

Supplemental deed poll

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

Dexus Asset Management Limited

Supplemental deed poll

Date 25 October 2022

Party

Dexus Asset Management Limited ACN 080 674 479 of Level 5, 80 Collins Street, Melbourne, Victoria in its capacity as responsible entity of the APN AREIT Fund ARSN 134 361 229 (**Responsible Entity**)

Recitals

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- D Section 601GC(1) of the Corporations Act provides that the Constitution may be modified, or repealed and replaced with a new constitution by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Unit Holders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

It is declared as follows:

1 Definitions and interpretation

1.1 Definitions

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

- (a) **Constitution** means the constitution establishing the Fund dated 8 December 2008, as amended from time to time, which governs the Fund;

-
- (b) **Effective Date** means 31 October 2022; and
 - (c) **Fund** means the registered scheme known as the APN AREIT Fund ARSN 134 361 229 (to be renamed the Dexus AREIT Fund).

1.2 Interpretation

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

2 Amendment of Constitution

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

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

in the Constitution as set out in Schedule 1.

3 No resettlement or redeclaration

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

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

4 Effect of amendments

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

5 Governing law and jurisdiction

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

Schedule 1 - Constitution

~~APN~~ Dexus AREIT Fund

Constitution

~~APN Funds~~ Dexus Asset Management Limited

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Date

Party

~~APN Funds~~ Dexus Asset Management Limited (formerly known as APN Funds Management Limited) ACN 080 674 479 of Level ~~530, 101~~ 80 Collins Street, Melbourne, Victoria. 3000 (~~APN FMDXAM~~)

Recitals

This Constitution is declared by the Responsible Entity to be the constitution for a trust to be known as the ~~APN~~ Dexus AREIT Fund.

1 Definitions and interpretation

1.1 Definitions

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

A Class Units means the Class of Units having the rights, obligations and restrictions set out in Schedule 3 of this Constitution.

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

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

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

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

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

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

ASIC means the Australian Securities and Investments Commission;

ASIC Exemption includes:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the *Corporations Act*; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Fund or the Responsible Entity.

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

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

ASX means the Australian Stock Exchange Limited or the financial market operated by that company (whichever the context requires);

Australian Accounting Standards means:

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

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

Class means a class of Units as determined by the Responsible Entity under clause 4.4;

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

Commencement Date means the date of commencement of the Fund, being the date on which Units are first issued;

Compliance Committee means a compliance committee for the Fund established in accordance with section 601JA of the *Corporations Act*;

Compliance Committee Member means a member of the Compliance Committee;

Compliance Plan means the compliance plan for the Fund as required by section 601HA of the *Corporations Act*;

Constitution means this constitution as amended from time to time;

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

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

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

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

Distributable Amount means the amount determined in accordance with clause 12.4;

Distribution Calculation Date means the last Business Day of each month or any other dates the Responsible Entity nominates;

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

Distribution Entitlement means the entitlement of a Unit Holder to the Distributable Amount determined in accordance with clause 12.4(c);

Distribution Period means the period commencing on the Commencement Date and ending on the following Distribution Calculation Date and each subsequent period commencing on the day after a Distribution Calculation Date and ending on the next Distribution Calculation Date or on termination of the Fund;

Expenses includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these. Examples of Expenses are given in item 1 of Schedule 1;

Financial Year means the period beginning on the Commencement Date and ending on the following 30 June, and each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Fund;

Fully Paid Unit means a Unit for which the Issue Price is fully paid;

Fund means the trust constituted by this Constitution and known as the **APN Dexu** AREIT Fund;

Gross Asset Value means the sum of:

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

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

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

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

IDPS means an investor directed portfolio service;

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

Issue Price of a Unit on any day means the amount determined under clause 6;

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

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

but does not include liabilities:

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

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

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

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

Month means a calendar month;

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

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

Net Income means for a Distribution Period, the net income of the Fund determined by the Responsible Entity in accordance with Australian Accounting Standards;

Properties means any land or interest in, or in or relating to any freehold, leasehold or other real property in which the Fund has a direct or indirect interest and **Property** shall be construed accordingly;

Redemption Date means the last Business Day of each month unless otherwise determined by the Responsible Entity;

Redemption Price means the amount determined under clause 8;

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

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

Relevant Class means a particular Class;

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

Responsible Entity means **APN Funds** **Dexus Asset** Management Limited ACN 080 674 479 or any other person acting as the trustee or responsible entity of the Fund in accordance with the provisions of this Constitution and, where appropriate, includes any agent or Adviser appointed by the Responsible Entity;

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

Special Resolution means a resolution passed by Unit Holders holding at least 75% of all Units on issue (provided that a Unit Holder's holding is reduced pro rata by any unpaid amounts in relation to the Unit Holder's Partly Paid Units).

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

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

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

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the redemption of Units; or

- (c) for the transfer of Assets to a Unit Holder under clause 24.2(b),
as the case requires;

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

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

Unit means a unit in the Fund created under this Constitution;

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

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

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

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

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

1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to an agreement or document (including, without limitation, a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document;
- (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (i) words and expressions defined in the *Corporations Act* have the meanings given to them in that law; and
- (j) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

1.3 General compliance provision

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

2 The Fund

2.1 Responsible Entity

As from the Commencement Date, ~~APN-FM~~DXAM is and has agreed to act as trustee and responsible entity of the Fund.

