

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

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# Constitution of the US Masters Residential Property Fund II

## 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.

**AMIT** means a trust which is an attribution managed investment trust under the Tax Act.

**AMIT Income Year** means a year of income for the purposes of the Tax Act that the Trust is an AMIT.

**AMIT Regime** means the regime for the taxation of AMITs.

**AMMA Statement** has the meaning given to that phrase in the Tax Act.

**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).

**Attached Security** has the meaning given to it in Schedule 1.

**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.

**CD Date** has the meaning given in clause 10.6(c).

**Complaint** means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or to the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

**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.

**Determined Member Component** has the meaning given to that phrase in the Tax Act.

**Determined Trust Component** has the meaning given to that phrase in the Tax Act.

**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.

**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.

**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.

**Implementation Date** means the fifth Business Day following the record date for the Internalisation Proposal or such other date after the record date as the Responsible Entity may determine.

**Income Distribution** means, in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 10.4.

**Incoming Capital Reallocation Amount** has the meaning given to it in clause 4.11.

**Ineligible Foreign Member** means a member of the Stapled Trust whose address shown in the Register on the record date for implementation of the Internalisation Proposal is a place outside Australia and its external territories and New Zealand, unless the Responsible Entity has determined or determines that it is lawful and not unduly onerous or impracticable to issue or provide that Member with units in the Stapled Trust.

**Internalisation Proposal** means the proposal to cause the Stapling of Units to units in the Stapled Trust as referred to in the notice of meeting sent to Members for that purpose.

**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** 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 Trust is Listed, as modified by any applicable waiver or other modification issued by ASX and, where the context requires, includes the ASX Settlement Operating Rules.

**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 the Trust is 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 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 Component** has the meaning given to that phrase in the Tax Act.

**Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under the Tax Act.

**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.

**New Attached Securities** has the same meaning as in Schedule 1, but for the purposes of Clause 28 includes units in the Stapled Trust.

**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.

**Outgoing Capital Reallocation Amount** has the meaning given to it in clause 4.9.

**Over** has the meaning given to that term in the Tax Act.

**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 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.

**Relevant Date** has the meaning given in clause 4.9(a).

**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.

**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 trustee of the Trust for the time being.

**Restapling** has the same meaning as in Schedule 1.

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

**Retail Client** has the same meaning as in section 761G of the Corporations Act.

**Sale Agent** means an entity or the entities appointed by the responsible entity of the Stapled Trust to sell the Sale Securities, under the constitution of the Stapled Trust.

**Sale Securities** has the meaning given in the constitution of the Stapled Trust.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture.

**Stapled Entity** has the same meaning as in Schedule 1.

**Stapled Security** has the same meaning as in Schedule 1.

**Stapled Trust** means US Masters Residential Property Fund ARSN 150 256 161.

**Stapling and Stapled** have the same meanings as given in Schedule 1.

**Stapling Commencement Time** means the most recent time at which the Responsible Entity determines that the Stapling Provisions commence in accordance with clause 30.1.

**Stapling Proposal** means a proposal to cause the:

- (a) Stapling of any other Securities or financial products to the Units;

- (b) Unstapling of one or more Attached Securities; or
- (c) Restapling of one or more Unstapled Securities.

and includes the Internalisation Proposal.

**Stapling Provisions** means the provisions relating to Stapling in Schedule 1, as applied under clause 30.2.

**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.

**Total Assets** means the total value of Assets of the Trust and the assets of each Stapled Entity.

**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 Trust is 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.

**Trust Component** has the meaning given to that phrase in the Tax Act.

**Under** has the meaning given to that term in the Tax Act.

**Unit** means an undivided share in the beneficial interest in the Trust as provided in this Constitution.



**Unstapled Security** has the same meaning as in Schedule 1.

**Unstapling** has the same meaning as in Schedule 1.

**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 (including an instrument of ASIC Relief) 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; and
- (q) amounts of money are expressed in Australian dollars unless otherwise expressly stated.

### 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) To the extent that a provision of this Constitution is inconsistent with a provision of the Corporations Act applicable to Registered Schemes, the clause 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 CHESS 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 Instrument 2017/125 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. 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.

## **1.7. 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 II 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, 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.
- (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.

#### **4.9. Capital reallocation - determination**

While Stapling applies, the Responsible Entity may at any time determine to reallocate some of the capital attributable to a Unit to become capital attributable to a unit in the Stapled Trust (or, if applicable, any other Attached Security). If the Responsible Entity so determines, it may:

- (a) set a date as at which Members and the number of Units they hold as noted on the Register will be used as the basis for implementing the reallocation ("**Relevant Date**");
- (b) distribute an amount of capital of the Trust (the "**Outgoing Capital Reallocation Amount**") to the Members;
- (c) as agent for and on behalf of each Member, apply the Outgoing Capital Reallocation Amount pro rata in respect of each Unit on issue as at the Relevant Date by paying that amount (or part of that amount, if there is more than one Stapled Entity) to the Stapled Trust (and if applicable, the other Stapled Entities) as an additional capital payment in respect of the corresponding existing unit in the Stapled Trust (or the relevant Attached Security of any other Stapled Entity).

