



Aspen Group Limited  
ABN 50 004 160 927

Aspen Property Trust  
ARSN 104 807 767

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## **ASX ANNOUNCEMENT 18 December 2019**

### **AMENDED CONSTITUTIONS OF ASPEN GROUP - CAPITAL REALLOCATION PROPOSAL**

Aspen Group ("Aspen") [ASX: APZ] today announced that it will implement the Capital Reallocation Proposal ("Proposal") approved by Securityholders at the annual general meeting held on 29 November 2019 ("AGM"). The details of the Proposal were set out in the Notice of Meeting and Explanatory Memorandum announced to the ASX on 28 October 2019. The results of the AGM are contained in a separate announcement.

Securityholders are not required to take any action.

#### **Amendments to Aspen's constitutions**

Pursuant to Listing Rule 15.4.2, attached is the constitution of Aspen Group Limited (ACN 004 160 927) (the "Company") as amended and lodged with the Australian Securities & Investments Commission ("ASIC") on 6 December 2019.

Pursuant to Listing Rule 15.4.2, attached is the constitution of Aspen Property Trust Limited (ACN 004 160 927) ("Trust") as amended by Evolution Trustees Ltd (ACN 611 839 519) as the responsible entity and lodged with ASIC on 18 December 2019.

The amendments to the constitution of the Company and Trust were approved by Securityholders at the AGM in order to facilitate the Proposal.

Attached:

1. Amended Company Constitution
2. Amended Trust Constitution

Announcement authorised by the Board.

**END**

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Aspen Group Limited ACN 004 160 927

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# Constitution

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# 1 Preliminary

## 1.1 Nature of Company

The Company is a public company limited by shares.

## 1.2 Status of Constitution

- (a) This Constitution is adopted by the Company in substitution for the former constitution of the Company.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

## 1.3 Definitions

In this Constitution, unless the context otherwise requires:-

**“Alternate Director”** means a person holding office as an alternate director of the Company pursuant to Clause 7.4;

**“Applicable Law”** means the Corporations Act, the Listing Rules and the SCH Business Rules;

**“Approving Resolution Deadline, in relation to a Proportional Takeover Bid”** means the day that is 14 days before the last day of the bid period;

**“Approving Resolution in relation to a Proportional Takeover Bid”** means a resolution to approve the proportional takeover bid passed in accordance with Clause 4.13(b):

**“ASIC”** means the Australian Securities and Investments Commission;

**“ASX”** means Australian Securities Exchange Limited;

**“Attached Securities”** means a Stapled Unit and any other security or securities which are from time to time Stapled or to be Stapled to a Share.

**“Auditor”** means any person appointed to perform the duties of auditor of the Company from time to time;

**“Business Day”** has the meaning which it bears in the Listing Rules;

**“Capital Reallocation Amount”** has the meaning given in the Stapled Trust Constitution;

**“Certificated Subregister”** means that part of the Register for a class of the Company’s securities that is administered by the Company and records certificated holdings of securities in that class;

**“CHES”** means the Clearing House Electronic Subregister System operated by ASX Settlement and Transfer Corporation Pty Ltd or such other securities clearing house as is approved pursuant to the Corporations Act from time to time and to which the Listing Rules apply;

**“CHES Approved Securities”** means securities of the Company which have been approved by SCH in accordance with the SCH Business Rules;

**“CHESS Subregister”** means that part of the Register for a class of Chess Approved Securities that is administered by SCH and records uncertificated holdings of securities in that class;

**“Company”** means Aspen Group Limited ACN 004 160 927;

**“Contribution Amount”** in relation to an Eligible Member, means the amount of up to [\$0.31] for each Share held by the Eligible Member;

**“Corporations Act”** means the Corporations Act 2001;

**“Directors”** means the directors of the Company from time to time and

**“Director”** means any one of them;

**“Dividend”** includes an interim dividend and a final dividend;

**“Eligible Member”** means each Member registered as a holder of Shares on the Record Date;

**“Elimination Notice”** means a notice in writing to Minority Members stating that the Company intends to sell or dispose of their Relevant Securities unless a Notice of Retention is received by the Retention Date;

**“Executive Director”** means a Director who is an employee (whether full-time or part-time) of the Company or of any Related Corporation;

**“Home Branch”** means the state branch of ASX designated as such by ASX in relation to the Company;

**“Implementation Date”** means the fifth business day after the Record Date or if an earlier date on or after the Record Date is determined by the Directors for the purposes of this definition, that earlier date;

**“Issuer Sponsored Subregister”** means that part of the Register for a class of Chess Approved Securities that is administered by the Company (and not SCH) and records uncertificated holdings of securities in that class;

**“Legal Costs”** means, in relation to a person, legal costs incurred by that person in defending an action in respect of a Liability of that person;

**“Liability”** means, in relation to a person, any liability incurred by that person as an officer of the Company or a Subsidiary;

**“Listed Securities”** means any Shares, options, stock, debentures or other securities issued by the Company from time to time and quoted on the Official List;

**“Listing Rules”** means the official listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**“Marketable Parcel”** has the meaning which it bears in the Listing Rules;

**“Member”** means a person whose name is entered in the Register as the holder of a Share from time to time;

**“Minority Member”** means any Member holding a parcel of Relevant Securities;

**“Non-executive Director”** means any Director other than an Executive Director;

**“Notice Date”** means the date on which an Elimination Notice is given;

**“Notice of Retention”** means a notice in writing from a Minority Member to the Company stating that all or some of the Relevant Securities are not to be sold or disposed of by the Company;

**“Officer”** means a Director, an Alternate Director or a Secretary;

**“Official List”** means the official list of entities that ASX has admitted and not removed;

**“Official Quotation”** means the official quotation of the Company’s securities on ASX;

**“Personal Representative”** means the legal personal representative, executor or administrator of the estate of a deceased person;

**“Prescribed Notice”** means the notice prescribed by the Corporations Act;

**“Proper SCH Transfer”** has the meaning which it bears in section 9 of the Corporations Act;

**“Proportional Takeover Bid”** means a takeover bid that is made or purports to be made under section 618(1)(b) of the Corporations Act in respect of securities included in a class of securities in the company;

**“Record Date”** means 7.00pm (Sydney time) on the date that clause 3.2A of this Constitution takes effect;

**“Register”** means the register of Members and, where applicable, includes the Certificated Subregister, the CHESS Subregister and the Issuer Sponsored Subregister and, while Stapling applies, includes the Stapling Register;