2.2 Declaration of Trust

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

2.3 Name of Fund

- (a) The name of the Fund is the 'Dexus~~APN~~ AREIT Fund' or such other name as the Responsible Entity may from time to time determine.

- (b) Subject to clause 2.3(c) and clause 2.3(d), if:
 - (i) ~~APN-FM~~DXAM retires or is removed as responsible entity of the Fund; or
 - (ii) there is a change in who controls ~~APN-FM~~DXAM;

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

3 Application of AMIT Regime to the Fund

- (a) If the Fund meets the qualification requirements set out in the AMIT Regime, the Responsible Entity may make an AMIT Choice.
- (b) If an AMIT Choice is made, then subject to clause 3(c), the provisions in Schedule 2 will prevail over any other provisions of this document to the extent of any inconsistency, if such an inconsistency is not adverse to Unit Holders’ rights.
- (c) If the Fund ceases to be an AMIT for any reason, including but not limited to the Fund ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 2, except those in clause 1 of Schedule 2 which will continue to be applied by the Responsible Entity, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Fund when it is not an AMIT; and
 - (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Fund.
- (d) Nothing in this clause 3 imposes an obligation on the Responsible Entity to:
 - (i) enter into or facilitate the entry of the Fund into the AMIT Regime;

- (ii) make any changes to this Constitution; or
- (iii) make an AMIT Choice.

4 Units and Unit Holders

4.1 Units

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

4.2 Fractional Units

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

4.3 Consolidation or subdivision of Units

- (a) The Responsible Entity may consolidate or divide the number of Units on issue.
- (b) Any consolidation or division will apply equally to all Units on issue in the same Class.
- (c) The Responsible Entity must amend the Register to record any consolidation or division of Units.

4.4 Classes of Units

- (a) Subject to this Constitution and the *Corporations Act*, the Responsible Entity may create different Classes. If the Responsible Entity so determines in relation to particular Units, the terms of issue of those Units may:
 - (i) have different rights, obligations and restrictions; and
 - (ii) provide for conversion of Units from one Class to another Class.
- (b) The provisions in Schedule 3 provide rights, obligations and restrictions attaching to A Class Units.

4.5 Equal value

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

4.6 Consolidation and re-division

- (a) Subject to clause 4.6(b) the Responsible Entity may at any time divide the Assets into any number of Units other than the number into which the Assets is for the time being divided.
- (b) A division of a kind referred to in clause 4.6(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on Issue in that Class.

4.7 Rights attaching to Units

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

4.8 Directions

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

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

4.9 Joint Holders of Units

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

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

subject to the production of any evidence of death that the Responsible Entity requires;

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

4.10 Benefits and obligations of Unit Holders

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

5 Offer and issue of Units

5.1 Offers

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

5.2 Minimum amounts

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

5.3 Form of application

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

5.4 Reinvestment

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

5.5 Acceptance or rejection

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

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

5.6 Uncleared funds

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

5.7 Payment of application money

- (a) Payment of the application money must be in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if required by the Responsible Entity).
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets, or if required by the Responsible Entity, by the Unit Holder.

5.8 Receipt of application

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

5.9 Issue of Units

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

- (a) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clauses 5.4 and 12.12, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated; or
- (b) in all other cases, on the Issue Date immediately after the later of the day on which:
 - (i) the Responsible Entity accepts the application for Units and the applicant is registered as the Holder of the Unit on the Register; or
 - (ii) the Responsible Entity receives the application money, or the property (which is acceptable to the Responsible Entity) against which the Units are to be issued is vested in the Responsible Entity.

5.10 Number of Units issued

Subject to clause 5.11 and the terms of issue of a Unit, the number of Units issued on any Issue Date in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be determined in accordance with the following formula:

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

Where:

- N is the number of Units issued;
- A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement);
- B is the application fee for the Units payable by the Unit Holder in accordance with clause 15.1(a); and
- C is the Issue Price for the Unit;

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

5.11 Units as consideration

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

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

Where:

- N is the number of Units issued;
- A is the value of the investment being acquired as determined in accordance with clause 11;
- B is the amount of the cash consideration paid in respect of the investment (if any);
- C is the application fee for the Units payable by the Unit Holder in accordance with clause 15.1(a); and
- D is the Issue Price of the Units being issued (as determined in accordance with clause 6.2).

5.12 No certificates

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

6 Issue Price

6.1 Issue Price while Units are not Officially Quoted

- (a) The Issue Price for the initial issue of Units is \$1 plus any relevant Transaction Charge.
- (b) At any other time, but subject to clause 6.1(d) and the rights, obligations and restrictions attaching to any particular Units or Class and while the Units are not Officially Quoted, the Issue Price for a Unit shall be determined in accordance with the following formula:

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

Where:

IP is the Issue Price;

A is the Net Asset Value;

B is any relevant Transaction Charge; and

C is the number of Fully Paid Units on issue,

and for the purposes of the formula in this clause 6.1(b), where there is more than one Class on issue, “Net Asset Value”, “Transaction Charge” and the “number of Fully Paid Units on issue” are proportionate to those variables the Responsible Entity determines are properly referable to the Relevant Class.

