



## **Consolidated Constitution of the US Masters Residential Property Fund**

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# Consolidated Constitution of the US Masters Residential Property Fund

## 1. Definitions and Interpretation

### 1.1. Definitions

In this Constitution:

**Accounting Principles** means the accounting standards and generally accepted accounting principles in Australia.

**Additional Tax** means the amount of any additional Tax withheld, paid, payable or otherwise imposed as a consequence of the particular characteristics of a Member or a group of Members and is the amount withheld, paid, payable or otherwise imposed as a direct result of those particular characteristics to the extent that it exceeds the amount that would be withheld, paid, payable or otherwise imposed if the Member or the group of Members had the same relevant characteristics as the majority of Members.

**Application Price** means the Unit price calculated in accordance with Clause 5.

**ASIC** means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**ASIC Relief** means an exemption or declaration granted by ASIC which gives release from certain provisions of the Corporations Act.

**Assets** means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount to which a Member is presently entitled.

**ASX Settlement Operating Rules** means the settlement rules operated by ASX Settlement Pty Limited (ACN 008 504 532).

**Bid Consideration** has the meaning given in Clause 5.6(a).

**Business Day** means a day which is a business day for the purposes of the Listing Rules.

**Compliance Committee Member** means a member of a compliance committee established by the Responsible Entity in connection with the Trust.

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

**Class** means a class of Units.

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

**CPU** means a perpetual cumulative convertible step-up preference unit issued on the CPU Terms.

**CPU Distribution Period** has the meaning given in the CPU Terms.

**CPU Holder** means a person Registered as the holder of a CPU.

**CPU Terms** means the terms of issue of a CPU set out in Schedule 1 which forms part of this Constitution.

**Distributable Income** has the meaning given in clause 10.1(a).

**Distribution Calculation Date** means the last day of each Tax Year and such other days as the Responsible Entity designates, consistent with the CPU Distribution Period for CPUs as set out in Schedule 1.

**Distribution Period** means:

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

**Entry Fee** means an entry fee of 5% of the Application Price for Units (or lesser amount as the Responsible Entity may in its absolute and unfettered discretion determine in accordance with Clause 19.6).

**Gross Value of the Assets** means from time to time, the gross value of all the Assets, with the value of real property assets being their fair market value as shown in the Trust's last produced audited or audit reviewed financial statements adjusted for any real property assets acquired or disposed of since that time at their acquisition or disposal prices.

**GST** means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**Liabilities** means all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust in accordance with the Accounting Principles but excludes all liabilities owed to the holders of Units in their capacity as the holders of Units.

**Liquid** means has the same meaning as in the Corporations Act.

**Listed** means admitted to the official list of a Prescribed Financial Market whether or not quotation of the Units is deferred, suspended or subjected to a trading halt.

**Listing Rules** means the listing rules of the Prescribed Financial Market on which the Units are Listed, as modified by any applicable waiver or other modification issued by ASX.

**Market Price** of a Unit on any Business Day means:

- (a) the weighted average price per Unit in that Class for sales of that Class on the Prescribed Financial Market on which Units are Listed (excluding any special crossings) on a Trading Day for the period of 10 Trading Days immediately prior to the relevant Business Day (whether or not a sale was recorded on any particular day) adjusted to take into account any ex-entitlement dates that occurred during this period; or
- (b) if Units in that Class:
  - (i) have not been traded for at least 5 out of 10 consecutive Trading Days before the relevant Business Day; and
  - (ii) in the Responsible Entity's opinion, a determination under paragraph (a) would not provide a fair reflection of the current market value of the Unit,

the price per Unit that an independent expert determines to be the market price of the Unit on the relevant Business Day.

**Member** means the person Registered as the holder of a Unit (including persons jointly Registered).

**Member of a Class** means a person Registered as the holder of a Unit of a particular Class.

**Net Asset Value** means the value of the Assets calculated in accordance with Clause 8 less the Liabilities.

**Offer** has the meaning given in Clause 5.6(c).

**Officially Quoted** means quoted on the official list of a Prescribed Financial Market including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

**Ordinary Unit** means a Unit with the rights attached thereto as provided in this Constitution including rights to both income and capital of the Trust.

**Ordinary Unit Holder** means a person Registered as the holder of an Ordinary Unit.

**Prescribed Financial Market** has the same meaning as in the Corporations Act.

**Register** means the register of Members kept by the Responsible Entity under the Corporations Act.

**Registered** means recorded in the Register.

**Registered Scheme** means a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

**Registration** means recording in the Register.

**Reinvestment Price** means:

- (a) where the Distribution Calculation Date is 30 June 2012, \$1.47; or
- (b) for all other Distribution Calculation Dates, the Market Price of Units of the relevant Class to be issued on reinvestment on the Business Day 11 Trading Days after the Distribution Calculation Date less a discount of 5% or such other discount, if any, not exceeding 10% as the Responsible Entity may determine.

**Resolution** means:

- (a) a resolution passed at a meeting of Members (or if applicable, at a meeting of Members of a Class):
  - (i) on a show of hands, by the required majority of Members (or if applicable, Members of the Class) present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Members (or if applicable, Members of the Class) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members (or if applicable, Members of the Class) holding the required majority of the Units.

Except where this Constitution or any applicable law provides otherwise, the "required majority" is a simple majority.

**Restricted Securities** has the same meaning as in the Listing Rules.

**Surplus Distributable Income** in respect of a Distribution Period or a Tax Year (as applicable) means the amount of Distributable Income (if any) in respect of that Distribution Period or Tax Year which is remaining after deduction of:

- (a) any amounts of Distributable Income paid or payable to CPU Holders in respect of that Distribution Period or Tax Year;
- (b) any amount of Deferred Distributions as at the last day of the Distribution Period or Tax Year; and
- (c) any amounts of Distributable Income already distributed to Ordinary Unit Holders in respect of the Distribution Period or Tax Year.

**Tax** means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Responsible Entity by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Responsible Entity on account of GST, together with interest and penalties.

**Tax Act** means the *Income Tax Assessment Act 1936* (**1936 Act**), the *Income Tax Assessment Act 1997* (**1997 Act**) or both the 1936 Act and the 1997 Act, as appropriate.

**Tax Year** means:

- (a) for the first tax year, the period from the establishment of the Trust to the date elected by the Responsible Entity in accordance with applicable law;
- (b) for the last tax year, the period from the first day of the tax year in which the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the date elected by the Responsible Entity from time to time.

**Trading Day** means those Business Days on which buying and selling occurs through the stock exchange automated trading system used by the Prescribed Financial Market on which the Units are Listed.

**Transmission Event** means:

- (a) for a Member who is an individual:
  - (i) that Member's death;
  - (ii) that Member's bankruptcy; or
  - (iii) that Member becoming of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; and
- (b) for a Member who is a body corporate, the dissolution of that Member or the succession by another body corporate to the assets and liabilities of the Member.

**Transaction Costs** means the Responsible Entity's estimate of the total costs of acquiring the Assets for the purposes of determining an Application Price and the total costs of disposing of the Assets for the purposes of determining a Withdrawal Price, provided that, subject to the Corporations Act, the Responsible Entity may in connection with any application for Units deem these costs to be a lesser sum or zero.

**Trust** means the trust constituted under or governed by this Constitution.

**Responsible Entity** means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the Responsible Entity of the Trust, with the first Responsible Entity being Dixon Advisory & Superannuation Services Limited.

**Unit** means an undivided share in the beneficial interest in the Trust as provided in this Constitution and includes an Ordinary Unit and a CPU.

**Valuation Time** means a time at which the Responsible Entity calculates Net Asset Value.

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

**Withdrawal Price** in relation to a Unit means the price calculated under Clause 27.

## **1.2. Interpretation**

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) the singular includes the plural and vice versa;
- (c) amend includes delete or replace;
- (d) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- (e) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (f) words importing a gender include any gender;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (h) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (i) a reference to anything (including, without limitation, any right) includes a part of that thing;
- (j) a reference to a Part, Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any Annexure, Exhibit or Schedule;
- (k) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a reference to a party to a document includes that party's successors and permitted assigns;
- (n) a reference to an agreement other than this Constitution includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (o) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- (p) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind;
- (q) amounts of money are expressed in Australian dollars unless otherwise expressly stated; and
- (r) capitalised terms which relate to CPUs which are not defined in clause 1.1 have the meaning set out in Schedule 1.

## **1.3. Inclusive expressions**

Specifying anything in this Constitution after the words **include** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

#### **1.4. General compliance provision**

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.
- (c) This Clause 1.4 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

#### **1.5. Listing Rules**

- (a) This Constitution is to be interpreted subject to:
  - (i) the Corporations Act;
  - (ii) the Listing Rules, while the Trust is Listed; and
  - (iii) the ASX Settlement Operating Rules, while the Units are CHESSE Approved Securities.
- (b) Despite anything to the contrary in this Clause 1.5, this Clause 1.5 has effect subject to Clause 1.4.
- (c) While the Trust is Listed:
  - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
  - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
  - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (d) While the Trust is Listed, the Responsible Entity must comply with the obligations imposed on it under the Listing Rules and the ASX Settlement Operating Rules. This obligation does not detract from or alter the power of the Responsible Entity to cause the Trust to cease to be Listed.
- (e) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision.
- (f) In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.5(c) is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.



## **1.6. Additional Listing Rule requirements**

At all times that the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
  - (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
  - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;
  - (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
  - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
  - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of a Unit except in any of the following cases:
  - (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the Prescribed Financial Market on which the Units are Listed as appropriate and equitable;
  - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
  - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
  - (iv) the divestment is under a court order;
- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to clause 1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

## **1.7. Other Documents**

A document does not become part of this Constitution by reason only of that document referring to this Constitution or vice versa, or any electronic link between them.

## **1.8. Schedules**

Any schedule to this Constitution is an operative part of it.

# **2. Name of Trust**

## **2.1. Name of Trust**

The Trust is called US Masters Residential Property Fund or by such other name as the Responsible Entity determines from time to time.

### **3. Assets held on trust**

#### **3.1. Assets held on Trust**

- (a) The Responsible Entity must hold the Assets on trust for Members.
- (b) The Assets vest in the Responsible Entity, but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.