**“Related Corporation”** means a corporation that is related to the Company by virtue of sections 9 and 50 of the Corporations Act;

**“Relevant Class in relation to a Proportional Takeover Bid”** means the class of securities in the company in respect of which offers are made under the proportional takeover bid;

**“Relevant Officer”** means a person who is, or has been, a Director or Secretary;

**“Relevant Securities”** means all parcels of Securities of a particular class that are less than a Marketable Parcel at the Notice Date;

**“Representative”** means any person authorised to act as a representative of a body corporate pursuant to section 250D of the Corporations Act;

**“Responsible Entity”** means the Responsible Entity of the Stapled Trust;

**“Restricted Securities”** has the meaning which it bears in the Listing Rules;



**“Retention Date”** means the date (being not less than 42 days after the Notice Date) specified as such in the Elimination Notice;

**“Sale Securities”** means Relevant Securities for which a Retention Notice has not been received by the Retention Date;

**“SCH”** has the meaning which it bears in the Listing Rules;

**“SCH Business Rules”** has the meaning which it bears in the Corporations Act;

**“Seal”** means the common seal of the Company (if any) and, where the context so requires, includes any Share seal, certificate seal or official seal of the Company;

**“Secretary”** means any person appointed to perform the duties of secretary of the Company from time to time;

**“Securities”** has the meaning which it bears in section 92(3) of the Corporations Act;

**“Share”** means a share in the capital of the Company;

**“Stapled”** means the linking together of Shares and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which are quoted on the ASX jointly as a “stapled security” or such other term as the ASX permits;

**“Stapled Unit”** means a Unit in the Stapled Trust;

**“Stapled Trust”** means the Aspen Property Trust ARSN 104 807 767;

**“Stapled Trust Constitution”** means the constitution establishing the Stapled Trust, as may be amended from time to time;

**“Stapled Entity”** means the Stapled Trust and any other trust, corporation or managed investment scheme whose securities are Stapled to the Shares;

**“Stapled Security”** means a Share and each Attached Security as Stapled together and registered in the name of the Member in the Stapling Register.

**“Stapling”** means the process that results in Shares and Attached Securities being and remaining Stapled to each other;

**“Stapling Commencement Date”** means the date upon which Stapling of the Shares to Stapled Units is to commence as determined by the Company and the Responsible Entity;

**“Stapling Register”** means the register established under Clause 13.2(e);

**“Subsidiary”** means a body corporate that is a subsidiary of the Company by virtue of sections 9 and 46 of the Corporations Act;

**“Takeover”** has the meaning which it bears in the Listing Rules; and

**“Transmission Event”** means:-

(a) if a Member is an individual:-

- (i) the death or bankruptcy of that Member; or
- (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law relating to mental health;
- (b) if a Member is a body corporate, the deregistration of that Member; or
- (c) in any case, the vesting in, or transfer to, a person of the Shares of a Member without that person becoming a Member.

#### **1.4 Interpretation**

In this Constitution:-

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:-
- (b) a reference to a partly paid Share is a reference to a Share in respect of which there is an amount unpaid;
- (c) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (d) a reference to a meeting of Members includes a meeting of any class of Members;
- (e) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or Representative;
- (f) a reference to a notice or document in writing includes a notice or document given by facsimile, electronic address or any other form of written communication;
- (g) a reference to this Constitution is a reference to this Constitution (and where applicable any of its provisions) as modified, substituted or repealed from time to time;
- (h) references to rules are references to rules of this Constitution;
- (i) words importing the singular include the plural (and vice versa), words denoting a given sex include the other sex, and words denoting individuals include corporations (and vice versa);
- (j) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations, and other statutory instruments issued under any legislation;
- (k) if any day appointed or specified by this Constitution for the doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day; and
- (l) words and expressions defined in the Applicable Law shall, unless otherwise defined in this Constitution or unless the context otherwise requires, have the same meanings when used in this Constitution.

## **1.5 Exercise of Powers**

Where this Constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

## **1.6 Severability**

If, at any time, any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it shall not affect or impair:-

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that provision or any other provision of this Constitution.

## **1.7 Transitional**

- (a) Subject to Clause 1.7(b), the provisions of this Constitution which relate to Official Quotation including, but not limited to, Rules which refer to ASX, the Listing Rules, the SCH Business Rules, the Home Branch, CHESSE Approved Securities, Restricted Securities or Listed Securities shall not come into effect until such time as the Company is admitted to the Official List.
- (b) To the extent that any of the provisions referred to in Clause 1.7(a) can continue to have effect following severance of the matters relating to Official Quotation, then such provisions shall be valid and effectual notwithstanding Clause 1.7(a), as from the date of adoption of this Constitution by special resolution of the Members.

# **2 Share Capital**

## **2.1 Issue of Shares and Options**

- (a) Subject to Clause 2.2, the Applicable Law and any rights attached to a class of Shares, the Company (under the control of the Directors) may:-
  - (i) allot and issue unissued Shares; and
  - (ii) grant options over unissued Shares, on any terms, at any time and for any consideration, as the Directors resolve.
- (b) The Company may issue preference Shares, including redeemable preference Shares.
- (c) Subject to the Applicable Law, the Company may pay brokerage or commission to a person in respect of that person or another person agreeing to subscribe for unissued Shares or other securities of the Company.

- (d) The payment of brokerage or commission pursuant to Clause 2.1(c) may include any or all of the payment of cash, the issue of Shares or other securities, the grant of options and the transfer of assets.

## **2.2 Equal issue of Attached Securities**

While Stapling applies:

- (a) the Company must not allot or issue Shares to any person or permit securities held by any person to convert to Shares unless there is a contemporaneous and corresponding allotment or issue of Attached Securities to the same person or securities held by the same person convert contemporaneously to corresponding numbers of Attached Securities to be held by that person;
- (b) the Company must not agree conditionally or otherwise:
  - (i) to issue a Share to a person or grant an option to subscribe for a Share; or
  - (ii) to issue, or grant an option to acquire, a security capable of converting to a Share,  
  
if performance of the agreement, exercise of the option, or the conversion of the security could cause the Company to contravene Clause 2.2(a);
- (c) Shares may not be issued on the basis that they are partly paid Shares unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid; and
- (d) any issue of partly paid Shares shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

## **2.3 Variation of Rights**

- (a) Subject to the Applicable Law and the terms of issue of Shares in a particular class, the Company may:
  - (i) vary or cancel rights attached to Shares in that class; or
  - (ii) convert Shares from one class to another,  
by:
    - (iii) special resolution of:
      - (A) the Company; and
      - (B) the Members holding Shares in that class; or
    - (iv) the written consent of Members with at least 75% of the votes in that class.