- (c) Each of the variables in clause 6.1(b) must be determined:
 - (i) as at the next Issue Date after the later of the day on which the Responsible Entity:
 - (A) accepts the completed application for Units; or
 - (B) receives the application money, or the property against which the Units are to be issued is vested in the Responsible Entity; or
 - (ii) in the case of a Unit issued under a distribution reinvestment plan, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.
- (d) For Units that are not Officially Quoted, the Responsible Entity may determine a different Issue Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by the *Corporations Act* and any applicable ASIC Exemption (and in such case, subject to the terms of that ASIC Exemption).

6.2 Issue of Units to acquire an Asset

- (a) Subject to clause 6.2(b), where Units are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Fund), the Issue Price for those Units must be calculated in accordance with clause 6.1(b) on the date of the agreement under which there will be an issue of Units; and
- (b) The Responsible Entity may determine a different Issue Price in relation to some Units, a Class or all Units to the extent permitted by and in accordance with the *Corporations Act* and any applicable ASIC Exemption.

6.3 Rounding

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

6.4 Satisfaction of Issue Price

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

7 Redemption of Units

7.1 Redemption request while Scheme is Liquid

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

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

7.2 Redemption while Fund is Liquid

- (a) This clause 7.2 shall apply in respect of the redemption of Units unless clause 7.3 applies.
- (b) Within a reasonable time of receiving the redemption request under clause 7.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:
 - (i) deny the request and notify the Unit Holder accordingly;

- (ii) effect the redemption request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Redemption Price out of the Assets;
 - (iii) subject to the *Corporations Act*, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the redemption request; or
 - (iv) partially effect the redemption in the manner described in clause 7.2(b)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 7.2(b)(iii);
- (c) if the Unit Holder has made a redemption request which complies with this Constitution and the Responsible Entity accepts the redemption request, the Responsible Entity must satisfy the redemption request in respect of a Unit by payment from the Assets the Redemption Price calculated in accordance with clause 8. The payment must be made within 5 days of the Redemption Date following the day on which the redemption request was made;
- (d) notwithstanding clause 7.2(c), the Responsible Entity may extend the period allowed for satisfying a redemption request until a later Redemption Date if in the opinion of the Responsible Entity:
 - (i) the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset;
 - (ii) the Responsible Entity does not consider it to be in the best interests of the Members as a whole to realise sufficient Assets to satisfy the withdrawal request; or
 - (iii) it is, for any reason, impractical to calculate the Net Asset Value of the Assets, including because of the closure of an exchange or trading or withdrawal restrictions in respect of a security;
- (e) the Responsible Entity may specify a minimum redemption amount for the Fund or a Class and vary that amount at its discretion;
- (f) unless otherwise determined by the Responsible Entity, the Responsible Entity need not give effect to a redemption request if:
 - (i) the aggregate Redemption Price of the Units to be redeemed is less than any minimum redemption amount determined by the Responsible Entity; and
 - (ii) the redemption would result in the aggregate Redemption Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 5.2;
- (g) if compliance with a redemption request would result in the aggregate Redemption Price of a Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 5.2, the

Responsible Entity may treat the redemption request as relating to the Unit Holder's entire Unit Holding;

- (h) if the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Redemption Price of that Unit Holding is less than the then current minimum holding amount, without the need for a redemption request;
- (i) the Responsible Entity may redeem the Unit Holding of a Unit Holder without the need for a redemption request after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption Price less than the then current minimum holding amount;
- (j) any balance realised representing a fraction of the proceeds of redemption of a Unit will be retained by the Responsible Entity to be added to any further application money received from the Unit Holder or to the proceeds of redemption of any other Units of the Unit Holder as the Responsible Entity may determine; and
- (k) if the application money for the Units which are the subject of a redemption request is paid by cheque, the Responsible Entity may refuse to act on that request until the cheque has cleared.

7.3 Redemption while Fund is a Registered Scheme and not Liquid

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

7.4 Clauses applicable whether or not the Fund is Liquid

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

7.5 The Responsible Entity may deny a request for redemption

Subject to the *Corporations Act* and clause 7.3, the Responsible Entity may deny a request for redemption of Units where:

- (a) the Fund has been terminated under clause 23;

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

7.6 Restrictions on Unit Holder

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

7.7 Responsible Entity discretion to redeem

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

7.8 No obligation to pay out of own funds

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

7.9 Sums owed to the Responsible Entity

Subject to the *Corporations Act*, the Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

7.10 Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Redemption Price due to Unit Holder pursuant to a redemption request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 7.10(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the redemption request or Withdrawal Offer (based on a valuation of the Assets which is consistent with the range of ordinary commercial practice for valuing assets of that type and be reasonably current). If the Responsible Entity requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.

- (c) The Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder, who shall be taken to have a present entitlement in that amount, if the Unit Holder redeems one or more of their Units and the direction is made to fund the redemption.