### **4. Units**

#### **4.1. Nature of Units**

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the rights, obligations or restrictions applicable to particular Classes as set out in this Constitution (including the CPU Terms), each Unit confers an equal undivided interest. Apart from any differences as to income entitlement arising from the time when a Unit is issued, all Units in a Class confer an equal undivided interest as the other Units in that Class.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (d) The Responsible Entity has a discretion to issue Units with any preferred, deferred or other special rights, obligations or restrictions whether in relation to distributions, voting, return of capital, withdrawal, payment of calls or otherwise that the Responsible Entity determines.
- (e) Subject to this Constitution, the Responsible Entity may convert any Units from one Class to another Class or reclassify Units from one Class to another. Ordinary Units and CPUs represent separate Classes.
- (f) The Responsible Entity must enter on the Register the Class or terms of issue of Units held by a Member.
- (g) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit, as set out in this Constitution.
- (h) A Member may not:
  - (i) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Responsible Entity;
  - (ii) claim or exercise any right in respect of any asset of the Trust or lodge any caveat or other notice affecting any asset of the Trust; or
  - (iii) require that any asset of the Trust be transferred to a Member.
- (i) Members may not give any directions to the Responsible Entity (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Responsible Entity to do or omit to do anything which may result in:
  - (i) the Trust ceasing to comply with the Listing Rules or the Responsible Entity acting inconsistently with this Constitution; or
  - (ii) the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which under this Constitution requires the agreement of the Responsible Entity.

#### **4.2. Fractions of Units**

- (a) Fractions of a Unit may be issued by the Responsible Entity.
- (b) Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Responsible Entity determines.
- (c) The provisions of the Constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (d) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

#### **4.3. Consolidation and Division of Units**

- (a) Units (or a Class of Units) may be consolidated or divided as determined by the Responsible Entity.
- (b) The Unit structure may only be reconstructed:
  - (i) if the proportion of Units held by Members in a Class relative to each other immediately before the reconstruction is maintained; and
  - (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

#### **4.4. Joint Tenancy**

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

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

#### **4.5. Death, Legal Disability of Member**

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.

#### **4.6. Benefits and obligations of Members**

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

**4.7. No further liability**

- (a) This Clause 4.7 is subject to any separate agreement between a Member and the Responsible Entity.
- (b) The liability of each Member in its capacity as such is limited to its investment in the Trust.
- (c) A Member is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.
- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the assets of the Trust.
- (e) Nothing in or under this Constitution makes the Responsible Entity an agent of a Member, nor does it create any relationship other than that of beneficiary and trustee.

**4.8. Class rights**

The rights attaching to Units in a Class cannot be cancelled, varied or adversely affected without a special resolution of Members and a special resolution of Members of the class affected.

**5. Application Price for Units****5.1. Application Price**

- (a) The Application Price for Ordinary Units issued under the first product disclosure statement prepared for the Trust will be \$1.60 per Ordinary Unit.
- (b) Subject to Clause 5.1(d), after the issue of Ordinary Units under the first product disclosure statement and for Ordinary Units that are not Officially Quoted, the Application Price will be equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue} + \text{number of Units into which all CPUs would convert at that date}}$$

- (c) Subject to this Clause 5.1(d) and Clause 5.8, if the Units are Officially Quoted, the Application Price for the issue of Units in the Class will be the Market Price of Units in the Class calculated by reference to:
  - (i) with respect to an application for Units, the date the Responsible Entity decides to proceed to the issue of Units in accordance with Clause 6;
  - (ii) the date of offer of the Units; or
  - (iii) the date of allotment of the Units.
- (d) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by ASIC Relief (and subject to the terms of that ASIC Relief and this Constitution) and, if the Units are Officially Quoted, the Listing Rules. The following apply to the extent they reflect the requirements of ASIC Relief:
  - (i) in the case of a proportionate offer (including a rights issue), Clause 5.4;
  - (ii) in the case of an issue of Units as consideration for an off-market bid, Clause 5.6;

- (iii) in the case of a placement of Units or pursuant to an interest purchase plan which complies with ASIC Class Order CO 09/425 while Units are Officially Quoted, Clause 5.7; and
- (iv) in the case of reinvestment of income, Clause 5.8.
- (e) The Application Price for the Ordinary Units issued under the third product disclosure statement prepared for the Trust (**3<sup>rd</sup> PDS**) will be the amount equal to:

$$\text{\$1.56} \times \left( \frac{\text{IER}}{\text{FER}} \right) + \text{3<sup>rd</sup> PDS Entry Fee}$$

**IER** is the Australian Dollar / US Dollar exchange rate published by Bloomberg at 5 pm (NY time) on or immediately prior to the date of the 3<sup>rd</sup> PDS;

**FER** is the Australian Dollar / US Dollar exchange rate published by Bloomberg at 5 pm (NY time) on or immediately prior to the date is 1 Business Day before Units are allotted under the 3<sup>rd</sup> PDS; and

**3<sup>rd</sup> PDS Entry Fee** is the fee payable to the Responsible Entity in accordance with Clause 19.2 in respect of an application for Ordinary Units under the 3<sup>rd</sup> PDS which has been accepted by the Responsible Entity, referred to in the 3<sup>rd</sup> PDS as a 2% structuring and arranging fee and 2% handling fee (exclusive of GST) .

- (f) Without limiting any other provision of this Constitution, the Application Price for the first issue of CPUs is the Issue Price specified in Schedule 1.

## 5.2. Variables

Each of the variables in Clause 5.1(b) must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Ordinary Units; or
- (b) the Responsible Entity receives the application money,

whichever happens later.

## 5.3. Rounding

The Application Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset of the Trust.

## 5.4. Pro rata rights issues

The Responsible Entity may (subject to the terms of any applicable ASIC Relief instrument) offer Units in a Class for subscription at a price determined by the Responsible Entity to those persons who were Members of the Class on a date determined by the Responsible Entity, provided that:

- (a) all Members of the Class are offered Units of the Class at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) where Ordinary Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with Clause 5.1(b) as at the date of offer,

but, subject to the Listing Rules and any applicable ASIC Relief, the Responsible Entity is not required to offer Units under this Clause 5.4 to persons whose address on the Register is in a place other than Australia.

### 5.5. Terms of pro rata issues

- (a) Any offer made under Clause 5.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings in the Class on the date determined by the Responsible Entity under Clause 5.4, provided that the Responsible Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under Clause 5.4 which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person, provided that the Application Price payable in relation to such further offer is the same price at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under Clause 5.4, such underwriter may take up any Units not subscribed for by Members.

### 5.6. Issue of Units as Bid Consideration

- (a) The Responsible Entity may issue Units as consideration, or part of the consideration, to acquire securities or financial products of a target entity under an off-market bid made in accordance with Chapter 6 of the Corporations Act (**Bid Consideration**).
- (b) The Responsible Entity may issue a Unit which is, or forms part of, the Bid Consideration at an Application Price which is equal to the Market Price of Units in that Class immediately prior to the date on which or as at which the public announcement of the off-market bid, or any revised off-market bid, for securities or financial products of the target entity is first made by the Responsible Entity or by an associate of the Responsible Entity in relation to the off-market bid.
- (c) If the Responsible Entity accepts the transfer of securities or financial products of the target entity, which are the subject of an acceptance of an offer under the off-market bid (Offer), then such transfer shall be taken to be in satisfaction of the obligation to make payment or transfer property for either:
  - (i) the application price for Units, in the event that only Units comprise the Bid Consideration; or
  - (ii) the application price for Units, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Units and other consideration.

### 5.7. Placements

- (a) Subject to Clauses 5.7(b) and 5.7(c), while Units of a Class are Officially Quoted, and not suspended from quotation, the Responsible Entity may at any time issue Units of that Class to any person by way of a placement or interest purchase plan (that accords with ASIC Legislative Instrument 13/655 or Class Order 09/425) at the Market Price of Units, adjusted if applicable under clause 5.1(d).
- (b) In the case of an issue to any underwriter or sub-underwriter of a distribution reinvestment plan or any persons nominated by them at a price per Unit equal to the price at which Units are issued pursuant to that distribution reinvestment plan in accordance with Clause 5.8.
- (c) The Responsible Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief.

### 5.8. Reinvestment

- (a) While the Units are Officially Quoted the Application Price payable for each Unit of a Class on reinvestment of Distributions (if any) is the applicable Reinvestment Price.

- (b) While Units are not Officially Quoted, the Application Price payable for each additional Ordinary Unit upon reinvestment of Distributions is the Application Price calculated by reference to Clause 5.1(b) on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

## **6. Application Procedure**

### **6.1. Application Form**

An applicant for Units must complete a form approved by the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.

### **6.2. Payment**

- (a) Payment in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
  - (i) accompany the application;
  - (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
  - (iii) comprise a reinvestment of distribution in accordance with Clauses 10.14 to 10.16.
- (b) For the avoidance of doubt, the Responsible Entity may accept a transfer of any security issued by the Responsible Entity (including any note or other debt instrument) on such terms as the Responsible Entity may determine as payment of the Application Price for Units under clause 6.2(a).
- (c) 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.
- (d) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earliest of:
  - (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units;
  - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act; or
  - (iii) the date of allotment of the Units.

Until the Responsible Entity decides to proceed to the issue of Units in accordance with this Clause 6, it holds such Application Monies upon bare trust for the applicant and the Responsible Entity must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. Where Application Monies are repayable under section 1017E of the Corporations Act, no interest is payable on that money.

### **6.3. Responsible Entity May Reject**

The Responsible Entity may reject an application in whole or in part and, subject to the Listing Rules, need not give any reason for the rejection.

#### 6.4. Minimum Amounts

The Responsible Entity may set a minimum application amount and a minimum holding for the Trust and alter those amounts at any time.

#### 6.5. Issue Date

- (a) Units which are issued on a reinvestment of distribution in accordance with this Constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (b) Except in the case of a reinvestment of distributions in accordance with this Constitution, in all other cases Units are taken to be issued on the date the applicant's name is recorded in the Register.

#### 6.6. Uncleared Funds

Units issued against application money paid other than in cleared funds or in consideration of a transfer of property are void if the funds are not subsequently cleared or the property does not vest in the Responsible Entity within 1 month of receipt of the application.

#### 6.7. Register

Subject to the Corporations Act, a single register may be kept in which details of the holders of Units of all Classes are separately recorded.

#### 6.8. Holding Statements

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a holding statement may be issued to evidence the holding of Units.

#### 6.9. Foreign Members

- (a) The Responsible Entity may determine that Foreign Members are not to be offered Units which are otherwise offered to Members in that capacity where it reasonably considers that it would:
  - (i) be in the best interests of the Members; and
  - (ii) be consistent with the actions permitted to be taken by the Responsible Entity under Legislative Instrument CO 13/656; and
  - (iii) in the case of CPUs only, is consistent with the CPU Terms.
- (b) If the Responsible Entity makes a determination under Clause 6.9(a) and it is practicable to do so, the Responsible Entity must issue the Units to a nominee who will sell the Units and pay to each Foreign Member the amount calculated as follows:

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

Where:

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

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

- (i) the Costs of the sale including any costs payable by the Responsible Entity to any nominee appointed under Clause 6.9(c) in respect of the Units;



- (ii) the amounts (if any) payable to the Responsible Entity by any nominee appointed under Clause 6.9(c) in respect of the Units; and
- (iii) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold under this Constitution;

N is the aggregate number of Units; and

NF is the number of Units to which that Foreign Member would otherwise have been entitled.

