

Supplemental deed poll

**Amending the constitution of the APN Asian REIT
Fund (to be renamed the Dexus Asian REIT Fund)**

Dexus Asset Management Limited

Supplemental deed poll

Date 25 October 2022

Party

Dexus Asset Management Limited ACN 080 674 479 of Level 5, 80 Collins Street, Melbourne, Victoria in its capacity as responsible entity of the APN Asian REIT Fund ARSN 162 658 200 (**Responsible Entity**)

Recitals

- A The Fund was established by, and is governed by, the Constitution.
- B The Fund is a managed investment scheme registered under Chapter 5C of the Corporations Act. The Responsible Entity is the trustee and responsible entity of the Fund.
- C Clause 21.2 of the Constitution provides that subject to the Corporations Act and any other approval that may be required by law, the Responsible Entity may by deed replace or amend the Constitution, or as otherwise permitted by the Corporations Act.
- D Section 601GC(1) of the Corporations Act provides that the Constitution may be modified, or repealed and replaced with a new constitution by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Unit Holders rights.
- E Clause 2.3(a) of the Constitution provides that the name of the Fund is the 'APN Asian REIT Fund' or such other name as the Responsible Entity may from time to time determine.
- F The Responsible Entity wishes to, and has the power to, amend the Constitution on the terms set out in this deed poll.
- G In the Responsible Entity's reasonable opinion, the amendments to the Constitution set out in this deed poll will not adversely affect Unit Holders' rights.

It is declared as follows:

1 Definitions and interpretation

1.1 Definitions

Unless otherwise defined in this deed poll, terms used in this deed poll bear the same meaning as in the Constitution, and:

- (a) **Constitution** means the constitution establishing the Fund dated 16 June 2011, as amended from time to time, which governs the Fund;
- (b) **Effective Date** means 31 October 2022; and

-
- (c) **Fund** means the registered scheme known as the APN Asian REIT Fund ARSN 162 658 200 (to be renamed the Dexus Asian REIT Fund).

1.2 Interpretation

- (a) Clause 1 of the Constitution applies to this deed poll as if set out in this deed poll.
- (b) Headings are inserted for convenience only and do not affect the interpretation of this deed poll.

2 Amendment of Constitution

In exercise of the power contained in clause 21.2 of the Constitution and section 601GC(1)(b) of the Corporations Act, the Responsible Entity declares that the Constitution is modified on and from the Effective Date by:

- (a) inserting the additional words underlined; and
- (b) deleting the words struck out,

in the Constitution as set out in Schedule 1.

3 No resettlement or redeclaration

The Responsible Entity confirms that it is not by this deed poll:

- (a) resettling or redeclaring the unit trust declared under the Constitution; or
- (b) causing the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

4 Effect of amendments

The amendments to the Constitution do not affect the validity or enforceability of any other provisions of the Constitution.

5 Governing law and jurisdiction

This deed poll is governed by the laws of Victoria and the Responsible Entity submits to the non-exclusive jurisdiction of its Courts. This deed poll has been executed and delivered on the date of this deed poll.

Schedule 1 - Constitution

Constitution

| ~~APN~~ Dexus Asian REIT Fund

| ~~APN Funds~~ Dexus Asset Management Fund

Constitution

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Date

Party

~~APN Funds~~ **Dexus Asset Management Limited** (formerly known as ~~APN Funds Management Limited~~) ACN 080 674 479 of Level ~~305~~, ~~101-80~~ Collins Street, Melbourne, Victoria 3000 (**Responsible Entity**)

Recitals

- A This Constitution is declared by the Responsible Entity to be the Constitution for a trust to be known as the ~~APN~~ **Dexus** Asian REIT Fund.

1 Definitions and interpretation

1.1 Definitions

In this Constitution the following terms, unless the context otherwise indicates, shall have the following meanings:

Adviser includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Responsible Entity or its related entities to provide advice or services in relation to the Trust.

AMIT means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Tax Act.

AMIT Choice means a choice made by the Responsible Entity pursuant to section 276-10(1)(e) of the Tax Act that the Trust be an AMIT for the purposes of the AMIT Regime.

AMIT Regime means the regime for the taxation of AMITs and Unit Holders contained in the:

- (a) Tax Act;
- (b) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016*;
- (c) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016*; and
- (d) *Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016*.

AMMA Statement has the meaning given to that phrase in section 276-460 of the Tax Act.

Applicant means a person who has made an application which has been accepted by the Responsible Entity (whether or not that person has been issued Units) and pursuant to which the person has undertaken a Commitment.

Application Price of a Unit on any day means the amount determined under clause 6.

ASIC means the Australian Securities and Investments Commission.

ASIC Exemption includes:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the *Corporations Act*; and

- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Trust or the Responsible Entity.

Assets means real property, cash, investments, rights, income and other property of the Trust from time to time.

Associate has the meaning given in the *Corporations Act*.

ASX means the ASX Limited (or a successor organisation) or the financial market operated by that company (whichever the context requires).

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the *Corporations Act*;
- (b) the requirements of the *Corporations Act* in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b).

Business Day means a day that most trading banks are open for business in Melbourne excluding any weekend or public holiday.

Call means a call on a Unit Holder or Applicant by the Responsible Entity to pay all or any part or all of:

- (a) the unpaid Application Price of a Partly Paid Unit; or
- (b) an Uncalled Commitment,

as the context requires.

Class means a class of Units as determined by the Responsible Entity under clause 3.4.

Class Expense means, in relation to a Class, an Expense or tax or a proportion of an Expense or tax determined by the Responsible Entity to be referable to a Class in accordance with clause 15.9.

Clearly Defined Rights where the rights to income and capital arising from each of the Units in the Trust are "clearly defined" at all times when the Trust is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

Commencement Date means the date of commencement of the Trust, being the date on which Units are first issued.

Commitment means, in respect of:

- (a) an Applicant, the dollar amount the Applicant has agreed to subscribe for Units; and
- (b) the transferee of Units that is not an Applicant, the dollar amount the transferee has agreed to subscribe for Units pursuant to an agreement as contemplated by clause 9.1(g).

Committed Equity means the sum of:

- (a) Application Prices for all issued Partly Paid Units and Fully Paid Units; and
- (b) Uncalled Commitments.

Complaint has the same meaning as in Australian Standard ISO 10002-2006 (or such other instrument which replaces it) and includes a dispute.

Constitution means this Constitution as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth), as amended from time to time.

Determined Member Component has the meaning given to that term in section 276-205 of the Tax Act.

Determined Member Component Choice a choice made by a Unit Holder under section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that term in section 276-255 of the Tax Act.

Distribution Calculation Date means the last Business Day of each month or any other dates the Responsible Entity nominates. For the avoidance of doubt, subject to the *Corporations Act*, the Responsible Entity may nominate different Distribution Calculation Dates for different Classes.

Distribution Date means 10 Business Days after the Distribution Calculation Date for the relevant Distribution Period.

Distribution Entitlement means the entitlement of a Unit Holder to the Net Income determined in accordance with clause 12.7.

Distribution Period means the period commencing on:

- (a) the Commencement Date and ending on the following Distribution Calculation Date and each subsequent period commencing on the day after a Distribution Calculation Date and
- (b) ending on the next Distribution Calculation Date or on termination of the Trust.

EDR Service means the Financial Ombudsman Service or such other ASIC-approved external dispute resolution service which replaces it.

Expenses includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these including but not limited to the example expenses set out in Schedule 1.

Financial Year means:

- (a) the period beginning on the Commencement Date and ending on the following 30 June; and
- (b) each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Trust.

Fully Paid Unit means a Unit for which the Application Price is fully paid.

Gross Asset Value means the sum of:

- (a) the value of all Assets; and
- (b) any other amounts which, in the opinion of the Responsible Entity, should be included for the purpose of making a fair and reasonable determination of the value of the Trust having regard to ordinary accounting principles.

GST has the meaning given to that expression in the GST Act.

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

GST Law has the meaning given to that expression in the GST Act.

IDPS means an investor directed portfolio service.

Initial Contribution means an amount which represents an initial contribution to the payment of an Applicant's Commitment which may be required by the Responsible Entity.

Interest Rate means the rate set pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time plus 2% per annum, calculated and accrued daily.

Interim Distribution means a distribution of the Net Income accruing during a Distribution Period (other than the last Distribution Period in a Financial Year).

Issue Date means the last Business Day of each month unless otherwise determined by the Responsible Entity.

Liabilities means the aggregate of the following at that time, as calculated by the Responsible Entity:

- (a) each liability of the Responsible Entity in respect of the Trust or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (b) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (c) other appropriate provisions in accordance with Australian Accounting Standards;

but does not include liabilities:

- (d) attached to application money or property in respect of which Units have not yet been issued; or
- (e) representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

For the avoidance of doubt, this definition of 'Liabilities' applies to the operation of the Trust under this Constitution only and is not intended to affect any other meaning of 'liabilities' of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes.

Liquid has the meaning given in section 601KA(4) of the *Corporations Act*.

Management Fee means a management fee to be charged by the Responsible Entity determined in accordance with clause 15.1.

Member Component has the meaning given to that term in section 276-210 of the Tax Act.

Month means a calendar month.

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

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Responsible Entity determines should be made); and
- (b) following any Distribution Calculation Date, the amount of any Net Income payable but not paid to Unit Holders on the day which the Net Asset Value is determined.

Net Income means the net income of the Trust determined by the Responsible Entity as determined in clauses 12.4 and 12.5.

Paid Proportion means in respect of a Unit Holder, the fraction calculated by dividing:

- (a) the amount that the Unit Holder has subscribed for the issue of Units pursuant to a Commitment plus the Application Price of any Units issued pursuant to a Commitment transferred to the Unit Holder, minus the Application Price of any Units issued pursuant to a Commitment transferred by the Unit Holder; by
- (b) the Unit Holder's Commitment.

Paid Up Equity means the sum of the:

- (a) Application Price for all issued Fully Paid Units; and
- (b) Partly Paid Proportion for Partly Paid Units.

Partly Paid Proportion means the amount determined in accordance with the following formula:

$$A = \frac{B}{C}$$

Where:

- A is the total number of Partly Paid Units on issue;
- B is the total of all amounts paid or due but unpaid in respect of the Application Price of all Partly Paid Units on issue; and
- C is the total of all Application Prices for Partly Paid Units on issue.

Partly Paid Unit means a Unit which has an Application Price which is payable by instalments and in respect of which all instalments have not been paid.

Project means the means the acquisition, subdivision, development, construction of any building on or sale of any Property (in whole or part).

Property means any real property purchased by the Responsible Entity as responsible entity for the Trust.

Register means each of the registers established and kept by the Responsible Entity under clause 20.

Registered Scheme means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) of the *Corporations Act*.

Relevant Person means a person who at any time was, is, or shall become a Unit Holder and that person's executors, administrators, successors and assigns.

Responsible Entity means [Dexus Asset](#) ~~APN Funds~~ Management Limited ACN 080 674 479 or any other person acting as the trustee or responsible entity of the Trust in accordance with the provisions of this Constitution and, where appropriate, includes any agent or Adviser appointed by the Responsible Entity.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Tax means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* or the *Income Tax (Transitional Provisions) Act 1997* (as the case requires).