7.11 Order of redemption

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

7.12 Liquid or not Liquid

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

7.13 Determination of income and capital

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

8 Redemption Price of Units

8.1 Redemption Price

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

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

Where:

RP is the Redemption Price;

A is Net Asset Value;

B is any relevant Transaction Charge; and

C is the number of Fully Paid Units on issue,

and for the purposes of the formula in this clause 8.1, where there is more than one Class on issue, “Net Asset Value”, “Transaction Charge” and the “number of Fully Paid Units on issue” are proportionate to those variables the Responsible Entity determines is properly referable to the Relevant Class.

8.2 Determination of Redemption Price

Each of the variables in clause 8.1 must be determined:

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

8.3 Redemption fee

The Responsible Entity may deduct any redemption fee payable under clause 15.1(c) in respect of a redemption of Units from the aggregate Redemption Price for those Units.

8.4 Receipt of redemption request

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

8.5 Rounding

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

9 Transfers

9.1 Transferability

Subject to this clause 9 and the terms of their issue, a Unit may be transferred by instrument in writing, in any form authorised by the *Corporations Act* or, subject to the *Corporations Act*, in any other form that the Responsible Entity approves or requires.

9.2 Registration of transfers

- (a) A transferor of Units remains the holder of the Units transferred until the transfer is registered by the Responsible Entity.
- (b) Where Units are transferred other than in accordance with an applicable uncertificated trading system, the following documents must be lodged for registration with the Responsible Entity:
 - (i) a proper instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units; and
 - (iii) any other information that the Responsible Entity may require to establish the transferor's right to transfer the Units.
- (c) Subject to clause 9.3, the Responsible Entity may register the transferee as the Holder of the Units.

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

9.3 Refusal of registration

Subject to the *Corporations Act*, the Responsible Entity may refuse to register any transfer of Units without being bound to provide a reason for such refusal.

10 Transmission of Units

10.1 Entitlement on death

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

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

10.2 Registration of persons entitled

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

- (ii) the registration of the transfer of; and
- (iii) the issue of certificates for,

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

10.3 Distributions and other rights

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

11 Valuation of Assets

11.1 Valuation of Assets

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

11.2 Determination of Net Asset Value

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

11.3 Method of valuation

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time.

- (b) Unless the Responsible Entity decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value and whilst the Fund is a Registered Scheme, the valuation methods and policies applied by the Responsible Entity shall be capable of resulting in a calculation of an Issue Price or Redemption Price that is independently verifiable.

12 Income and distributions

12.1 Determination of income and reserves

- (a) The Responsible Entity shall determine, in accordance with Australian Accounting Standards:
 - (i) the Net Income of the Fund and whether any item is on income or capital account; and
 - (ii) the extent to which reserves or provisions need to be made.

12.2 Distribution of income

- (a) For each Distribution Period, the Responsible Entity shall calculate the Distributable Amount and distribute each Unit Holder's Distribution Entitlement.
- (b) A distribution of income under this clause may be in cash or of Assets or by way of the issue of bonus Units.

12.3 Present entitlement

The persons who are Unit Holders at 5 p.m. on the last day of a Distribution Period shall have an absolute vested and indefeasible interest in the Distributable Amount for that Distribution Period, irrespective of the number of days they have been a Unit Holder in that Distribution Period.

12.4 Distributable Amount

- (a) The Distributable Amount for a Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) shall be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the Distributable Amount;

I is the Net Income of the Fund for that Distribution Period (as determined by the Responsible Entity pursuant to clause 12.1 and taking into account any adjustments required as a result of any direction made by the Responsible Entity under clause 7.10(c)) less any amounts of the Net Income that is set aside as a reserve or provision in accordance with clause 12.1; and

- C is any additional amount (including capital) that the Responsible Entity has determined is to be distributed.
- (b) The Distributable Amount for the last Distribution Period in a Financial Year shall be the difference between:
- (i) the 'net income' of the Fund calculated in accordance with section 95(1) of the *Income Tax Assessment Act 1936* as amended or substituted from time to time and taking into account any adjustments required as a result of any direction made by the Responsible Entity under clause 7.10(c) less any amount of the income that is set aside as a reserve or provision in accordance with clause 12.1; and
 - (ii) the total of the Distribution Amounts for all the prior Distribution Period in that Financial Year,
- plus any additional amount (including capital) that the Responsible Entity has determined is to be distributed.
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Distribution Period shall be determined in accordance with the following formula:

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

Where:

- A is the Distributable Amount;
- B is the aggregate of the number of Units held by the Unit Holder at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of Units held by that Unit Holder at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 12.13 (if any), multiplied by the relevant proportion; and
- C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of total Units on issue at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 12.13 (if any), multiplied by the relevant proportion.

12.5 Distribution Entitlement

- (a) The Responsible Entity shall pay to each Unit Holder its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Responsible Entity shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Responsible Entity determines it is not practical to distribute on a Distribution Date,

with any sum so retained for all purposes treated as income for the next following Distribution Period.

- (c) The Responsible Entity may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Responsible Entity under this Constitution or that is required to be deducted by law.

12.6 Discharge of Responsible Entity's obligation

It is acknowledged by Unit Holders that payments of Distributable Amounts in accordance with clause 12.4 shall be a good and complete discharge of any liability owed by the Responsible Entity to any person in respect of an entitlement to the Distributable Amount.

12.7 Capital distributions

The Responsible Entity may distribute the capital of Fund to the Unit Holders in addition to a distribution made under clause 12.4. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on issue on that date. A distribution under this clause may be in cash or of Assets or by way of issue of bonus Units.

