



HERBERT  
SMITH  
FREEHILLS

Deed

# Deed of Amendment

## Aventus Retail Property Fund

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Aventus Capital Limited

ACN 606 555 480



# Deed poll

## Deed poll

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Date ► 26 August 2015

This deed poll is made by

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Trustee	<b>Aventus Capital Limited as trustee of the Aventus Retail Property Fund</b> ACN 606 555 480 of Level 14, 71 Macquarie Street, Sydney NSW 2000
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Background	<ol style="list-style-type: none"><li>1 The Aventus Retail Property Fund (<b>Trust</b>) was established under a trust deed dated 28 July 2015 (<b>Constitution</b>).</li><li>2 The Trustee is the trustee of the Trust.</li><li>3 Clause 17 of the Constitution provides that, subject to clause 17(b) of the Constitution, the Trustee may by deed replace or amend the Constitution (including clause 17).</li><li>4 Clause 17(b) of the Constitution provides that any such replacement or amendment of the Constitution must be approved by Unitholders to the extent that their approval would be required under the provisions of the Corporations Act which apply to the amendment of the constitution of a registered scheme if the Trust were a registered scheme.</li><li>5 On or about the date of this deed poll, the sole Unitholder passed a resolution approving the amendments to the Constitution contemplated by this deed poll.</li></ol>
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This deed poll witnesses that:

## 1 Definitions, interpretation and deed components

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### 1.1 Definitions

A word or phrase defined in the Constitution has the same meaning when used in this deed poll.



## **1.2 Interpretation**

Clause 2 of Schedule 1 to the Constitution applies to this deed poll.

## **1.3 Deed components**

This deed poll includes any schedule.

# **2 Operation of this deed poll**

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This deed poll takes effect on and from the date of execution of this deed poll.

# **3 Amendment to Constitution**

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## **3.1 Amendment**

Subject to clause 3.2 of this deed poll, the Constitution is amended by making such deletions and insertions as are required such that the Constitution is in the form of the trust deed contained in Schedule 1 to this deed poll.

## **3.2 Provisions that have not been amended**

- (a) Clauses 2.1 and 2.3 of the Constitution are not amended, substituted or otherwise affected in any way by this deed poll. Nothing expressly or impliedly contained in this deed poll is effective to confirm, declare, re-declare, re-settle, or otherwise acknowledge any of the trusts declared under the Constitution or any of the trusts to which property is subject at the date of this deed poll, or to impress any new or additional trusts upon property held on trust as at the date of this deed poll.
- (b) For information purposes only, and subject always to clause 3.2(a) of this deed poll, clauses 2.1 and 2.3 of the Constitution are reproduced in Schedule 1.

# **4 Governing law**

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This deed poll is governed by the laws of New South Wales.



## Schedule 1

### Amendment to Constitution

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## Constitution – Aventus Retail Property Fund

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[james.graham@HSF.com](mailto:james.graham@HSF.com)



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Dated ► 26 August 2015

## Parties

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**Aventus Capital Limited**

ACN 606 555 480 of Level 14, 71 Macquarie Street, Sydney  
NSW 2000

**(Responsible Entity)**

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## Background

The Responsible Entity wishes to establish, and act as  
responsible entity of, a unit trust called the Aventus Retail  
Property Fund.

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## 1 Definitions and interpretations

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### 1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
<b>Application</b>	any of the following, as the case requires: <ol style="list-style-type: none"> <li>1 an application for Units;</li> <li>2 a notification of the exercise of, or application to exercise, Options; or</li> <li>3 an application for Options.</li> </ol>
<b>Application Moneys</b>	the amount required to be paid to or the value of any cash or other property to be transferred to the Responsible Entity by an applicant on the making of an Application.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX Settlement</b>	ASX Settlement Pty Limited ACN 008 504 532.
<b>ASX Settlement Operating Rules</b>	the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time.
<b>ASX</b>	ASX Limited ACN 008 624 691 or the market operated by it as the context requires.
<b>Attached Security</b>	a Security which is from time to time Stapled or to be Stapled to a Unit.
<b>Auditor</b>	the auditor from time to time appointed by the Responsible Entity to audit the Trust.
<b>Business Day</b>	has the meaning given to that term in the Listing Rules.



Term	Meaning
<b>Capital Reallocation</b>	a capital contribution in the circumstances contemplated by clause 4.8.
<b>CHESS Approved Securities</b>	securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASX Settlement) in accordance with the ASX Settlement Operating Rules.
<b>Compliance Committee</b>	any compliance committee for the Trust if required by section 601JA of the Corporations Act.
<b>Compliance Plan</b>	the compliance plan for the Trust as required by section 601HA of the Corporations Act.
<b>Corresponding Number</b>	in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Unit at that time.
<b>Corporations Act</b>	Corporations Act 2001 as modified by any applicable ASIC class order or instrument.
<b>Costs</b>	includes costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.
<b>Current Unit Value</b>	<p>the amount calculated as follows:</p> $CUV = \frac{NAV}{NU}$ <p>where:</p> <p>CUV is Current Unit Value</p> <p>NAV is Net Asset Value</p> <p>NU is the number of Units on Issue.</p>
<b>Distributable Amount</b>	the amount (if any) determined in accordance with clause 9.4(a).
<b>Distribution Calculation Date</b>	30 June and 31 December in each year or such other dates as the Responsible Entity may determine.
<b>Distribution Date</b>	either:



Term	Meaning
	<ol style="list-style-type: none"><li>1 a day not more than three calendar months after the Distribution Calculation Date for the relevant Distribution Period; or</li><li>2 if the Responsible Entity determines that it is in the interests of Unitholders to delay the Distribution Date for a particular Distribution Period, the date determined by the Responsible Entity as being the appropriate Distribution Date for the Distribution Period.</li></ol>
<b>Distribution Entitlement</b>	the entitlement to any Distributable Amount determined in accordance with clause 9.4(b).
<b>Distributable Income</b>	the amount determined in accordance with clause 9.2.
<b>Distribution Period</b>	the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.
<b>Distribution Reinvestment Arrangement</b>	an arrangement of the kind described in clause 9.6.
<b>Exercise Price</b>	in relation to a Unit issued on the exercise of an Option, the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 5.
<b>Financial Year</b>	<ol style="list-style-type: none"><li>1 for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June.</li><li>2 for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates.</li><li>3 in all other circumstances, the 12 month period ending on 30 June in each year.</li></ol>
<b>Foreign Interests</b>	the Units or Options to which a Foreign Unitholder would have been entitled but for clause 4.7(a).
<b>Foreign Unitholder</b>	a Unitholder whose address appearing in the Register is in a country outside Australia or New Zealand.
<b>Forfeited Unit</b>	a Partly Paid Unit which is forfeited under clause 3.8(b) by non-payment of an Instalment.