#### 4.10. Capital reallocation - implementation

If the Responsible Entity determines under clause 4.9 to pay a distribution as an Outgoing Capital Reallocation Amount, then:

- (a) each Member is deemed to have directed the Responsible Entity to pay their proportionate share of the Outgoing Capital Reallocation Amount to the relevant Stapled Entity or Stapled Entities on that basis;
- (b) the Responsible Entity must pay the Outgoing Capital Reallocation Amount (calculated according to the number of Units held by the Member on the Relevant Date) to the relevant Stapled Entity or Stapled Entities on that basis;
- (c) each Member will be deemed to have irrevocably appointed the Responsible Entity as its attorney and agent to do all things the Responsible Entity considers necessary to give effect to the reallocation of capital under clause 4.9; and
- (d) the simultaneous reduction in the capital attributed to each Unit resulting from payment of the Outgoing Capital Reallocation Amount will be reflected in the records of the Trust.

#### 4.11. Incoming capital reallocation

If at any time, the Stapled Trust (or any other Stapled Entity) undertakes a capital distribution, all or part of which is paid to or for the benefit of the Trust ("**Incoming Capital Reallocation Amount**") on terms which substantially mirror the provisions of clauses 4.9 and 4.10, then each Member is:

- (a) deemed to have directed the Responsible Entity to accept the Member's proportionate share of the Incoming Capital Reallocation Amount (calculated according to the number of Units held by the Member at the time the Incoming Capital Reallocation Amount is paid); and
- (b) deemed to have appointed the Responsible Entity as their attorney and agent to do all things the Responsible Entity considers necessary or desirable to give effect to the receipt of their proportionate share of the Incoming Capital Reallocation Amount by the Responsible Entity,

and the Responsible Entity must apply, at the same time in respect of each Member, the Member's per-Unit share of the Incoming Capital Reallocation Amount as an additional capital payment in respect of each of the Member's Units to which the relevant Attached Securities are Stapled. All amounts so received by the Responsible Entity are Assets, and the simultaneous increase in the capital attributed to each Unit from the application of the Incoming Capital Reallocation Amount will be reflected in the records of the Trust.

### 5. Application Price for Units

#### 5.1. Application Price

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

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

- (c) Subject to Clause 5.1(d) and Clause 5.8, if the Units are Officially Quoted, the Application Price for the issue of Units in a Class will be the Market Price of Units in the Class.

- (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 Instrument 2019/547 while Units are Officially Quoted, Clause 5.7; and
  - (iv) in the case of reinvestment of income, Clause 5.8,

and in all cases, provided that the exercise of such discretion does not impact upon the ability of the Trust to satisfy the requirements to be a “fixed trust” for the purposes of the Tax Act for a year that is not an AMIT Income Year, and does not impact the rights of Members to income and capital being clearly defined for the purposes of the AMIT Regime for a year that is an AMIT Income Year.

## **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 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 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 and New Zealand.

## **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 instruments 2023/693 or 2019/547) 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 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 Clause 10.15.
- (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:
  - (i) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires, the applicant must provide a recent valuation of the property; and
  - (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factor in the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.
- (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) While the Trust is not Listed, 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. While the Trust is Listed, Units issued on reinvestment of a distribution are taken to be issued on the first Business Day after calculation of the Reinvestment Price.
- (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 Members as a whole; and
  - (ii) be consistent with the actions permitted to be taken by the Responsible Entity under ASIC instrument 2023/697; and
- (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 all Units sold on behalf of Foreign Members, being the amount (if any) remaining after deducting from the proceeds of sale of those 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 sold on behalf of all Foreign Members; 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) but if it does so, is not liable to the Foreign Member for any loss or costs associated with the sale of their Units.

## **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 CHESS 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 Trust is Listed, create rules to facilitate such participation which may be additional to 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.
- (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. While the Trust is a Registered Scheme, the Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Withdrawal Price of a Unit, the value must be reasonably current.
- (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:
    - (A) excluding any amount that is included in the net income of the Trust that will not be received by the Responsible Entity; and
    - (B) disregarding the operation of the AMIT Regime and section 95AAD in an AMT Income Year; 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. Power to accumulate or defer amounts**