Tax Invoice has the same meaning as given to that expression in the GST Act.

Transaction Charge means, in relation to a Unit, an amount determined by the Responsible Entity which reflects a fair estimate of Expenses incurred or that would be incurred:

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the withdrawal of Units; or
- (c) for the transfer of Units or Assets to a Unit Holder,

as the case requires.

Transferee Subscription Agreement means a subscription agreement in the form required by the Responsible Entity in its absolute discretion which requires the transferee to be bound by the terms of this deed and any other term as determined by the Responsible Entity.

Trust means the trust constituted by this Constitution and known as the ~~APN~~-[Dexus](#) Asian REIT Fund.

Trust Component has the meaning given to that term in section 276-260 of the Tax Act.

Uncalled Commitment means in respect of:

- (a) an Applicant, the Commitment of the Applicant less the dollar amount of Calls paid by the Applicant and any Initial Contribution; and
- (b) the Trust, the sum of Uncalled Commitments for all Applicants.

Unders and Overs Rules means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Trust level are to be carried-forward and dealt with in future income years.

Unit means a unit in the Trust created under this Constitution.

Unit Holder means a person registered as the holder of a Unit (including any person jointly registered).

Unit Holding means the total Units held by a Unit Holder.

Valuation means the valuation report prepared by the Valuer and procured by the Responsible Entity at least 15 and not more than 20 Business Days before the end of a Financial Year.

Valuer means an independent expert of at least 10 years standing experienced in the valuation of assets of a similar type as the Property, such expert to be appointed by the Responsible Entity. The valuer so appointed shall act as expert and not as arbitrator and his or her decision shall be final and binding. Such valuer shall be instructed to consider any written representations made reasonably promptly on behalf of the Responsible Entity or any of its subsidiaries.

Wholesale Client has the meaning set out in the Corporations Act.

Withdrawal Date means the last Business Day of each month unless otherwise determined by the Responsible Entity.

Withdrawal Offer means an offer made by the Responsible Entity in respect of the Trust in accordance with section 601KB of the *Corporations Act*.

Withdrawal Price means the amount determined under clause 8.

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to an agreement or document (including, without limitation, a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document;
- (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;

- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (i) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
- (j) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

1.3 General compliance provision

- (a) This clause 1.3 only applies if the Trust is a Registered Scheme.
- (b) A provision of this Deed which is inconsistent with a provision of the *Corporations Act* does not operate to the extent of the inconsistency.
- (c) This clause 1.3 is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this Deed.
- (d) This clause 1.3 prevails over all other provisions of this Deed including any that are expressed to prevail over it.

2 The Trust

2.1 Responsible Entity

As from the Commencement Date, [Dexus Asset](#)~~APN Funds~~ Management Limited is and has agreed to act as responsible entity and trustee of the Trust.

2.2 Declaration of Trust

- (a) The Assets shall vest in the Responsible Entity on the Commencement Date and the Responsible Entity declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Constitution.
- (b) The Responsible Entity shall clearly identify the Assets as property of the Trust and hold the Assets separately from the assets of the Responsible Entity and any other trust or managed investment scheme for which the Responsible Entity is the trustee or responsible entity.

2.3 Name of Trust

- (a) The name of the Trust is the '[APN-Dexus](#) Asian REIT Fund' or such other name as the Responsible Entity may from time to time determine.
- (b) Subject to clause 2.3(c) and clause 2.3(d), if:
 - (i) [Dexus Asset](#) ~~APN Funds~~ Management Limited retires or is removed as responsible or trustee of the Trust; or
 - (ii) there is a change in who controls [Dexus Asset](#)~~APN Funds~~ Management Limited;

- (iii) (each a 'Name Change Event'), then the name of the Trust must be changed by deleting the expression 'DexusAPN' and the Responsible Entity must not use that expression (or a substantially or deceptively similar expression or letters) in connection with the Trust. The Responsible Entity must amend this Constitution to reflect the change in the name of the Trust within 20 Business Days of the Name Change Event occurring. The new Responsible Entity or new trustee covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.
- (c) The Responsible Entity may use the expression 'DexusAPN' for the purpose of advertising the change of name of the Trust for 20 Business Days after the Name Change Event or in the case of the Responsible Entity retiring or being removed, such longer period as the Responsible Entity agrees. In the case of the Responsible Entity retiring or being removed, any advertisement must be approved by the Responsible Entity. That approval will not be unreasonably withheld.
- (d) Clause 2.3(b) does not apply if Dexus AssetAPN Funds Management Limited agrees otherwise prior to the Name Change Event subject to any conditions it may specify (in its absolute discretion).

3 Units and Unit Holders

3.1 Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Each Unit confers on the Unit Holder a beneficial interest in the Trust as an entirety and does not confer an interest in a particular part of the Trust or the Assets.

3.2 Fractional Units

- (a) The Responsible Entity may issue fractions of a Unit calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines.
- (b) This Constitution applies to fractions of Units in proportion to which the fraction bears to one Unit.

3.3 Consolidation, subdivision and conversion of Units

- (a) Subject to clause 3.3(b), the Responsible Entity may consolidate, divide or convert the number of Units on issue into any number of Units other than the number into which the Assets is for the time being divided.
- (b) A division, consolidation or conversion of a kind referred to in clause 3.3(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on issue in that Class.
- (c) The Responsible Entity must amend the Register to record any consolidation, division or conversion of Units.

3.4 Classes of Units

Subject to section 601FC(1)(d) of the *Corporations Act* (if the Trust is a Registered Scheme), the Responsible Entity may create different Classes with such rights, obligations and restrictions

attaching to the Units of such Classes as it determines. If the Responsible Entity so determines in relation to a particular Class, the terms of issue of those Units in that Class may:

- (a) eliminate, reduce, create or enhance any of the rights or obligations which would otherwise be carried by such Units; and
- (b) provide for conversion of Units from one Class to another Class and, if the Responsible Entity so determines, change the number of Units on such a conversion.

3.5 Equal value

At any time, all the Units of a Class are of equal value and rank equally.

3.6 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with or question the rights, powers, authority, discretion or obligations of the Responsible Entity under this Constitution;
 - (ii) exercise any right, power or privilege in respect of an Asset;
 - (iii) lodge a caveat in respect of any Asset; or
 - (iv) require that any Asset be transferred to the Unit Holder or any other person.
- (c) A Unit Holder may not create any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other Security Interest over a Unit without the consent of the Responsible Entity.

3.7 Directions

Unit Holders cannot give any direction to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which:

- (a) may result in the Responsible Entity acting contrary to the law; or
- (b) would otherwise be within the scope of any discretion or power expressly conferred on the Responsible Entity by this Constitution.

3.8 Joint holders of Units

Where two or more persons are registered as the holders of a Unit they are, for the purpose of the administration of the Trust and not otherwise, deemed to hold the Unit as joint tenants and not tenants in common, on the following conditions:

- (a) the Responsible Entity shall not be bound to register more than three persons as joint Unit Holders of the Unit;
- (b) the joint Unit Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Unit Holder, the survivor or survivors shall be the only person or persons whom the Responsible Entity will recognise as having any title to the Unit, subject to the production of any evidence of death that the Responsible Entity requires;

- (d) any one of the joint Unit Holders may give an effective receipt that discharges the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Unit Holders of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Responsible Entity and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unit Holders,

unless the Responsible Entity determines otherwise.

3.9 Benefits and obligations of Unit Holders

Except where expressly provided in this Constitution to the contrary, all benefits and obligations contained in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.

3.10 Perpetuities

The Responsible Entity cannot issue any Units after the 80th anniversary from the day before the Commencement Date if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. The preceding sentence prevails over all provisions of this Constitution.

3.11 Application of the AMIT Regime to the Trust

- (a) If the Trust meets the qualification requirements set out in the AMIT Regime, the Responsible Entity may make an AMIT Choice.
- (b) If an AMIT Choice is made, then subject to clause 3.11(c), the provisions in Schedule 2 will prevail over any other provisions of this Constitution to the extent of any inconsistency, if such an inconsistency is not adverse to Unit Holders' rights.
- (c) If the Trust ceases to be an AMIT for any reason, including but not limited to the Trust ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 2, except those in clause 1 of Schedule 2 which will continue to be applied by the Responsible Entity, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Trust when it is not an AMIT; and
 - (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Trust.
- (d) Nothing in this clause 3.11 imposes an obligation on the Responsible Entity to:
 - (i) enter into or facilitate the entry of the Trust into the AMIT Regime;
 - (ii) make any changes to this Constitution; or
 - (iii) make an AMIT Choice.

4 Application procedure

4.1 Offers

The Responsible Entity may at any time offer Units for subscription or sale and may invite persons to make offers to apply for or buy Units.

4.2 Minimum amounts

The Responsible Entity may specify a minimum initial application amount, minimum Commitment amount, minimum further application amount, minimum holding amount in respect of Units for the Trust as a whole or a Class and vary those amounts at its discretion.

4.3 Form of application

- (a) Each application for Units will, unless the Responsible Entity approves otherwise:
 - (i) conform with the form and content requirements of any relevant disclosure document;
 - (ii) if there is no relevant disclosure document, be made in such manner as the Responsible Entity approves and
 - (iii) be accompanied by application monies as required by any relevant disclosure document.
- (b) The Responsible Entity may authorise an application to be transmitted electronically.

4.4 Reinvestment

The Responsible Entity may, at its absolute discretion, allow a Unit Holder to reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units in the Trust under a distribution reinvestment plan on terms and conditions prescribed by the Responsible Entity.

4.5 Acceptance or rejection

The Responsible Entity may, without being bound to give any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of an application.

4.6 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not cleared within 5 Business Days of being presented for payment.

4.7 Payment of application money

- (a) Payment of the application money must be in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if required by the Responsible Entity).

- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets, or if required by the Responsible Entity, by the Unit Holder.

4.8 Receipt of application

The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

4.9 Issue of Units

Unless otherwise determined by the Responsible Entity, Units are taken to be issued:

- (a) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clauses 4.4 and 12.15, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated; or
- (b) in all other cases, on the Issue Date immediately after the later of the day on which:
 - (i) the Responsible Entity accepts the application for Units and the applicant is registered as the Unit Holder of the Unit on the Register; or
 - (ii) the Responsible Entity receives the application money, or the property (which is acceptable to the Responsible Entity) against which the Units are to be issued is vested in the Responsible Entity.

4.10 Number of Units issued

Subject to clause 4.11 and the terms of issue of a Unit, the number of Units issued on any Issue Date in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be determined in accordance with the following formula:

- (a) for a Unit other than a Partly Paid Unit, the number determined in accordance with the following formula:

$$N = \frac{A}{B}$$

Where:

N is the number of Units issued;

A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement); and

B is the Application Price for the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines from time to time.

- (b) for a Partly Paid Unit, the number determined in accordance with the following formula:

$$N = \frac{A}{B}$$

Where:

- N is the number of Units issued;
- A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement); and
- B is that amount of the Application Price which is payable at the time of issue of the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines from time to time.