Term	Meaning
<b>Fully Paid Unit</b>	a Unit on which the whole of the Issue Price has been paid.
<b>Fund or Trust Property</b>	all the cash, investments, rights and other property of the Trust (including, but not limited to, each unpaid Instalment in respect of each Partly Paid Unit).
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world.
<b>Gross Asset Value</b>	the value of the Fund not including assets of the Fund that relate to derivative instruments used for hedging.
<b>Holder</b>	a Unitholder or Optionholder (as the context may require).
<b>Indicative Buy Back Price</b>	<ol style="list-style-type: none"><li>1 where a Unit does not form part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or</li><li>2 where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day.</li></ol>
<b>Instalment</b>	in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue.
<b>Issue Price</b>	in relation to a Unit or an Option, the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in clause 5 pursuant to which the Unit or Option was issued, and in respect of a Unit issued on the exercise of an Option, means the Exercise Price.
<b>Liabilities</b>	<p>the liabilities in respect of the Trust, including:</p> <ol style="list-style-type: none"><li>1 unpaid administrative costs and expenses including fees of the Responsible Entity;</li><li>2 accrued charges in respect of or owing in relation to any asset of the Fund;</li><li>3 amounts of all borrowings; and</li><li>4 any provision for Tax which in the opinion of the Responsible Entity</li></ol>

Term	Meaning
	should be taken into account.
<b>Listed</b>	admitted to the Official List.
<b>Listing Rules</b>	the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
<b>Meeting</b>	a meeting of Holders convened in accordance with this deed.
<b>month</b>	calendar month.
<b>Net Asset Value</b>	<p>Gross Asset Value less the following:</p> <ol style="list-style-type: none"> <li>all amounts required to repay borrowings and to meet all Costs (including the amount of any provisions the Responsible Entity determines, in consultation with the Auditor (if any), should be made) but excluding Liabilities (if any): <ul style="list-style-type: none"> <li>to Unitholders in respect of Units; and</li> <li>relating to derivative instruments used for hedging;</li> </ul> </li> <li>following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unitholders on the day on which the Net Asset Value is determined; and</li> <li>any amount paid in advance of a call on a Partly Paid Unit.</li> </ol>
<b>Net Income of the Trust</b>	the net income of the Trust for the Distribution Period as calculated under the Tax Act as reduced by any non-cash amounts included in that net amount (including but not limited to franking credits, foreign income tax offsets and any amount included as assessable under Division 230 for which no cash payment is received) .
<b>Official List</b>	the official list of ASX.
<b>Official Quotation or Officially Quoted</b>	official quotation by ASX of Units, Options or Stapled Securities, as the case requires.
<b>Operating Income</b>	the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less costs, expenses or outgoings (whether cash or not) arising in deriving that income including, but not limited to:



Term	Meaning
	<ol style="list-style-type: none"><li>1 property and other outgoings;</li><li>2 repairs and maintenance;</li><li>3 interest and other borrowing costs; and</li><li>4 fees paid to the Responsible Entity;</li></ol>
<b>Option</b>	an option granted by the Responsible Entity in respect of unissued Units.
<b>Optionholder</b>	the person for the time being registered as a holder of an Option, including any persons jointly registered.
<b>Paid-up Proportion</b>	in relation to a Unit, the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit.
<b>Partly Paid Unit</b>	a Unit in respect of which any portion of its Issue Price remains unpaid.
<b>Proposal</b>	a proposal approved by Holders: <ol style="list-style-type: none"><li>1 unanimously in writing; or</li><li>2 at a Meeting approved by special resolution.</li></ol>
<b>Responsible Entity or Trustee</b>	Aventus Capital Limited or any other company that replaces it as trustee (including any company named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust).
<b>Register</b>	the register of Unitholders or Optionholders maintained by the Responsible Entity pursuant to clause 1.6(a) or Chapter 2C of the Corporations Act, as the context requires.
<b>Security</b>	has the meaning given to that term in section 92(1) of the Corporations Act.
<b>Stapled</b>	in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others.
<b>Stapled Entity</b>	any trust, corporation, managed investment scheme or other entity the





Term	Meaning
	Securities in which are Stapled to Units.
<b>Stapled Security</b>	a Unit and each Attached Security which are Stapled together.
<b>Stapled Security Register</b>	the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with clause 20.7.
<b>Stapling Date</b>	the date determined by the Responsible Entity to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities.
<b>Tax</b>	any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above.
<b>Tax Act</b>	the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997.
<b>Terms of Issue</b>	in relation to a Stapled Security, Unit or Option, the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed).
<b>Terms of Offer</b>	in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option.
<b>Transmission Event</b>	<ol style="list-style-type: none"><li>in respect of a Holder who is an individual:<ul style="list-style-type: none"><li>the death of the Holder;</li><li>the bankruptcy of the Holder; or</li><li>the Holder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or</li></ul></li><li>in respect of a Holder which is a body corporate, the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder.</li></ol>
<b>Trust</b>	the trust constituted under this deed.



Term	Meaning
<b>Unit</b>	an undivided interest in the Trust as provided for in this deed.
<b>Unitholder</b>	<ol style="list-style-type: none"><li>1 a person registered as the holder of a Unit, including any persons jointly registered; or</li><li>2 a person whose Application and Application Moneys have been accepted by the Responsible Entity, but who is not yet registered as the holder of a Unit.</li></ol>
<b>Unit Holding</b>	the total number of Units held by a Unitholder.
<b>Units on Issue</b>	the number of Units created under this deed and not cancelled.
<b>Unstapling Date</b>	the date determined by the Responsible Entity to be the Unstapling Date pursuant to clause 20.5(a).

## 1.2 Interpretations

In this deed:

- (a) terms defined for the purposes of the Corporations Act are used in this deed with the same meaning;
- (b) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (c) the singular includes the plural and the plural includes the singular;
- (d) words of any gender include all genders;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (f) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (g) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (h) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;



- (k) a reference to cash includes cheques and bank cheques;
- (l) references to sums of money are to amounts in Australian dollars;
- (m) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (n) While the Trust is not a registered scheme, each reference to Responsible Entity is a reference to the trustee of the Trust; and
- (o) a reference to a body, other than the Responsible Entity (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### **1.3 General compliance provision**

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

- (a) a provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency;
- (b) clause 1.3(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed; and
- (c) this clause 1.3 prevails over all other provisions of this deed including any that are expressed to prevail over it.