- (c) The Responsible Entity may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Units under, and pay to each Foreign Member the amount calculated in accordance with the formula in, Clause 6.9(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Member under Clause 6.9(b).

## **7. Transfers**

### **7.1. Transfer**

- (a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, all transfers of Units must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units under this Clause 7.1(a) unless the instrument of transfer:
  - (i) is duly stamped (if applicable);
  - (ii) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
  - (iii) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed, all transfers of Officially Quoted Units must be effected in accordance with the Listing Rules.
- (c) A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of the transfer is effected in accordance with the ASX Settlement Operating Rules.

### **7.2. Transaction advice after transfer**

If the Responsible Entity accepts a transfer under this Clause 7, the Trustee may issue a transaction advice for:

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

### **7.3. No General Restriction on Transfer**

- (a) There is no restriction on the transfer of Units and, subject to Clause 25.1 and the terms of a Class as set out in this Constitution, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under Clause 7.1(b).
- (b) Except as otherwise set out in this Clause 7 or the terms of a Class as set out in this Constitution, there is no restriction on any other transfer of Units.
- (c) In relation to Units which are CHES Approved Securities:

- (i) subject to Clauses 7.3(c)(ii) and 7.3(c)(iii), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX Settlement Operating Rules transfer;
- (ii) the Responsible Entity may apply a holding lock to specified CHESS Approved Securities where permitted to do so by the Listing Rules; and
- (iii) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

#### **7.4. Power to suspend registration of transfers**

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

#### **7.5. Transmission of Units**

- (a) In the case of a Transmission Event in respect of a Member, the only persons who will be recognised as having any title to the Units registered in the Member's name or any benefits accruing in respect of those Units:
  - (i) where the Member is a joint holder, the survivor or survivors of the Member;
  - (ii) where the Member is an individual, the legal personal representative of the Member or the person entitled to the Units as a result of bankruptcy; or
  - (iii) where the Member is a body corporate, the person entitled to the Units as a result of the dissolution or succession.
- (b) Nothing in Clause 7.5(a) releases the Member or the estate of a deceased Member from any liability in respect of the Units held whether that Unit was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement to the Unit, elect:
  - (i) to be registered as the Member of the Unit by signing and serving on the Responsible Entity a notice in writing stating that election; or
  - (ii) to have some other person nominated by that person registered as the transferee of the Unit by executing a transfer to that other person in accordance with Clause 7.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 7.5(a) unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by the Responsible Entity in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Units apply, so far as they can and with such changes as are necessary, to any transfer under Clause 7.5(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Member of the Unit.
- (f) For the purposes of this Constitution, where 2 or more persons are jointly entitled to any Unit in consequence of a Transmission Event they will, upon being registered as the Members of the Unit, be taken to hold the Unit as joint tenants and Clause 4.4 will apply to them.

- (g) Despite Clause 7.5(a), the Responsible Entity may register a transfer of Units signed by a Member before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

## **7.6. Recognition of Member**

- (a) Except as otherwise provided by law or provided in this Constitution, the Responsible Entity:
  - (i) must treat the person entered on the Register as a Member as the absolute owner of all rights and interests of the Member; and
  - (ii) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit by any other person, even if the Responsible Entity has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Member until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Responsible Entity, Units held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in Clause 7.6(c) limits the operation of Clause 7.6(a).

## **7.7. Participation in Transfer Systems**

The Responsible Entity may determine that Units which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may, with the approval of the operator of the Prescribed Financial Market on which the Units are Listed, create rules to facilitate such participation which may be additional to or may override this Clause 7.

# **8. Valuation of Assets**

## **8.1. Periodic Valuations**

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(1)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value at any time.

## **8.2. Valuation Methods**

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time provided that the valuation methods and policies are consistent with the Accounting Principles and ordinary commercial practice for valuing assets of the same type as the relevant category Assets.
- (b) Unless the Responsible Entity determines otherwise, and subject to the terms of any applicable ASIC Relief instrument, the value of an Asset for the purpose of calculating Net Asset Value will be its market value which must be determined in a manner consistent with the Accounting Principles and ordinary commercial practices for valuing assets of the same type as the Assets.
- (c) If an option has been granted over an Asset this is to be taken into account in assessing the value of the Asset.
- (d) If the Trust is a Registered Scheme then if the Responsible Entity values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price that is independently verifiable.

## 9. Accounts, Audit and Reports

### 9.1. Accounts – Registered Scheme

If the Trust is a Registered Scheme, the Responsible Entity must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Trust.

### 9.2. Accounts – Not a Registered Scheme

While the Trust is not a Registered Scheme, the Responsible Entity:

- (a) must arrange the preparation and maintenance of such accounts and reports as the Responsible Entity, reasonably exercising its discretion, considers appropriate having regard to the nature of the Trust and its Assets, with a view to ensuring that the financial position of the Trust at any time is accurately recorded; and
- (b) will determine at its discretion whether or not to have the Trust's accounts audited (but will arrange for such an audit if so directed by all Members).

## 10. Income and Distributions to Members

### 10.1. Distributable Income

- (a) The Responsible Entity may determine the distributable income for each Distribution Period (**Distributable Income**) by way of standing principles (subject to the determination not being in contradiction of trust or tax laws), the application of which is capable of independent verification, and may change such principles from time to time in respect of Distribution Periods ending after the change in principles.
- (b) In determining the Distributable Income of the Trust, the Responsible Entity may determine whether any receipt, profit, gain, cost, expense, outgoing or other amount is to be treated as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income provided that any allocation is a fair and reasonable allocation between Classes.
- (c) For the avoidance of doubt:
  - (i) in determining the Distributable Income, the Responsible Entity does not have to take into account the Accounting Principles; and
  - (ii) the preparation of the accounts of the Trust in accordance with current Accounting Principles is not to be regarded as a determination by the Responsible Entity of the method for calculating the Distributable Income.
- (d) Unless the Responsible Entity determines otherwise (including by way of standing principles under clause 10.1(a)), the Distributable Income for a Distribution Period must be:
  - (i) the net income of the Trust as defined in Section 95(1) of the 1936 Tax Act, excluding any amount that is included in the net income of the Trust that will not be received by the Responsible Entity; but
  - (ii) not less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.

### 10.2. Present Entitlement

A person who at any time during the Tax Year is or has been a Member of a Class, is presently entitled, at the end of the Tax Year to the share of Distributable Income of the Trust for the Tax

Year, in proportion to the distributions they each receive are or entitled to receive in respect of the Tax Year under this Clause 10 or the terms of issue of a Class as set out in this Constitution.

### **10.3. CPU Holder entitlement to Distributable Income**

- (a) Each person who is or was a CPU Holder on the Record Date referable to a Distribution Period, is entitled to be paid a Distribution on the relevant Distribution Payment Date, if the Responsible Entity determines to make a Distribution in respect of that Distribution Period.
- (b) If the Responsible Entity determines to make a Distribution in respect of a Distribution Period in accordance with Clause 10.3(a), the Responsible Entity must pay the Distribution on the Distribution Payment Date.
- (c) If any amount of Distributable Income would remain at the end of a Tax Year after payment of the Distributions referred to in Clause 10.3(a), the Responsible Entity must first pay that amount of Distributable Income to reduce any Deferred Distribution that would exist at the last day of the Tax Year before it can pay any amount of Distributable Income to Ordinary Unit Holders under Clauses 10.5 and 10.6.

### **10.4. No other payment**

The Responsible Entity must not distribute to any CPU Holder under Clause 10.3 any additional amount out of the Distributable Income other than an amount which the CPU Holder is entitled to be paid in accordance with the CPU Terms.

### **10.5. Ordinary Unit Holder entitlement to Surplus Distributable Income**

Subject to clause 10.3(c), if after the Responsible Entity has paid or determined to pay a Distribution to CPU Holders in respect of a Distribution Period, any Surplus Distributable Income in respect of that Distribution Period is available for distribution, the Responsible Entity may distribute to the Ordinary Unit Holders the Surplus Distributable Income for that Distribution Period on the Distribution Payment Date.

### **10.6. Distributions to holders of Ordinary Units for the Tax Year**

- (a) Subject to Clause 10.3(c), the Responsible Entity must pay to the Ordinary Unit Holders on the Register at the end of the last day of that Tax Year an amount equal to their share calculated under clause 10.6(b) of the Surplus Distributable Income (if any) for the Tax Year.
- (b) The share of the Surplus Distributable Income (if any) to which an Ordinary Unit Holder is entitled under clause 10.6(a) is to be calculated in accordance with the following formula:

$$\left( \frac{(A + B) \times C}{D} \right) - E$$

where:

- A = the Surplus Distributable Income in respect of the relevant Tax Year;
- B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on Issue held by any such Member;
- C = the aggregate of the number of Ordinary Units held by the Member as at the close of business on the last Business Day of that Tax Year which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Ordinary Units issued during that period which have a proportionate income entitlement in accordance with Clause 10.9, the aggregate number of such Ordinary Units held by that Member multiplied by the relevant proportion;

D = the aggregate of the total number of Ordinary Units entitled to a full income distribution for the relevant Tax Year plus, if Ordinary Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 10.9, the aggregate of the total number of such Ordinary Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last day of the Tax Year; and

E = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year as a consequence of the characteristics of the Member including the number or percentage of Ordinary Units on Issue held by the Member,

and if there is no Surplus Distributable Income for the Tax Year, the Ordinary Unit Holders will not be entitled to a distribution under this clause 10.6.

- (c) Any distribution of Surplus Distributable Income to the Ordinary Unit Holders under this clause 10.6 must be paid on the Distribution Payment Date for the last Distribution Period in the Tax Year.

#### **10.7. Satisfaction of Present Entitlement**

The present entitlement of a Member to Distributable Income of the Trust for a Tax Year will be satisfied by the payment of the distributions to the Member in respect of the Tax Year under this clause 10.

#### **10.8. Minimum Distribution**

If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, subject to the CPU Terms, the Responsible Entity may transfer capital to enable distribution to Members holding Ordinary Units pro rata of the minimum amount necessary to avoid the Responsible Entity as Responsible Entity of the Trust becoming assessable to pay tax under the Tax Act.