4.11 Units as consideration

Where an investment is acquired (on behalf of the Trust) for consideration which includes the issue of Units by the Responsible Entity, the number of Units created and issued by the Responsible Entity is determined in accordance with the following formula:

$$N = \frac{A - B}{C}$$

Where:

- N is the number of Units issued;
- A is the value of the investment being acquired as determined in accordance with clause 11;
- B is the amount of the cash consideration paid in respect of the investment (if any); and
- C is determined as:
 - (i) for a Unit other than a Partly Paid Unit - the Application Price of the Units being issued (as determined in accordance with clause 6.2); and
 - (ii) for a Unit that is a Party Paid Units - the amount of the Application Price which is payable at the time of issue of the Unit.

4.12 No certificates

No certificates will be issued for Units, unless determined otherwise by the Responsible Entity.

4.13 Defective applications

Where, within 10 Business Days (or such other period as the Responsible Entity determines) of the creation and issue of Units in the Trust, the Responsible Entity determines that:

- (a) the applicant was not entitled to hold the Units issued;
- (b) the application was incorrectly executed or executed without power or authority; or
- (c) the application form was defective and was accepted in error,

then the Responsible Entity may in its sole discretion cancel those Units, make an appropriate entry in the Register of the Trust and repay the application money to the applicant out of the

Assets. If Units are cancelled under this clause, the Responsible Entity is not required to adjust any Application Price or Withdrawal Price determined before the cancellation of the Units in the Trust.

5 Partly Paid Units and Commitments

5.1 Partly Paid Units

Subject to the *Corporations Act* (if the Trust is a Registered Scheme), the Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines including, without limitation, terms and conditions regarding the number of instalments and the terms on which instalments are payable.

5.2 Commitments

A person may agree to make a Commitment to subscribe for Units and must:

- (a) complete and execute an application in respect of the Commitment on such terms and conditions and in such form as the Responsible Entity determines; and
- (b) undertake to pay Calls as and when required by the Responsible Entity.

5.3 Calls

- (a) Subject to the rights, obligations and restrictions attaching to any Class, the Responsible Entity may make a Call on:
 - (i) the holder of a Partly Paid Unit and the holder must pay the Call in accordance with the terms of issue of that Unit; and
 - (ii) an Applicant and the Applicant must pay the Call in accordance with the Commitment.
- (b) The Responsible Entity may only make a Call if the Call is made on all Unit Holders of that Class or on all Applicants (as applicable).
- (c) The Responsible Entity must make Calls pro rata to:
 - (i) the number of Partly Paid Units held by a Unit Holder; and
 - (ii) the Commitment of each Applicant.
- (d) If an Applicant makes an application to make a Commitment after a Call has been made, subsequent Calls must be made so that no Call is made on any Applicant if, following the payment of that Call, the Paid Proportion of that Applicant would be greater than the Paid Proportion of any other Applicant, assuming that all Calls made are paid in full.
- (e) The Responsible Entity may at any time postpone a Call or extend the time for payment of a Call.
- (f) Upon payment of a Call in respect of a Commitment, the Responsible Entity must issue to the Applicant the number of fully paid Units calculated in accordance with clause 4.10(a).

5.4 Default on calls

- (a) If all or part of a Call is not paid on or before the date on which payment under the Call is due, the Applicant or the holder of a Partly Paid Unit (as applicable) must pay interest on the unpaid portion of the Call from that day to the time of actual payment.
- (b) Interest which accrues on an unpaid Call will become an Asset.
- (c) Unless the terms of the Partly Paid Unit or the Commitment provide otherwise, interest will be payable at the Interest Rate.

5.5 Non-receipt of notice of Call

A Call is not invalidated as a result of the non-receipt of any notice of a Call by a Unit Holder or Applicant or the accidental omission to give notice of a Call to any Unit Holder or Applicant.

5.6 Deductions for unpaid Calls

If all or any part of a Call is not paid by the date on which payment under the Call is due, the Responsible Entity may apply any amount payable to the relevant Unit Holder under this Deed to pay amounts unpaid under the Call, together with accrued interest and all costs and expenses incurred by the Responsible Entity in relation to the unpaid Call.

5.7 Forfeiture

- (a) If all or part of a Call is not paid by the date on which payment under the Call is due, any Partly Paid Units that are the subject of the Call or Units held by a Unit Holder that has made a Commitment may be forfeited to the Responsible Entity.
- (b) Forfeiture may be effective by a notice from the Responsible Entity, with effect from the date of such notice.
- (c) The non-receipt of any notice by any Unit Holder, or the accidental omission to give notice of forfeiture to any Unit, shall not invalidate the forfeiture.
- (d) The forfeiture of Units under this clause 5 includes forfeiture of all distributions and other money payable to the Unit Holder relating to the forfeited Units not actually paid to the Unit Holder before the forfeiture (except to the extent to which such amounts have already been applied to reduce the Call amount under clause 5.6).
- (e) Unless the Responsible Entity determines otherwise, the rights attaching to forfeited Units which have not yet been sold or otherwise disposed of are suspended for the period from the date of the forfeiture to the date of sale or disposal.
- (f) Subject to clause 5.10, a Unit Holder whose Units have been forfeited under this clause ceases to be a Unit Holder in respect of the forfeited Units from the date the Responsible Entity gives a notice under clause 5.7(b).

5.8 Entry on Register

Where any Unit has been forfeited in accordance with this clause, the Responsible Entity will enter the forfeiture and the date of forfeiture in the Register.

5.9 Disposal of forfeited Units

Subject to the *Corporations Act* and any applicable ASIC Exemption (where the Trust is a Registered Scheme), the Responsible Entity may sell or otherwise dispose of a forfeited Unit in the manner and at such prices as the Responsible Entity determines, including on the basis that the purchaser of such forfeited Units is not obliged to pay any unpaid Call in respect of that Unit.

5.10 Cancellation of Forfeiture

At any time before a forfeited Unit is sold or otherwise disposed of:

- (a) the Responsible Entity may cancel the forfeiture upon such conditions as it determines; and
- (b) if the Unit Holder pays to the Responsible Entity the full amount of all unpaid Calls (including accrued interest and all costs and expenses incurred by the Responsible Entity in the relation to the unpaid Call), the forfeiture must be cancelled.

5.11 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of forfeited Units, receive the selling price in respect of those Units and effect a transfer of those Units in the name of the Unit Holder whose Units have been sold. The Unit Holder authorises the Responsible Entity to take these steps and appoints the Responsible Entity as its agent and attorney to do so. The Unit Holder indemnifies the Responsible Entity against any claim or liability incurred by the Responsible Entity in doing so.
- (b) Upon effecting a transfer under clause 5.11(a), the Responsible Entity shall register the transferee as the holder of the Units in the Register. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

5.12 Remaining liability

Despite the forfeiture of Units pursuant to clause 5.7, the Unit Holder whose Unit has been forfeited remains liable to pay to the Responsible Entity the amounts listed in clauses 5.15(a)(i) to 5.15(a)(iv). That liability ceases if and when the Responsible Entity receives payment in full of those amounts and amounts owing by that Unit Holder.

5.13 Lien

Subject to the *Corporations Act*, the Responsible Entity has a first and paramount lien upon every Unit for unpaid Calls and other moneys payable to the Responsible Entity by a Unit Holder. That lien extends to all distributions and other money payable in relation to a Unit from time to time.

5.14 Sale of Units to enforce lien

For the purposes of enforcing a lien, the Responsible Entity may sell the Units subject to the lien, in accordance with this clause 5 as if the Units had been forfeited for non-payment of a Call.

5.15 Proceeds of sale

- (a) The net proceeds of any sale of forfeited Units to enforce a lien (including all distribution and other money from time to time payable to the Unit Holder in relation to those Units) must be applied by the Responsible Entity in the following order:

- (i) in payment of all costs which have been or will be incurred in relation to the forfeiture or enforcement of the lien (as the case may be) and the sale;
 - (ii) in payment of the amount of the unpaid Call;
 - (iii) in payment of the:
 - (A) unpaid portion of the Application Price in respect of the forfeited Unit;
 - (B) uncalled Commitment of an Applicant;
 - (iv) in payment of the amount of any accrued interest on the Call and any other moneys payable to the Responsible Entity; and
 - (v) in payment of the surplus (if any) to the Unit Holder whose Units have been sold.
- (b) If the net proceeds of any sale are insufficient to pay the amounts in clauses 5.15(a)(i) to 5.15(a)(iv), the Unit Holder whose Units have been sold remains liable for the difference between the net proceeds of sale and the sum of those amounts.

5.16 Joint Holders

- (a) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due on the Partly Paid Units held by them.
- (b) Joint Applicants in respect of a Commitment are jointly and severally liable for all amounts due in respect of a Commitment.

5.17 Termination

Upon termination of the Trust an Applicant has no liability to subscribe for Units except to the extent of Calls made prior to the termination.

5.18 Actions not limited

For the avoidance of doubt, nothing in this clause 5 limits an action, remedy or right that the Responsible Entity may take or pursue at law (whether pursuant to a breach of this Deed, any contract or otherwise) in order to enforce the non payment of a Call.

6 Application Price

6.1 Application Price

- (a) The Application Price for the initial issue of Units is \$1.00 plus any relevant Transaction Charge.
- (b) At any other time, but subject to clause 6.1(d) and the rights, obligations and restrictions attaching to any particular Units or Class, the Application Price for a Unit shall be determined in accordance with the following formula:

$$AP = \frac{A + B}{C + D}$$

Where:

- AP is the Application Price;
- A is the Net Asset Value;
- B is any relevant Transaction Charge expressed as a percentage point basis; and
- C is the number of Fully Paid Units on issue; and
- D is Partly Paid Proportion.

For the purposes of the formula in clause 6.1(b), where there is more than one Class on issue, 'Net Asset Value', 'Transaction Charge' and the 'number of Units on issue' are variables determined by the Responsible Entity in respect of the relevant Class in accordance with clause 3.4.

- (c) Each of the variables in clause 6.1(b) must be determined:
 - (i) as at the next Issue Date after the later of the day on which the Responsible Entity:
 - (A) accepts the completed application for Units; or
 - (B) receives the application money or the property against which the Units are to be issued is vested in the Responsible Entity; or
 - (ii) in the case of a Unit issued under a distribution reinvestment plan, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.
- (d) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Trust is a Registered Scheme it is permitted to do so by the *Corporations Act* and any applicable ASIC Exemption (and in such case, subject to the terms of that ASIC Exemption).

6.2 Issue of Units to acquire an Asset

Subject to clause 6.2(b), where Units are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Trust):

- (a) the Application Price for those Units must be calculated in accordance with clause 6.1(b) on the date of the agreement under which there will be an issue of Units; and
- (b) the Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Trust is a Registered Scheme it is permitted to do so under the *Corporations Act* and any applicable ASIC Exemption.

6.3 Rounding

The Application Price may be rounded as the Responsible Entity determines.

6.4 Satisfaction of Application Price

The Application Price may be satisfied by payment in cash or by transfer to the Responsible Entity of property acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts payment other than cash, it may determine that some or all of the costs associated with the valuation or transfer of such property are payable or reimbursable out of the Assets or by the applicant.