### **1.4 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.4, this clause 1.4 has effect subject to clause 1.3.
- (b) If the Trust is admitted to the Official List, the following clauses apply:
  - (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;
  - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
  - (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
  - (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of the inconsistency.

## 1.5 Additional Listing Rule requirements

If the Trust is admitted to the Official List:

- (a) the Responsible Entity must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under clause 3.7 has not been paid;
  - (2) in the case of voting rights, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with Schedule 4;
  - (3) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (4) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (5) the right is removed or changed under a court order;
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
  - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
  - (4) the divestment is under a court order; or
  - (5) the divestment is under clause 3.8(f);
- (c) the Responsible Entity must not divest a Unitholder of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in ASX Settlement Operating Rule 2.13. Without limitation to clause 1.4, at all times that the Trust is admitted to the Official List the Responsible Entity must comply with ASX Settlement Operating Rule 5.12.

## 1.6 Corporations Act prior to registration

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

- (a) Chapter 2C (Registers);
- (b) Part 2G.4 (Meetings of Members of Registered Managed Investment Schemes), provided that the Responsible Entity may call a meeting on shorter notice than is required by section 252F with the unanimous consent of Unitholders and section 253E shall not apply; and
- (c) Chapter 2M (Financial Reports and Audit).



## 1.7 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

## 2 The Trust

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### 2.1 Trustee

Aventus Capital Limited is appointed and agrees to act as trustee of the Trust.<sup>1</sup>

### 2.2 Name of Trust

The name of the Trust is ***Aventus Retail Property Fund***. The Responsible Entity may change the name of the Trust.

### 2.3 Vesting of assets in Trustee

The assets of the Fund are vested in, and are held by, the Trustee on behalf of the Unitholders.<sup>2</sup>

## 3 Interest of Unitholder

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### 3.1 Division into Units

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

### 3.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Responsible Entity, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Responsible Entity may consolidate such fractions.
- (c) The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:

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<sup>1</sup> Reproduced for information purposes only – not amended by Supplemental Deed dated 26 August 2015.

<sup>2</sup> Reproduced for information purposes only – not amended by Supplemental Deed dated 26 August 2015.



- (1) immediately amend the Register to record the consolidation or split;
- (2) notify the Unitholder within 30 days of the consolidation or split; and
- (3) ensure that each Unit in a class is consolidated or split on the same basis as each other Unit in that class.

### **3.3 Issue of Partly Paid Units**

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

### **3.4 Joint Holders**

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

- (a) except where otherwise required under the ASX Settlement Operating Rules, the Responsible Entity is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Responsible Entity will recognise as having any title to the Unit or Option, 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, cheques or other communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

### **3.5 Benefits and obligations of Unitholders and Optionholders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unitholder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Optionholder to the extent provided in this deed. The



benefits in this deed only apply for the benefit of Optionholders where expressly provided in this deed.

- (c) Subject to the Corporations Act, where the interests of Optionholders and Unitholders conflict, the Responsible Entity must prefer the interests of Unitholders.

### **3.6 No further liability**

- (a) This clause 3.6 is subject to any separate agreement between a Unitholder and the Responsible Entity and to any Instalments on Partly Paid Units payable under clauses 3.3 and 3.7 to 3.15.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the 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 Fund.
- (e) Except as provided in clauses 3.9(a), 3.13(g), 6.4(h), 9.5(e), 20.2(e), 20.6(a)(2) and 20.6(b), nothing in or under this deed:
  - (1) makes the Responsible Entity the agent of a Holder; or
  - (2) creates any relationship other than (as between a Holder and the Responsible Entity) that of beneficiary and trustee.

### **3.7 Failure to pay instalment on Partly Paid Unit**

- (a) The Responsible Entity must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Responsible Entity or the non-receipt of such notice by the Holder of a Partly Paid Unit does not affect the obligation of the Holder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment on the due date, the Unitholder must pay:
  - (1) so much of the Instalment as is unpaid;
  - (2) interest, which accrues daily and may be capitalised monthly or at such other intervals as the Responsible Entity determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment at the rate determined pursuant to clause 3.8(c); and
  - (3) any costs, expenses or damages incurred by the Trust in relation to the non-payment or late payment of the Instalment.
- (c) For the purposes of clause 3.7(b)(2), the interest rate is:
  - (1) if the Responsible Entity has fixed a rate, the rate so fixed; or
  - (2) in any other case, the rate prescribed in respect of unpaid judgments in the Supreme Court of New South Wales.



### 3.8 Forfeiture of Units

- (a) If a Unitholder fails to pay the whole of an Instalment when it falls due, the Responsible Entity may serve a notice on that Unitholder:
  - (1) requiring payment of the amount payable under clause 3.7(b);
  - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under clause 3.7(b) is to be paid; and
  - (3) stating that in the event of non-payment of the whole of the amount payable under clause 3.7(b) by the time and at the place named, the Unit in respect of which the Instalment was due will be liable to be forfeited.
- (b) A Partly Paid Unit is forfeited and the Responsible Entity may offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 3.8(a).
- (c) A forfeiture under clause 3.8(b) will include all distributions, interest and other money payable in respect of a Forfeited Unit and not actually paid before the forfeiture.
- (d) Where a Unit has been forfeited:
  - (1) notice of the forfeiture must be given to the Unitholder who owned the Forfeited Unit immediately before the forfeiture; and
  - (2) an entry of the forfeiture, with the date, must be made in the Register.
- (e) Failure to give the notice or make the entry required under clause 3.8(d) does not invalidate the forfeiture.
- (f) If a Unit forms part of a Stapled Security and:
  - (1) the Unitholder of the Unit fails to pay the whole of an instalment on an Attached Security forming part of the Stapled Security when it falls due;
  - (2) forfeiture procedures substantially similar to those set out in these clauses 3.8 to 3.14 are invoked in respect of the Attached Security; and
  - (3) the payment default giving rise to such forfeiture procedures being invoked has not been remedied by the relevant Unitholder,

the Responsible Entity may apply the provisions of these clauses 3.8 to 3.14 in respect of the Unit in order to ensure that the Unit and each Attached Security are simultaneously subject to forfeiture pursuant to substantially identical procedures.

### 3.9 Sale of Forfeited Unit

- (a) The Responsible Entity may offer a Forfeited Unit for sale and sell that Unit as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 3.9(f), if the Responsible Entity sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Responsible Entity.
- (c) The Responsible Entity must ensure that the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (9), (10) and (13)) as if the Forfeited Unit was a share, the Trust was a company and the Responsible Entity was the directors of the company.