- (b) The provisions of this Constitution relating to meetings of Members apply (so far as they are capable of application and with the necessary changes) to every meeting held pursuant to Clause 2.3(a) except that:-
  - (i) a quorum for each meeting is 2 Members who together hold, or represent by proxy, one-third of the issued Shares of the relevant class; and
  - (ii) if a person holds all of the issued Shares of the relevant class, a quorum is constituted by that person.

## **2.4 Conversion of Shares**

- (a) Subject to Clause 2.4(b) and the Listing Rules, the Company may, by ordinary resolution passed at a general meeting of Members, convert all or any of its Shares into a larger or smaller number of Shares.
- (b) While Stapling applies, Shares may only be converted into a larger or smaller number of Shares under Clause 2.4(a) if the related Attached Securities are also converted at the same time and to the same extent.

## **2.5 Reductions of Capital and Buy-backs**

- (a) Subject to Clause 2.5(d) and the Applicable Law, the Company may:-
  - (i) reduce its share capital; and
  - (ii) buy-back Shares in itself, on any terms and at any time.
- (b) The distribution of any reduction or buy-back in respect of the share capital of the Company may include any or all of the payment of cash, the issue of Shares or other securities, the grant of options and the transfer of assets.
- (c) If the distribution of any reduction or buy-back in respect of the share capital of the Company includes an issue or transfer of shares in a body corporate, each Member:-
  - (i) agrees to become a member of that body corporate; and
  - (ii) in the case of a transfer, appoints the Company and each Director as its agent to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.
- (d) While Stapling applies, the Company must not reduce its share capital or buy back any Shares unless there occurs contemporaneously a buy-back or reduction of the corresponding number of Attached Securities in a manner which ensures that at all times a person who holds Shares holds an equal number of Attached Securities.

## **2.6 Recognition of Ownership**

Except as required by law or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Member registered as the holder of that Share.

## **2.7 Joint Holders**

- (a) If a Share is held jointly by 2 or more persons, those persons hold that Share as joint tenants.
- (b) The Company is not required to register more than 3 persons as joint holders of a Share.

## **2.8 Certificates**

- (a) Subject to the Applicable Law and this Constitution, each person whose name is entered as a Member in the Register is entitled, free of charge, to receive a Share certificate under the seal in accordance with the Corporations Act in respect of each class of Shares registered in the Member's name. In addition:-
  - (i) the Company shall dispatch all Share certificates, required by this Constitution to be issued, within 5 Business Days of the issue of the relevant Shares;
  - (ii) if any Shares are jointly held:-
    - (A) the Company is not required to issue more than one Share certificate; and
    - (B) delivery of a Share certificate to any one of the joint holders is deemed to be delivery to all of them;
  - (iii) each Share certificate issued in accordance with this Clause 2.7 must include all information required by the Listing Rules or the SCH Business Rules to be provided to the holder of the Shares; and
  - (iv) subject to the Corporations Act, the Company must issue a replacement Share certificate if:-
    - (A) the Company receives and cancels the existing Share certificate; or
    - (B) the Company is satisfied that the existing Share certificate has been lost or destroyed and the Member pays such fee as the Directors resolve from time to time.
- (b) Clause 2.7(a) shall not apply it and to the extent that, on an application by or on behalf of the Company, ASIC has made a declaration under section 1096(3) of the Corporations Act that the Company is a person in relation to whom that section does not apply.
- (c) Any certificates in respect of Shares which are issued may, if the directors so determine, record both the number of Shares and the number of Attached Securities held by each member.

## **2.9 Non-issue or Cancellation of Certificates**

- (a) Notwithstanding any other provision of this Constitution, the Company:-
  - (i) need not issue a Share certificate; and

- (ii) may cancel any Share certificate without issuing a substitute Share certificate, in respect of any Shares in any circumstances where the non-issue or cancellation of that Share certificate is permitted by the Applicable Law.
- (b) Where the Directors have determined not to issue Share certificates or to cancel existing Share certificates, a Member is entitled to receive such statements of the holdings of the Member as are required to be distributed to the Member under the Applicable Law.

## **2.10 Restricted Securities**

- (a) The Company must comply with the Listing Rules in respect of Restricted Securities.
- (b) Notwithstanding the generality of Clause 2.10(a):-
  - (i) Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX;
  - (ii) the Company must refuse to acknowledge an assignment or disposal (including registering a transfer) of Restricted Securities during the escrow period except as permitted by the Listing Rules or ASX; and
  - (iii) during a breach of the Listing Rules relating to Restricted Securities or a breach of any escrow agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **2.11 Power to Sell Unmarketable Parcels**

- (a) Subject to the Applicable Law, this Clause 2.11 and Clause 2.12, the Company may give an Elimination Notice at any time.
- (b) The Company may only give an Elimination Notice once in any 12 month period.
- (c) The Company's power under Clause 2.11(a) lapses following the announcement of a Takeover, however, the procedure may be started again after the close of the offers made under the Takeover.
- (d) Subject to the Applicable Law, the Company may sell any Securities of a Member if the Securities held by that Member are in a new holding created by a transfer on or after 1 September 1999 of a number of Securities of that class that was less than a Marketable Parcel at the time:-
  - (i) a Proper SCH Transfer was initiated; or
  - (ii) a paper based transfer was lodged.
- (e) The Company must give a Member referred to in Clause 2.11(d) a notice stating that the Securities have been sold or disposed of.

- (f) No sale under Clause 2.11(d) may occur unless a contemporaneous sale of an identical number of Attached Securities is effected by the relevant Stapled Entities.