12.8 Grossed up Tax amounts

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Amount for a Distribution Period which is referable to a dividend or other income to which they are presently entitled.

12.9 Excess distribution

If at the end of a Financial Year the auditor of the Fund determines that the amount distributed as the Distributable Amount under this clause 12 exceeds the aggregate of the net income for the Financial Year, the excess will be taken to be a distribution of capital.

12.10 Categories and source of income

The Responsible Entity may keep separate accounts for any category or source of income and distribute the income from any category or source to any Unit Holder.

12.11 Receipt

- (a) For the purposes of this clause 12, the Responsible Entity is entitled to treat any amount which the Responsible Entity is entitled to receive but has not actually received before the Distribution Calculation Date as actually received:
 - (i) before the Distribution Calculation Date; or
 - (ii) after the Distribution Calculation Date.
- (b) If any amount has been included in the Distributable Amount and is not subsequently received by the Responsible Entity, the Responsible Entity shall be entitled to recover

any amount that has been over distributed. However, the Responsible Entity shall not be bound to pursue that right of recovery. The Responsible Entity may determine that any amount so distributed is to be treated as a distribution of the capital of the Fund. No claim will lie against the Responsible Entity at the suit of any Unit Holder or any other person by reason of that distribution or any resultant loss to the Fund.

12.12 Reinvestment

A Unit Holder may, if the Responsible Entity approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 6. The procedure for reinvestment of distribution is to be determined by the Responsible Entity and notified to Unit Holders from time to time.

12.13 Other rights or restrictions

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

- (a) Units on terms which entitle the Unit Holder to a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Amount to which a Unit Holder holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (b) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued.

12.14 Withholding Tax

- (a) The Responsible Entity recover from the Unit Holder an amount that the Responsible Entity has paid in Tax on behalf of or in respect of a Unit Holder (including in respect of a distribution or an amount attributed to a Unit Holder) as a debt.
- (b) The Responsible Entity is entitled to set off an amount that the Responsible Entity can recover from the Unit Holder under clause 12.14(a) against debts due, or owed, by the Responsible Entity to the Unit Holder.

13 Powers of the Responsible Entity

13.1 General powers of Responsible Entity

- (a) Subject to this Constitution, the Responsible Entity has all the powers in respect of the Fund that it is possible under law to confer on a responsible entity as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.

- (b) In exercising its powers and carrying out its duties, the Responsible Entity must treat the Unit Holders who hold interests of the same Class equally and Unit Holders who hold interests of different Classes fairly except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c).
- (c) The generality of this clause 13.1 is not limited by anything in the remainder of this clause 13.
- (d) To the maximum extent permitted by law:
 - (i) any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment are hereby excluded; and
 - (ii) without limiting the generality of clause 13.1(d)(i), section 6 of the *Trustee Act 1958 (Vic)* is hereby expressly excluded from operation in relation to this Constitution and the Fund.

13.2 Specific powers of the Responsible Entity

Without limiting the generality of clause 13.1, the Responsible Entity in its capacity as responsible entity of the Fund may:

- (a) borrow or raise money (whether or not on security) and incur any and all types of obligations and liabilities;
- (b) create Security Interests over all or any part the Assets;
- (c) apply for listing of the Fund and quotation of the Units (or any other financial product relating to the Fund) on any stock exchange (including but not limited to the ASX) and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Unit Holder as the Unit Holder's agent or attorney to do all things necessary to effect a listing or quotation;
- (d) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
 - (i) purchasing or disposing of Assets for cash or other consideration; and
 - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction (for speculative purposes or otherwise);
- (e) subject to clause 2.2(b), mix Assets with assets of any other person or trust;
- (f) share risk and returns with any other person or trust;
- (g) vary, replace or deal with the Assets in any way;
- (h) buy-back Units;
- (i) fetter future discretions, such as by the granting of options;

- (j) enter into any arrangement or agreement with underwriters in relation to the Fund;
 - (k) exercise all voting rights conferred by the Assets as it thinks fit; and
 - (l) give guarantees and/or indemnities to any person,
- as if it were dealing with its own assets.

13.3 Delegation

- (a) Without limiting clause 13.1, the Responsible Entity may appoint any person to as its delegate, attorney or agent to:
 - (i) perform any act;
 - (ii) carry out any obligation; or
 - (iii) exercise any power,
 - (iv) that the Responsible Entity has under this Constitution.
- (b) The Responsible Entity may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Responsible Entity, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Responsible Entity and perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.
- (c) Any person appointed under clauses 13.3(a) or 13.3(b) may be an Associate or employee of the Responsible Entity.
- (d) An appointment under clauses 13.3(a) or 13.3(b) may be joint.
- (e) Subject to section 601FB of the *Corporations Act*, the Responsible Entity will not be liable for the acts or omissions of any delegate.