#### **10.9. Member's Rights**

For the avoidance of doubt and despite anything in this Clause 10:

- (a) the rights of a Member under this Clause 10 are subject to the rights, obligation and restrictions attaching to the Units which they hold; and
- (b) for the purposes of distribution entitlements, partly paid Units will be treated as that proportion of whole Units as the amount paid up bears to the total issue price for that Unit, rounded down to the nearest 2 decimal places, or in such other manner.

#### **10.10. Trust taxed as a Company**

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this Clause 10.10 applies to any period (a **Distribution Period**) instead of Clauses 10.1 to 10.9. If it does so:

- (a) as soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles;
- (b) the Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust;
- (c) subject to the CPU Terms, including that there is at the time no amount of Deferred Distribution, the Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Ordinary Unit Holders on the Register on any date determined by the Responsible Entity (**CD Date**);

- (d) for each Distributable Amount being paid to Members under this Clause 10.10, the Responsible Entity:
- (i) must comply with the CPU Terms;
  - (ii) must comply with the Tax Act; and
  - (iii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies;
- (e) an Ordinary Unit Holder will be entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

A = the aggregate of the number of Ordinary Units held by the Member as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the CD Date for that Distributable Amount Ordinary Units which have proportionate income entitlement, the aggregate number of such Ordinary Units held by that Member multiplied by the relevant proportion;

B = the aggregate of the number of Ordinary Units entitled to full income distribution plus if any Ordinary Units have been issued with proportionate income entitlement, the aggregate of the total number of such Ordinary Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for the Distributable Amount;

C = the Distributable Amount and

- (f) the Distributable Amount must be paid to Members within two months after the relevant CD Date.

#### **10.11. Withholding Tax**

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that it is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, pursuant to Clause 10.6(b), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

#### **10.12. Other Distributions**

If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may at any time:

- (a) distribute any amount of capital or income to CPU Holders in accordance with the CPU Terms;
- (b) subject to the CPU Terms, distribute any amount of capital to Members holding Ordinary Units pro rata according to the number of Units held as at a time decided by the Responsible Entity; or
- (c) subject to the CPU Terms, distribute any amount of income to Members holding Ordinary Units pro rata according to the number of such Units held as at a time decided by the Responsible Entity.

### 10.13. Separate Accounts

- (a) 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 Members.
- (b) Where Clause 10.11(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.

### 10.14. Notification of Beneficial Ownership

Notwithstanding any obligation of a Member under law to notify the Responsible Entity of any legal or beneficial ownership of Units, a Member must notify the Responsible Entity immediately if, at any time, its beneficial ownership, directly or indirectly, of the Units exceeds:

- (a) 5% of the total Units on issue; and
- (b) 10% of the total Units on issue.

In addition, the Responsible Entity may require Members to provide notices from time to time confirming the beneficial ownership of Units or providing other relevant information.

Failure to give such notice to the Responsible Entity will not affect the interest of the Member in the Units or the liability of the Member under this Constitution and will not affect the rights of the Responsible Entity to determine a deduction for Tax in accordance with this Clause 10.

### 10.15. Reinvestment

- (a) If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may:
  - (i) decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class; or
  - (ii) decide whether to permit the CPU Holders to reinvest some or all of any distribution in respect of CPUs to acquire Ordinary Units in accordance with the CPU Terms.
- (b) If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) Members are bound by the terms of any distribution reinvestment plan implemented by the Responsible Entity from time to time.
- (d) The Responsible Entity has power to do all such acts and things which it considers necessary, desirable or reasonably incidental to give effect to the terms of any distribution reinvestment plan implemented by the Responsible Entity from time to time.
- (e) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the Distribution Payment Date.
- (f) If reinvestment applies, the Application Price for the Units to be issued on reinvestment will be calculated in accordance with Clause 5.8.
- (g) For the avoidance of doubt, a Unit issued under a distribution reinvestment plan implemented by the Responsible Entity does not have a right to distributions in respect of the Distribution Period to which the reinvested distribution relates.



### **10.16. Position on Transfer of Units**

Income in the distribution account when a transfer or transmission of Units is Registered remains credited to the transferor.

## **11. Payments**

### **11.1. Responsible Entity Discretion**

Money payable by the Responsible Entity to a Member may be paid in any manner the Responsible Entity decides.

### **11.2. Unpresented Cheques**

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.

### **11.3. Unsuccessful Payment**

Where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt.

### **11.4. No Fractions**

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

### **11.5. Discharge of Responsible Entity**

A payment to any one of joint Members will discharge the Responsible Entity in respect of the payment.

### **11.6. Deductions**

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

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Responsible Entity or any other person,

which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Responsible Entity considers should be deducted.

## **12. Powers of the Responsible Entity**

### **12.1. General Powers**

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 Responsible Entity and as though it were the absolute owner of the Assets and acting in its personal capacity.

### **12.2. Contracting Powers**

Without limiting Clause 12.1, the Responsible Entity in its capacity as Responsible Entity of the Trust has power to borrow or raise money and to lend or advance money (whether or not on security) and to incur all types of obligations and liabilities.

### **12.3. Investment Powers**

Without limiting Clause 12.1, the Responsible Entity may in its capacity as Responsible Entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

### **12.4. Guarantees**

Without limiting Clause 12.1, the Responsible Entity may if it considers it appropriate in all the circumstances to do so, guarantee or assume the obligations of any person (including an associate of the Responsible Entity) and a third party dealing with the Responsible Entity may rely on a certified extract of the minutes of a meeting of the directors of the Responsible Entity as conclusive evidence that the Responsible Entity has formed the opinion that it is appropriate in all the circumstances to exercise its powers under this Clause 12 and is thereby empowered accordingly.

### **12.5. Power of Delegation**

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity sees fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.

### **12.6. Exercise of Discretion**

Subject to Clause 12.7, the Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

### **12.7. Discretion Limited**

The Responsible Entity may not exercise its powers in a manner or to an extent that would cause the Trust to be subject to income taxation as a separate entity as a non-fixed trust.

## **13. Retirement of Responsible Entity**

### **13.1. Voluntary Retirement**

- (a) While the Trust is a Registered Scheme, the Responsible Entity may retire as the Responsible Entity of the Trust as permitted by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity may retire on not less than 3 month's notice to Members. On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

### **13.2. Compulsory Retirement**

- (a) While the Trust is a Registered Scheme, the Responsible Entity must retire as the Responsible Entity of the Trust when required by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity must retire if required to do so by a Resolution passed by at least 75% of the votes cast by Members entitled to vote on the Resolution.

### **13.3. New Responsible Entity**

If the Trust is not a Registered Scheme at the time the Responsible Entity is to retire, any proposed replacement Responsible Entity must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.

### **13.4. Release**

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed.

### **13.5. Retirement Benefit**

The Responsible Entity is entitled, subject to any approval required by law, to agree with the incoming Responsible Entity to be remunerated by, or to receive a benefit from, the incoming Responsible Entity in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming Responsible Entity as its replacement; or
- (b) its retirement as Responsible Entity,

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

## **14. Notices to Members**

### **14.1. Notices to Members**

- (a) Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member may be given electronically, including by way of announcements on the Prescribed Financial Market on which the Units are Listed, or in such other manner as the Responsible Entity determines, unless a Member specifies to receive such notices and communications in writing. In this case, notices and communications should be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.
- (b) A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.
- (c) In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- (d) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

### **14.2. Notices of the Responsible Entity**

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing (which includes a fax), or in such other manner as the Responsible Entity determines.
- (b) The notice is effective only at the time of receipt.
- (c) The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Responsible Entity dispenses with this requirement.

## **15. Meetings of Members**

### **15.1. Corporations Act**

The Responsible Entity may at any time convene a meeting of Members, and must do so if required by the Corporations Act.

### **15.2. Member's Request for Meeting**

- (a) While the Trust is not a Registered Scheme:
  - (i) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 50% of the votes that may be cast on the resolution; and
  - (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in Clause 15.2(a) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

### **15.3. Notice Period**

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notice of meetings of Members is governed by the Corporations Act.

### **15.4. Responsible Entity May Determine**

Subject to the specific provisions of this Constitution relating to meetings of members and the Corporations Act (if the Corporations Act applies), the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

### **15.5. Quorum**

The quorum for a meeting of Members is at least 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### **15.6. No Quorum**

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

### **15.7. Chairman**

- (a) Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Members.
- (b) The decision of the chairman on any matter relating to the conduct of the meeting is final.

**15.8. Adjournment**

The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

**15.9. Resolutions Binding**

- (a) A Resolution binds all Members, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

**15.10. Proxies and Voting while the Trust is a Registered Scheme**

While the Trust is a Registered Scheme:

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

**15.11. While the Trust is not a Registered Scheme**

While the Trust is not a Registered Scheme, the remaining Clauses 15.12 to 15.15 apply.

**15.12. Voting**

- (a) Voting is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this Constitution to be decided by a percentage of Units, or a percentage of votes able to be cast.
- (b) Each Member present in person or by proxy has:
  - (i) on a show of hands, one vote; and
  - (ii) on a poll, one vote for each Unit they hold.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees. In the case of an equality of votes, the chairman has the casting vote.

**15.13. Poll**

A poll may be demanded before or on declaration of the result of a show of hands by either:

- (a) the chairman, or
- (b) at least 2 Members present in person or by proxy who together hold at least 10% of Units.

**15.14. Proxies**

- (a) A Member may be represented at a meeting by proxy. Proxies are governed by the provisions of the Corporations Act relating to Registered Schemes as if the Trust were a Registered Scheme.
- (b) The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

### **15.15. Class Meetings**

The rights attaching to a Class must not be varied without the written consent of all Members holding Units of that Class or by a special resolution of Members holding Units of that Class. Meetings of Members holding Units of a Class are to be convened and conducted in the same manner as meetings of Members generally under this Constitution, and the provisions of this Clause 15 apply to Class meetings with any necessary or appropriate adaptations, including that “Members” will be taken to be a reference to Members of the relevant Class.

## **16. Rights and Liabilities of Responsible Entity**

### **16.1. Holding Units**

The Responsible Entity and its associates may hold Units in the Trust in any capacity.

### **16.2. Other Capacities**

Subject to the Corporations Act, if the Corporations Act applies, nothing in this Constitution restricts the Responsible Entity (or its associates) from:

- (a) dealing with itself (as Responsible Entity of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as Responsible Entity of the Trust or in another capacity), an associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

### **16.3. 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 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 a Member 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 will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

## **17. Limitation of Liability and Indemnity in favour of Responsible Entity**

### **17.1. No limitation of other undertakings**

This Clause 17 does not limit or affect any other indemnities given to the Responsible Entity in this Constitution or at law.