## **2.12 Exercise of Power of Sale of Unmarketable Parcels**

- (a) Subject to Clause 2.11 and this Clause 2.12, the exercise by the Company of the power referred to in Clause 2.11 extinguishes:-
  - (i) all interests in the Sale Securities of the former Minority Member; and
  - (ii) all claims against the Company in respect of the Sale Securities by that Minority Member, including all Dividends determined to be paid in respect of those Sale Securities and not actually paid.
- (b) For the purposes of the sale or disposal of Sale Securities under Clause 2.11 and this Clause 2.12, each Minority Member appoints the Company:-
  - (i) as the Minority Member's agent to sell or otherwise dispose of all of the Sale Securities at such price or consideration, on such other terms, in such manner, and at such times as the Directors think fit;
  - (ii) as the Minority Member's agent to receive the proceeds of sale on behalf of the Minority Member; and
  - (iii) each of its Directors jointly and severally, as the Minority Member's attorneys, in that Minority Member's name and on that Minority Member's behalf, to effect all transfer documents, deeds, instruments or other documents necessary to sell or dispose of the Sale Securities.
- (c) Subject to the Applicable Law and Clause 2.11 and this Clause 2.12, the Company may sell, or dispose of, Sale Securities at any time, in any manner and on any terms as the Directors may determine in their absolute discretion.
- (d) The Company may:-
  - (i) exercise any powers permitted under the Applicable Law to enable the sale or disposal of Sale Securities under Clause 2.11 and this Clause 2.12;
  - (ii) receive the proceeds of any sale or disposal of the Sale Securities;
  - (iii) appoint a person to sign a transfer for the Sale Securities; and
  - (iv) enter in the Register the name of the person to whom Sale Securities are sold or disposed.
- (e) The person to whom a Sale Security is sold or disposed need not enquire whether the Company:-
  - (i) properly exercised its power under Clause 2.11 and this Clause 2.12 in respect of that Share; or



- (ii) properly applied the proceeds of sale or disposal of those Securities, and the title of that person is not affected by those matters.
- (f) The remedy of any person aggrieved by a sale or disposal of Sale Securities is in damages only and against the Company exclusively.
- (g) A certificate in writing from the Company, signed by a Director or Secretary, stating that the Sale Securities were sold, or disposed of, in accordance with Clause 2.11 and this Clause 2.12 is sufficient evidence of those matters.
- (h) If the Company exercises its power under Clause 2.11(a)-(c), either the Company or the person to whom a Sale Security is sold, or disposed of, must pay the expenses of the sale or disposal.
- (i) The Company must apply the proceeds of any sale or disposal of any Sale Securities in the following order:-
  - (i) in the case of an exercise of its power under Clause 2.11(d)-(e), the expenses of the sale or disposal;
  - (ii) the amounts due and unpaid in respect of those Sale Securities; and
  - (iii) the balance (if any) to the former Minority Member or the former Minority Member's Personal Representative, on the Company receiving the certificate (if any) for those Sale Securities or other evidence satisfactory to the Company regarding the ownership of those Securities.
- (j) If the Company is entitled to exercise its power under Clause 2.11 and this Clause 2.12, the Company may, by resolution of the Directors, remove or change either or both:-
  - (i) the right to vote; and
  - (ii) the right to receive Dividends,
 of the relevant Minority Member in respect of some or all of the Relevant Securities liable to be sold or disposed of.
- (k) After the sale of the relevant Sale Securities, the Company must pay to the person entitled any Dividends that have been withheld pursuant to Clause 2.12(j).

## **2.13 No Prohibition on Foreign Ownership**

Nothing in this Constitution shall have the effect of limiting or restricting the ownership of any securities of the Company by foreign persons except where such limits or restrictions are prescribed by Australian law.

## **3 Calls, Company Payments, Forfeiture and Liens**

### **3.1 Calls**

- (a) Subject to the Corporations Act, Clause 3.1(r) and the terms of issue of a Share, the Company (under the control of the Directors) may, at any time, make calls on the Members of a Share for all, or any part of the amount unpaid on the Share.
- (b) The Company (under the control of the Directors) may make calls payable for one or more Members for different amounts and at different times.
- (c) Subject to the terms of issue of a Share, a call may be made payable by instalments.
- (d) The Directors may revoke or postpone a call or extend the time for payment of a call.
- (e) A call is made when the Directors resolve to make the call.
- (f) The Company must give notice of a call to Members as required by the Applicable Law.
- (g) A notice of a call must:-
  - (i) be in writing;
  - (ii) specify the amount of the call;
  - (iii) specify the time and place of payment of the call; and
  - (iv) specify the person to whom that call must be paid.
- (h) A call is not invalid if:-
  - (i) a Member does not receive notice of the call; or
  - (ii) the Company accidentally does not give notice of the call to a Member.
- (i) A Member must pay to the Company the amount of each call made on the Member to the persons and at the times and places specified in the notice of the call.
- (j) If an amount unpaid on a Share is payable, by the terms of issue of the Share or otherwise, in one of more fixed amounts on one or more fixed dates, the Member of that Share must pay to the Company those amounts on those dates.
- (k) A Member must pay to the Company:-
  - (i) interest at the rate specified in Clause 3.6(a) on any amount referred to in Clause 3.1(i) or Clause 3.1(j) which is not paid on or before the time appointed for payment, from the time appointed for payment to the time of the actual payment; and

- (ii) expenses incurred by the Company because of the failure to pay, or late payment of that amount.
- (l) The Directors may waive payment of all, or any part of, an amount payable under Clause 3.1(k) and, while Stapling applies, such waiver shall extend to any moneys unpaid on Attached Securities.
- (m) The joint holders of a Share are jointly and severally liable for the payment of all calls due in respect of that Share.
- (n) The Company may recover an amount due and payable under this Clause 3.1 from a Member by:-
  - (i) commencing legal action against the Member for all, or part of, the amount due;
  - (ii) enforcing a lien on the Share in respect of which the call was made; or
  - (iii) forfeiting the Share in respect of which the call was made.
- (o) The debt due in respect of an amount payable under this Clause 3.1 in respect of a Share is sufficiently proved by evidence that:-
  - (i) the name of the Member sued is entered in the Register as one or more of the holders of that Share; and
  - (ii) there is a record in the minute books of the Company of:-
    - (A) in the case of an amount referred to in Clause 3.1(k), that amount; or
    - (B) in any other case, the resolution making the call.
- (p) The Company may:-
  - (i) accept from any Member all, or any part of, the amount unpaid on a Share held by the Member before that amount is called for;
  - (ii) pay interest at any rate the Directors resolve, on the amount paid before it is called, from the date of payment until and including the date the amount becomes actually payable; and
  - (iii) repay the amount paid to that Member.
- (q) An amount paid in advance pursuant to paragraph 3.1(p)(i) does not confer a right to participate in:-
  - (i) a Dividend determined to be paid from the profits of the Company; or
  - (ii) any surplus of the Company in a winding up of the Company, for the period before the date when the amount paid would have otherwise become payable.
- (r) While Stapling applies, the Company may not make a call unless an equivalent call is also made by the Stapled Entity in relation to Attached Securities.