7 Withdrawal procedures

7.1 Withdrawal request

Subject to this clause 7 and the *Corporations Act* (where the Trust is a Registered Scheme), a Unit Holder may make a request for the withdrawal of some or all of its Units, or to realise a specified amount, in any manner or form approved or required by the Responsible Entity and delivered to the registered office (or other place nominated by the Responsible Entity) and:

- (a) while the Trust is a Registered Scheme and not Liquid, the Responsible Entity must only give effect to that withdrawal request in the circumstances set out in clause 7.3; and
- (b) at any other time, the Responsible Entity may give effect to that request at the time and in the manner set out in clause 7.2, provided that the withdrawal request has been given to the Responsible Entity at least 30 days prior to the Withdrawal Date to which the request relates, unless otherwise agreed by the Responsible Entity.

7.2 Withdrawal while Trust is Liquid or not a Registered Scheme

- (a) This clause 7.2 shall apply in respect of the withdrawal of Units unless clause 7.3 applies.
- (b) Within a reasonable time of receiving the withdrawal request under clause 7.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:
 - (i) deny the request and notify the Unit Holder accordingly;
 - (ii) effect the withdrawal request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Withdrawal Price out of the Assets;
 - (iii) subject to the *Corporations Act*, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the withdrawal request; or
 - (iv) partially effect the withdrawal in the manner described in clause 7.2(b)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 7.2(b)(iii).
- (c) If the Unit Holder has made a withdrawal request which complies with this Constitution and the Responsible Entity accepts the withdrawal request, in part or in full, the Responsible Entity must satisfy the withdrawal request in respect of a Unit by payment from the Assets the Withdrawal Price calculated in accordance with clause 8. The payment must be made within 30 days of the Withdrawal Date following the day on which the withdrawal request was made.
- (d) Notwithstanding clause 7.2(c), the Responsible Entity may extend the period allowed for satisfying a withdrawal request until a later Withdrawal Date if in the opinion of the Responsible Entity:
 - (i) the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset;

- (ii) the Responsible Entity does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request; or
 - (iii) it is, for any reason, impractical to calculate the Net Asset Value of the Assets, including because of the closure of an exchange or trading or withdrawal restrictions in respect of a security.
- (e) The Responsible Entity may specify a minimum withdrawal amount for the Trust or a Class and vary that amount at its discretion.
- (f) Unless otherwise determined by the Responsible Entity, the Responsible Entity need not give effect to a withdrawal request if:
 - (i) the aggregate Withdrawal Price of the Units to be redeemed is less than any minimum withdrawal amount determined by the Responsible Entity; or
 - (ii) the withdrawal would result in the aggregate Withdrawal Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 4.2.
- (g) If compliance with a withdrawal request would result in the aggregate Withdrawal Price of a Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 4.2, the Responsible Entity may treat the withdrawal request as relating to the Unit Holder's entire Unit Holding.
- (h) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Withdrawal Price of that Unit Holding is less than the then current minimum holding amount, without the need for a withdrawal request.
- (i) The Responsible Entity may redeem the Unit Holding of a Unit Holder without the need for a withdrawal request after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount.
- (j) Any balance realised representing a fraction of the proceeds of withdrawal of a Unit will be retained by the Responsible Entity to be added to any further application money received from the Unit Holder or to the proceeds of withdrawal of any other Units of the Unit Holder as the Responsible Entity may determine.
- (k) If the application money for the Units which are the subject of a withdrawal request is paid by cheque, the Responsible Entity may refuse to act on that request until the cheque has cleared.

7.3 Withdrawal while Trust is a Registered Scheme and not Liquid

- (a) This clause 7.3 shall apply when the Trust is a Registered Scheme and not Liquid.
- (b) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity in accordance with Part 5C.6 of the *Corporations Act*.
- (c) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (d) The Responsible Entity is not at any time obliged to make a Withdrawal Offer.

- (e) If the Responsible Entity receives a withdrawal request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

7.4 Clauses applicable whether or not the Trust is Liquid

The following clauses 7.5 to 7.12 are applicable in respect of withdrawals of Units regardless of whether or not the Trust is Liquid.

7.5 The Responsible Entity may deny a request for withdrawal

Subject to the *Corporations Act* (where the Trust is a Registered Scheme) and clause 7.3 and irrespective of anything in clause 7.2, the Responsible Entity may deny a request for withdrawal of Units where:

- (a) the Trust has been terminated under clause 23;
- (b) accepting the request would constitute a breach of this Constitution, the compliance plan, the *Corporations Act*, or the disclosure document;
- (c) accepting the request would cause the Trust to cease to be Liquid;
- (d) accepting the request would unfairly prejudice another Unit Holder; or
- (e) the Responsible Entity does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request.

7.6 Restrictions on Unit Holder

- (a) Upon making a withdrawal request under clause 7.1, the Unit Holder will have no right to deal with the Units that are subject of the request (unless and until the request is denied by the Responsible Entity).
- (b) A Unit Holder may not withdraw a withdrawal request unless the Responsible Entity agrees.

7.7 Responsible Entity discretion to redeem

Subject to the *Corporations Act* (where the Trust is a Registered Scheme) and clause 7.3, the Responsible Entity may at any time in its absolute discretion redeem some or all of the Units held by a Unit Holder without being requested to do so at the Withdrawal Price by giving at least 30 days notice to the Unit Holder of its intention to redeem such Units.

7.8 No obligation to pay out of own funds

The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.

7.9 Sums owed to the Responsible Entity

Subject to the *Corporations Act* (where the Trust is a Registered Scheme), the Responsible Entity may deduct from the proceeds of withdrawal or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

7.10 Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Withdrawal Price due to Unit Holder pursuant to a withdrawal request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 7.10(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal request or Withdrawal Offer (based on a valuation of the Assets which is consistent with the range of ordinary commercial practice for valuing assets of that type and be reasonably current). If the Responsible Entity requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.
- (c) The Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder, who shall be taken to have a present entitlement in that amount, if the Unit Holder redeems one or more of their Units and the direction is made to fund the Withdrawal Offer.

7.11 Order of withdrawal

Unless the Responsible Entity determines otherwise, the first Units issued to a Unit Holder are the first to be redeemed.

7.12 Liquid or not Liquid

The Responsible Entity will determine whether the Scheme is Liquid. Such a determination is binding on Unit Holders and no Unit Holder will challenge it.

7.13 Determination of income and capital

Unless the Responsible Entity otherwise determines, the proceeds of withdrawal paid to a Unit Holder will comprise of capital only. Subject to the law, the Responsible Entity may however determine at its absolute discretion that the proceeds of withdrawal comprises part capital and part income of the Trust in the Financial Year in which the withdrawal occurs.

7.14 Cooling off

Where the Trust is a Registered Scheme, nothing in this clause 7 prevents the Responsible Entity from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the trustee of the Trust.

8 Withdrawal Price of Units

8.1 Withdrawal Price

A Unit must only be redeemed at a Withdrawal Price calculated in accordance with the following formula:

$$WP = \left(\frac{A}{B}\right) \times \left(\frac{C}{D}\right)$$

Where:

WP is the Withdrawal Price;

A is Net Asset Value less any relevant Transaction Charge;

B is the number of Fully Paid Units on issue plus the Partly Paid Proportion;

C is the amount paid up on that Unit; and

D is the Application Price of that Unit.

For the purposes of the above formula in, where there is more than one Class on issue, 'Net Asset Value', 'Transaction Charge' and the 'number of Units on issue' are variables determined by the Responsible Entity in respect of the relevant Class in accordance with clause 3.4.

8.2 Determination of Withdrawal Price

Each of the variables in clause 8.1 must be determined:

- (a) while the Trust is a Registered Scheme and not Liquid, as at the day on which the Withdrawal Offer closes; and
- (b) at any other time, as at:
 - (i) the next Withdrawal Date after the Responsible Entity received (or is taken to have received) a withdrawal request; or
 - (ii) where the period allowed for withdrawal has been extended pursuant to clause 7.2(d), the Withdrawal Date on which the withdrawal request is processed.

8.3 Receipt of withdrawal request

The Responsible Entity may determine that a withdrawal request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

8.4 Rounding

The Withdrawal Price may be rounded as the Responsible Entity determines.

9 Transfers

9.1 Transferability

- (a) Unit Holders may not transfer or assign their interest in the Trust other than with the prior written consent of the Responsible Entity, which consent may be given or withheld at the Responsible Entity's sole discretion.
- (b) A transfer of Units is not effective until it has been recorded in the Register.

- (c) All transfers of Units will be effected by an instrument of transfer in writing in a form and in a manner approved by the Responsible Entity provided that, where the Trust is a Registered Scheme, the form of transfer must not be prohibited by the *Corporations Act*.
- (d) The Responsible Entity may refuse to register a transfer (whether voluntarily or by operation of law) of Units without being bound to provide any reason for any refusal.
- (e) A transferor of Units remains the holder of the Units until the transfer is registered and the name of the transferee is entered in the Register in respect of those Units.
- (f) The Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.
- (g) The Responsible Entity may require a transferee of Units to execute a Transferee Subscription Agreement before allowing the transfer of Units to the transferee.

9.2 Refusal to register a transfer

Without limiting the generality of clause 9.1, subject to the *Corporations Act* (where the Trust is a Registered Scheme), the Responsible Entity may refuse to register any transfer of Units without being bound to provide a reason for such refusal and the Responsible Entity may refuse to register a transfer of Units if:

- (a) the Responsible Entity is not satisfied that the transferee has the financial resources and intention to pay all:
 - (i) unpaid amounts in respect of Partly Paid Units; and
 - (ii) Uncalled Commitments;
- (b) the transferee has not undertaken:
 - (i) to pay the unpaid amounts in respect of Partly Paid Units; and
 - (ii) a Commitment,
 in a form acceptable to the Responsible Entity;
- (c) the transferee is not a Wholesale Client;
- (d) the Responsible Entity would or may be required to prepare a product disclosure statement in respect of the transfer of the Units; or
- (e) the transfer is required to be, but is not, duly stamped.

9.3 Registration of transfers

- (a) Unless the Responsible Entity determines otherwise, where Units are transferred, the following documents must be lodged for registration with the Responsible Entity:
 - (i) a proper instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units; and
 - (iii) any other information that the Responsible Entity may require to establish the transferor's right to transfer the Units.

- (b) The Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

10 Transmission of Units

10.1 Entitlement on death

- (a) Subject to clause 10.1(b), if a Unit Holder dies:
 - (i) the survivor (or survivors, where the Unit Holder was a joint Unit Holder); and
 - (ii) the legal personal representatives of the deceased, where the Unit Holder was a sole Unit Holder,

will be the only persons recognised by the Responsible Entity as having any title to the Unit Holder's interest in the Units.

- (b) The Responsible Entity may refuse to recognise any person referred to in clause 10.1(a) or to recognise any claim without providing any reason. The Responsible Entity may require evidence of a Unit Holder's death as it thinks fit.
- (c) This clause 10 does not release:
 - (i) the estate of a deceased joint Unit Holder from any liability in respect of a Unit that had been jointly held by the Unit Holder with other persons; or
 - (ii) where the Unit Holder was a sole Unit Holder, the legal personal representative or the trustee of the Unit Holder's estate from any liability in respect of Units held by the deceased Unit Holder.

10.2 Registration of persons entitled

- (a) Subject to the *Corporations Act*, the *Bankruptcy Act 1966* (Cth) and the production of any information that is properly required by the Responsible Entity, a person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Unit Holder may elect to:
 - (i) by written notice to the Responsible Entity, be registered as the Unit Holder in respect of that Unit; or
 - (ii) to nominate some other person to be registered as the Unit Holder of the Unit.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.