- (a) The Responsible Entity may, in respect of a Distribution Period in a Tax Year that is an AMIT Income Year for the Trust, determine prior to the end of that Distribution Period that all or part of the Distributable Income of the Trust for the period from the commencement of the Tax Year until the end of the Distribution Period that has not already been distributed to Members under clauses 10.4 and 10.9(b) will:
  - (i) be accumulated; or
  - (ii) not be distributed in respect of the Distribution Period and will be distributed to Members of the Trust later in the Tax Year.
- (b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to clause 10.2(a) is, in accordance with clause 10.4, to:
  - (i) exclude the relevant amount from the Income Distributions for Members of the Trust for:
    - (A) the Distribution Period; and
    - (B) in the case of an accumulation pursuant to clause 10.2(a)(i), all future Distribution Periods; and
  - (ii) in the case of amounts which are carried forward for distribution later in the Tax Year under clause 10.2(a)(ii), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Tax Year unless the Responsible Entity determines to distribute the relevant amount earlier under clause 10.9(b).
- (c) For the purposes of identifying the Members to whom any Determined Trust Components that are reflected in Distributable Income that is accumulated under clause 10.2(a)(i) are to be attributed under the AMIT Regime, the amounts accumulated are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Tax Year.
- (d) Amounts which are:
  - (i) accumulated pursuant to clause 10.2(a)(i); or
  - (ii) carried forward for distribution later in the Tax Year pursuant to clause 10.2(a)(ii), but only until the time at which the amount is distributed under clauses 10.4 and 10.9(b);

continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

**10.3. 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:

- (a) if the Tax Year is not an AMIT Income Year, the Distributable Income of the Trust for the Tax Year; and
  - (b) if the Tax Year is an AMIT Income Year, the Distributable Income of the Trust for the Tax Year excluding any amounts accumulated pursuant to clause 10.2(a)(i),
- in proportion to the distributions they each receive or are entitled to receive in respect of the Tax Year under each of clause 10.4 and clause 10.9(b) bear to the sum of all distributions under

clause 10.4 and clause 10.9(b) (as applicable), to persons who are or have been Members at any time during the Tax Year.

#### **10.4. Income Distributions to holders of Units for the Tax Year**

- (a) The Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to their share calculated under clause 10.3 of the Distributable Income (if any) for the Tax Year.
- (b) The share of the Distributable Income (if any) to which a Member is entitled under clause 10.3(a) is to be calculated in accordance with the following formula:

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

where:

A = the Distributable Income in respect of the relevant Tax Year excluding:

(A) any amounts which the Responsible Entity has determined to accumulate for the Tax Year under clause 10.2; and

(B) any amounts paid pursuant to clause 10.9(b) during the 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 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 Units issued during that period which have a proportionate income entitlement in accordance with Clause 10.6, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

D = the aggregate of the total number of Units entitled to a full Income Distribution for the relevant Tax Year plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 10.6, the aggregate of the total number of such 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 Units on Issue held by the Member,

and if there is no Distributable Income for the Tax Year, the Members will not be entitled to a distribution under this clause 10.4.

- (c) Any distribution of Distributable Income to the Members under this clause 10.4 must be paid within 3 months of the last Distribution Period in the Tax Year.

#### **10.5. 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.

#### **10.6. 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.

### 10.7. 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 10.7 applies to any period (a **Distribution Period**) instead of Clauses 10.1(d)(ii) to 10.6. 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) 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 Members 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 10.7, the Responsible Entity:
  - (i) must comply with the Tax Act; and
  - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies;
- (e) a Member 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 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 Units which have proportionate income entitlement, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

B = the aggregate of the number of Units entitled to full income distribution plus if any Units have been issued with proportionate income entitlement, the aggregate of the total number of such 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.

### 10.8. 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 10.4(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.

#### **10.9. Other Distributions**

The Responsible Entity may at any time:

- (a) distribute any amount of capital to Members pro rata according to the number of Units held as at a time decided by the Responsible Entity (including in connection with the Internalisation Proposal or any other Stapling Proposal, where the distribution is of securities that will become Attached Securities in the Stapled Trust or another Stapled Entity or the distribution will be applied on behalf of each Member to acquire such securities); or
- (b) distribute any amount of income to Members pro rata according to the number of such Units held as at a time decided by the Responsible Entity.

#### **10.10. 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 10.8(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.

#### **10.11. Attribution under AMIT Regime – basis for attribution**

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Tax Year, attribute all of the Determined Trust Components of the Trust for the Tax Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 10.11(a) in accordance with the Tax Act and the following principle, that the amount of each Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this Constitution.
- (c) Following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Trust, all of the Determined Trust Components of the Trust for the Tax Year that are reflected in:
  - (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Tax Year under clause 10.4;
  - (ii) any distributions of Distributable Income that the Member or former Member has become entitled to during the Tax Year under clause 10.9(b); and
  - (iii) any Income Distributions that would arise for the Member or former Member at a time specified in clause 10.2(c) ("**Relevant Time**") under clause 10.4 if the Relevant Time was the end of a Distribution Period and variable "A" in the formula set out in clause 10.4 for the Distribution Period was the amount accumulated under clause 10.2(a)(i).
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed for the Trust as an Income Distribution under clause 10.4 or under clause 10.9(b) are referable to Determined Trust Components of the Trust for the Tax Year of a particular character. These estimates are not

binding on the Responsible Entity when undertaking the process provided for under clause 10.11(a).

#### **10.12. Attribution under AMIT Regime – Member objections**

If the Trust is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

- (a) the Member or former Member must:
  - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Member is required to do so under the Tax Act for the objection to be effective; and
  - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection;
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Trust to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Members or former Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members or former Members.