### 3.2 Company Payments on Behalf of a Member

- (a) A Member or, if the Member is deceased, the Member's Personal Representative, must indemnify the Company against any liability which the Company has under any law to make a payment (including payment of a tax) in respect of:-
  - (i) a Share held by that Member (whether solely or jointly);
  - (ii) a transfer or transmission of Shares by that Member;
  - (iii) a Dividend or other money which is, or may become, due or payable to that Member; or
  - (iv) that Member.
- (b) A member, or if the Member is deceased, the Member's Personal Representative, must pay to the Company immediately on demand:-
  - (i) the amount required to reimburse the Company for a payment referred to in Clause 3.2(a); and
  - (ii) pay to the Company interest at the rate specified in Clause 3.6(a) on any amount referred to in Clause 3.2(a) paid by the Company, from the date of payment by the Company until and including the date the Company is reimbursed in full for that payment.
- (c) The Company may refuse to register a transfer of any Shares by a Member referred to in Clause 3.2(a), or that Member's Personal Representative, until all money payable to the Company under this Clause 3.2(a)-(d) has been paid.
- (d) The powers and rights of the Company under this Clause 3.2(a)-(d) are in addition to any right or remedy that the Company may have under the law which requires the Company to make a payment referred to in Clause 3.2(a).
- (e) The company may recover an amount due and payable under Clause 3.2(a)-(d) from the Member or the Member's Personal Representative by any or all of:-
  - (i) deducting all, or part of, that amount from any other amount payable by the Company to that person in respect of the Shares of that person;
  - (ii) commencing legal action against that person for all, or part of, that amount; or
  - (iii) enforcing a lien on one or more of the Shares of that person.
- (f) The Directors may waive any or all of the rights of the Company under this Clause 3.2.

### 3.2A Capital Reallocation

- (a) ***(Increase in liability to contribute to share capital)*** If on or before the Record Date, the Responsible Entity determines in accordance with the

Stapled Trust Constitution to pay a Capital Reallocation Amount to Stapled Trust Unitholders then:

- (i) the liability of each Eligible Member to contribute to the share capital of the Company is increased with effect on and from the Implementation Date by the Contribution Amount; and
  - (ii) each Eligible Member is liable to pay to the Company on the Implementation Date the Contribution Amount, in respect of each share in the Company held by the Eligible Member on the Record Date and is taken to have been made subject to a call for the Contribution Amount made and payable on the Implementation Date.
- (b) **(Payment of increased liability)** If the Responsible Entity determines in accordance with the Stapled Trust Constitution to pay a Capital Reallocation Amount to the Company on behalf of Eligible Members which is equal to or greater than the product derived by multiplying the number of Stapled Securities on issue as at the Record Date by the Contribution Amount, then:
- (i) the Company accepts the Capital Reallocation Amount as a good and final discharge of each Eligible Member's liability under this clause 3.2A to contribute to the share capital of, or to pay any other amount to, the Company under this clause 3.2A; and
  - (ii) each Eligible Member has, with effect on and from the receipt by the Company of the payment, no further liability under this clause 3.2A to contribute to the share capital of, or to pay any other amount to, the Company, and the determination by the Responsible Entity applies and this clause 3.2A operates in accordance with its terms despite any prior direction given by the Eligible Member in respect of payments out of the Stapled Trust; and
- (c) the Company may (following the above steps) direct the Responsible Entity to retain and apply all or any part of the Capital Reallocation Amount towards repayment of any loan to the Company from the Stapled Trust.

### **3.3 Forfeiture**

- (a) The Directors may resolve that a Share of a Member is forfeited if:-
- (i) the Member does not pay a call or instalment on that Share on or before the date for its payment; and
  - (ii) the Company gives the Member notice in writing:-
    - (A) requiring the Member to pay that call or instalment, any interest on it and all expenses incurred by the Company by reason of the non-payment; and

- (B) stating that the Share is liable to be forfeited if the Member does not pay to the Company, at the place specified in the notice, the amount specified in the notice, within the period required by the Applicable Law; and
  - (C) the Member does not pay that amount in accordance with that notice.
- (b) When any Share has been forfeited, the Company must:-
  - (i) give notice in writing of the forfeiture to the Member registered as its holder before the forfeiture; and
  - (ii) record the forfeiture with the date of forfeiture in the Register.
- (c) Failure by the Company to comply with any requirement in Clause 3.3(b) does not invalidate the forfeiture.
- (d) The forfeiture of a Share extinguishes:-
  - (i) all interests in that Share of the former Member; and
  - (ii) all claims against the Company in respect of that Share by the former Member, including all Dividends determined to be paid in respect of that Share and not actually paid.
- (e) A former Member of a forfeited Share must pay to the Company:-
  - (i) all calls, instalments, interest and expenses in respect of that Share at the time of forfeiture; and
  - (ii) interest at the rate specified in Clause 3.6(a) on those amounts from the time of forfeiture until and including the date of payment of those amounts.
- (f) The Company may sell, reissue, or otherwise dispose of, a Share which has been forfeited on any terms and in any manner as the Directors resolve.
- (g) The Company may, by ordinary resolution passed at a general meeting of Members, cancel a Share which has been forfeited under the terms on which the Share is on issue.
- (h) A certificate in writing from the Company signed by a Director or Secretary certifying that a Share was forfeited on a specified date is sufficient evidence of:-
  - (i) the forfeiture of that Share; and
  - (ii) the right and title of the Company to sell, reissue, or otherwise dispose of, that Share.
- (i) Subject to the Corporations Act, the Directors may:-
  - (i) waive any or all of the rights of the Company under this clause 3.2A; and

- (ii) at any time before a sale, disposition, reissue or cancellation of a forfeited Share, cancel the forfeiture on any terms as the Directors resolve.
- (j) While Stapling applies, notwithstanding any other provisions of this Constitution:
  - (i) the Company may not forfeit, cancel or accept a surrender of a Share held by a person unless contemporaneously with the forfeiture of the Shares the relevant Stapled Entities forfeit, redeem or otherwise cancel the relevant Attached Securities held by the same person; and
  - (ii) the Company may not sell, re-issue or otherwise dispose of a forfeited Share to a person unless contemporaneously with the sale, re-issue or other disposal the person acquires the Attached Securities,

in each case with the purpose of ensuring that at all times a person who holds Shares holds an equal number of the Attached Securities and that a person who holds the Attached Securities holds an equal number of Shares.