- (d) The Responsible Entity is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (e) A person whose Units have been forfeited ceases to be the Holder of those Units, but remains liable to pay, and must immediately pay, to the Responsible Entity all Instalments, interest, costs, expenses and damages owing in respect of the Units at the time of the forfeiture.
- (f) Where permitted by the Listing Rules (while the Trust is Listed), the Responsible Entity may:
  - (1) exempt a Unit from all or any part of this clause 3.9;
  - (2) waive or compromise all or any part of any payment due to the Responsible Entity; and
  - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

### **3.10 Income and Capital of a Forfeited Unit**

Distributions of income and capital under clause 9:

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

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.8(b), the Responsible Entity must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### **3.12 Cancellation of Forfeiture**

The Responsible Entity must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Responsible Entity the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.7(b) and any other amount payable in respect of the forfeiture.

### **3.13 Consequences of sale and continuing liability**

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the holder of that Unit but remains liable to the Responsible Entity for the total amount payable under clause 3.7(b).
- (b) The Unitholder's liability under this clause 3.13 ceases as soon as the Responsible Entity receives:
  - (1) payment in full of the amount payable pursuant to clause 3.7(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.



- (c) A statement signed by a director or secretary of the Responsible Entity setting out:
  - (1) that a Partly Paid Unit has been forfeited; and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Responsible Entity must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) The transferee of a Forfeited Unit is not required to verify the application of the purchase money.
- (f) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (g) The Responsible Entity is authorised to and must execute a transfer of a Forfeited Unit as agent of the Holder to the purchaser of that Forfeited Unit and register the transferee as the Holder of the Forfeited Unit.

### **3.14 Proceeds of sale of Forfeited Unit**

- (a) If a Forfeited Unit is sold under clause 3.8(b), the Responsible Entity must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Responsible Entity in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Responsible Entity in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit;
  - (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 3.7(b);
  - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying any balance (subject to any lien that exists under clause 3.15 in respect of money not presently payable) to the former Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Responsible Entity must pay the Costs listed in clause 3.14(a)(1) and 3.14(a)(2) pro rata to the number of Forfeited Units being sold.
- (c) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

### **3.15 Lien for Amounts Owning**

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



## 4 Issue of Units and Options

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### 4.1 Number of Units issued

- (a) If the Responsible Entity accepts an Application for Units (other than Partly Paid Units) in whole or in part, the number of Units issued is the number (rounded down to the nearest whole number) determined by the Responsible Entity by dividing the relevant Application Moneys by the Issue Price.
- (b) If the Responsible Entity accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Responsible Entity by dividing the relevant Application Moneys by that part of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Option's Terms of Issue and Terms of Offer.

### 4.2 Application for Units or Options

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

- (a) complete or make an Application in the form or manner determined by the Responsible Entity;
- (b) lodge or make the Application at the place or address and in the manner determined by the Responsible Entity; and
- (c) include with the Application:
  - (1) the Application Moneys in the form or manner specified by the Responsible Entity; or
  - (2) if the person is to transfer property to the Responsible Entity, all things required under clause 4.3(a).

### 4.3 Payments to the Responsible Entity

- (a) If an applicant is to transfer property to the Responsible Entity, the Responsible Entity must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Responsible Entity; and
  - (2) a valuation acceptable to the Responsible Entity stating the current market value of the property or other statement of its current market value.
- (b) If Units or Options are issued and:
  - (1) the Responsible Entity has not received the Application Moneys in accordance with the Terms of Issue; or
  - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Responsible Entity,

the Units or Options are void as from their date of issue or such other date as the Responsible Entity determines if the Responsible Entity has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.



- (c) All income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Responsible Entity) before the issue of those Units or Options forms part of the Fund.

#### 4.4 Allotment

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

#### 4.5 Responsible Entity's discretion on Application

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

#### 4.6 Certificates

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

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

#### 4.7 Foreign Unitholders

- (a) The Responsible Entity may determine that Foreign Unitholders are not to be offered Units or Options which are otherwise offered to Unitholders in that capacity where it reasonably considers that it would be in the best interests of the Holders.
- (b) If the Responsible Entity makes a determination under clause 4.7(a) and it is practicable to do so, the Responsible Entity must sell the Foreign Interests and pay to each Foreign Unitholder the amount calculated as follows:

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

where:

- AF is the amount to be paid to that Foreign Unitholder;
- NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:
  - (1) the Costs of the sale;
  - (2) the amounts (if any) payable by the Responsible Entity to any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
  - (3) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold under this deed;
- N is the aggregate number of Foreign Interests; and
- NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.



- (c) The Responsible Entity may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unitholder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Unitholder under clause 4.7(b).

#### **4.8 Capital Reallocation**

- (a) If at any time, a Stapled Entity makes a capital payment to the Responsible Entity as a capital reallocation amount, each Unitholder is:
  - (1) taken to have directed the Responsible Entity to accept that capital reallocation amount; and
  - (2) the Responsible Entity must apply that amount as an additional capital payment in respect of each Unit which is stapled to a security of the Stapled Entity making the capital payment equally in respect of each Unit.
- (b) The Responsible Entity may at any time make a capital payment to a Stapled Entity as a capital reallocation amount provided that:
  - (1) the constitution of the Stapled Entity contains provisions to the effect of those in clause 4.8(a); and
  - (2) the Responsible Entity is satisfied that the capital payment will be applied as an additional capital payment in respect of each Stapled Security to which a Unit is stapled equally.

### **5 Power to issue Units and Options**

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#### **5.1 Powers Cumulative**

- (a) The Responsible Entity may issue Units only in accordance with this clause 5 and subject to this deed.
- (b) No clause of this clause 5 (other than this clause 5.1) limits any other clause.

#### **5.2 Underwriting of Issue**

- (a) The Responsible Entity may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units; or
  - (3) the exercise of Options,to be underwritten by an underwriter on terms determined by the Responsible Entity.
- (b) The underwriter may:
  - (1) be the Responsible Entity or a related body corporate of the Responsible Entity;
  - (2) take up any Units or Options not subscribed for; and
  - (3) purchase Forfeited Units sold under clause 3.8(b).

- (c) The Responsible Entity may issue Units and Options under to this clause 5.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

### **5.3 Issues of Units prior to listing**

For the first issue of Units following registration of the Trust as a registered scheme, the Responsible Entity may issue Units at any time to any person at an Issue Price per Unit of \$2.00.

### **5.4 Other issues of Units and Options after listing**

In addition to any other power the Responsible Entity has to issue Units or Options under this deed and subject always to compliance with the Corporations Act:

- (a) the Responsible Entity may issue Units or Options at any time to any person by way of placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
- (1) where the Trust is Listed, Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Responsible Entity;
  - (2) where the Trust is Listed, Units are not part of the Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Responsible Entity; or
  - (3) where Units or Stapled Securities (as the case may be) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 4.1(a) and 5.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made; and
- (b) the Responsible Entity may issue Units at any time to any person otherwise than by way of placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
- (1) where the Trust is Listed, Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Responsible Entity based on the reasonably current market price of the Stapled Securities;
  - (2) where the Trust is Listed, Units are not part of the Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Responsible Entity based on the reasonably current market price of the Units; or
  - (3) where Units or Stapled Securities (as the case may be) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 4.1(a) and 5.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.