#### **10.13. AMIT Regime Unders/Overs**

For any Tax Year that is an AMIT Income Year, the Responsible Entity may determine how any Unders or Overs that arise for the Trust are to be dealt with in accordance with the AMIT Regime. The Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Responsible Entity addresses the Unders or Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Responsible Entity had not made the choice, or had made the choice differently.

#### **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) The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.;
- (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 first Business Day in the Distribution Period following the Distribution Period to which the distribution relates.
- (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 may be reinvested in Units (at the Application Price prevailing at the next Valuation Time after the cheque is cancelled) or may be dealt with in accordance with applicable laws relating to unclaimed moneys.

### **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, after the failure of the third attempt the money the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after that, or the money may be dealt with in accordance with applicable laws relating to unclaimed moneys.

### **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**

The Responsible Entity may in its absolute discretion decide how and when to exercise its powers, provided that the exercise of such power and discretion (as applicable) does not impact:

- (a) upon the ability of the Trust to satisfy the requirements to be a "fixed trust" for the purposes of the Tax Act for a year that is not an AMIT Income Year; and

- (b) the rights of Members to income and capital being clearly defined for the purposes of the AMIT Regime for a year that is an AMIT Income Year.

### **12.7. Rights and powers in relation to the AMIT Regime**

Without limiting clause 12.1, the Responsible Entity has, in addition to its other rights and powers provided for under this constitution and at law:

- (a) the power to make an election to determine that the Trust is an AMIT (which, if made, must be documented in writing by the Responsible Entity); and
- (b) all of the powers and rights which are necessary for or incidental to the Trust being able to be operated in a manner permitted by the Tax Act as an AMIT, including:
  - (i) being eligible to apply the AMIT Regime;
  - (ii) complying with the requirements of the AMIT Regime;
  - (iii) being properly administered and operated under the AMIT Regime; and
  - (iv) maintaining equity between the Members as a result of the operation of the AMIT Regime.

## **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 months' 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.

## **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 Trust is 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 an email is taken to be received 1 hour after it is sent if the sender has not received a notice of non-delivery. 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, 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) Subject to the Corporations Act, 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 relation to the proper performance of its duties, whether incurred by the exercise of its powers under this constitution or by any other act, omission or circumstance.
- (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), 18.2 and 18.3, 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 18.1(c) 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. AMIT Indemnity**

- (a) Without limiting clause 18.1(c), the Responsible Entity is entitled to be indemnified by a Member or former Member for:
  - (i) any Tax (or an estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member or former Member; and
  - (ii) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member or former Member under clause 17.4 in the circumstances contemplated in clause 18.3(a)(i).
- (b) The Members agree that if the Responsible Entity is entitled to be indemnified by a Member under clause 18.3(a), or under the AMIT Regime, the Responsible Entity may, in order to satisfy that indemnity, deduct from any amounts owing to the particular Member the aggregate of any amounts which the Responsible Entity is entitled to be indemnified under clause 18.3(a), or under the AMIT Regime.

### **18.4. 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) The Responsible Entity is entitled to be paid a fee out of the Assets for its services in relation to the operation of the Trust equal to the Responsible Entity's reasonable estimate of its costs, including all overheads and internal expenses of the Responsible Entity, whether incurred directly by the Responsible Entity or reimbursed by the Responsible Entity to any of its related bodies corporate, for which it is not otherwise reimbursed pursuant to clause 19.5. The entitlement to this fee continues to the date of final distribution in accordance with clause 21.3. However, the Responsible Entity is not entitled to a management fee in respect of any period during which it is not appointed as trustee or responsible entity of the Trust..
- (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) The fee payable pursuant to clause 19.1 is to be payable from time to time upon demand by the Responsible Entity. The Responsible Entity may make demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs. The Responsible Entity must produce a statement within one month from the end of each quarter setting out the management fee for the Quarter and any amount remaining unpaid. .
- (d) While Stapling applies, unless the Responsible Entity determines a different apportionment, the liability for the management fee calculated under this clause 19.1 will be apportioned between the Trust and each Stapled Entity by reference to the proportion which the Trust's Assets and the assets of the Stapled Entity have contributed to the calculation of the Total Assets. To the extent that the management fee for a month is apportioned and charged to the Stapled Trust, it may not be charged to the Trust's Assets.

### **19.2. 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.

### **19.3. Indemnity out of Fund**

In addition to the Responsible Entity's right of remuneration under Clauses 19.1 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 proper performance of its duties in relation to the Trust.

### **19.4. 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 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 accrues daily until paid.

### **19.5. 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 19.5(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;
- (n) the preparation, implementation, amendment and audit of any Compliance Plan;
- (o) complying with any law, and any request or requirement of the ASIC;
- (p) any Stapling of Units to Attached Securities;
- (q) any Stapling Proposal, and
- (r) any capital reallocation under Clauses 4.9 to 4.11.