10.3 Distributions and other rights

- (a) If a Unit Holder dies or suffers a legal disability, the Unit Holder's legal personal representative or the trustee of the Unit Holder's estate (as the case may be) is, on the production of all information as is properly required by the Responsible Entity, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Unit Holder would have been entitled to if the Unit Holder had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit as a result of the death or legal disability of a Unit Holder, they will, for the purposes of this Constitution, be taken to be joint Unit Holders of the Unit.

11 Valuation of Assets

11.1 Valuation of Assets

- (a) The Responsible Entity may, at any time, cause the valuation of any Asset and (if the Trust is a Registered Scheme) shall do so as and when required by the *Corporations Act*.
- (b) The must cause an Asset to be valued if and when required by ASIC or the *Corporations Act* and the valuation must be carried out in accordance with those requirements.

11.2 Determination of Net Asset Value

- (a) The Responsible Entity may determine the Net Asset Value at any time including more than once each day.
- (b) The Responsible Entity must determine the Net Asset Value:
 - (i) if and when required by ASIC or the *Corporations Act* (if the Trust is a Registered Scheme);
 - (ii) on each Issue Date and any other day on which Units in the Trust are issued; and
 - (iii) on each Withdrawal Date in respect of which a Withdrawal Offer has been made pursuant to clause 7.3.

11.3 Method of valuation

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time.
- (b) Where the Trust is a Registered Scheme, unless the Responsible Entity decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value and whilst the Trust is a Registered Scheme, the valuation methods and policies applied by the Responsible Entity shall be capable of resulting in a calculation of an Application Price or Withdrawal Price that is independently verifiable.

12 Income and distributions

12.1 Collection of income

The Responsible Entity shall receive and collect all dividends, interest, rents and all other income of the Trust.

12.2 Payment of expenses

The Responsible Entity shall pay out of the gross income of the Trust all costs and disbursements, commissions, fees, tax (including any goods and services tax, land tax or income tax), management charges and other proper outgoings in respect of the Assets and administration of the Trust.

12.3 Nature of receipts

The Responsible Entity may determine whether any receipt, profit, gain (whether realised or unrealised) payment, loss, outgoing, provision or reserve or any sum of money or investment in a Financial Year is or is not to be treated as being on income or capital account and whether and the extent to which any provisions or reserves need to be made for the Financial Year.

12.4 Responsible Entity must determine Net Income

The Responsible Entity must determine the Net Income of the Trust for each Financial Year.

12.5 Net Income

If no determination is made or to the extent to which no determination is made under clause 12.4 prior to the end of a Financial Year, then the Net Income for that Financial Year is calculated in the same manner as net income is calculated under the Tax Acts for that Financial Year provided that where in calculating the net income under the Tax Acts it is necessary to:

- (a) gross up any amount of income (for example tax offsets such as foreign tax credits or franking credits);
- (b) include any amount of deemed assessable income; or
- (c) make any deemed deduction,

then the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deduction must not be included in calculating the Net Income of the Trust for the Financial Year unless the Responsible Entity determines otherwise before the end of the Financial Year.

12.6 Present entitlement

- (a) Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the persons who are Unit Holders at 5 p.m. on the last day of the Financial Year will be presently entitled in the proportions specified in clause 12.7(c) to the Net Income for that Financial Year (less any part of the Net Income which has been previously distributed in that Financial Year in accordance with this clause 12.7(a)) together with any additional amount which the Responsible Entity determines in accordance with clause 2.11 to distribute to Unit Holders in respect of that Financial Year.

- (b) Unit Holders that have been paid, or had applied for their benefit, any part of the Net Income during the Financial Year in accordance with clause 12.7(a) shall be deemed to be presently entitled to the amount paid to them or applied for their benefit.

12.7 Distribution of the Net Income

- (a) The Responsible Entity may make an Interim Distribution of the Net Income accruing during any Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year). The Interim Distribution cannot exceed, but can be less than, the amount of the Net Income which has accrued during the relevant Financial Year up to the date of the calculation of the Interim Distribution and may take into account any adjustments required as a result of any direction made by the Responsible Entity under clause 7.10(c).
- (b) For the last Distribution Period of the Financial Year, the Responsible Entity must distribute the Net Income of the Trust for the Financial Year less any amount previously distributed during the Financial Year pursuant to clause 12.7(a) and taking into account any adjustments required as a result of any direction made by the Responsible Entity under clause 7.10(c).
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Financial Year shall be determined in accordance with the following formula:

$$\frac{A \times B}{C}$$

Where:

- A is the amount determined by the Responsible Entity in accordance with clauses 12.4 and 12.5 to be distributable for the relevant Financial Year;
- B is the aggregate of the number of Units held by the Unit Holder at 5.00 p.m. on the Distribution Calculation Date; and
- C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date.

12.8 Distribution Entitlement

- (a) The Responsible Entity shall pay to each Unit Holder its Distribution Entitlement for a Financial Year on or before the Distribution Date for that Financial Year.
- (b) The Responsible Entity shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Responsible Entity determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as income for the next following Financial Year.
- (c) The Responsible Entity may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Responsible Entity under this Constitution or that is required to be deducted by law.

12.9 Minimum distribution

The Responsible Entity may transfer capital to enable distribution to Unit Holders of the minimum amount necessary to avoid the Responsible Entity as trustee of the Trust being assessable to pay Tax.

12.10 Discharge of Responsible Entity's obligation

It is acknowledged by Unit Holders that payments of the Distribution Entitlements in accordance with clause 12.8 shall be a good and complete discharge of any liability owed by the Responsible Entity to any person in respect of an entitlement to their Distribution Entitlements.

12.11 Capital distributions

The Responsible Entity may, at any time, distribute the capital of the Trust to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on issue on that date. A distribution under this clause may be in cash or of Assets.

12.12 Excess distribution

If at the end of a Financial Year the auditor or Responsible Entity of the Trust determines that the amount distributed as the Net Income under this clause 12 exceeds the aggregate of the Net Income for the Financial Year, the excess will be taken to be a distribution of capital.

12.13 Categories and source of income

The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Unit Holders.

12.14 Receipt

- (a) For the purposes of this clause 12, the Responsible Entity is entitled to treat any amount which the Responsible Entity is entitled to receive but has not actually received before the Distribution Calculation Date as actually received:
 - (i) before the Distribution Calculation Date; or
 - (ii) after the Distribution Calculation Date.
- (b) If any amount included in the amounts determined to be distributed in accordance with clauses 12.4 and 12.5 but is not subsequently received by the Responsible Entity, the Responsible Entity shall be entitled to recover any amount that has been over distributed. However, the Responsible Entity shall not be bound to pursue that right of recovery. The Responsible Entity may determine that any amount so distributed is to be treated as a distribution of the capital of the Trust. No claim will lie against the Responsible Entity at the suit of any Unit Holder or any other person by reason of that distribution or any resultant loss to the Trust.

12.15 Reinvestment

- (a) A Unit Holder may, if the Responsible Entity approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must

be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 6.

- (b) Subject to the Unit Holder's expressed or implied consent, the Responsible Entity may, at its discretion, reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units and that amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 6.
- (c) The procedure for reinvestment of distribution is to be determined by the Responsible Entity and notified to Unit Holders from time to time.

12.16 Other rights or restrictions

For the removal of doubt and despite anything else contained in this clause 12, the rights of a Unit Holder under this clause 12, are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Responsible Entity is entitled to do so under the *Corporations Act*, the Responsible Entity may issue:

- (a) Partly Paid Units which for the purposes of determining the Holder's Distribution Entitlement, are to be treated according to:
 - (i) that proportion of a whole Unit as the amount paid up bears to the total Application Price for that Unit rounded to the nearest two decimal places; and
 - (ii) the length of time during the Financial Year for which the proportion or different proportions of the Application Price were paid up;
- (b) Units on terms which entitle the Unit Holder to a distribution of the amounts determined for distribution under clauses 12.4 and 12.5 in respect of a Financial Year in which such Units are issued in an amount which is not greater than:

$$A \times \frac{B}{C}$$

where:

A is the Distribution Entitlement for each Unit Holder in respect of a Financial Year determined under clause 12.7(c);

B is the number of days from the date of issue of those Units to the end of that period; and

C is the total number of days in that period.

- (c) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distribution Entitlement in respect of a Financial Year in which such Units are issued; or
- (d) Partly Paid Units on any other terms and conditions it determines.

12.17 Withholding Tax

- (a) The Responsible Entity may recover from the Unit Holder an amount that the Responsible Entity has paid in Tax on behalf of or in respect of a Unit Holder (including in respect of a distribution or an amount attributed to a Unit Holder) as a debt.
- (b) The Responsible Entity is entitled to set off an amount that the Responsible Entity can recover from the Unit Holder under clause 12.17(a) against debts due, or owed, by the Responsible Entity to the Unit Holder.

12.18 Allocation of Net Income

To the extent permitted by law the Responsible Entity must allocate the net income of the trust as defined under section 95 of the 1936 Tax Act (amended or substituted from time to time) to Unit Holders on a fair and reasonable basis having regard to their entitlements to income and capital of the Trust as determined under this Constitution.

13 Powers of the Responsible Entity

13.1 General powers of Responsible Entity

- (a) Subject to this Constitution, the Responsible Entity has all the powers in respect of the Trust that it is possible under law to confer on a trustee as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.
- (b) The generality of this clause 13.1 is not limited by anything in the remainder of this clause 12.
- (c) To the maximum extent permitted by law:
 - (i) any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment are hereby excluded; and
 - (ii) without limiting the generality of clause 13.1(c)(i), section 6 of the *Responsible Entity Act 1958 (Vic)* is hereby expressly excluded from operation in relation to this Constitution and the Trust.
- (d) In exercising its powers and carrying out its duties, the Responsible Entity must treat the Unit Holders who hold interests in the same Class equally and Unit Holders who hold interests of different Classes fairly except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c).

13.2 Specific powers of the Responsible Entity

Without limiting the generality of clause 13.1, the Responsible Entity in its capacity as trustee of the Trust may:

- (a) borrow or raise money (whether or not on security) and incur any and all types of obligations and liabilities;
- (b) create Security Interests over all or any part the Assets;
- (c) create different Classes with different rights and entitlements;

- (d) apply to ASIC for registration of the Trust as a Registered Scheme under the *Corporations Act*;
 - (e) apply for listing of the Trust and quotation of the Units (or any other financial product relating to the Trust) on any stock exchange (including but not limited to the ASX) and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Unit Holder as the Unit Holder's agent or attorney to do all things necessary to effect a listing or quotation;
 - (f) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
 - (i) purchasing or disposing of Assets for cash or other consideration; and
 - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction (for speculative purposes or otherwise);
 - (g) subject to clause 2.2(b), mix Assets with assets of any other person or trust;
 - (h) share risk and returns with any other person or trust;
 - (i) vary, replace or deal with the Assets in any way;
 - (j) buy-back Units;
 - (k) fetter future discretions, such as by the granting of options;
 - (l) enter into any arrangement or agreement with underwriters in relation to the Trust;
 - (m) exercise all voting rights conferred by the Assets as it thinks fit; and
 - (n) give guarantees and/or indemnities to any person,
- as if it were dealing with its own assets.