## 6 Responsible Entity's Powers

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### 6.1 General powers of Responsible Entity

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

### 6.2 Delegation by Responsible Entity

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

### 6.3 Buy-back of Units

- (a) While the Trust is Listed, the Responsible Entity may buy-back Units, subject to and in accordance with the Corporations Act (as modified from time to time) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this clause 6.3 the Units purchased are cancelled.
- (c) Where a Unit forms part of a Stapled Security, the Responsible Entity may only buy-back and cancel Units if the Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this clause 6.3 will be determined by the Responsible Entity (or its nominee) as follows:
  - (1) any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5%; and
  - (2) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.





- (e) The Responsible Entity may determine that part of the purchase price payable for a Unit or Stapled Security purchased under this clause 6.3 includes an amount which represents a distribution of Distributable Income.

## 6.4 Small Holdings

- (a) This clause 6.4 applies while the Units are Officially Quoted.
- (b) Subject to the provisions of this clause 6.4, the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Unitholder without request by the Unitholder where the Units held by a Unitholder comprise less than a marketable parcel as provided in the Listing Rules. The Responsible Entity may only sell or redeem Units on one occasion in any 12 month period.
- (c) The Responsible Entity must notify the Unitholder in writing of its intention to sell or redeem Units under this clause 6.4, and give the Unitholder at least 6 weeks from the date of the notice in which to tell the Responsible Entity that the Unitholder wishes to retain the Units.
- (d) The Responsible Entity will not sell or redeem the relevant Units:
  - (1) before the expiry of 6 weeks from the date of the notice given under clause 6.4(c); or
  - (2) if, within the 6 weeks allowed by clause 6.4(c):
    - (A) the Unitholder advises the Responsible Entity that the Unitholder wishes to retain the Units; or
    - (B) the market value of the Units held by the Unitholder increases to at least a marketable parcel as provided in the Listing Rules.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale or redemption as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption will not be sent to the Unitholder until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- (h) The Responsible Entity is entitled to execute on behalf of a Unitholder any transfer of Units under this clause 6.4.
- (i) Where a Unit forms part of a Stapled Security, the Responsible Entity may only redeem Units under this clause 6.4 if the Securities to which those Units are Stapled are the subject of a contemporaneous redemption and may only sell Units under this clause 6.4 if the Securities to which those Units are Stapled are the subject of a contemporaneous sale.



## 7 Responsible Entity's responsibilities and indemnities

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### 7.1 No limitation of other undertakings

This clause 7 does not limit or affect any other indemnities given to the Responsible Entity in this deed or at law.

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

### 7.3 Indemnities

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

### 7.4 Responsible Entity may rely on advice

The Responsible Entity may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Responsible Entity in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers and other persons consulted by the



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, 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, statements or information.

## **7.5 Interested dealings by Responsible Entity**

The Responsible Entity or an officer or employee or Associate of the Responsible Entity may:

- (a) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Responsible Entity or any Holder or as an executor, administrator, receiver or trustee;
  - (b) have an interest in or enter into a contract or transaction with:
    - (1) the Responsible Entity or an Associate of the Responsible Entity;
    - (2) any Holder; or
    - (3) any other person, including one whose Securities form an asset of the Fund; or
  - (c) hold or deal in or have any other interest in an asset of the Fund,
- and may retain and is not required to account for any benefit derived by doing so.

## **7.6 Responsible Entity cannot be a Unit Holder**

- (a) Despite any other provision of this Deed, the Responsible Entity is not and cannot become a Unitholder or otherwise become a beneficiary under the Trust.
- (b) Paragraph (a) of this clause is irrevocable and may not be amended by any subsequent variation or alteration to this Deed.

# **8 Valuation of the Fund**

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## **8.1 Valuation of assets of the Fund**

- (a) The Responsible Entity may at any time cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the value of an asset of the Fund, the Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of the assets of the Fund.
- (c) Each asset of the Fund must be valued at its reasonably current market value unless the Responsible Entity determines:
  - (1) there is no market in respect of the asset of the Fund; or
  - (2) the reasonably current market value does not represent the fair value of the asset of the Fund.
- (d) Where the Responsible Entity makes a determination under clause 8.1(c), the Responsible Entity must at the same time determine the method of valuation of



the asset of the Fund consistent with ordinary commercial practice for valuing that type of asset.

- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Responsible Entity.

## **8.2 Currency Conversion**

Where it is necessary for any purposes to convert one currency to another, the conversion will be made:

- (a) at a time; and
- (b) at such rates quoted by a bank or other financial institution, nominated by the Responsible Entity in its absolute discretion.

## **8.3 Responsible Entity to determine Current Unit Value**

The Responsible Entity may determine the Current Unit Value at any time.

# **9 Income and Distributions**

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## **9.1 Determination of income and reserves**

The Responsible Entity is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

## **9.2 Distribution of income**

- (a) The Responsible Entity may at any time distribute to Unitholders income or capital out of the Fund.
- (b) For each Distribution Period the Responsible Entity must:
  - (1) determine the Distributable Income for the Distribution Period; and
  - (2) calculate and distribute each Unitholder's Distribution Entitlement.
- (c) If no determination is made or to the extent to which no determination is made under clause 9.2(b)(1), the Distributable Income for that Distribution Period is equal to the Net Income of the Trust for that Distribution Period.

## **9.3 Responsible Entity discretion**

In making a determination under clauses 9.1 or 9.2 the Responsible Entity does not have to take into account accounting standards or generally accepted accounting principles and practices which apply to trusts. The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination that an item is income or capital or that a reserve or provision is needed, or as a determination of the method for calculating the Distributable Income of the Trust.



## 9.4 Distribution Entitlement

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

$$DA = I + C - R$$

where:

- DA is the Distributable Amount for the period.
- I is the Distributable Income of the Fund for the period.
- C is any additional amount (including capital) that the Responsible Entity has determined is to be distributable to Unitholders in the period.
- R is:
- (1) that part (if any) of the Distributable Income of the Fund for the period which has been distributed during the period; and
  - (2) any amount of Distributable Income which has been included in the purchase price of Units bought back in accordance with clause 6.3 during the period.