#### **19.6. 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.

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

Subject to the Corporations Act and the Listing Rules (if they apply), 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 \$48.33 for Units in the Trust. The Responsible Entity's nominee must be issued with 10,000 Units at an Issue Price of \$0.004833 per Unit in return for 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, 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**

- (i) 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 paid to Members pro rata according to the respective numbers of 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(i) 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:
  - (i) accept any applications for Units from a person who is not an existing Member; and
  - (ii) accumulate an amount under clause 10.2(a)(i) for the last Distribution Period of the Trust.

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

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

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, subject to the Corporations Act:
  - (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

While the Trust is a Registered Scheme, if a Member submits to the Responsible Entity a Complaint in relation to the Trust:

- (a) if the Member is a Retail Client, the Responsible Entity must comply with the requirements under section 912A(2) of the Corporations Act applicable to the Complaint; and
- (b) if the Member is not a Retail Client, the Responsible Entity:
  - (i) must acknowledge receipt of the Complaint as soon as practicable;
  - (ii) must, where there is a compliance committee, refer the Complaint to the committee for its consideration;
  - (iii) must, where there is no compliance committee, consider the Complaint;
  - (iv) 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;
  - (v) may in its discretion give any of the following remedies to the complainant:
    - (A) information and explanation regarding the circumstances giving rise to the Complaint;
    - (B) an apology; or
    - (C) compensation for loss incurred by the Member as a direct result of the breach (if any); and
  - (vi) 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:
    - (A) the determination of the compliance committee (or if Clause 24(b)(iii) applies, the Responsible Entity);
    - (B) the remedies (if any) available to the member; and
    - (C) information regarding any further avenue for complaint.

For the purposes of this clause 24, while the Trust is a Registered Scheme, a reference to a Member includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under clause 26 but who has not yet been paid the Withdrawal Price of the Units.

## **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.

### **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 Units be withdrawn. Each request must:

- (a) state the Member's name and address, and the number or value of Units to be withdrawn; and
- (b) be delivered to the Responsible Entity in writing.

A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.

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

Within 180 days 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 in that case it must notify the Member accordingly within 180 days of receipt of the request); or
- (b) effect the withdrawal by causing the number (or value) of 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) the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Member referred to in the withdrawal request at the Withdrawal Price; or
- (d) partially effect the withdrawal in the manner described in Clause 26.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in Clause 26.2(c).

Where Units are redeemed, the Responsible Entity must pay the Withdrawal Price of the Units to the Member or former Member within 21 days of the date on which the redemption occurred.

### **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, 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) sending a copy to all Members (or a Class of Members); or

- (ii) making a copy available by electronic means and giving notice to Members that it is available.
- (c) Subject to the Corporations Act and the Listing Rules, 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 by sending a notice to all Members or making the notice available by electronic means and giving notice to Members that it is available.
- (e) If the Responsible Entity receives a withdrawal request, and the Trust ceases to be Liquid at a time before the request is met, the request lapses.

#### **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 valuation of the Assets used for this purpose must be reasonably current and the specific Assets to be transferred must be valued by reference to the range of ordinary commercial practice for valuing the relevant type of asset.

#### **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 Relief, the Responsible Entity may effect a buy-back of Units by purchasing Units on market. The price at which the Responsible Entity offers or agrees to purchase Units on market is at the absolute discretion of the Responsible Entity, subject to the ASX Operating Rules and its duties under the Corporations Act.

### **26.12. Order**

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

### **26.13. When Units are redeemed**

Units redeemed under this clause 26 are taken to be redeemed at the time at which the Withdrawal Price is known and the redemption is recorded in the Register, and from that time until payment the former holder of the redeemed Units:

- (a) ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the withdrawal proceeds; but
- (b) may enforce their rights as a creditor under this clause 26 as if they were still a party to this constitution.

## **27. Withdrawal Price**

The Withdrawal Price for any Unit will be equal to:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units on issue}}$$

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.

## **28. Internalisation Proposal**

### **28.1. Power to enter into the Internalisation Proposal**

Without limiting any other provision of this Constitution, the Responsible Entity has power to enter into an implementation deed that sets out certain steps involved in the Internalisation Proposal, and to determine the time and manner in which it will give effect to the Internalisation Proposal.

### **28.2. Power to give effect to Internalisation Proposal**

If the Responsible Entity determines to carry out the Internalisation Proposal in accordance with this clause 28, then the Responsible Entity has power to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the proposal (including, if applicable, anything the Responsible Entity has power to do under the Stapling Provisions), including to:

- (a) issue Units to the Stapled Trust which are intended to be distributed in specie to persons who are members of the Stapled Trust at the record date for the Internalisation Proposal (subject to paragraph (c) of this clause 28.2);

- (b) update the Register to record that the Units transferred as referred to in paragraph (a) are then held by those members of the Stapled Trust;
- (c) register the transfer of Units that would otherwise have been transferred to Ineligible Foreign Members to the Sale Agent for sale in accordance with the constitution of the Stapled Trust;
- (d) invest some or all of the Application Price of the Units issued under paragraph (a) in shares in US Masters Responsible Entity Holdco Pty Ltd;
- (e) effect the Stapling of Units to New Attached Securities, being units in the Stapled Trust; and
- (f) at any time, execute all documents and do all things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Internalisation Proposal.