13.3 Delegation

- (a) Without limiting clause 13.1, the Responsible Entity may appoint any person to as its delegate, attorney or agent to:
 - (i) perform any act;
 - (ii) carry out any obligation; or
 - (iii) exercise any power (including the appointment of its own delegate, attorney or agent),

that the Responsible Entity has under this Constitution.
- (b) The Responsible Entity may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Responsible Entity, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Responsible Entity and perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.

- (c) Any person appointed under clauses 13.3(a) or 13.3(b) may be an Associate or employee of the Responsible Entity.
- (d) An appointment under clauses 13.3(a) or 13.3(b) may be joint.
- (e) Subject to section 601FB of the *Corporations Act* (if the Trust is a Registered Scheme), the Responsible Entity will not be liable for the acts or omissions of any delegate. The Responsible Entity may include provisions to protect and assist those dealing with the delegate as the Responsible Entity thinks fit.
- (f) If the Responsible Entity delegates any of its responsibilities under this Deed to a third party, including, but not limited to, administration of the Trust, management of the Project or development management of the Project, the Responsible Entity may pay to the person to whom it has delegated that role:
 - (i) all or part of the fees that the Responsible Entity would otherwise have been entitled to receive under this Deed for undertaking that role; or
 - (ii) the amount of that person's fees from Assets.

13.4 Advisers

Without limiting this clause, the Responsible Entity may engage an Adviser to assist with its duties and functions under this Constitution. An Adviser may be an Associate or employee of the Responsible Entity.

13.5 Exercise of discretion

The Responsible Entity shall in its absolute discretion decide how and when to exercise its powers.

14 Holding of Assets

14.1 How held

Subject to clauses 14.2 and 14.3, all Assets will be held in the name of the Responsible Entity.

14.2 Custodian

If the Responsible Entity considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Responsible Entity and acting as agent for the Responsible Entity.

14.3 Holding of Assets

A custodian appointed by the Responsible Entity in respect of a particular Asset must hold that Asset:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Responsible Entity (and while the Trust is a Registered Scheme, to the extent permitted by *Corporations Act* and any applicable ASIC Exemption).

15 Remuneration and Expenses of Responsible Entity

15.1 Responsible Entity's Fees

Subject to the *Corporations Act* and clause 15.9, the Responsible Entity will be entitled to a Management Fee of up to 1.50% per annum of the Net Asset Value of the Trust calculated and accrued daily (or as otherwise determined by the Responsible Entity) and payable within seven days of the end of each quarter unless otherwise determined by the Responsible Entity. The Management Fee may be deducted from the Assets of the Trust.

15.2 Waiver of remuneration

The Responsible Entity may accept a lower fee than it is entitled to receive under this Constitution, or may defer payment for a period on such terms as the Responsible Entity determines at its sole discretion.

15.3 Priority of Responsible Entity's remuneration

The remuneration of the Responsible Entity shall have priority over the payment of all other amounts payable from the Assets of the Trust.

15.4 Establishment costs

- (a) Without limiting clause 15.8, the Responsible Entity, or an Associate of the Responsible Entity, may pay, on behalf of the Trust, any or all costs and expenses incurred in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first disclosure document (**Establishment Costs**).
- (b) In such a case, the Responsible Entity or the Associate (as the case may be) will be entitled to be reimbursed out of the Assets for all Establishment Costs that were reasonably and properly incurred.
- (c) The Responsible Entity or the Associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Assets in a year or years later than the year in which the Establishment Cost was incurred.

15.5 Differential fee arrangements

Subject to the *Corporations Act* and any applicable ASIC Exemption (where the Trust is a Registered Scheme), the Responsible Entity may agree with any Unit Holder any fee arrangements with that Unit Holder which are different to those provided for under this Constitution or which apply to other Unit Holders.

15.6 Units as payment for fees

Subject to the *Corporations Act*, the Responsible Entity, the Responsible Entity may elect that it is to be issued Units instead of cash in payment of its fees or reimbursement of its expenses under this Constitution.

15.7 Fees paid to the Responsible Entity in a different capacity

Subject to the *Corporations Act* where the Trust is a Registered Scheme, the Responsible Entity may be paid a fee for work performed in connection with the Trust in its personal capacity and not in its capacity as the responsible entity or trustee of the Trust. The Responsible Entity may retain any such fee for its own purposes and is not required to account for the fee to the Trust or to Unit Holders.

15.8 Reimbursement of Expenses

Subject to the Corporations Act where the Trust is a Registered Scheme, all Expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Trust shall be payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the *Corporations Act*, including, without limitation, Expenses arising in connection with the matters listed in item 1 of Schedule 1.

15.9 Class Expenses

Subject to the *Corporations Act*, where a Class is on issue and the Responsible Entity may make a determination that an Expense, or part of an Expense, is to be a Class Expense in relation to a Class, but if no determination is made under this clause, then:

- (a) in respect of fees of the Responsible Entity which are charged to a particular Class, the GST on those fees and the corresponding reduced input credit or input credit (as the case may be) that arises in connection with a fee payable or supply in respect of a Class, is to be referable to that Class; and
- (b) any other Expenses under this clause 15 is to be referable to all Units on an equal basis.

15.10 Proper performance of duties

Where the Trust is a Registered Scheme, the rights of the Responsible Entity to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Responsible Entity, are only available in relation to the proper performance of those duties.

15.11 GST

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 15.11 as those expressions in the GST Law.
- (b) Any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution represents the value of the taxable supply and does not include GST.
- (c) If the Responsible Entity makes a taxable supply in connection with or arising under this Constitution (including the performance of any of its obligations) for consideration which, under clause 15.11(b), represents its value:
 - (i) the Responsible Entity shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that taxable supply in addition to any other amount to which the Responsible Entity is entitled; or
 - (ii) the recipient of the supply must pay to the Responsible Entity, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that taxable supply,at the Responsible Entity's discretion.
- (d) The supplier of a taxable supply shall issue a valid Tax Invoice to the recipient of the supply on request.
- (e) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of GST for which the party is entitled to an input tax credit.

15.12 Taxes in other jurisdictions

- (a) Without limiting clause 15.11, any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution does not include any goods and services tax, value added tax or other similar tax payable in any jurisdiction.
- (b) In addition to any other amount to which the Responsible Entity is entitled under this Constitution, the Responsible Entity shall be entitled to be paid or reimbursed for an amount equal to any goods and services tax, value added tax or other similar tax payable by the Responsible Entity in any jurisdiction:
 - (i) from the Assets; or
 - (ii) by the Unit Holder, where the Responsible Entity has an obligation to pay such goods and services tax, value added tax or other similar tax in relation to a supply of goods and/or services made to the Unit Holder or other event that triggers a liability for goods and services tax, value added tax or other similar tax,at the Responsible Entity's discretion.
- (c) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of any goods and services tax, value added tax or other similar tax payable in any jurisdiction for which the party is entitled to any input tax credit or similar credit in any jurisdiction.

15.13 Sums owed to the Responsible Entity

The Responsible Entity may redeem such number of a Unit Holder's Units (including a fraction, if necessary) as have a value (based on the Net Asset Value at that time) equal to any amount of money due to it by the Unit Holder and deduct such amounts from the Withdrawal Price of the Units.

16 Change in Responsible Entity

16.1 Voluntary retirement while the Trust is a Registered Scheme

- (a) While the Trust is a Registered Scheme, the Responsible Entity may retire as the trustee of the Trust as permitted by section 601FL of the *Corporations Act*.
- (b) If permitted by law or by any relief from the Corporations Act granted by ASIC, the Responsible Entity may appoint its successor by deed.

16.2 Voluntary retirement while the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the Responsible Entity may retire as the trustee of the Trust by giving at least 3 months notice to Unit Holders (or such shorter period as they agree). On retirement, the Responsible Entity may appoint in writing another person to be the trustee of the Trust.

16.3 Compulsory retirement

The Responsible Entity shall retire as the responsible entity trustee of the Trust when required by law.

16.4 New responsible entity

- (a) Any proposed replacement responsible entity shall execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) On retirement or removal, the Responsible Entity shall give the new trustee or responsible entity all books, documents and records relating to the Trust.
- (c) On retirement or removal the Responsible Entity shall be released from all obligations in relation to the Trust arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Responsible Entity, all fees and other amounts owing to the Responsible Entity and all amounts deferred by the Responsible Entity pursuant to clause 15.2 become due and payable to the Responsible Entity from the Assets and the new Responsible Entity must take such action as is necessary to promptly effect all such payments.

16.5 Retirement benefit

Subject to the *Corporations Act* (where the Trust is a Registered Scheme), the Responsible Entity may agree to be paid a benefit by another entity who proposes to be the trustee of the Responsible Entity (**Proposed Responsible Entity**) in consideration for:

- (a) retiring as responsible entity; or
- (b) agreeing to submit to a proposal for its retirement to a meeting of Unit Holders and nominating to the Unit Holders the Proposed Responsible Entity the replacement responsible entity,

and the Responsible Entity is not required to account to Unit Holders for the benefit received.

17 Limitation of liability

17.1 Limitation of Responsible Entity's liability

- (a) Subject to the *Corporations Act* where the Trust is a Registered Scheme, neither the Responsible Entity nor its Associates are liable for any loss or damage to any person (including any Unit Holder) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Constitution; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Constitution,

in any case, subject to the law, the liability of the Responsible Entity in relation to the Trust is limited to the Assets, from which the Responsible Entity is entitled to be, and is in fact, indemnified.

- (b) In particular, subject to the *Corporations Act*, (where the Trust is a Registered Scheme) the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
- (ii) it acted as required by law; or
- (iii) it relied in good faith upon any signature, marking or documents.

17.2 Limitation of Unit Holders' liability

- (a) Subject to clauses 17.2(c) and 17.2(e), the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Trust.
- (b) A Unit Holder shall not be required to indemnify the Responsible Entity if there is a deficiency in the Assets or to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity, on its own account and on account of the Trust, shall be entitled to be indemnified by each Relevant Person for any Tax, bank fees or charges of the Relevant Person paid out of the Trust, except to the extent to which the Responsible Entity is reimbursed out of the Trust.
- (d) Joint Unit Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 17.2(c) applies.
- (e) In the absence of separate agreement with a Unit Holder, the recourse of the Responsible Entity and any creditor shall be limited to the Assets.

18 Indemnity

18.1 Responsible Entity's indemnity

In addition to any indemnity available to the Responsible Entity under the law or this Constitution, but subject to the *Corporations Act*, if the Trust is a Registered Scheme the Responsible Entity has a right to be fully indemnified out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Trust and against all actions, proceedings, costs, claims and demands brought against the Responsible Entity in its capacity as trustee of the Trust in respect of any matter or thing done or omitted (**Indemnified Matter**) except:

- (a) in the case of the Responsible Entity's own fraud, negligence or wilful default; and
- (b) in respect of the overhead expenses of the Responsible Entity.

18.2 Responsible Entity's indemnity continuing

- (a) The right of indemnity of the Responsible Entity in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 18.1 will continue in favour of the Responsible Entity after it has ceased to be the Responsible Entity and will apply even if at any time the Liabilities exceed the Net Asset Value.