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

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

where:

- DE is the Distribution Entitlement.
- DA is the Distributable Amount.
- UH is the aggregate of the Paid-up Proportion of each Unit Holding of the Unitholder at the close of business on the Distribution Calculation Date.
- UI is the aggregate Paid-up Proportion of all Units on issue at the close of business on the Distribution Calculation Date.

## 9.5 Distribution of Entitlement

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



- (e) The Responsible Entity may at any time determine to satisfy its obligation to pay the whole or any part of a Unitholder's Distribution Entitlement which comprises capital by applying for and paying up as agent of the Unitholder an issue of Securities in a Stapled Entity which are issued pursuant to provisions in the constitution of that Stapled Entity substantially similar to those contained in clause 4.8 of this deed.

## **9.6 Distribution Reinvestment Arrangements**

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

## **9.7 Discharge of Responsible Entity's obligation**

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

## **9.8 Trust taxed as a company**

Notwithstanding clauses 9.4 and 9.5, if in any Financial Year the Responsible Entity in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Responsible Entity has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.8(a)) is to be determined in accordance with clause 9.4(b).
- (c) The Responsible Entity must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.8(b)) to the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period.
- (d) The Responsible Entity may take all steps necessary or desirable in relation to distributions, including the franking of distributions.

## **9.9 Distributions in specie**

- (a) Any reference in this clause 9.9 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) If the Responsible Entity exercises a power to transfer any asset of the Fund to a Holder as a distribution, the Responsible Entity may as it sees fit in its absolute discretion either:
  - (1) require the Holder receiving the asset as a distribution (**First Holder**) or a Holder which is an associate of the First Holder to pay some or all



of any GST on any supply arising from the distribution and any Holder so required must then indemnify the Responsible Entity against that GST, and pay to the Responsible Entity on demand an amount equal to that GST; or

- (2) itself pay some or all of that GST and recover the amount of that GST out of the Fund.
- (c) The right of a party to recover any amount in respect of GST under this clause 9.9 on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient except where the recipient is required to issue the Tax Invoice or Adjustment Note.

## 10 Remuneration of Responsible Entity

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### 10.1 Responsible Entity's remuneration

- (a) Except as set out in this clause 10.1, Schedule 1 and Schedule 2, the Responsible Entity is not entitled to any fee or other remuneration from the Fund but is entitled to be remunerated by a third party for its services as Responsible Entity and to be indemnified by a third party for any liabilities incurred by it as Responsible Entity and may retain and is not required to account for any benefit so derived by it from that third party.
- (b) Where the Responsible Entity is One Managed Investment Funds Limited (ABN 47 117 400 987) the Responsible Entity is, subject to clause 10.5, entitled to the fees specified in Schedule 1.
- (c) Following the retirement or removal of One Managed Investment Funds Limited as responsible entity, the Responsible Entity is, subject to clause 10.5, entitled to the fees specified in Schedule 2.

### 10.2 Waiver or deferral of remuneration

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

### 10.3 Priority of Responsible Entity's remuneration

The remuneration of the Responsible Entity (if any) has priority over the payment of all other amounts payable from the Fund

### 10.4 Indemnity

Subject to clause 10.5:

- (a) In addition to any other right of indemnity the Responsible Entity may have under this deed, the Responsible Entity is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred at law or under this deed in the performance of its duties. Without limitation, this includes all expenses connected with this deed, the formation of the Trust and registration of the Trust as a registered scheme and the preparation, review, distribution and promotion of any product disclosure statement or offering



memorandum in respect of Units or Stapled Securities and other promotion of the Trust or the Stapled Entities.

- (b) Without limiting the generality of clause 10.4(a), the Responsible Entity is indemnified and entitled to be reimbursed out of or have paid from the Fund all Costs associated with the raising of capital for the Fund including the payment of any fees payable to a broker in respect of an Application for Units.

## **10.5 Proper performance of duties**

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

## **10.6 Act or omission of a delegate**

The indemnity under clause 10.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

## **10.7 Indemnity unaffected by an unrelated breach**

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

## **10.8 Reimbursement of GST**

- (a) Any reference in this clause 10.8 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this deed which is relevant in determining the amount of any payment to be made to or by the Responsible Entity is exclusive of any GST unless indicated otherwise.
- (c) If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Fund an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Fund.
- (d) If the Trust is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the 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, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Responsible Entity to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the





purposes of the GST Act. This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Fund for other purposes of this deed and the Corporations Act.

- (e) Where an expense is paid from the Fund to the Responsible Entity, the payment shall comprise part of the consideration for a supply by the Responsible Entity to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Fund for other purposes of this constitution and the Corporations Act.

## 11 Indemnity and insurance

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### 11.1 Persons to whom clauses 11.2 and 11.4 apply

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

### 11.2 Indemnity

The Responsible Entity must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

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

### 11.3 Extent of indemnity

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### 11.4 Insurance

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

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

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.





## 11.5 Savings

Nothing in clauses 11.2 or 11.4:

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

## 12 Transfers and other transactions

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### 12.1 Transfer

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
  - (1) is duly stamped (if applicable);
  - (2) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
  - (3) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options or the transfer is effected in accordance with the ASX Settlement Operating Rules.

### 12.2 Transaction advice after transfer

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

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

### 12.3 No General Restriction on Transfer

- (a) Whilst the Trust is Listed, there is no restriction on the transfer of Units and, subject to clauses 12.3(c) and 12.5, 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 12.1(b).
- (b) Except as otherwise set out in this clause 12, there is no restriction on any other transfer of Units or Options.
- (c) In relation to Units which are CHESS Approved Securities:
  - (1) subject to clauses 12.3(c)(2) and 12.3(c)(3), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX Settlement transfer;



- (2) the Responsible Entity may apply a holding lock to specified CHES Approved Securities where permitted to do so by the Listing Rules; and
- (3) 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.

## **12.4 Power to suspend the 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.

## **12.5 Restricted Securities**

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

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

## **12.6 Transmission of Units and Options**

- (a) In the case of a Transmission Event in respect of a Holder, the only persons who will be recognised as having any title to the Units or Options registered in the Holder's name or any benefits accruing in respect of those Units or Options are:
  - (1) where the Holder is a joint holder, the survivor or survivors of the Holder;
  - (2) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units or Options as a result of bankruptcy; or
  - (3) where the Holder is a body corporate, the person entitled to the Units or Options as a result of the dissolution or succession.
- (b) Nothing in clause 12.6(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units or Options held whether that Unit or Option was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement to the Unit or Option, elect:
  - (1) to be registered as the Holder of the Unit or Option by signing and serving on the Responsible Entity a notice in writing stating that election; or



- (2) to have some other person nominated by that person registered as the transferee of the Unit or Option by executing a transfer to that other person in accordance with clause 12.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to this clause 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 deed relating to the right to transfer, and the registration of transfers of, Units and Options apply, so far as they can and with such changes as are necessary, to any transfer under clause 12.6(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Holder of the Unit or Option.
- (f) For the purposes of this deed, where 2 or more persons are jointly entitled to any Unit or Option in consequence of a Transmission Event they will, upon being registered as the Holders of the Unit or Option, be taken to hold the Unit or Option as joint tenants and clause 3.4 will apply to them.
- (g) Despite clause 12.6(a), the Responsible Entity may register a transfer of Units signed by a Holder before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

## **12.7 Recognition of Holder**

- (a) Except as otherwise provided by law or provided in this deed, the Responsible Entity:
  - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
  - (2) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit or Option by any other person, even if the Responsible Entity has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Responsible Entity, Units or Options held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in clause 12.7(c) limits the operation of clause 12.7(a).