### **3.4 Liens**

- (a) The Company has a first ranking lien on:-
  - (i) each Share and, while Stapling applies, each Stapled Security registered in the name of a Member;
  - (ii) the proceeds of sale of those Shares and, while Stapling applies, those Stapled Securities; and
  - (iii) all Dividends determined to be payable in respect of those Shares and, while Stapling applies, those Stapled Securities, for:-
    - (A) each unpaid call or instalment which is due but unpaid on those Shares and, while Stapling applies, those Stapled Securities;
    - (B) all amounts which the Company is required by law to pay, and has paid, in respect of those Shares (including any payment under Clause 3.2) or the forfeiture or sale of those Shares and, while Stapling applies, those Stapled Securities; and
    - (C) all interest and expenses due and payable to the Company under this Clause 3.
- (b) Subject to Clause 3.5, the Company may sell a Share or, while Stapling applies, a Stapled Security of a Member to enforce a lien on the Share or, while Stapling applies, the Stapled Security if:-
  - (i) an amount secured by that lien is due and payable;

- (ii) the Company gives the Member or the Member's Personal Representative notice in writing:-
  - (A) requiring payment of that amount, any interest on it and all expenses incurred by the Company by reason of the non-payment; and
  - (B) stating that the Share or, while Stapling applies, the Stapled Security is liable to be sold if that person does not pay to the Company, at the place specified in the notice, the amount specified in the notice within the period required by the Applicable Law;
- (iii) while Stapling applies, the Company gives the Responsible Entity notice in writing that it proposes to exercise its lien on the Stapled Security; and
- (iv) the Member or the Member's Personal Representative does not pay that amount in accordance with that notice.
- (c) Registration of a transfer of a Share or Stapled Security by the Company releases any lien of the Company on the Share or, while Stapling applies, the Stapled Security, in respect of any amount owing on that Share or Stapled Security, unless the Company gives notice in writing, to the person to whom that Share or Stapled Security is transferred, of the amount owing.
- (d) The Directors may waive any or all of Company's rights under this Clause 3.4.

### **3.5 Sales, Disposals and Reissues**

- (a) The Company may:-
  - (i) receive the purchase money or consideration for Shares or Stapled Securities sold, or disposed of, under this Clause 3;
  - (ii) appoint a person to sign a transfer of Shares or Stapled Securities sold, or disposed of, under this Clause 3; and
  - (iii) enter in the Register the name of the person to whom the Shares or Stapled Securities are sold or disposed.
- (b) The person to whom a Share or Stapled Security is sold or disposed under this Clause 3 need not enquire whether the Company:-
  - (i) properly exercised its powers under this Clause 3 in respect of that Share or Stapled Security; or
  - (ii) properly applied the proceeds of sale or disposal of those Shares, or Stapled Securities and the title of that person is not affected by those matters.
- (c) The remedy (if any) of any person aggrieved by a sale or other disposal of Shares or Stapled Securities under this Clause 3 is in damages only and against the Company exclusively.



- (d) A certificate in writing from the Company signed by a Director or Secretary that a Share or Stapled Security was sold, reissued or otherwise disposed of in accordance with this Clause 3 is sufficient evidence of those matters.
- (e) The Company must apply the proceeds of any sale, re-issue or other disposal of any Shares or Stapled Securities, under this Clause 3, and, while Stapling applies, in consultation with the Responsible Entity, in the following order:-
  - (i) the expenses of the sale, other disposal or reissue;
  - (ii) the amounts due and unpaid in respect of those Shares and or, while Stapling applies, Stapled Securities; and
  - (iii) the balance (if any) to the former Member or the former Member's Personal Representative, on the Company receiving the certificate (if any) of those Shares or Stapled Securities or other evidence satisfactory to the Company regarding the ownership of those Shares or Stapled Securities.

### **3.6 Interest**

- (a) A person must pay interest under this Clause 3 to the Company:-
  - (i) at a rate the Directors resolve; or
  - (ii) if the Directors do not resolve, at 8% per annum.
- (b) Interest payable to the Company under this Clause 3 accrues daily.
- (c) The Company may capitalise interest payable under this Clause 3 at any interval the Directors resolve.

## **4 Transfer of Shares**

### **4.1 Participation in CHES**

Subject to the Applicable Law, the Directors may do anything they consider necessary or desirable to facilitate participation by the Company in CHES or any other computerised or electronic share transfer registration or stock market settlement system introduced by, or acceptable to, ASX in respect of transfers of, or dealings in, marketable securities.

### **4.2 Form of Transfer**

Subject to this Constitution, Members may transfer any Shares held by them by:-

- (a) a Proper SCH Transfer or any other method of transferring or dealing in Shares introduced by ASX or operated in accordance with the SCH Business Rules or the Listing Rules and, in such case, recognised under the Corporations Act; or

- (b) an instrument in writing in any usual or common form or in any other form that the Directors, in their absolute discretion, approve from time to time.

#### **4.3 CHES Transfers**

- (a) The Company must comply with all obligations imposed on it under the Applicable Law in respect of a Proper SCH Transfer or any other transfer of Shares.
- (b) Notwithstanding any other provision of this Constitution, the Company must not prevent, delay or interfere with the registration of a Proper SCH Transfer or any other transfer of Shares.

#### **4.4 Registration Procedure**

Where an instrument of transfer referred to in Clause 4.2(b) is used by a Member to transfer Shares, the following provisions apply:-

- (a) the instrument of transfer must be executed by, or on behalf of, both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Corporations Act;
- (b) the instrument of transfer must be left at the registered office of the Company for registration accompanied by the relevant Share certificate (if any) and such other evidence as the Directors may require to prove:-
  - (i) the title of the transferor; and
  - (ii) the transferor's right to transfer the Shares;
- (c) a fee must not be charged on the registration of the transfer; and
- (d) on registration of the transfer, the Company must cancel the old Share certificate (if any).