13.4 Advisers

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

13.5 Exercise of discretion

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

14 Holding of Assets

14.1 How held

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

14.2 Custodian

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

14.3 Holding of Assets

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

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

15 Remuneration and Expenses of Responsible Entity

15.1 Responsible Entity's Fees

Subject to the *Corporations Act* and clause 15.9, the Responsible Entity will be entitled to the following fees in respect of the Fund:

- (a) in respect of each application for Units in the Fund which the Responsible Entity accepts, an Application Fee determined by the Responsible Entity and notified to Unit Holders of up to 2% of the application money paid to acquire Units;
- (b) the Responsible Entity may deduct from the Assets of the Fund, a management fee determined by the Responsible Entity and notified to Unit Holders of up to 1% of the Gross Asset Value of the Fund calculated and accrued daily (or as otherwise determined by the Responsible Entity) and payable within seven days of the end of each month;
- (c) in respect of each redemption of Units, the Responsible Entity may deduct a redemption fee determined by the Responsible Entity and notified to Unit Holders of up to 2% of the aggregate Redemption Price for the Units from the aggregate Redemption Price of Units; and
- (d) on termination of the Fund, the Responsible Entity will be entitled to be indemnified out of the Fund for a termination fee of up to 1% of the Gross Asset Value of the Fund on the date of termination of the Fund.

15.2 Waiver of remuneration

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

15.3 Priority of Responsible Entity's remuneration

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

15.4 Establishment costs

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

15.5 Differential fee arrangements

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

15.6 Units as payment for fees

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

15.7 Fees paid to the Responsible Entity in a different capacity

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

15.8 Reimbursement of Expenses

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

15.9 Proper performance of duties

The rights of the Responsible Entity to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the

performance of its duties as Responsible Entity, are only available in relation to the proper performance of those duties.

15.10 GST

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 15.10 as those expressions in the GST Law.
- (b) Any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution represents the value of the taxable supply and does not include GST.
- (c) If the Responsible Entity makes a taxable supply in connection with or arising under this Constitution (including the performance of any of its obligations) for consideration which, under clause 15.10(b), represents its value:
 - (i) the Responsible Entity shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that taxable supply in addition to any other amount to which the Responsible Entity is entitled; or
 - (ii) the recipient of the supply must pay to the Responsible Entity, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that taxable supply,at the Responsible Entity's discretion.
- (d) The supplier of a taxable supply shall issue a valid Tax Invoice to the recipient of the supply on request.
- (e) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of GST for which the party is entitled to an input tax credit.

15.11 Taxes in other jurisdictions

- (a) Without limiting clause 15.10, any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution does not include any goods and services tax, value added tax or other similar tax payable in any jurisdiction.
- (b) In addition to any other amount to which the Responsible Entity is entitled under this Constitution, the Responsible Entity shall be entitled to be paid or reimbursed for an amount equal to any goods and services tax, value added tax or other similar tax payable by the Responsible Entity in any jurisdiction:
 - (i) from the Assets; or
 - (ii) by the Holder, where the Responsible Entity has an obligation to pay such goods and services tax, value added tax or other similar tax in relation to a supply of goods and/or services made to the Holder or other event that

triggers a liability for goods and services tax, value added tax or other similar tax,

- (iii) at the Responsible Entity's discretion.
- (iv) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of any goods and services tax, value added tax or other similar tax payable in any jurisdiction for which the party is entitled to any input tax credit or similar credit in any jurisdiction.

15.12 Sums owed to the Responsible Entity

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

16 Change in Responsible Entity

16.1 Voluntary retirement while the Fund is a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity may retire as the responsible entity of the Fund as permitted by section 601FL of the *Corporations Act*.

16.2 Voluntary retirement while the Fund is not a Registered Scheme

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

16.3 Compulsory retirement

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

16.4 New responsible entity

- (a) Any proposed replacement responsible entity shall execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) On retirement or removal the Responsible Entity shall give the new trustee or responsible entity all books, documents and records relating to the Fund.
- (c) On retirement or removal the Responsible Entity shall be released from all obligations in relation to the Fund arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Responsible Entity, all fees and other amounts owing to the Responsible Entity and all amounts deferred by the Responsible Entity pursuant to clause 15.1(a) become due and payable to the Responsible Entity from the

Assets and the new Responsible Entity must take such action as is necessary to promptly effect all such payments.

16.5 Retirement benefit

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

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

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

17 Limitation of liability

17.1 Limitation of Responsible Entity's liability

- (a) Subject to the *Corporations Act*, neither the Responsible Entity is liable for any loss or damage to any person (including any Unit Holder) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Constitution; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Constitution.
- (b) Subject to the *Corporations Act*, the liability of the Responsible Entity in relation to the Fund is limited to the Assets, from which the Responsible Entity is entitled to be, and is in fact, indemnified.
- (c) In particular, subject to the *Corporations Act*, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
 - (ii) it acted as required by law; or
 - (iii) it relied in good faith upon any signature, marking or documents.

17.2 Limitation of Unit Holders' liability

- (a) Subject to clauses 17.2(c) and 17.2(e), the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Fund.

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

18 Indemnity

18.1 Responsible Entity's indemnity

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

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

18.2 Responsible Entity's indemnity continuing

- (a) The right of indemnity of the Responsible Entity in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 18.1 will continue in favour of the Responsible Entity after it has ceased to be the Responsible Entity and will apply even if at any time the Liabilities exceed the Net Asset Value.
- (c) For the avoidance of doubt, the Responsible Entity may be entitled to an indemnity under clause 18.1 in respect of any act or omission of a delegate or agent appointed by the Responsible Entity for which the delegate or agent is not obliged to fully indemnify the Fund.