## **12.8 Participation in Transfer Systems**

The Responsible Entity may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 12.

# **13 Options**

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## **13.1 Terms and Subscription**

- (a) This clause 13 applies to all Options.



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

### **13.2 Nominees**

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

### **13.3 Exercise**

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

### **13.4 Optionholder's Rights and Interest**

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to,

Unitholders.

- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Responsible Entity is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Responsible Entity to ensure that it assumes the covenants and obligations of the outgoing Responsible Entity under those Options.

### **13.5 Redemption or Repurchase**

- (a) The Responsible Entity may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Responsible Entity must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Responsible Entity and the Responsible Entity may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).



- (b) Options and rights redeemed or purchased under clause 13.5(a) form part of the Fund and the Responsible Entity is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Responsible Entity retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

## 14 Retirement or Removal of Responsible Entity

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### 14.1 Retirement and removal of Responsible Entity

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

## 15 Alterations to Trust

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Subject to section 601GC of the Corporations Act (if the Trust is a registered scheme) and any approval required by law, the Responsible Entity may by deed replace or amend this deed (including this clause).

## 16 Term of Trust and termination of Trust

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### 16.1 Term of Trust

The term of the Trust ends on the earlier of:

- (a) the date on which the Trust is wound up; and
- (b) the date on which the Trust is terminated under this deed or by law.

### 16.2 When the trust is to be wound up

The Responsible Entity must wind up the Trust on and from the earlier of:

- (a) on a date determined by the Responsible Entity as the date on which the Trust is to be terminated and advised to Unitholders by notice in writing not less than 60 days before that termination date;
- (b) on a date determined by the Unitholders in general meeting; and
- (c) on a date ordered by the court.

### 16.3 Procedure on winding up of Trust

- (a) In winding up the Trust the Responsible Entity must:
  - (1) realise the Fund;
  - (2) pay any amount due to it under clause 16.3(c)(3) or 16.3(d);
  - (3) pay all Costs of the Responsible Entity in its capacity as Responsible Entity of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust otherwise than in their capacity as a Unitholder; and
  - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata in accordance with the Paid-Up Proportion of Units held by Unitholders.
- (b) The Responsible Entity may distribute an asset of the Fund to a Unitholder in specie. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.
- (aa) For the purpose of distributing an asset in accordance with clause 16.3(b), such asset of the Fund must be valued at its reasonably current market value unless the Responsible Entity determines:
  - (1) there is no market in respect of the asset of the Fund; or
  - (2) the reasonably current market value does not represent the fair value of the asset of the Fund.
- (bb) Where the Responsible Entity makes a determination under clause 16.3(aa), the Responsible Entity must at the same time determine the method of valuation of the asset of the Fund consistent with ordinary commercial practice for valuing that type of asset.
- (c) The Responsible Entity is entitled to be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
  - (1) by it before the winding up of the Trust which it has not recouped;



- (2) by it in connection with the winding up of the Trust and the realisation of the Fund;
  - (3) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
  - (4) 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;
- (d) The Responsible Entity is entitled to:
  - (1) an indemnity against the amounts referred to in clause 16.3(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.3(a)(4) is made; and
  - (2) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 10.
- (e) The Responsible Entity may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (f) The Responsible Entity may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this deed, including but not limited to under clause 16.3(c) or 16.3(d).
- (g) The Responsible Entity must distribute among the Unitholders in accordance with clause 16.3(a)(4) anything retained under clause 16.3(f) which is subsequently not required.

## **16.4 Audit of accounts of Trust**

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

## **17 Meetings**

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### **17.1 Meetings**

The Responsible Entity may convene a Meeting at any time. The provisions of schedule 2 and the Corporations Act (if applicable) apply to a Meeting.

### **17.2 Passing of resolution**

A resolution passed at a meeting of Holders held in accordance with this deed is binding on all Holders.





## 18 Complaints

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The Responsible Entity must establish and maintain a procedure for dealing with complaints by Unitholders which meets the requirements of section 912A(2) of the Corporations Act.

## 19 Proposal approved by Holders

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### 19.1 Power to implement a Proposal and limitation of liability

- (a) Having regard to the functions of the Responsible Entity and without limiting anything else in this clause 19 the Responsible Entity has power to and must do all things which it considers are necessary, desirable or reasonably incidental to effect a Proposal and those powers apply notwithstanding, and are not limited by, any provision of this deed other than clauses 1.3, 1.4 and 1.5.
- (b) Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever beyond the assets of the Fund to Holders 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 Proposal.

### 19.2 Appointment of Responsible Entity as agent and attorney

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

- (a) applying for Securities in the name of a Holder;
- (b) making or accepting transfers of Securities in the name of and for the Holder;
- (c) distributing any asset of the Fund to a Holder by way of an in specie distribution;
- (d) applying a capital distribution (otherwise payable to a Holder as consideration for an issue of Securities in the name of the Holder or as consideration for a transfer of Securities to the Holder);
- (e) receiving and giving a good discharge for moneys to which a Holder or former Holder is entitled pursuant to the terms of a Proposal and to pay those moneys in accordance with clause 19.3, and to pay the balance to each person entitled to them or as that person directs.

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

### 19.3 Payment of fees

If it is a term of a Proposal that, if implemented, the Responsible Entity is:

- (a) entitled to the payment of a fee out of the assets of the Fund or is entitled to pay out of the assets of the Fund a fee to a fund manager, a property manager or any agent or contractor; or
- (b) required to direct a payor (or payors) of money to Holders (or former Holders in the Trust) to withhold a specified sum from such money on account of fees





payable to a fund manager, any property manager or any agent or contractor of the Trust and to pay that specified sum to the Responsible Entity or as the Responsible Entity so directs,

the Responsible Entity is authorised to make the payment or provide the direction, provided:

- (c) in the case of a payment to the Responsible Entity, the payment is in full satisfaction of all claims that the Responsible Entity might otherwise have against the assets of the Fund for the payment of any fees; and
- (d) in the case of a payment or a direction to pay a fund manager, any property manager or any agent or contractor, the Responsible Entity procures an acknowledgement in writing from the payee that the payee accepts such payment in full satisfaction of all claims that it might otherwise have against the assets of the Fund or the Responsible Entity.