- (c) For the avoidance of doubt, the Responsible Entity may be entitled to an indemnity under clause 18.1 in respect of any act or omission of a delegate or agent appointed by the Responsible Entity for which the delegate or agent is not obliged to fully indemnify the Trust.

18.3 Payment

The Responsible Entity may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 18.1.

18.4 Responsible Entity not to incur liability

The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

19 Responsible Entity's indemnity against Tax liability

19.1 Indemnity

- (a) The Responsible Entity is entitled to be indemnified by a Unit Holder, a former Unit Holder or an Applicant to the extent that it incurs a liability for Tax as a result of the Unit Holder's, former Unit Holder's or Applicant's action or inaction or as a result of an act or omission requested by the Unit Holder, former Unit Holder or Applicant.
- (b) For the avoidance of doubt, clause 19.1(a) includes an indemnity by a Unit Holder, former Unit Holder or Applicant in favour of the Responsible Entity in respect of any Tax that may arise as a result of:
 - (i) the Responsible Entity issuing Units to the Unit Holder or a former Unit Holder;
 - (ii) the Responsible Entity redeeming any Unit or cancelling any Commitment;
 - (iii) the Responsible Entity making a Call in respect of Partly Paid Units or a Commitment;
 - (iv) the transfer of Units by a Unit Holder or a former Unit Holder;
 - (v) the transfer of a Commitment by an Applicant; and
 - (vi) any person acquiring an interest in a Unit or a Commitment from a Unit Holder, a former Unit Holder or an Applicant (as the case may be).

19.2 Joint Holders

Joint holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 19.1 applies.

20 Register

20.1 Keeping Register

The Responsible Entity shall establish and keep, or cause to be kept, a register of Unit Holders at:

(a) its registered office;

(b) a place in Australia where the work involved in maintaining the register is done; or

(c) any other place permitted by the Corporations Act.

in a form which, to the extent applicable, complies with the requirements of section 169 of the Corporations Act.

~~(a) The Responsible Entity shall establish and keep, or cause to be kept, a register of Unit Holders at its registered office.~~

~~(b) Where the Trust is a Registered Scheme the Register must be kept in a form which, to the extent applicable, complies with the requirements of section 169 of the Corporations Act.~~

20.2 Responsible Entity's powers

Where the Trust is a Registered Scheme, the Responsible Entity has the powers conferred under the *Corporations Act* in relation to the Register.

20.3 Inspection

The Responsible Entity will make the Register available for inspection without charge to Unit Holders at all times when the Responsible Entity's registered office is open for business to the public.

20.4 Changes

Every Unit Holder shall promptly notify the Responsible Entity of any change of name or address and the Responsible Entity must alter the Register accordingly.

20.5 Register conclusive

Except where this Constitution or the law requires otherwise, the Responsible Entity is entitled to treat the registered Unit Holder as absolute owner of the relevant Unit for all purposes. The entry in the Register shall be conclusive except where the Responsible Entity is satisfied of manifest error and the Responsible Entity is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit.

21 Amendments to this Constitution

21.1 Overriding provision

This clause 21 shall be read subject to clause 22.

21.2 Responsible Entity may amend

Subject to the *Corporations Act* if the Trust is a Registered Scheme and any other approval that may be required by law, the Responsible Entity may by deed replace or amend this Constitution (including this clause) or as otherwise permitted by the *Corporations Act*.

21.3 Statutory requirements

Clause 21.2 does not apply to provisions deemed by clause 22 to be incorporated into this Constitution.

21.4 Compliance with the AMIT Regime

Without in any way limiting the Responsible Entity's powers in clause 21, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Trust; or
- (b) ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Unit Holders that arise under the AMIT Regime.

22 Corporations Act and ASIC Exemptions

22.1 Corporations Act

Notwithstanding any other provision of this Constitution, a provision of this Constitution which is expressed to apply subject to the *Corporations Act*, is only so subject while the Trust is a Registered Scheme (and the provision is to be read accordingly).

22.2 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the *Corporations Act* or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the Responsible Entity determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Responsible Entity to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

22.3 ASIC Exemptions

If relief from the provisions of the *Corporations Act* granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, notwithstanding any amendment to this Constitution effected under clause 21, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Responsible Entity declares in writing that this is the case. This declaration may be made at any time.

23 Termination of Trust

The Trust terminates on the earlier of:

- (a) unless otherwise permitted by law, the day eighty years less one day from the Commencement Date;
- (b) the date determined by the Responsible Entity as the date on which the Trust is to be terminated, being a date at least 3 months after the date of the provision of notice of such termination to all Unit Holders; or
- (c) the date on which the Trust is otherwise terminated by law.

24 Termination and winding up of the Trust

24.1 Realisation of Assets

On the termination and winding up of the Trust, the Responsible Entity shall:

- (a) not issue or redeem Units in the Trust; and
- (b) not convert, substitute or replace Units in the Trust with other Units or Classes of Units;
- (c) not vary any rights attaching to the Units;
- (d) not make a Call on the holder of a Partly Paid Unit;
- (e) sell and realise the Assets and, subject to clauses 24.3, 24.4 and 24.5 distribute to the Unit Holders the amount calculated in accordance with clause 24.2(a).

24.2 Procedure on the winding up of the Trust

- (a) Subject to the terms of issue of any Unit or Class, the net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, shall be distributed pro rata to Unit Holders according to the number of Units they hold less the value of any Assets transferred to or to be transferred to that Unit Holder under clause 24.2(b). The Responsible Entity may distribute proceeds of realisation in instalments.
- (b) If the Unit Holder and the Responsible Entity agree, the Responsible Entity may transfer to the Unit Holder specified Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Trust, such specified Assets to be transferred at a value reasonably determined by the Responsible Entity to be the value of the relevant Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the *Corporations Act*, the provisions of this Constitution shall continue to apply from the date of termination of the Trust until the date of final distribution under clause 24.2(a), but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Unit Holder.

24.3 Responsible Entity may recover termination fee and other Expenses

The Responsible Entity shall be entitled to be indemnified out of the Trust for, and to be paid and retain from the proceeds all Expenses incurred or likely to be incurred:

- (a) by the Responsible Entity in connection with the winding up of the Trust;
- (b) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and

- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Responsible Entity in connection with the winding up of the Trust.

24.4 Retention of Assets

The Responsible Entity may retain under its control for so long as it thinks fit that part of the Assets which in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust. If any part of the Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 24.1 and 24.2.

24.5 Postponement of realisation

The Responsible Entity may postpone the realisation of any part of the Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Assets and will not be responsible for any loss attributable to that postponement.

24.6 Responsible Entity's obligation to make distributions

The Responsible Entity shall not be obliged to make a distribution to a Unit Holder under this clause 24 unless the Unit Holder delivers to the Responsible Entity any evidence of title required by the Responsible Entity together with any form of receipt and discharge required by the Responsible Entity.

24.7 Cancellation of Units

Unless the Responsible Entity determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Assets is made.

24.8 Continuation of powers

The powers, duties and rights of the Responsible Entity (including the rights to remuneration and to any indemnities under this Constitution or the law) continue following termination to the extent to which they are not inconsistent with this clause 24.

24.9 Audit of accounts of the Trust

If the Trust is a Registered Scheme, to the extent that the *Corporations Act* or ASIC policy requires, the Responsible Entity shall arrange for the final accounts of the Trust following the winding up to be audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Responsible Entity.

25 Meetings of Unit Holders

25.1 Convening meetings

The Responsible Entity may at any time convene a meeting of Unit Holders or a Class of Unit Holders and shall do so if required by the *Corporations Act*.

25.2 Calling and holding meetings while the Trust a Registered Scheme

While the Trust is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the *Corporations Act*. However:

- (a) despite section 252G(4) of the *Corporations Act*, a notice of meeting sent by post is taken to be given the day after it is posted;
- (b) despite section 252R(2) of the *Corporations Act*, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;
- (c) despite section 252R(3) of the *Corporations Act*, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and
- (d) despite section 252Y(2) of the *Corporations Act*, an appointment of a proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.

25.3 Calling and holding meetings while the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, meetings of Unit Holders will be called and held as if Part 2G.4 applied (as modified by clause 25.2) with any necessary modifications.

25.4 Resolution binding on Unit Holders

A resolution passed at:

- (a) a meeting of Unit Holders is binding on all Unit Holders; and
- (b) a meeting of Class of Unit Holders is binding on all Unit Holders in that Class.

25.5 Written resolution

Except in circumstances where the *Corporations Act* requires a resolution to be passed at a meeting of Unit Holders or a Class of Unit Holders, a resolution in writing signed by Unit Holders, or, where relevant, Unit Holders of a Class, together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders, or Class of Unit Holders and is effective when signed by the last of Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by that Unit Holder.

25.6 Conduct of meetings of Unit Holders

- (a) A meeting of Unit Holders may be called and held:
 - (i) in person;
 - (ii) by telephone;
 - (iii) by audiovisual linkup; or
 - (iv) using any technology determined by the Responsible Entity before the relevant meeting.
- (b) A Unit Holder is regarded as present at a meeting of Unit Holders where the meeting is conducted by telephone, audiovisual linkup or other technology if the Unit Holder is:

- (i) afforded a reasonable opportunity to participate in the meeting; and
- (ii) enabled to vote on all polls held during the meeting.
- (c) A meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place determined by the Responsible Entity.

25.7 Direct voting

Despite anything to the contrary in this Constitution, the Responsible Entity may determine that, at any general meeting or class meeting, a Unit Holder who is entitled to attend and vote on a resolution at that meeting is entitled to vote by direct vote in respect of that resolution. A 'direct vote' means a vote delivered to the Responsible Entity (or any other person specified by the Responsible Entity) other than at a general meeting or class meeting (but excludes any vote by proxy), and includes such a vote delivered by post or any electronic means approved by the Responsible Entity. The Responsible Entity may prescribe procedures that apply to direct voting, including by specifying the form, method and timing of giving a direct vote at a meeting for the vote to be valid.

26 Notices

26.1 Notices to Unit Holders

- (a) Subject to the *Corporations Act*, a notice or other communication from the Responsible Entity to a Unit Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the *Corporations Act*, a notice or other communication from the Responsible Entity to a Unit Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
 - (iii) other means, is taken to be received at the time the Responsible Entity determines.

26.2 Notices to joint Unit Holders

The Responsible Entity may give a notice or other communication to joint Unit Holders by giving it to the Unit Holder first named in the Register for that holding.

26.3 Notice to successor

The Responsible Entity may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Unit Holder by sending it to the legal personal representatives of the Unit Holder or trustee of the deceased Unit Holder's estate at the address supplied for the purpose by the representative or trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Unit Holder's address as recorded in the Register.

26.4 Signature on notice

The signature on any notice or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of Responsible Entity or of any director, secretary or other authorised officer of the Responsible Entity.

26.5 Notices to the Responsible Entity

Notices to the Responsible Entity by Unit Holders must be given in writing or in any other manner the Responsible Entity determines. A notice is effective when it is received by the Responsible Entity. A notice must be signed by the Unit Holder or a duly authorised representative (unless the Responsible Entity waives this requirement).