18.3 Payment

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

18.4 Responsible Entity not to incur liability

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

18.5 Compliance Committee and Advisory Committee

If a Compliance Committee Member incurs a liability in connection with the Fund in that capacity in good faith, the Responsible Entity may indemnify the Compliance Committee Member out of the Assets, to the extent permitted by the *Corporations Act*.

19 Responsible Entity's indemnity against Tax liability

19.1 Indemnity

The Responsible Entity is entitled to be indemnified by a Unit Holder or a former Unit Holder to the extent that it incurs a liability for Tax as a result of the Unit Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.

19.2 Joint Holders

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

20 Register

20.1 Keeping Register

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

(a) its registered office;

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

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

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

20.2 Responsible Entity's powers

The Responsible Entity has the powers conferred under the *Corporations Act* in relation to the Register.

20.3 Inspection

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

20.4 Changes

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

20.5 Register conclusive

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

21 Amendments to this Constitution

21.1 Overriding provision

This clause 21 shall be read subject to clause 22.

21.2 Responsible Entity may amend

- (a) Subject to the *Corporations Act* and any other approval that may be required by law, the Responsible Entity may by deed replace or amend this Constitution (including this clause) or as otherwise permitted by the *Corporations Act*.
- (b) Such replacement or amendment may be effected by:
 - (i) Special Resolution of the Unit Holders; or
 - (ii) by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Unit Holders' rights.

21.3 Compliance with the AMIT Regime

Without in any way limiting the Responsible Entity's powers in clause 21.2, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

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

21.4 Statutory requirements

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

22 Corporations Act and ASIC Exemptions

22.1 Corporations Act

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

22.2 Agreed amendments

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

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

22.3 ASIC Exemptions

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

23 Termination of Fund

The Fund terminates on the earlier of:

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

24 Termination and winding up of Fund

24.1 Realisation of Assets

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

- (a) not issue or redeem Units in the Fund; and
- (b) sell and realise the Assets and, subject to clauses 24.3, 24.4 and 24.5, distribute to the Unit Holders the amount calculated in accordance with clause 24.2(a).

24.2 Procedure on winding up of Fund

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

24.3 Responsible Entity may recover termination fee and other Expenses

The Responsible Entity shall be entitled to be indemnified out of the Fund for, and to be paid and retain from the proceeds, the termination fee in clause 15.1(d) and all Expenses incurred or likely to be incurred:

- (a) by the Responsible Entity in connection with the winding up of the Fund;
- (b) by or on behalf of any creditor of the Responsible Entity in relation to the Fund; and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Responsible Entity in connection with the winding up of the Fund.

24.4 Retention of Assets

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

24.5 Postponement of realisation

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

24.6 Responsible Entity's obligation to make distributions

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

24.7 Cancellation of Units

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

24.8 Continuation of powers

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

24.9 Audit of accounts of Fund

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

25 Meetings of Holders

25.1 Convening meetings

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

25.2 Calling and holding meetings while the Fund a Registered Scheme

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

- (a) despite section 252G(4) of the *Corporations Act*, a notice of meeting sent by post is taken to be given the day after it is posted;
- (b) despite section 252R(2) of the *Corporations Act*, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;
- (c) despite section 252R(3) of the *Corporations Act*, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the

Responsible Entity may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and

- (d) despite section 252Y(2) of the *Corporations Act*, an appointment of a proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.

25.3 Calling and holding meetings while Fund is not a Registered Scheme

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

25.4 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

25.5 Written resolution

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

25.6 Conduct of meetings of Unit Holders

- (a) A meeting of Unit Holders may be called and held:
 - (i) in person;
 - (ii) by telephone;
 - (iii) by audiovisual linkup; or
 - (iv) using any technology determined by the Responsible Entity before the relevant meeting.
- (b) A Unit Holder is regarded as present at a meeting of Unit Holders where the meeting is conducted by telephone, audiovisual linkup or other technology if the Unit Holder is:
 - (i) afforded a reasonable opportunity to participate in the meeting; and
 - (ii) enabled to vote on all polls held during the meeting.
- (c) A meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place determined by the Responsible Entity.

25.7 Direct voting

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

26 Notices

26.1 Notices to Unit Holders

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

26.2 Notices to joint Unit Holders

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

26.3 Notice to successor

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

26.4 Signature on notice

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

Responsible Entity or of any director, secretary or other authorised officer of the Responsible Entity.

26.5 Notices to the Responsible Entity

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

27 Complaints

If a Unit Holder submits to the Responsible Entity a complaint alleging that the Unit Holder has been adversely affected by the Responsible Entity's conduct in its management or administration of the Fund, the Responsible Entity:

- (a) shall, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) shall ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) shall act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (d) may, in its discretion, give any remedies to the complainant, including without limitation:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (e) shall communicate to the complainant as soon as practicable and, in any event, not more than 45 days after receipt by the Responsible Entity of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Unit Holder; and
 - (iii) information regarding any further avenue for complaint.