## **19.4 Paramountcy**

Subject only to clauses 1.3, 1.4 and 1.5, this clause 19 has effect notwithstanding any other provision of this deed and any provision of this deed which is inconsistent with this clause 19 does not operate to the extent of any inconsistency.

## **20 Stapling**

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### **20.1 Power to staple Securities**

In addition to any power the Responsible Entity has under clause 19, the Responsible Entity may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to any Unit and may cause the Stapling of further Securities to Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit and for such purposes the Responsible Entity has power to and must do all things which it considers are necessary, desirable or reasonably incidental to effect a Stapling and those powers apply notwithstanding, and are not limited by, any provision of this deed other than clauses 1.3, 1.4 and 1.5.

### **20.2 Applications, transfers and distributions in specie**

- (a) For the purposes of Stapling, the Responsible Entity may:
  - (1) apply for Securities in the name of a Unitholder;
  - (2) make a transfer of Securities to all Unitholders;
  - (3) make a transfer of Securities by way of an in specie distribution of Securities to all Unitholders; or
  - (4) issue Units to a member of a Stapled Entity or a proposed Stapled Entity to achieve a Stapling.
- (b) If the Responsible Entity applies for Securities in accordance with clause 20.2(a)(1), it must apply for Securities for all Unitholders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.



- (c) If the Responsible Entity effects a transfer made in accordance with clause 20.2(a)(2) it must effect the transfer to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 9.5(a), if the Responsible Entity makes an in specie distribution under clause 20.2(a)(3) the Responsible Entity:
  - (1) must transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution in specie and 10am the following day; and
  - (2) must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Responsible Entity in accordance with clause 20.2(a), each Unitholder authorises the Responsible Entity to act as the Unitholder's agent to:
  - (1) apply for Securities in the name of that Unitholder;
  - (2) accept a transfer of Securities for that Unitholder; and
  - (3) agree to become a member of the relevant Stapled Entity.

### **20.3 Operation of Stapling provisions**

Clauses 20.4 to 20.9 apply only, and for so long as, a Unit is a component of a Stapled Security.

### **20.4 Units to be Stapled**

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied either that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity and the Unitholders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
  - (1) the Responsible Entity must not offer a Unit for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
  - (2) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
  - (3) the Responsible Entity must not issue or sell a unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;



- (4) the Responsible Entity must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and
- (5) the Responsible Entity must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

## **20.5 Unstapling Date**

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 20.5, this does not prevent the Responsible Entity from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

## **20.6 Transfer of Stapled Securities**

- (a) Until the Unstapling Date:
  - (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee;
  - (2) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee; and
  - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Responsible Entity as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Share is Stapled to the same transferee.
- (b) Each Unitholder irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.



## 20.7 Stapled Security Register

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

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

## 20.8 Unitholder meetings

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

## 20.9 Variation of Stapling provisions

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

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

# 21 Notices

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## 21.1 How and where Notices may be sent

A notice or other communication under this deed (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or fax at the address or the fax number specified:

- (a) for the Responsible Entity in Schedule 3;
- (b) for the Holder, as recorded in the Register,

or as otherwise specified by a party by Notice.

## 21.2 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the



sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.

- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

## 22 General

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### 22.1 Method of payment or repayment

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

### 22.2 Binding conditions

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

### 22.3 Governing law

The rights, liabilities and obligations of the Responsible Entity and the Holders are governed by the laws of Australia and New South Wales.

### 22.4 Severability

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



## Schedules

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## Schedule 1

### Fees - One Managed Investment Funds Limited

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(Clause 10.1(b))

Where:

- (a) The Responsible Entity is providing custody services to the Fund; and
- (b) the Responsible Entity is One Managed Investment Funds Limited ABN 47 117 400 987,

the Responsible Entity is entitled to a custody fee equal to the higher of \$2,000 per month and the aggregate of:

- (c) 0.02% per annum of the Gross Asset Value (for Gross Asset Value up to \$250 million); and
- (d) 0.01% per annum of the Gross Asset Value (for Gross Asset Value in excess of \$250 million),

payable monthly in arrears.



## Schedule 2

### Fees – Responsible Entity following One Managed Investment Funds Limited

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(Clause 10.1(c))

The Responsible Entity is entitled to a fee equal to the aggregate of:

- (e) 0.70% per annum of the Gross Asset Value (for Gross Asset Value up to \$1,500,000,000);
- (f) 0.60% per annum of the Gross Asset Value (for Gross Asset Value between \$1,500,000,000 and \$2,000,000,000); and
- (g) 0.50% per annum of the Gross Asset Value (for Gross Asset Value in excess of \$2,000,000,000),

payable monthly in arrears.





## Schedule 3

### Notice details

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(Clause 21.1(a))

Where One Managed Investment Funds Limited is the responsible entity

<b>Responsible Entity</b>	One Managed Investment Funds Limited
Address	11th Floor, 20 Hunter Street, Sydney, New South Wales
Attention	Justin Epstein
Phone	+61 2 8277 0010
Fax	+61 2 8580 5700

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## Schedule 4

### Meetings

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(Clause 17)

#### 1 Notice of meeting

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

#### 2 Who may attend and address Meetings

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

#### 3 Quorum

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

#### 4 Adjournments

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



## 5 Proxies

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- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if any);
  - (2) under the hand of an officer or attorney who has been authorised by the corporation;
  - (3) under the hand of any 2 directors or a director and a secretary; or
  - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Responsible Entity at least 48 hours, or any shorter period determined by the Responsible Entity from time to time, before the time appointed for the Meeting at which the proxy proposes to vote.
- (e) If paragraph 5(d) is not complied with, the proxy is invalid.
- (f) The Responsible Entity is not obliged to enquire whether a proxy has been validly given.
- (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Paragraph 5(g) does not apply if the Responsible Entity has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

## 6 Voting

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



## 7 Joint Unitholders

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

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



HERBERT  
SMITH  
FREEHILLS

## Signing page


Executed as a deed poll

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Signed, sealed and delivered by  
**Aventus Capital Limited**  
by

sign here ►   
\_\_\_\_\_  
Company Secretary/Director

print name Mahendrarvarman Thillainadesan

sign here ►   
\_\_\_\_\_  
Director

print name BRUCE CARTER

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