## 17.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Member or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity;
- (b) the Responsible Entity will not be liable to any Member to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust;
- (c) a Member must not:
  - (i) bring proceedings against the Responsible Entity in its personal capacity; or
  - (ii) apply to have the Responsible Entity put into administration or wound up or apply to have a receiver or similar person appointed to the Responsible Entity or prove in the administration or winding up of the Responsible Entity;
- (d) 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 and the Responsible Entity must use reasonable endeavours to ensure that its Liability is limited to the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust; and
- (e) the Responsible Entity is not liable to account to any person for any payment made in good faith to any Government Agency for any Tax or any other charges in respect of the Trust or for any transaction arising under this Constitution notwithstanding that such payment need not have been made.

## 17.3. Acts or omissions of Responsible Entity and others

- (a) The Responsible Entity is not responsible for:
  - (i) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (ii) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (iii) Costs if a person fails to carry out an agreement with the Responsible Entity or an attorney, delegate or agent of the Responsible Entity,

except where the Corporations Act expressly provides otherwise.
- (b) The Responsible Entity will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
  - (i) any provision of any present or future law or statute of Australia or any State or Territory; or
  - (ii) any decree, order or judgement of any competent court;
  - (iii) or any document or agreement binding on the Responsible Entity,

the Responsible Entity is prevented, forbidden or hindered from doing or performing.

- (c) No act or omission of the Responsible Entity will be considered fraud, negligence or breach of trust by it to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.

#### **17.4. Indemnity in Favour of Responsible Entity**

- (a) The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this Clause 17.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as Responsible Entity of the Trust.

### **18. Liability of Members**

#### **18.1. Liability Limited**

- (a) Subject to Clauses 18.1(c) and 18.2, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 18.3 applies.

#### **18.2. Recourse**

In the absence of separate agreement with a Member, the recourse of the Responsible Entity and any creditor is limited to the Assets.

#### **18.3. Restrictions on Members**

A Member:

- (a) must not interfere with any rights or powers of the Responsible Entity under this Constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.



## **19. Remuneration and Expenses of Responsible Entity**

### **19.1. Management Fee**

- (a) Subject to the proper performance of its duties, the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 0.5% per annum of the Gross Value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.
- (b) This calculation of the Management Fee is to be made and paid to the Responsible Entity in United States of America dollars unless the Responsible Entity agrees to accept the sum converted into Australian currency with such conversion to occur at the date of payment.
- (c) In relation to the month in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month. Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid.

### **19.2. Entry Fee**

Subject to the proper performance of its duties (as they relate to new issues of Units), the Responsible Entity is entitled to be paid an Entry Fee in respect of an application for Units which has been accepted by the Responsible Entity.

### **19.3. Payment of Responsible Entity's fee**

The Responsible Entity's fees accrue daily and are payable in arrears within 5 days of the last day of the month.

### **19.4. Priority of Responsible Entity's remuneration**

The Responsible Entity's fee must be paid in priority to the payment of all other amounts payable from the Trust.

### **19.5. Indemnity out of Fund**

In addition to the Responsible Entity's right of remuneration under Clauses 19.1 and 19.2 and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

### **19.6. Waiver of Fees**

The Responsible Entity may waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution.

The Responsible Entity may do so in relation to a Class or Members generally, that is, subject to the Corporations Act, may waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution differently for different Classes of Units.

Where payment is deferred, the fee and/or levy accrues daily until paid.

### **19.7. Expenses**

All expenses incurred by the Responsible Entity in connection with the Trust are payable or reimbursable out of the Assets, but while the Trust is a Registered Scheme such reimbursement or payment is only available to the extent that the amounts are incurred in the proper performance of the Responsible Entity's duties as Responsible Entity and only to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with including but not limited to:

- (a) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;
- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (f) Tax, including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning a 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 Clause 19.7(k) must be repaid;
- (l) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (m) while the Trust is a Registered Scheme but 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 any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any Compliance Plan; and
- (o) complying with any law, and any request or requirement of the ASIC.

### **19.8. GST**

- (a) If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution.

- (b) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by  $(1 + n)$  where "n" is the new prevailing rate of GST (expressed as a decimal).
- (c) In the event that the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

### **19.9. Sums Owed to the Responsible Entity**

The Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

## **20. Duration of the Trust**

### **20.1. Initial Settlement**

The Trust commences when an initial person nominated by the Responsible Entity subscribes at least \$16 for Ordinary Units in the Trust. The Responsible Entity's nominee must be issued with one (1) Ordinary Unit in return for each \$1.60 of that payment.

### **20.2. Termination**

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.

## **21. Procedure on Termination**

### **21.1. Realisation of Assets**

Following termination, the Responsible Entity must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

### **21.2. Audit of Winding Up**

If, at the time it is to be wound up, the Trust is a Registered Scheme, and to the extent that ASIC policy so requires, the Responsible Entity must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

### **21.3. Distribution Following Termination**

- (a) 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, must be distributed in the following manner:
  - (i) the Responsible Entity must first pay to the CPU Holders the Wind Up Amount under Clause 9.4 of the CPU Terms or, if the net proceeds of realisation are less than the aggregate Wind Up Amount for all CPUs on issue, a pro rata share of the proceeds among all CPU Holders; and

- (ii) then, the Responsible Entity must pay the balance of the net proceeds of realisation (if any) to Ordinary Unit Holders pro rata according to the respective numbers of Ordinary Units they hold.

The Responsible Entity may distribute proceeds of realisation in instalments.

- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie*. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
  - (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members all Costs incurred or which it establishes will be incurred:
    - (A) by it before the winding up of the Trust which it has not recouped;
    - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
    - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
    - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
  - (ii) an indemnity against the amounts referred to in Clause 21.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 21.3(a) is made; and
  - (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 19.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 19.
- (f) Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 21.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member.

## **22. Amendments to this Constitution**

### **22.1. Responsible Entity May Amend**

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, if the Corporations Act allows:
  - (i) by Resolution; or
  - (ii) by deed executed by the Responsible Entity.

- (b) While the Trust is not a Registered Scheme, the Responsible Entity may by deed amend this Constitution but, where the amendments adversely affect the rights of Members, may only do so with the approval of a Resolution.

## **22.2. Statutory Requirements**

While the Trust is a Registered Scheme, and the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this Constitution contain certain provisions, then those provisions are deemed 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. Clause 22.1(a) does not apply to provisions deemed by this Clause 22.2 to be incorporated in the Constitution.

## **23. Compliance Committee**

### **23.1. Compliance Committee**

While the Trust is a Registered Scheme and a compliance committee is acting in that capacity for the Trust, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

### **23.2. Persons to whom Clauses 23.3 and 23.5 apply**

Clauses 23.3 and 23.5 apply to each person who is or has been a member of the Compliance Committee (if any).

### **23.3. Indemnity**

The Responsible Entity must from the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 23.3 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

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

### **23.4. Extent of indemnity**

The indemnity in Clause 23.3:

- (a) is a continuing obligation and is enforceable by a person to whom Clause 23.3 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **23.5. Insurance**

The Responsible Entity may, from the Trust, to the extent permitted by law:

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

for any person to whom this Clause 23.5 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or

for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **23.6. Savings**

Nothing in Clauses 23.3 or 23.5:

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

## **24. Complaints**

### **24.1. Complaints**

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Responsible Entity a complaint alleging that the Member has been adversely affected by the Responsible Entity's conduct in its management or administration of the Trust, the Responsible Entity:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must 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 third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:
  - (i) the determination of the compliance committee (or if Clause 24.1(c) applies, the Responsible Entity);
  - (ii) the remedies (if any) available to the member; and
  - (iii) information regarding any further avenue for complaint.

## **25. General**

### **25.1. Restricted Securities**

- (a) Clause 25.1(b) only operates:
  - (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 25.1(b); and

- (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights in respect to those Units.

## **25.2. Small Holdings**

- (a) Subject to the provisions of this Clause 25.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 25.2 on 1 occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 25.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
  - (i) before the expiry of 6 weeks from the date of the notice given under Clause 25.2(c); or
  - (ii) if within the 6 weeks allowed by Clause 25.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

## **25.3. Constitution Legally Binding**

This Constitution binds the Responsible Entity and each present and future Member 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.

## **25.4. Severance**

If all or part of any provision contained in this Constitution is void or invalid or would otherwise result in all or part of this Constitution being void or invalid for any reason, then such part is to be severed from this Constitution without affecting the validity or operation of any other provision of this Constitution.

## **25.5. Governing Law**

This Constitution is governed by the law of New South Wales. The Responsible Entity and the Members submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

## **25.6. Other Obligations Excluded**

Except as required by the Corporations Act, all obligations of the Responsible Entity which might 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 Responsible Entity of the Trust arising under any statute.

## **26. Withdrawal of Units**

### **26.1. Withdrawal request while Trust is Liquid**

Subject to Clause 26.3 and the Listing Rules, while the Trust is Liquid or is not a registered scheme, any Member may request that some or all of their Ordinary Units be withdrawn. Each request must:

- (a) satisfy the form and content requirements prescribed by the Responsible Entity; and
- (b) be delivered to the Responsible Entity at its registered office (or other place nominated by the Responsible Entity).

Upon making such a request, the Member will have no right to deal with the Units (unless and until the request is denied by the Responsible Entity). A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.

### **26.2. Action following a request**

Within a reasonable time of receiving a withdrawal request under Clause 26.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:

- (a) deny the request (but it must then notify the Member accordingly); or
- (b) subject to the CPU Terms, effect the withdrawal by causing the number (or value) of Ordinary Units held by the Member referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Assets ; or
- (c) subject to the CPU Terms, the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Ordinary Units held by the Member referred to in the withdrawal request; or
- (d) subject to the CPU Terms, partially effect the withdrawal in the manner described in Clause 26.2(b) and partially purchase Ordinary Units (or arrange for Ordinary Units to be purchased) in the manner described in Clause 26.2(c).

### **26.3. Suspension of withdrawal request right**

Unless the Responsible Entity determines otherwise, the right to make a withdrawal request under Clause 26.1 is suspended while the Units in the Trust are Officially Quoted.