27 Complaints

27.1 Handling of Complaints

If a Unit Holder submits to the Responsible Entity a Complaint, the Responsible Entity:

- (a) shall acknowledge receipt of the complaint immediately or, where immediate acknowledgement is not possible, as soon as practicable;
- (b) shall ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) shall act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (d) may, in its discretion, give any of the following remedies to the Unit Holder:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (e) shall communicate to the Unit Holder as soon as practicable and, in any event, not more than 45 days after receipt by the Responsible Entity of the Complaint (or 21 days for disputes involving default notices):
 - (i) the determination in relation to the Complaint;
 - (ii) the remedies (if any) available to the Unit Holder; and
 - (iii) information regarding any further avenue for Complaint,

except that the requirement to provide such a communication to the Unit Holder does not apply where the Complaint (except for a Complaint relating to hardship) is resolved to the Unit Holder's complete satisfaction by the end of the fifth Business Day after the Complaint is received and the Unit Holder has not requested a response in writing.

27.2 Time for final response not met

If the Responsible Entity cannot provide a final response to the Unit Holder within 45 days (or 21 days for disputes involving default notices) as required by clause 27.1(e), the Responsible Entity must:

- (a) inform the Unit Holder of:
 - (i) the Status of the Complaint;
 - (ii) the reasons for the delay; and
 - (iii) the right to complain to the EDR Service; and
- (b) provide the name and contact details of the EDR Service to the Unit Holder.

28 Rights of the Responsible Entity

28.1 Right to hold Units

The Responsible Entity and/or any of its Associates may hold Units in any capacity.

28.2 Other capacities

Subject to the *Corporations Act*, nothing in this Constitution restricts the Responsible Entity (in its personal capacity or in any other capacity other than as responsible entity of the Trust) and/or any of its Associates:

- (a) dealing with the Responsible Entity (as responsible entity of the Trust or in another capacity), an Associate of the Responsible Entity or with any Unit Holder;
- (b) being interested in any contract or transaction or matter with the Responsible Entity (as responsible entity of the Trust or in another capacity), an Associate of the Responsible Entity or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (d) any dealings with any entity in which the Assets are invested,

and in each case the Responsible Entity (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

28.3 Responsible Entity may rely

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and any other persons consulted by the Responsible Entity who are in each case

believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;

- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by the Responsible Entity of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Responsible Entity in connection with the Trust upon which it is reasonable for the Responsible Entity to rely,

and the Responsible Entity shall not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or documents.

29 Constitution legally binding

This Constitution binds the Responsible Entity and each present and future Unit Holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

30 Other obligations excluded

Except as required by the *Corporations Act*, all obligations of the Responsible Entity which may otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including, without limitation, any obligation of the Responsible Entity in its capacity as trustee of the Trust arising under any statute.

31 Payment

- (a) Any money payable by the Responsible Entity to a Unit Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's address as supplied in the Register.
- (b) A Unit Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this Constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Unit Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Responsible Entity in respect of the payment.
- (d) The Responsible Entity may determine that any cheque not presented within six months or any electronic fund transfer which is unsuccessful at least twice times is cancelled. If the Responsible Entity so determines the amount of the cheque or electronic fund transfer may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 4.4. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled.
- (e) The Responsible Entity is entitled to keep any interest accrued on money payable to a Unit Holder or former Unit Holder.
- (f) Money payable to the Responsible Entity may from time to time be paid in a manner other than that described in clause 31 with the Responsible Entity's consent.

- (g) The Responsible Entity may deduct from any amount to be paid, or received from, a Unit Holder or a person who was previously a Unit Holder any amount the Responsible Entity is authorised or required to deduct by law, the Constitution or any product disclosure document for the Trust of which the terms are binding on the Unit Holder.

32 Severability

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

33 Governing law

This Constitution is governed by the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

Constitution

Schedule 1- Expenses

The following are examples of Expenses for which the Responsible Entity may be reimbursed out of the Assets and are not intended to limit the Expenses which may be payable:

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Trust and any supplemental deed or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) the preparation, approval, implementation, audit and interpretation of a Compliance Plan;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any other interest in the Trust, marketing material or other documents whether required by law or otherwise to be prepared in respect of the Trust;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (f) the investigation, negotiation or acquisition of any proposed investment;
- (g) the administration, management, valuation or promotion of the Trust or its Assets and Liabilities, including without limitation:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) issuing Units by the Responsible Entity or any sales of Units by one or more Unit Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
 - (iii) computer operation and development and data processing;
 - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this Constitution;
 - (v) dealing with Unit Holder enquiries;
 - (vi) communications with Unit Holders (written or otherwise);
 - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;

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- (viii) leasing premises outside of Australia for the Responsible Entity in connection with the Trust; and
 - (ix) any travel expenses incurred in connection with the Trust;
 - (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;
 - (i) Taxes (provided they are not on the personal account of the Responsible Entity and including any GST charged to the Responsible Entity), stamp duty and financial institution fees;
 - (j) the inclusion of the Trust on any IDPS list;
 - (k) the engagement of delegates, agents, Advisers and Valuers;
 - (l) without limiting paragraph (k), the payment of management fees, performance fees or other fees associated with the engagement of any investment manager or other delegate;
 - (m) preparation and audit of the taxation returns and accounts of the Trust;
 - (n) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
 - (o) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent in which case any expenses paid or reimbursed under this paragraph (o) shall be repaid;
 - (p) the establishment and operation of a Compliance Committee in connection with the Trust, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of Compliance Committee Members;
 - (q) while there is no Compliance Committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a Compliance Committee, including (if the Trust is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (r) admission of the Trust to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Trust from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
 - (s) complying with any law or any request or requirement of the ASIC or any other regulatory authority in relation to the Trust;
 - (t) fees payable to ASIC or any other regulatory authority in relation to the Trust or Units;
 - (u) the assigning or maintaining of a credit rating to the Trust; and

-
- (v) raising money or otherwise obtaining financial accommodation for the Trust, including a capital raising by the Trust, including fees payable to any underwriter or broker.

Schedule 2 - Attribution Managed Investment Trust Provisions

1 Unit Holders' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Unit Holder in the Trust constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to have Clearly Defined Rights,
 - (i) the Responsible Entity may not exercise any right or power, whether it is one provided to the Responsible Entity under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Trust arising from each Unit in each relevant AMIT for the Trust to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
 - (ii) the Responsible Entity must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c); and
 - (iii) in addition to the requirements of clause 20, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3.4 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Responsible Entity powers in relation to AMIT Regime

- (a) The Responsible Entity has all of the powers and rights which are necessary and expedient to enable the Trust to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (b) Without limiting the Responsible Entity's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Responsible Entity has the power to:
 - (i) work out the Trust Component of each applicable character of the Trust, or each Class, for a Financial Year;
 - (ii) attribute all of the Trust Components and Determined Trust Components of the Trust, or each Class, for a Financial Year, under the AMIT Regime, including making an attribution of income of a particular category, source or character for tax purposes;

- (iii) make an alteration to the Responsible Entity's attribution of the Trust Components and Determined Trust Components of the Trust or each Class, for a Financial Year, under the AMIT Regime including, without limitation, making as a result of the Responsible Entity applying the Unders and Overs Rules;
 - (iv) issue (or reissue as the case may be) an AMMA Statement;
 - (v) where the Trust has Classes of Units on issue, and the Responsible Entity has made a choice that each Class is to be treated as a separate AMIT. If the Responsible Entity has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;
 - (vi) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;
 - (vii) allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis; and
 - (viii) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.
- (c) Subject to the *Corporations Act*, the Responsible Entity is not liable to any Unit Holder or former Unit Holder with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Responsible Entity makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Responsible Entity results in a different attribution outcome for the Unit Holder than if the Responsible Entity had not made the choice, or had made the choice in a different way.

3 Attribution of Trust Components

- (a) The Responsible Entity must attribute all of the Trust Components and Determined Trust Components of:
- (i) the Trust; or
 - (ii) if the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class in the Trust,
- in respect of a Financial Year, to the Unit Holders or former Unit Holders under the AMIT Regime.
- (b) The Responsible Entity undertakes to perform attribution under clause 3(a)**Error! Reference source not found.** in accordance with the following principles:
- (i) the amount of each Unit Holder or former Unit Holder's Member Components and Determined Member Components of a particular

character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units in the Trust held by the Unit Holder or former Unit Holder, having regard to the provisions of this Constitution;

- (ii) subject to clause 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Trust;
 - (iii) subject to clause 3(b)(iv), the Responsible Entity must not attribute any part of a Determined Trust Component to a Unit Holder or former Unit Holder because of the tax characteristics of the Unit Holder or former Unit Holder;
 - (iv) the Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c) of the Constitution;
 - (v) if there is more than one Class on issue in the Trust and the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Responsible Entity must only attribute Determined Trust Components of a particular Class to Unit Holders of that Class (and not any other Class); and
 - (vi) the Responsible Entity must attribute to each Unit Holder or former Unit Holder, so much of the Determined Trust Components of the Trust or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Unit Holder or former Unit Holder has become entitled to during the Financial Year.
- (c) Where the Responsible Entity exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Responsible Entity make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing income allocation provisions or amount payable to a Unit Holder under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3.4 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements contemplated in the existing income allocation provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3.4 of this Constitution) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Trust ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Trust for any subsequent Financial Year and to the extent required by the AMIT Regime, an appropriate adjustment must be made to take into account any over or under distributions of any tax component from any prior period in which the Trust was an AMIT.

5 Determined Member Component Choice

- (a) If a Unit Holder makes or intends to make a Determined Member Component Choice (in this clause, **Choice**) for the purposes of the AMIT Regime, the Unit Holder must:
 - (i) before providing notice of such Choice to the Commissioner of Taxation, provide the Responsible Entity not less than seven days' notice of its intention to do so and a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
 - (ii) provide to the Responsible Entity all information the Responsible Entity reasonably requests in relation to any act, matter or thing relating to any Choice; and
 - (iii) consent to the Responsible Entity becoming a party to any proceedings with the Commissioner of Taxation relating to the Choice.
- (b) The Unit Holder acknowledges that if a Unit Holder makes a Choice it may be necessary or desirable for the Responsible Entity to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Unit Holders for the purposes of the AMIT Regime.
- (c) The Responsible Entity shall have no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to a Choice.
- (d) The Responsible Entity has the right to issue or reissue any AMMA Statement to the Unit Holder or other Unit Holders if a Unit Holder makes a Choice.

6 Debt-like AMIT instruments

The Unit Holders and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.

Supplemental deed poll

Signing page

EXECUTED by DEXUS ASSET
MANAGEMENT LIMITED ACN 080 674 479
as responsible entity of the APN ASIAN REIT
FUND by its joint attorneys under power of
attorney dated 17 December 2021 in the
presence of:

By executing this document, each joint
attorney states that the joint attorney has
received no notice of revocation of the power
of attorney



Signature of witness

Jennifer Shi Qing Zhou

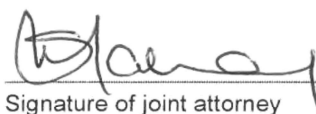
Name of witness (*please print*)



Signature of joint attorney

Diane Khoury

Name of joint attorney
(*please print*)



Signature of joint attorney

SCOTT DOMINIC MAHONY

Name of joint attorney
(*please print*)