### **28.3. Liability of Responsible Entity**

The Responsible Entity has no liability of any nature whatsoever to Members beyond the Assets arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of the Internalisation Proposal.

### **28.4. Paramountcy of provision**

Subject to the Corporations Act and Clauses 1.4 and 22.2, the provisions of this clause 28 prevail over other provisions of this constitution in the case of any inconsistency.

## **29. Stapling Proposal**

### **29.1. Power to enter into Stapling Proposal**

Without limiting any other provision of this constitution (including Clause 28), the Responsible Entity may determine to carry out and give effect to a Stapling Proposal without reference to or approval from Members.

### **29.2. Power to give effect to Stapling Proposal**

If the Responsible Entity determines to carry out a Stapling Proposal in accordance with this clause 29, then the Responsible Entity has power to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the relevant proposal (including, if applicable, anything the Responsible Entity has power to do under the Stapling Provisions), including to:

- (a) issue Units;
- (b) make distributions and other payments out of the Assets (including under clause 10.8) or to redeem Units, and to apply the distribution, payment or redemption proceeds on behalf of Members by payment, transfer, endorsement or otherwise;
- (c) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body, and to be bound by the constituent documents of that company, trust or body;
- (d) if Units or other securities are to be transferred as part of a Stapling Proposal, to give on behalf of Members a warranty as to good and unencumbered title to the Units or securities to be transferred, and other warranties customary in a transfer of securities;
- (e) transfer Assets;
- (f) effect the Stapling and/or Unstapling of Securities or financial products, including New Attached Securities; and

- (g) at any time, execute all documents and do all things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Stapling Proposal.

### **29.3. Appointment of Responsible Entity as agent and attorney**

To give effect to a Stapling Proposal the Responsible Entity is irrevocably appointed the agent and attorney of each Member, to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the Stapling Proposal, including to:

- (a) apply any proceeds referred to in clause 28.2(b) on behalf of the Member in any manner referred to in that clause;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any Securities or financial products in favour of the Member;
- (c) execute a transfer of Units held by or on behalf of the Member;
- (d) execute a transfer of Assets to a Member; and
- (e) execute documents and give consents.

The Responsible Entity is authorised to execute these documents and to do these things without needing further authority or approval from Members.

### **29.4. Liability of Responsible Entity**

The Responsible Entity has no liability of any nature whatsoever to Members beyond the Assets arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling Proposal.

### **29.5. Paramountcy of provision**

Subject to the Corporations Act and Clauses 1.4, 22.2 and 28, the provisions of this clause 29 prevail over other provisions of this constitution in the case of any inconsistency.

## **30. Stapling**

### **30.1. Stapling**

The Responsible Entity may determine:

- (a) that the Stapling Provisions will take effect in accordance with Clauses 28.2 or 29.2;
- (b) the Stapling Commencement Time;
- (c) that a New Attached Security will be Stapled to each Unit; and
- (d) subject to Schedule 1, that Units will be Unstapled.

### **30.2. Stapling Provisions**

If the Responsible Entity determines, the Stapling Provisions take effect on and from the Stapling Commencement Time until they cease to apply in accordance with this constitution.

On and from the Stapling Commencement Time:

- (a) subject to clause 22, the Stapling Provisions apply and this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act (if it applies) or any other law; and



- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

## Schedule 1

### Stapling Provisions

On and from any Stapling Commencement Time determined by the Responsible Entity, these Stapling Provisions:

- (a) apply to each Issuer in relation to its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent expressly provided in the Constituent Document or where this would result in a breach of the Corporations Act or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in the schedule a reference to a “**paragraph**” is a reference to a numbered provisions of this schedule.

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Trust Constitution, and:

**Accession Deed** means a deed of that name between each Issuer and any new Responsible Entity or any issuer of a New Attached Security, by which that person accedes to a Co-operation Deed.

**Application Price** means:

- (a) in respect of a Unit, the Application Price for the Unit calculated in accordance with clause 5 of the Trust Constitution or paragraph 4 of this Schedule 2;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security;
- (c) in respect of a Stapled Security, the Application Price for a Stapled Security calculated in accordance with this schedule.

**Attached Security** in the context of:

- (a) the Trust Constitution, means a Unit; and
- (b) the Constituent Document for any Other Attached Security, means those Attached Securities.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Securities.

**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Trust Constitution.

**Controlled Entity** means any subsidiary or any trust or other entity, whether or not a legal entity, which is owned or controlled by an entity for accounting purposes.

**Co-operation Deed** means a deed which may be entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security (it being

acknowledged that a Co-operation Deed is not required where the Issuer of each Attached Security is the same legal entity).

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**Group** means the Trust, the Stapled Entities and each of their Controlled Entities.