### **26.4. Withdrawal while Trust is not Liquid**

- (a) While the Trust is a registered scheme but is not Liquid, subject to the CPU Terms, the Responsible Entity may make a Withdrawal Offer to all Members or to Members in a Class. A Member may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Member has no right to request that some or all of the Member's Units be withdrawn. A Member may not withdraw an acceptance of a Withdrawal Offer unless the Responsible Entity agrees.
- (b) A Withdrawal Offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The Withdrawal Offer may be made by:
  - (i) publishing it (for example, in a national newspaper or on the internet); or
  - (ii) giving a copy to all Members (or a Class of Members).
- (c) Subject to the Corporations Act, the Listing Rules and the CPU Terms, the Responsible Entity may determine the terms of a Withdrawal Offer in its absolute discretion but the means of effecting the withdrawal must be one of those permitted under Clause 26.2 (subject to the Corporations Act and the Listing Rules).



- (d) The Responsible Entity may cancel a Withdrawal Offer in accordance with the Corporations Act.

#### **26.5. Minimum holding**

If the Responsible Entity has established a minimum number of Units for which an application can be made or a minimum number of Units which must be held at any time, then the Responsible Entity may treat a withdrawal request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Member to hold fewer Units than that minimum number, as a request for the withdrawal of all that Member's Units. If there is more than one Class, this clause only applies to Units in the same Class.

#### **26.6. Sums owed**

The Responsible Entity may deduct from the proceeds of withdrawal of Units any money due to the Responsible Entity in relation to the Member.

#### **26.7. Transfer of Assets to effect a withdrawal**

Rather than pay cash to effect a withdrawal in whole or in part, the Responsible Entity may transfer Assets to a Member (or the Member's nominee). The Responsible Entity must satisfy itself that the Assets (with any cash paid) will equal the total amount of cash otherwise payable. The Responsible Entity may do this on the basis of a valuation of the Assets obtained within one month of the withdrawal date.

#### **26.8. Liquid or not Liquid**

The Responsible Entity will determine whether or not the Trust is Liquid and, where the Trust is a registered scheme, will make this determination in accordance with the Corporations Act. Such a determination is binding on Members.

#### **26.9. Cooling off**

Nothing in this Clause 26 prevents the Responsible Entity from complying with any requirement to return application money to Members in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the Responsible Entity or the Trust.

#### **26.10. Increase of minimum holding**

Subject to the Corporations Act and the Listing Rules, if the Responsible Entity increases the minimum holding for the Trust, the Responsible Entity may, after giving 30 days' notice to a Member who holds Units with an aggregate Withdrawal Price less than the current minimum holding, redeem that Member's holding without the need for a withdrawal request.

#### **26.11. On market buy back of Units**

Subject to the Listing Rules, the Corporations Act and any relevant ASIC exemption, including but not limited to an ASIC class order, the Responsible Entity may effect a buy-back of Units by purchasing Units on market as if the Trust was a company, with any adaptations that the operator of the Prescribed Market on which the Units are Listed or ASIC consider appropriate.

#### **26.12. Order**

Unless the Responsible Entity decides otherwise, the first Units issued to a Member are the first Units withdrawn.

### **27. Withdrawal Price**

The Withdrawal Price for any Unit will be equal to:

## Net Asset Value - Transaction Costs

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$$\frac{\text{number of Units on issue} + \text{number of Units}}{\text{into which all CPUs would convert at that date}}$$

While the Trust is not a registered scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the Responsible Entity received (or is taken to have received) the withdrawal request.

If the Trust is a registered scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes.

## Schedule 1

### Terms of issue of CPUs

#### 1. Issue Price

##### 1.1. Issue Price

- (a) The issue price of each CPU is \$100.00 (**Issue Price**).
- (b) Each CPU must be paid for in full on application.

#### 2. Form and Ranking

##### 2.1. Form

- (a) Each CPU is a perpetual cumulative convertible step-up preference unit in URF conferring an undivided share in the beneficial interest in the assets of the URF. A CPU converts into Ordinary Units in accordance with these Terms.
- (b) CPUs are issued according to the Constitution of which these Terms form part.

##### 2.2. Entries in the Register

CPUs are taken to be issued when they are entered in the Register.

##### 2.3. No certificates

No certificates will be issued in respect of any CPU unless the Issuer determines that certificates should be available or they are required by any applicable law.

##### 2.4. Ranking

Subject to the Constitution, each CPU ranks:

- (a) equally with all other CPUs in all respects;
- (b) senior to Ordinary Units in respect of Distributions and payments in a winding up of the URF in accordance with these Terms; and
- (c) subordinate to all creditors of the Issuer as responsible entity of URF in respect of distributions and payments in a winding up of URF.

#### 3. Distributions

##### 3.1. Calculation of Distributions

- (a) Subject to these Terms (including clause 3.3), each CPU entitles the Holder on the relevant Record Date to receive on each relevant Distribution Payment Date a distribution (**Standard Distribution**) in respect of each CPU Distribution Period for each CPU calculated in accordance with the following formula:

$$D = R \times IP \times N/365$$

Where:

D is the distribution payable in respect of that CPU Distribution Period;

R is the Rate;

IP is the Issue Price for the CPU; and

N is the number of days from and including the Issue Date until (and including) the last day of the first CPU Distribution Period and thereafter from and including the first day of each succeeding CPU Distribution Period until (and including) the last day of the relevant CPU Distribution Period.

- (b) In these Terms, **Rate** means:
- (i) in respect of all CPU Distribution Periods in the period from the Issue Date to but excluding the Step-Up Date – 6.25% per annum;
  - (ii) in respect of all CPU Distribution Periods from and including the Step-Up Date – 8.75% per annum.
- (c) The Issuer may not pay a Standard Distribution greater than the amount determined in accordance with clause 3.1(a).

### **3.2. CPU Distribution Period**

- (a) The initial CPU Distribution Period is the period from the date of issue of the CPUs to 30 June 2018.
- (b) Thereafter, subject to clause 3.2(c), each CPU Distribution Period is the period of 6 months until the next to occur of 30 June and 31 December.
- (c) The final CPU Distribution Period is the period from the first day of the current CPU Distribution Period until the Conversion of the CPUs.

### **3.3. Payment of Distributions**

The payment of Standard Distributions and Deferred Distributions (each a **Distribution**) is subject to:

- (a) the Issuer determining the Distribution to be payable;
- (b) the Constitution; and
- (c) the Corporations Act and any other law not prohibiting the Issuer from paying the Distribution.

### **3.4. Rounding of Distributions**

All calculations of Distributions must be rounded down to 2 decimal places. For the purposes of calculating a Holder's aggregate entitlement to a Distribution, any fraction of a cent must be disregarded.

### **3.5. Distribution Payment Dates**

Distributions are payable in arrears by the date 40 Business Days after the end of the relevant CPU Distribution Period

### **3.6. Record Dates**

A Distribution is only payable to persons who are Holders on the Record Date for that Distribution.

### **3.7. Ordinary Units issued on reinvestment**

- (a) In the case of a reinvestment of a Distribution at the election of a Holder, the number of Ordinary Units to be issued must be determined in accordance with the following formula:

$$U = RA/DRPP$$

Where

U is the number of Ordinary Units to be issued;

RA is the total amount to be reinvested in Ordinary Units; and

DRPP is the DRP Price as determined in accordance with clause 3.7(b).

- (b) For the purposes of clause 3.7(a), **DRP Price** means an amount equal to 95% of the VWAP of Ordinary Units over the 10 Business Days (whether or not trading of Ordinary Units occurs on those Business Days) up to but excluding the Record Date for the relevant CPU Distribution Period.
- (c) If the Issuer elects to issue Ordinary Units under this clause 3.7 (**Distribution Ordinary Units**), it must:
  - (i) issue the Distribution Ordinary Units within 5 Business Days of the payment date for the relevant Distribution;
  - (ii) ensure that the Distribution Ordinary Units rank pari passu with Ordinary Units from the date of issue;
  - (iii) apply for official quotation of the Ordinary Units and issue holding statements for the Distribution Ordinary Units within the time periods stipulated by the Listing Rules for a new issue of Ordinary Units.

### **3.8. Distributions are cumulative**

- (a) The entitlement of the holder of a CPU to the payment of a Standard Distribution is cumulative so that if, in respect of a CPU Distribution Period, no Standard Distribution is paid or the Standard Distribution paid on a CPU is less than the entitlement to a Standard Distribution for that CPU Distribution Period, the shortfall (**Deferred Distribution**), is, subject to the Issuer's right to further defer payment of a Distribution under clause 3.3, payable on the Distribution Payment Date for the immediately following CPU Distribution Period.
- (b) For the purposes of clauses 3.8(a) and 3.9(a), a Distribution is taken to have been paid if it has been reinvested in Ordinary Units at the election of the Holder.

### **3.9. Consequences of non-payment**

- (a) If, for any reason, the Issuer has not paid a Distribution in an amount equal to the entitlement to a Distribution for that CPU Distribution Period together with any amount of Deferred Distribution within 40 Business Days after the end of the relevant CPU Distribution Period, the Issuer must not, without the approval of a Special Resolution passed at a separate meeting of Holders:
  - (i) pay any distributions (whether of income or capital) on;
  - (ii) undertake a buyback (other than as a result of an on-market buyback undertaken in accordance with ASIC Corporations (ASX-listed Schemes On-market Buybacks) Instrument 2016/1159 or any successor or replacement instrument), redeem or otherwise cancel; or
  - (iii) give effect to a redemption of or withdrawal from URF in respect of,
 

any Ordinary Units or any other units in URF over which the CPUs rank in priority for participation of profits with respect to the CPU Distribution Period for that Distribution, unless and until all Deferred Distributions have been paid.
- (b) Without limiting clause 3.3 or clause 3.8 the Issuer may elect at any time to pay to Holders a distribution up to the amount of any Deferred Distribution.

## 4. Conversion

### 4.1. Conversion

- (a) Each CPU converts into the number of Ordinary Units determined in accordance with clause 4.4:
  - (i) in respect of all CPUs held by a Holder who provides a Holder Conversion Notice, on the Holder Conversion Date for that Holder; and
  - (ii) in respect of all other CPUs, on the Issuer Conversion Date,
 (the **Conversion Date**). CPUs do not convert into Ordinary Units in any other circumstances.
- (b) Each CPU confers all the rights attaching to the relevant number of Ordinary Units determined in accordance with clause 4.4 but these rights do not take effect until the relevant Conversion Date. At that time:
  - (i) all other rights or restrictions conferred upon the CPUs under these Terms no longer have effect; and
  - (ii) the Ordinary Units into which each CPU has converted rank equally with all other Ordinary Units then on issue and the Issuer must issue a statement that the Holder of those Ordinary Units holds each Ordinary Unit so ranking.
- (c) The taking effect of the rights of a CPU under this clause 4 by the reclassification of an interest in URF in the nature of a CPU to a Ordinary Unit is, for the purposes of these Terms, together termed **Conversion** (and **Convert** has a corresponding meaning).
- (d) Conversion does not constitute cancellation, redemption or termination of a CPU nor an issue, allotment or creation of a new unit.