#### **4.5 Simultaneous transfer of Attached Securities**

While Stapling applies, any transfer of a Share under this Clause may only be made if there is a simultaneous transfer of Attached Securities.

#### **4.6 Refusal to Register Transfers**

- (a) The Directors may refuse to register any transfer of Shares (other than a Proper SCH Transfer) where:-
  - (i) the Applicable Law permits the Company to do so;
  - (ii) the Applicable Law or any law relating to stamp duty requires the Company to do so; or
  - (iii) the transfer is a transfer of Restricted Securities which is, or might be, in breach of the Listing Rules or any escrow agreement entered into by the Company in respect of the Restricted Securities.
- (b) Where the Directors refuse to register a transfer pursuant to Clause 4.6(a), they must give notice in writing of such refusal (including the

reasons for such refusal) to the transferee and the lodging broker (if any) in accordance with the Applicable Law.

#### **4.7 Noninterference with Registration**

Notwithstanding any other provision of this Constitution, the Company must not prevent or interfere with the registration of a transfer of Shares in a manner which is contrary to the Listing Rules or the SCH Business Rules.

#### **4.8 Closure of Register**

Subject to the Listing Rules and the SCH Business Rules, the Register may be closed during such times as the Directors may determine, not exceeding:-

- (a) 30 days in each calendar year; or
- (b) any one period of more than 5 consecutive Business Days.

#### **4.9 Retention of Transfers**

- (a) Subject to the SCH Business Rules, all registered instruments of transfer must be retained by the Company.
- (b) Any instrument of transfer which the Directors decline or refuse to register must be returned to the transferee on demand (except in the case of fraud).

#### **4.10 Powers of Attorney**

Any power of attorney granted by a Member which empowers the grantee to transfer Shares and is lodged, produced or exhibited to the Company or any Officer:-

- (a) shall be taken and deemed to continue and remain in full force and effect, as between the Company and the grantor of the power;
- (b) may be acted upon until express notice in writing of:-
  - (i) its revocation; or
  - (ii) the death of the grantor of the power, is lodged at the registered office of the Company or at the place where the Register is kept.

#### **4.11 Other Securities**

The provisions of this Clause 4 shall apply, with the necessary alterations, to any other Listed Securities (including, without limitation, Stapled Securities while Stapling applies) issued by the Company from time to time.

#### **4.12 Compliance with Rules**

The Company must comply with the Listing Rules and the SCH Business Rules in relation to all matters covered by such rules.

#### **4.13 Transferor Remains Holder Until Registration**

A transferor of Shares remains the registered holder of the Shares until:-

- (a) a Proper SCH. Transfer has taken effect in accordance with the SCH. Business Rules;

- (b) the transfer is registered in the name of the transferee and is entered in the Register,

whichever is the earlier.

#### **4.14 Plebiscite to Approve Proportional Takeover Bids**

- (a) Despite Clause 4.3 and 4.6, a transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid must not be registered unless and until an approving resolution to approve the proportional takeover bid has been passed or is taken to have been passed in accordance with Clause 4.13(b).
- (b) Where offers have been made under a proportional takeover bid, the directors must:
  - (i) convene a meeting of the persons entitled to vote on the approval resolution for the purpose of considering and, if thought fit, passing a resolution to approve the proportional takeover bid; and
  - (ii) ensure that such a resolution is voted on it in accordance with this Clause 4.13(b),before the approving resolution deadline.
- (c) The provisions of this Constitution relating to general meetings apply, as far as they can and with such changes as are necessary, to a meeting that is convened pursuant to Clause 4.13(b).
- (d) The bidder under a proportional takeover bid and any associates of the bidder are not entitled to vote on the approving resolution and if they do vote, their votes must not be counted.
- (e) Subject to Clause 4.14(d), a person who, as at the end of the day on which they first offer under the proportional takeover bid was made, held securities of the relevant class is entitled to vote on the approving resolution relating to the proportional takeover bid and, for the purposes of so voting, is entitled to one vote for each security held at that time.
- (f) An approving resolution is to be taken as passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one half and otherwise is to be taken to have been rejected.
- (g) If an approving resolution has not been voted on in accordance with this Clause 4.13(b)-(g) before the approving resolution deadline, approving resolution will be taken to have been passed in accordance with this Clause 4.13(b) on the approving resolution deadline.

#### **4.15 Sunset Clause for Clause 4.13**

Clause 4.13 ceases to have effect at the end of 3 years beginning:

- (a) where those rules have not been renewed in accordance with the Corporations Act on the date that those rules were adopted by the company; or

- (b) where those rules have been renewed in accordance with the Corporations Act on the date those rules were last renewed.

#### **4.16 Single instrument of transfer for Stapled Securities**

While Stapling applies and subject to the Corporations Act and the Listing Rules, if they apply:

- (a) the Company must not register any transfer of Shares unless it is a single instrument of transfer of Stapled Securities and any provisions of this Clause 4 referring to a transfer of Shares will be deemed to be a reference to such a transfer; and
- (b) unless the context otherwise requires, a reference in this Clause 4 to a Share will be deemed to be a reference to a Stapled Security.

## **5 Transmission of Shares**

### **5.1 Deceased Members**

- (a) If a Member (not being one of several joint holders) dies, the Company must recognise only the Personal Representative of that Member as having any title or interest in the Shares registered in the name of that Member or any benefits accruing in respect of those Shares.
- (b) If a Member (being any one or more of the joint registered holders of any Share) dies, the Company must recognise only the surviving joint registered holders of that Share as having any title to, or interest in, or any benefits accruing in respect of, that Share.
- (c) The estate of a deceased Member is not released from any liability in respect of the Shares registered in the name of that Member.
- (d) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be joint holders of that Share.

### **5.2 Transmission Events**

- (a) Subject to the Bankruptcy Act 1966 and the Corporations Act, if a person entitled to a Share because of a Transmission Event gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of any Shares, that person may:-
  - (i) elect to be registered as a Member in respect of those Shares by giving a signed notice in writing to the Company; or
  - (ii) transfer those Shares to another person.
- (b) Upon receiving a notice under Clause 5.2(a)(i) the Company must register the person as the holder of those Shares.
- (c) A transfer pursuant to Clause 5.2(a)(ii) is subject to all provisions of this Constitution relating to transfers of Shares.

- (d) A person registered as a Member as a consequence of Clause 5.2(a)-(c) must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.
- (e) A person who has given to the Directors the information referred to in Clause 5.2(a) in respect of a Share, is entitled to the same rights to which that person would be entitled if registered as the holder of that Share.