**Intra-Group Loan** means:

- (a) a loan or any form of financial accommodation; or
- (b) any form of guarantee or indemnity or grant of security in favour of an entity,

which is provided by the Responsible Entity to any entity in the Group or received from or given by a Stapled Entity.

**Intra-Group Transaction** means a transaction among Group parties including the Trust and any Stapled Entities.

**Investor** means in this Schedule 1 a person entered in the Register as a holder of a Stapled Security (which includes a Unit).

**Issuer:**

- (a) in the context of the Trust Constitution, means the Responsible Entity; and
- (b) in the context of the Constituent Document of any other Attached Security, means the issuer of that Attached Security.

**New Attached Security** means a Security that the Responsible Entity has determined be Stapled to the Units and, if applicable, the other Stapled Securities and, for the purposes of Clause 28, includes units in the Stapled Trust.

**Other Attached Security** means:

- (a) in respect of a Unit, an identical number of each Attached Security other than a Unit; and
- (b) in respect of any New Attached Security, an identical number of each Attached Security other than that New Attached Security.

**Other Issuer** means:

- (a) in respect of the Responsible Entity, each Issuer other than the Responsible Entity in its capacity as trustee of the Trust; and
- (b) in respect of the issuer of any Other Attached Security, each Issuer other than the issuer of the Other Attached Security.

**Register** means the register of Investors kept or caused to be kept by the Stapled Entities under paragraph 5.

**Registered** means recorded in the Register.

**Reorganisation Proposal** means a Stapling Proposal, or a consolidation or division of Units under clause 4.3.

**Restapling** has the meaning given in paragraph 7.3.

**Same Person** means either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are:

- (a) Stapled to the Units at the first Stapling Commencement Time; or
- (b) Attached Securities, where the Issuer of those securities has executed an Accession Deed,

and includes the Stapled Trust.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Trust** has the same meaning as in the Trust Constitution.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. "**Stapled**" has a corresponding meaning.

**Stapling Commencement Time** means the most recent time at which the Issuer determines that the Stapling of Attached Securities commences including in accordance with clause 30.1 of the Trust Constitution.

**Stapling Matter** means a matter specified in paragraph 2.2(b).

**Stapling Proposal** has the same meaning as in the Trust Constitution.

**Trust** means the trust the subject of the Trust Constitution.

**Trust Constitution** means the constitution establishing the Trust of which this schedule forms an operative part.

**Unit** means a unit in the Trust.

**Unstapled Security** means a Security which is no longer Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in clause 1 of the Trust Constitution apply to this schedule.

## **2 Stapling – general intention**

### **2.1 Stapled Securities – general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Time. Subject to paragraph 7, it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

### **2.2 Stapling Matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents, each Investor, by acquiring a Stapled Security will be taken to have consented to the Stapling of the Stapled Security and to each provision in the Constituent Documents, including the following Stapling Matters:
  - (i) the Stapling of the Attached Securities;
  - (ii) the Stapling of New Attached Securities to the Stapled Securities;
  - (iii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (iv) the Unstapling of one or more Attached Securities;
  - (v) the Restapling of an Unstapled Security; and
  - (vi) the Unstapling of the Stapled Securities.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
  - (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.
- (d) Without limiting paragraph 2.2(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 6, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:

- (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme;
  - (iv) if Units or other securities are to be transferred as part of a proposal to Staple a New Attached Security, to give on behalf of Members a warranty as to good and unencumbered title to the Units or securities to be transferred, and other warranties customary in a transfer of securities; and
  - (v) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the transfer (including by way of specie distribution) of the New Attached Security to the Investor under paragraph 6.
- (e) The Issuer may:
- (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this paragraph 2.2 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.
- (f) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

### **3 Dealing in Stapled Securities**

#### **3.1 Stapling**

Subject to paragraph 7, on and from the Stapling Commencement Time, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;

- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the Application Price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Time must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Time, the Issuer must not:
  - (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,
 

if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 7.
- (b) **(Attached Securities)** Subject to paragraph 7, on and from the Stapling Commencement Time, the Issuer must not:
  - (i) cancel, forfeit, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, forfeiture, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security; or
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue, forfeiture or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation by law by which it is bound, or if it does not have any necessary consent or approval.

### 3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint certificates or joint holding statements**

The Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### **3.5 No joint venture or partnership**

Nothing contained or implied in this schedule is to be construed as creating an association, joint venture or partnership among the Stapled Entities.

## **4 Allocation of Application Price**

### **4.1 Application Price**

While the Units are Stapled, the Application Price payable for a Unit is the price calculated under clause 5.1 of the Trust Constitution, and the Application Price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.