### 4.2. Issuer Conversion

- (a) Subject to clause 4.2(c), the Issuer may elect to Convert all CPUs to Ordinary Units on 1 January 2023 or the first day of any subsequent CPU Distribution Period provided it first does the following:
  - (i) if URF is Listed at that time, by releasing an announcement on the ASX Company Announcements Platform stating that all CPUs will be Converted and the relevant Issuer Conversion Date for Conversion; or
  - (ii) if URF is not Listed at that time, by giving written notice to Holders.
- (b) The announcement or notice issued under clause 4.2(a) must specify the date for Conversion being the last date of the then current CPU Distribution Period (**Issuer Conversion Date**).
- (c) The Issuer must issue an announcement or give notice to Holders under clause 4.2(a) no later than 10 Business Days prior to the Issuer Conversion Date.

### 4.3. Holder Conversion

- (a) A Holder may require the Conversion of all (but not some) of its CPUs in the circumstances set out in this clause 4.3 by giving written notice to the Issuer in the form published by the Issuer from time to time (**Holder Conversion Notice**). A Holder Conversion Notice is irrevocable other than with the consent of the Issuer which it may withhold in its discretion.
- (b) A Holder may only deliver a Holder Conversion Notice if, as at the date of delivery of the Holder Conversion Notice, the Issuer has breached its obligations under clause 3.9.

- (c) All CPUs held by a Holder who has delivered a Holder Conversion Notice Convert on the Holder Conversion Date for that Holder.
- (d) The **Holder Conversion Date** for a Holder is the first day of the next CPU Distribution Period that is at least 30 Business Days after the date that Holder has delivered a Holder Conversion Notice to the Issuer.
- (e) A Holder who has delivered a Holder Conversion Notice must:
  - (i) provide evidence of title acceptable to the Issuer for the CPUs the subject of the notice; and
  - (ii) not dispose of or otherwise agree to dispose of any interest in the CPUs to which the Holder Conversion Notice relates.

#### 4.4. Conversion: number of Ordinary Units

- (a) Subject to clause 4.4(g), on the Conversion Date, each CPU converts into the number of Ordinary Units determined in accordance with the following formula (**CA** or **Conversion Amount**):

$$CA = CN + ACN$$

Where:

CN is the Conversion Number; and

ACN is the Additional Conversion Number.

- (b) In these Terms, subject to clauses 4.4(e) - 4.4(f), **Conversion Number** is the number determined in accordance with the following formula:

$$CN = IP/CVWAP$$

Where:

CN is the Conversion Number;

IP is the Issue Price; and

CVWAP is the Conversion VWAP.

- (c) In these Terms, **Additional Conversion Number** is the number determined in accordance with the following formula:

$$ACN = OD/CVWAP$$

Where:

ACN is the Additional Conversion Number;

OD is the aggregate of all Distributions that the Holder would have been entitled to receive as at the Conversion Date had the Issuer determined under clause 3.3 to pay:

- (i) a Standard Distribution in accordance with clause 3.1; and
- (ii) a Deferred Distribution in respect of all periods up to the Conversion Date that remained unpaid; and

CVWAP is the Conversion VWAP.

- (d) In these Terms, **Conversion VWAP** means an amount equal to 97.5% of the VWAP of Ordinary Units over the 10 Business Days (whether or not trading of Ordinary Units occurs on those Business Days) up to but excluding the Conversion Date.
- (e) If the Conversion Number determined in accordance with clause 4.4(d) is less than the Minimum CN, the Conversion Number is the Minimum CN.
- (f) If the Conversion Number determined in accordance with clause 4.4(d) is greater than the Maximum CN, the Conversion Number is the Maximum CN.
- (g) If on Conversion the aggregate number of Ordinary Units to which a Holder is entitled includes a fraction of a Ordinary Unit, that fraction must be disregarded and the Holder has no further claim or right to that fraction of a Ordinary Unit.

#### 4.5. Quotation from Conversion

The Issuer must apply for official quotation of the Ordinary Units issued upon Conversion within the time periods stipulated by the Listing Rules for a new issue of Ordinary Units.

#### 4.6. Adjustment to Minimum CN and Maximum CN

- (a) Subject to clause 4.6(e), in a consolidation of Ordinary Units, the Minimum CN and Maximum CN must be consolidated in the same ratio as the Ordinary Units.
- (b) Subject to clause 4.6(e), in a subdivision of Ordinary Units, the Minimum CN and Maximum CN must be subdivided in the same ratio as the Ordinary Units.
- (c) Subject to clause 4.6(e), if the Issuer undertakes a pro rata rights issue or bonus issue of Ordinary Units to holders of Ordinary Units generally, each of the Minimum CN and Maximum CN is adjusted in accordance with the following formula:

$$AMCN = MCN \times (CV / ((CV - (S + D)) / N + 1))$$

Where:

AMCN is the adjusted Minimum CN or Maximum CN (as appropriate);

MCN is the Minimum CN or Maximum CN (as appropriate) immediately prior to application of this formula;

CV is the VWAP of Ordinary Units during the period from the first Business Day after the announcement of the rights or bonus issue up to and including the last Business Day of trading *cum* rights or bonus issue;

S is the subscription or security price per Ordinary Unit for the rights issue and is zero in the case of a bonus issue;

D is the distributions due but not yet paid on Ordinary Units (except those to be issued under the pro rata issue); and

N is the number of Ordinary Units with rights or entitlements that must be held to receive a right to one new Ordinary Unit under the pro rata issue,

provided that no adjustment is made to the Minimum CN or Maximum CN if:

- (i) (S + D) exceeds CV; or
- (ii) at or about the time of the rights issue or bonus issue, the Issuer offers Ordinary Units to the Holders at the same issue price and in the same proportion as if the Holders had been able to participate in the rights issue or bonus issue, whether or not they have the ability to renounce the rights.



- (d) Subject to clause 4.6(e), if the Issuer undertakes an off-market buyback or cancellation of Ordinary Units, each of the Minimum CN and Maximum CN is adjusted in accordance with the following formula:

$$AMCN = MCN \times (CV / ((CV - (S + D)) / N + 1))$$

Where:

AMCN is the adjusted Minimum CN or Maximum CN (as appropriate);

MCN is the Minimum CN or Maximum CN (as appropriate) immediately prior to application of this formula;

CV is the VWAP of Ordinary Units during the period from the first Business Day after the announcement of the buy-back up to and including the last Business Day of trading *cum* buy-back;

S is the price per Ordinary Unit paid under the buy-back;

D is the distributions due but not yet paid on Ordinary Units (if any); and

N is the proportion of the issued Ordinary Units bought back expressed as a decimal,

provided that no adjustment is made to the Minimum CN or Maximum CN if:

- (i) (S + D) exceeds CV; or
  - (ii) at or about the time of the rights issue or bonus issue, the Issuer offers Ordinary Units to the Holders at the same issue price and in the same proportion as if the Holders had been able to participate in the rights issue or bonus issue, whether or not they have the ability to renounce the rights.
- (e) Notwithstanding the express provisions of clauses 4.6(a) - 4.6(d), in any reconstruction or alteration of capital, the Minimum CN and Maximum CN must be adjusted so that:
- (i) a Holder will not receive a benefit that holders of Ordinary Units do not receive; and
  - (ii) a Holder does not forego any benefit that it would have received had the reconstruction or alteration of capital not happened.

#### **4.7. No other adjustments**

Unless otherwise approved by Special Resolution passed at a separate meeting of Holders and a Special Resolution of members of URF, no adjustment to the methodology for determining the number of Ordinary Units into which CPUs are Converted may be made as a result of Issuer undertaking:

- (a) an issue of Ordinary Units other than an issue undertaken on a pro rata basis (including a placement, an issue under an off-market takeover bid, an issue under an unitholder purchase plan and an issue under a DRP);
- (b) a distribution of capital or income to holders of Ordinary Units; or
- (c) an on-market buy-back of Ordinary Units.

## **5. Payments to Holders**

### **5.1. No set-off**

The Holder has no right to set-off any amounts owing by it to the Issuer against any claims owing by the Issuer.

## **5.2. Time limit for claims**

A claim against the Issuer for payment according to these Terms is void unless made within five years of the due date for payment.

## **6. Title and transfer of CPU**

### **6.1. Title**

Title to a CPU passes when details of the transfer are entered in the Register.

### **6.2. Issuer may request holding lock or refuse to register transfer**

If CPU are Officially Quoted, and if permitted to do so by the Listing Rules and the Corporations Act, the Issuer may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of CPU approved by and registered on the CS Facility's electronic subregister or CPU registered on an issuer-sponsored subregister, as the case may be; or
- (b) refuse to register a transfer of CPU.

### **6.3. Issuer must request holding lock or refuse to register transfer**

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of CPU approved by and registered on the CS Facility's electronic subregister or CPU registered on an issuer-sponsored subregister, as the case may be, if the Corporations Act, the Listing Rules or the terms of a restriction agreement require the Issuer to do so.
- (b) The Issuer must refuse to register any transfer of CPU if the Corporations Act, the Listing Rules or the terms of a restriction agreement require the Issuer to do so.

### **6.4. Notice of holding locks and refusal to register transfer**

If, in the exercise of its rights under clauses 6.2 and 6.3, the Issuer requests application of a holding lock to prevent a transfer of CPU or refuses to register a transfer of CPU, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to the Holder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

## **7. Quotation and Foreign Holders**

### **7.1. Quotation on ASX**

The Issuer must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of CPU on ASX.

### **7.2. Foreign Holders**

Where CPU held by a Foreign Holder are to be converted to Ordinary Units in accordance with these Terms, unless the Issuer is satisfied that the laws of the Foreign Holder's country of residence (as shown in the Register) permit the conversion to Ordinary Units of the Foreign Holder (but as to which the Issuer is not bound to enquire), either unconditionally or after compliance with conditions which the Issuer regards as acceptable and not unduly onerous, the Ordinary Units which the Foreign Holder is obliged to accept may be issued to a nominee who will sell those Ordinary Units and pay a cash amount equal to the net proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Foreign Holder. The nominee may be a related party of the Issuer.