28 Rights of the Responsible Entity

28.1 Right to hold Units

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

28.2 Other capacities

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

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

28.3 Responsible Entity may rely

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and any other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by the Responsible Entity of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Responsible Entity in connection with the Fund upon which it is reasonable for the Responsible Entity to rely,

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

29 Constitution legally binding

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

30 Other obligations excluded

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

31 Payment

- (a) Any money payable by the Responsible Entity to a [Unit](#) Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's address as supplied in the Register.
- (b) A [Unit](#) Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this Constitution be paid by cheque or otherwise by electronic direct credit payment into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a [Unit](#) Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Responsible Entity in respect of the payment.
- (d) The Responsible Entity may determine that any cheque not presented within six months is cancelled. If the Responsible Entity so determines, the amount of the cheque may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 12.12. The reinvestment is deemed to be made on the day the cheque is cancelled.
- (e) If any electronic direct credit payment to a Unit Holder's nominated bank account is rejected:
 - (i) the Responsible Entity will notify the Unit Holder by letter within 5 Business Days of the rejection occurring, requesting that the Unit Holder confirm their bank account details with the Responsible Entity; and
 - (ii) if the Responsible Entity has not received the Unit Holder's updated banking details as requested under clause 31(e)(i) at least 2 Business Days before the next distribution or other payment is due to be made to the Unit Holder, the Responsible Entity may determine that the payment will be reinvested as additional Units at the next reinvestment date for the Fund in accordance with clause 12.12.
- (f) Money payable to the Responsible Entity may from time to time be paid in a manner other than that described in clause 31(a) with the Responsible Entity's consent.

32 Severability

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable, so much hereof as is necessary to render it valid and enforceable shall be

deemed to be severed but the remainder of this Constitution will remain in full force and effect.

33 Governing law

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

EXECUTED as a **Deed**

Schedule 1 - Fees and Expenses

1 Expenses

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

Expenses in any way connected with:

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

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

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

Schedule 2 - AMIT Provisions

1 Unit Holders' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Unit Holder in the Fund constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to have Clearly Defined Rights:
 - (i) the Responsible Entity may not exercise any right or power, whether it is one provided to the Responsible Entity under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Fund arising from each Unit in each relevant AMIT for the Fund to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
 - (ii) the Responsible Entity must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly except to the extent that the Responsible Entity directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c); and
 - (iii) in addition to the requirements of clause 21, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Responsible Entity powers in relation to AMIT Regime

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

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

3 Attribution of income

- (a) The Responsible Entity must attribute all of the Trust Components and Determined Trust Components of:
 - (i) the Fund; or
 - (ii) if the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class in the Fund,
 in respect of a Financial Year, to the Unit Holders or former Unit Holders under the AMIT Regime.
- (b) The Responsible Entity undertakes to perform attribution under clause 3(a) in accordance with the following principles:

- (i) the amount of each Unit Holder's or former Unit Holder's Member Components and Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units in the Fund held by the Unit Holder or former Unit Holder, having regard to the provisions of this Constitution;
 - (ii) subject to clause 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Fund;
 - (iii) subject to clause 3(b)(iv), the Responsible Entity must not attribute any part of a Determined Trust Component to a Unit Holder or former Unit Holder because of the tax characteristics of the Unit Holder or former Unit Holder;
 - (iv) the Responsible Entity may direct an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c);
 - (v) if there is more than one Class on issue in the Fund and the Responsible Entity has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Responsible Entity must only attribute Determined Trust Components of a particular Class to Unit Holders of that Class (and not any other Class); and
 - (vi) the Responsible Entity must attribute to each Unit Holder or former Unit Holder, so much of the Determined Trust Components of the Fund or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Unit Holder or former Unit Holder has become entitled to during the Financial Year.
- (c) Where the Responsible Entity exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Responsible Entity make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement provisions or amount payable to a Unit Holder under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital contemplated in the existing Distribution Entitlement provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Fund ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Fund for that or any subsequent Financial Year and to the extent required by

the AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Fund was an AMIT.

5 Determined Member Component Choice

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

6 Debt-like AMIT instruments

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

Schedule 3 - A Class Units

1 Responsible Entity Fee

- (a) In respect of A Class Units, this clause shall apply to the exclusion of clause 15.1.
- (b) Subject to the *Corporations Act* and clause 15.9, the Responsible Entity may deduct from the Assets of the A Class, a management fee determined by the Responsible Entity and notified to Unit Holders of up to 2% of the Gross Asset Value of the A Class calculated and accrued daily (or as otherwise determined by the Responsible Entity) and payable within seven days of the end of each month.

Supplemental deed poll

Signing page

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

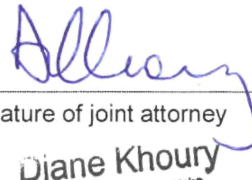
By executing this document, each joint
attorney states that the joint attorney has
received no notice of revocation of the power
of attorney



Signature of witness

Jennifer Shi Qing Zhou

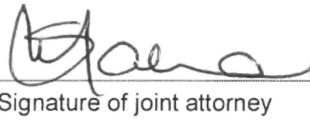
Name of witness *(please print)*



Signature of joint attorney

Diane Khoury

Name of joint attorney
(please print)



Signature of joint attorney

SCOTT DOMINIC MAHONY

Name of joint attorney
(please print)