### **4.2 Apportionment of Application Price**

- (a) If a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains an applicable provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Issuer must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Issuer and the Other Issuers, the Application Price for a Stapled Security will be allocated between the Application Price of the Unit and the Application Price of the Other Attached Securities in the ratio that the net assets of the Trust and each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.
- (c) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

### **4.3 Application Price if reinvestment applies**

- (a) While Units are Stapled, the Application Price payable for each additional Unit on a reinvestment of distributions of capital or income payable to an Investor under clause 10.8 of the Trust Constitution is:
  - (i) if the Trust is Listed and is not a Taxable Trust, the Reinvestment Price; and
  - (ii) otherwise, the Application Price calculated under clause 5.1 of the Trust Constitution on the first Business Day (as defined in the Trust Constitution) after:
    - (A) if the Trust is not Listed and not a Taxable Trust, the end of the Distribution Period to which the distribution relates; and
    - (B) if the Trust is a Taxable Trust, the first Business Day after the distribution has been paid.
- (b) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the number of Stapled Securities issued will be rounded down to the nearest whole Stapled Security and any remaining amount becomes an asset of the Trust or Stapled Entity to which the distribution relates.



- (c) While Units are Stapled, clause 10.8 of the Trust Constitution applies as if a reference in those clauses to Units was a reference to Stapled Securities.

## 5 Single Register

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities are recorded.

## 6 Stapling of New Attached Securities

A determination under clause 29.1 of the Trust Constitution that a Security is a New Attached Security may only be made if:

- (a) each Other Issuer (including the issuer of the New Attached Security) has agreed:
  - (i) to the Stapling of the New Attached Security to the Stapled Security; and
  - (ii) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group;
- (b) the Constituent Documents in relation to the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
- (c) the issuer of the New Attached Security has agreed to enter into the Accession Deed (if applicable);
- (d) where approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
- (e) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.

## 7 Unstapling

### 7.1 Procedure for Unstapling

Subject to this paragraph 7, from the Stapling Commencement Time each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### 7.2 Unstapling an Attached Security

- (a) A determination under clause 30.1 of the Trust Constitution to Unstaple one or more Attached Securities from the Stapled Security may only be made:
  - (i) if each Other Issuer has agreed:
    - (A) to the Unstapling; and
    - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole; and
  - (ii) if the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled.
- (b) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### 7.3 Restapling

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 7.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

#### **7.4 Unstapling the Stapled Securities**

- (a) Subject to paragraph 7.4(b), the Corporations Act, and the relevant Constituent Documents, the Issuer must determine that an Attached Security or the Attached Securities (as applicable) will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under paragraph 7.4(a) may only be made if each Other Issuer has agreed:
  - (i) to the Unstapling of the Attached Security; and
  - (ii) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 7.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

## **8 Duties and obligations of the Issuer**

### **8.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer (including any Director, and any person making a decision on behalf of the Issuer, the Trust or a Stapled Entity) may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **8.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretions include the carrying out of the Issuer’s functions and duties and identifying the Investor’s rights and interests.

## **9 Meetings of Investors**

### **9.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **9.2 Representatives’ form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **9.3 Other attendees**

The auditor of each Stapled Entity and the representatives of each Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

## **10 General**

### **10.1 Other capacities**

Subject to the Corporations Act, the Responsible Entity (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates) or with any Member, including to engage any of its associates to provide services to the Responsible Entity;
- (b) be interested in any contract or transaction with itself (as trustee and/or responsible entity of the Trust or in another capacity) or any Stapled Entity (or their associates) or with any Member or any other person; and
- (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust,

and retain for its own benefit any profits or benefits derived from any of these acts, dealings, relationships, capacities, contracts or transactions.

### **10.2 Expenses in relation to the Trust**

- (a) A reference to "Unit" in clause 1.1 of the Trust Constitution is a reference to it as part of a Stapled Security, a reference to "Trust" is a reference to the Trust as part of the Group, and a reference to "Register" includes any single register kept in which details of the holders of Attached Securities are recorded.
- (b) Clause 19.5 of the Trust Constitution is taken to also include expenses in connection with:
  - (i) establishing, administering and managing the Stapling, including the costs incurred in enforcing Stapling, the Stapling of New Attached Securities, the Unstapling of an Attached Security, the Restapling of Unstapled Attached Securities and the Unstapling of the Stapled Securities; and
  - (ii) organising, convening and holding meetings of Investors, implementing any Resolutions and communicating with Investors.

### **10.3 Intra-Group loans and transactions**

Subject to the Corporations Act as modified by any applicable ASIC Relief, without limiting the Constituent Documents and despite anything in the Constituent Documents, the Responsible Entity may, in its capacity as trustee and/or responsible entity of the Trust, and each Other Issuer may, enter into contracts or arrangements which are Intra-Group Loans or Intra-Group Transactions.

### **10.4 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

### **10.5 Other Attached Security**

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1, 4.2(a), 4.3, 10.1 and 10.2 apply in relation to that New Attached Security with the necessary changes.

## Signing page

DATED: \_\_\_\_\_

**EXECUTED** by **US MASTERS**  
**RESPONSIBLE ENTITY LIMITED** in  
 accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by  
 authority of its directors:

.....  
 Signature of director

.....  
 Name of director (block letters)

.....  
 Signature of director/company  
 secretary\*  
 \*delete whichever is not applicable

.....  
 Name of director/company secretary\*  
 (block letters)  
 \*delete whichever is not applicable