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## **8. Amendment of these Terms**

### **8.1. Amendment without consent**

Subject to complying with the Corporations Act and all other applicable laws, the Issuer may amend these Terms:

- (a) if the Issuer is of the opinion that the amendment is:
  - (i) of a formal, minor or technical nature;
  - (ii) made to cure any ambiguity or correct any manifest error;
  - (iii) expedient for the purpose of enabling the CPU to be listed for quotation or to retain listing on any stock exchange, to be cleared or settled through any clearing system or to retain clearance and settlement through any clearing system or to be offered for, or subscription for, sale under the laws for the time being in force in any place and it is otherwise not reasonably considered by the Issuer to adversely affect the rights of Holders; or
  - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority; or
- (b) generally in any case where such amendment is reasonably considered by the Issuer not to adversely affect the rights of Holders.

### **8.2. Amendment with consent**

Without limiting clause 8.1 but subject to the Corporations Act, the Issuer may amend these Terms if the amendment has been approved by a Special Resolution passed at a separate meeting of Holders.

### **8.3. Meanings**

In this clause 8, **amend** includes modify, cancel, alter, adjust or add to and **amendment** has a corresponding meaning.

### **8.4. Notice of amendments**

Any amendment of these Terms made in accordance with this clause 8 must be promptly notified to Holders.

## **9. General Provisions**

### **9.1. Issues of other securities**

Except as set out in these Terms or the rules of a DRP applied to a Distribution, the CPU carry no right to participate in any offering of securities by the Issuer.

### **9.2. Voting**

The Constitution contains provisions for convening meetings of the Holders to consider any matter affecting their interests, including any variation of these Terms which requires the consent of Holders.

### **9.3. Priority of Distributions**

- (a) If:
  - (i) a Distribution for each CPU held in respect of a CPU Distribution Period; or

- (ii) a distribution entitlement on any other units in URF which rank equally with the CPUs as to distributions;

has been determined by the Issuer to be paid but has not been paid, or is not able to be paid in full, any Distributions and any distributions payable on those other units must be paid pro rata.

- (b) Unless and until Conversion occurs, the CPUs rank in priority to Ordinary Units for the payment of distributions.

#### **9.4. Distribution of proceeds on a Winding Up**

- (a) Unless and until Conversion, if net proceeds are available to be distributed under Clause 21.3 on a winding up of URF, Holders are entitled to receive out of those proceeds, in respect of each CPU held, a payment equal to Wind Up Amount as determined as at the date the Issuer commenced the winding up of URF (**Wind Up Date**) before any payment of income or capital is made to holders of Ordinary Units or any other class of securities ranking behind the CPUs.
- (b) In these Terms **Wind Up Amount** means the aggregate of:
  - (i) the Issue Price; and
  - (ii) any Distribution that the Holder would have been entitled to receive as at the Wind Up Date had the Issuer determined under clause 3.3 to pay:
    - (A) a Standard Distribution in accordance with clause 3.1;
    - (B) a Deferred Distribution in respect of all periods up to the Conversion Date that remained unpaid.

#### **9.5. Shortfall on a Winding Up**

If, upon a winding up of URF, there are insufficient funds to pay in full the amounts referred to in clause 9.4 and the amounts payable in respect of any other units in URF ranking as to such distribution equally with the CPUs on a winding up of URF, the Holders and the holders of any such other units share in any distribution of assets of URF in proportion to the amounts to which they are entitled respectively.

#### **9.6. Participation in Surplus Assets and Profits**

The CPUs do not confer on Holders any further right to participate in the surplus assets of URF on a winding up or in the property or profits of URF beyond the rights set out in these Terms.

#### **9.7. Restrictions on other issues**

- (a) The issue of any other class of units in URF which rank in priority to the CPUs in respect of distributions or return of capital on a winding up constitutes an alteration of the rights attached to the CPUs. Accordingly, unless and until all the CPUs have been Converted, the Issuer must not, without approval of a Special Resolution passed at a separate meeting of Holders, issue, or permit the conversion of any existing units ranking in priority to the CPUs as to dividends or return of capital on winding up.
- (b) The Issuer may at any time issue further CPUs or other securities ranking equally with (including any convertible preference unit on similar terms to the CPUs) or behind any existing CPUs as to distributions or return of capital on winding up without approval of a Special Resolution passed at a separate meeting of Holders. Such an issue does not constitute a variation or cancellation of the rights attached to the then existing CPUs.

## 10. Interpretation and Definitions

### 10.1. Interpretation

- (a) Unless the context otherwise requires, if there is any inconsistency between the provisions of these Terms and the Constitution, then, to the maximum extent permitted by law, the provisions of these Terms will prevail.
- (b) Except to the extent otherwise specified in these Terms, notices may be given by URF to a Holder in the manner described by the Constitution for the giving of notices to members of URF and the relevant provisions of the Constitution apply with all necessary modification to notices to Holders.
- (c) Unless otherwise specified, in these Terms, a reference to a **clause** is a reference to a clause of these Terms.
- (d) If a calculation is required under these Terms, unless the contrary intention is expressed, the calculation will be rounded down to 2 decimal places.
- (e) If an event under these Terms must occur, or anything must be done under these Terms, on or by a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
- (f) Definitions and interpretations under the Constitution also apply to these Terms, subject to clause 10.1(a).
- (g) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (h) Specifying anything in these Terms after the words **include** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 10.2. VWAP adjustments

For the purposes of calculating VWAP in accordance with these terms:

- (a) where, on some or all of the Business Days in the relevant calculation period (**Reference Period**), Ordinary Units have been quoted on ASX as *cum* any distribution or other entitlement and Distribution Ordinary Units are to be issued or the CPUs convert into Ordinary Units after the date those Ordinary Units no longer carry that entitlement (**Ex Date**), then the VWAP on the Business Days on which those Ordinary Units have been quoted *cum* distribution or *cum* entitlement must be reduced by an amount (**Cum Value**) equal to:
  - (i) (in the case of a distribution), the amount of that distribution;
  - (ii) (in the case of an entitlement which is traded on ASX on any of those Business Days), the volume weighted average price of all such entitlements sold on ASX during the Reference Period on the Business Days on which those entitlements were traded, as attributed to each Ordinary Units; or
  - (iii) (in the case of an entitlement not traded on ASX during the Reference Period), the value of the entitlement per Ordinary Unit as reasonably determined by the Issuer; and
- (b) where, on some or all of the Business Days in the Reference Period, Ordinary Units have been quoted *ex* distribution or *ex* entitlement, and Distribution Ordinary Units are to be issued or the CPUs convert into Ordinary Units which would be entitled to receive the relevant distribution or entitlement, the VWAP on the Business Days on which those Ordinary Units have been quoted *ex* distribution or *ex* entitlement must be increased by the Cum Value.

## 11. Definitions

In these Terms the following terms have the meaning set out below:

Additional Conversion Number	has the meaning given in clause 4.4(c).
Applicable Regulation	such provisions of the Listing Rules, the ASX Settlement Operating Rules, the Corporations Act and any regulations or rules passed under or pursuant to any such provisions, as may be applicable to the transfer.
ASX	Australian Securities Exchange Limited.
Business Day	a day other than a Saturday, Sunday or public holiday on which banks are open for normal banking business in Sydney.
Constitution	the constitution of URF from time to time.
Conversion	has the meaning given in clause 4.1(c).
Conversion Amount	has the meaning given in clause 4.1(a).
Conversion Date	has the meaning given in clause 4.1(a).
Conversion Number	has the meaning given in clause 4.1(b).
Conversion VWAP	has the meaning given in clause 4.1(d).
Corporations Act	the <i>Corporations Act 2001 (Cth)</i> .
CPU	a series A perpetual cumulative convertible step-up preference unit in the capital of URF issued in accordance with these Terms.
CPU Distribution Period	has the meaning given in clause 3.2.
CS Facility	has the same meaning as "prescribed CS facility" in the Corporations Act.
CS Facility Operator	the operator of a CS Facility.
Deferred Distribution	has the meaning given in clause 3.8.
Distribution	a Standard Distribution or a Deferred Distribution.
Distribution Payment Date	each date on which a Distribution is payable in accordance with clause 3.5, whether or not a Distribution is paid on that date.
Distribution Ordinary Units	has the meaning given in clause 3.7(c).
DRP	a distribution reinvestment plan that may be adopted by Issuer under which Holders have the opportunity to reinvest a Distribution in securities in URF.
Foreign Holder	means a Holder whose address in the Register is a place outside Australia or New Zealand or who

	the Issuer otherwise believes may be a foreign Holder.
Holder	a person whose name is for the time being entered in the Register as the holder of a CPU.
Holder Conversion Date	has the meaning given in clause 4.3(d).
Holder Conversion Notice	has the meaning given in clause 4.3(a).
Issue Date	the date of issue of a CPU.
Issue Price	has the meaning given in clause 1.1.
Issuer	the company registered with ASIC as the responsible entity for URF from time to time, being as at the Issue Date Walsh & Company Investments Limited (ACN 152 367 649) (AFSL 410 433) in its capacity as responsible entity of URF.
Issuer Conversion Date	has the meaning given in clause 4.2(b).
Issuer Conversion Notice	has the meaning given in clause 4.2(a)(i).
Listing Rules	the listing rules of the ASX.
Maximum CN	the number specified in the PDS as the Maximum CN from the date of issue adjusted from time to time in accordance with clause 4.6.
Minimum CN	the number specified in the PDS as the Minimum CN from the date of issue adjusted from time to time in accordance with clause 4.6.
Officially Quoted	a quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.
PDS	the product disclosure statement issued by the Issuer in connection with the offer of CPUs.
Rate	has the meaning given in clause 3.1(b).
Record Date	for payment of: (a) a Standard Distribution - the last day of the CPU Distribution Period for that Distribution; and (b) a Deferred Distribution or an Additional Distribution - the date prior to its payment that is determined by the Issuer.
Register	the register of URF maintained by the Issuer.
Registrar	Boardroom Pty Limited or any other person appointed by the Issuer to maintain the Register.
Special Resolution	has the meaning given in the Corporations Act.

Standard Distribution	has the meaning given in clause 3.1.
Step-Up Date	1 January 2023.
Terms	these terms and conditions of issue of the CPUs.
Ordinary Unit	an ordinary unit in URF.
URF	US Masters Residential Property Fund (ARSN 150 256 161).
VWAP	subject to clause 10.2, the volume weighted average price of trading of Ordinary Units sold on the ASX market and the Chi-X market over the relevant period or on the relevant days but does not include any block trades, large portfolio trades, permitted trades during the pre-trading hours period, permitted trades during the post-trading period, out of hours trades and exchange traded option exercises.
Wind Up Amount	has the meaning given in clause 9.4(b).
Wind Up Date	has the meaning given in clause 9.4(a).