## **6 Proceedings of Members**

### **6.1 Written Resolutions of Members**

- (a) The Company may pass a resolution without a meeting of Members being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of Clause 6.1(a), each Member of a joint membership must sign the document.
- (c) While the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

### **6.2 Convening of Members' Meetings**

- (a) Subject to the Corporations Act, the Directors may call a meeting of Members at any time and place as the Directors resolve.
- (b) The Directors must call and arrange to hold a meeting of Members on the request of Members in accordance with the Corporations Act.
- (c) The Members may call and arrange to hold a meeting of Members as provided by the Corporations Act.

### **6.3 Annual General Meeting**

- (a) The Company must hold an annual general meeting of Members (AGM) in accordance with the Corporations Act.
- (b) The business of an AGM may include any or all of the following, even if not referred to in the notice of meeting:-
  - (i) the consideration of the annual financial report, Director's report and Auditor's report;
  - (ii) the election of Directors;
  - (iii) the appointment of the Auditor; and
  - (iv) the fixing of the Auditor's remuneration.
- (c) The chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, or make comments on, the management of the Company.

- (d) If the Auditor or their representative is at the meeting, the chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

#### **6.4 Notice of Members' Meetings**

- (a) The Company must give not less than Prescribed Notice for a meeting of Members.
- (b) Notice of a meeting of Members must be given to:-
  - (i) each Member;
  - (ii) each Director;
  - (iii) each Alternate Director;
  - (iv) the Auditor; and
  - (v) if the Company has issued and there are currently any Listed Securities, the Home Branch.
- (c) Subject to Clause 6.14(h), a notice of a meeting of Members must:-
  - (i) set out the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be transacted at the meeting;
  - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:-
    - (A) that the Member has a right to appoint a proxy;
    - (B) whether or not the proxy needs to be a Member; and
    - (C) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (v) if the Company is included in the Official List:-
    - (A) specify a place and fax number for the purposes of receipt of proxy appointments (and may specify an electronic address for such purposes); and
    - (B) comply with the Listing Rules.
- (d) A person may waive notice of any meeting of Members by notice in writing to the Company to that effect.

- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid if either or both:-
  - (i) a person does not receive notice of the meeting; or
  - (ii) the Company accidentally does not give notice of the meeting to a person.
- (f) Subject to the Corporations Act, the attendance of a person at a meeting of Members waives any objection that person may have:-
  - (i) to a failure to give notice of the meeting to that person in accordance with this Constitution; and
  - (ii) to the consideration of a particular matter at the meeting which is not-
    - (A) business referred to in the notice of meeting; or
    - (B) business referred to in Clause 6.3(b),
 unless the person objects to the consideration of that matter when it arises.

## **6.5 Notice to Home Branch**

Notwithstanding the generality of Clause 6.4(b)(v), if the Company is included in the Official List, the Company must notify the Home Branch:-

- (a) if any meeting at which Directors are to be elected, at least 5 Business Days before the closing day for receipt of nominations for Directors;
- (b) and in any other case, on the Business Day that the notice of meeting is dispatched to Members; and
- (c) as soon as is practicable after any general meeting of Members:-
  - (i) in the case of special business, whether or not the resolutions were carried; and
  - (ii) in the case of ordinary business, which resolutions were not carried or were amended or withdrawn.

## **6.6 Right to Attend Meetings**

- (a) Subject to Clause 6.6(c), the following persons are entitled to attend a meeting of Members:-
  - (i) each Member, in person or by proxy, attorney or Representative;
  - (ii) each Director;
  - (iii) each Alternate Director (if any);
  - (iv) the Auditor; and
  - (v) any other person or persons as the chairperson may approve from time to time.



- (b) Subject to Clause 6.6(c), while Stapling applies, the Responsible Entity, the auditor of the Stapled Trust and the representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.
- (c) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:-
  - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - (ii) has any audio or visual recording device;
  - (iii) has a placard or banner;
  - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (v) refuses to produce, or to permit examination of, any article, or the contents of any article, in the person's possession;
  - (vi) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
  - (vii) is not-
    - (A) a Member;
    - (B) a proxy, attorney or Representative of a Member; or
    - (C) the Auditor.

## **6.7 Joint Meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Company may make such rules for the conduct of such meetings as the Company determines.

## **6.8 Meetings in 2 or More Places**

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:-
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in the proceedings;
  - (ii) enables the chairperson to be aware of the proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places pursuant to Clause 6.8(a):-
  - (i) a Member present at one of the places is taken to be present at the meeting; and

- (ii) the chairperson of the meeting may determine at which place the meeting is taken to be held.

## **6.9 Quorum**

- (a) A quorum for a meeting of Members is:-
  - (i) 2 Members entitled to vote at that meeting; or
  - (ii) where the Company has only one Member, that Member.
- (b) In determining whether a quorum for a meeting of Members is present:-
  - (i) where more than one proxy, attorney or Representative of a member is present, only one of those persons is counted;
  - (ii) where a person is present as a Member and as a proxy, attorney or Representative of another Member, that person is counted separately for each appointment provided that there is at least one other Member present; and
  - (iii) where a person is present as a proxy, attorney or Representative for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- (c) A quorum for a meeting of Members must be present at the commencement of the meeting, in which case it is taken to be present at all times during the meeting unless the chairperson otherwise determines.
- (d) If a quorum for a meeting of Members is not present within 15 minutes after the time appointed for a meeting of Members:-
  - (i) where the meeting was called pursuant to Rules 6.2(b) or 6.2(c), the meeting is dissolved; and
  - (ii) in any other case, the meeting is adjourned to either:-
    - (A) the same day in the next week at the same time and place; or
    - (B) such other date, time and place as the Directors specify.
- (e) If a quorum for a meeting of Members is not present within 15 minutes after the time appointed for an adjourned meeting of Members, the meeting is dissolved.

## **6.10 Chairperson**

- (a) The chairperson of Directors elected pursuant to Clause 10.5(a) must (if present within 15 minutes after the time appointed for the meeting and willing to act) chair each meeting of Members.
- (b) If, at a meeting of Members:-
  - (i) there is no chairperson of Directors;

- (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of the meeting, the Directors may, by majority vote, elect a person present to chair all or part of the meeting.
- (c) Subject to Clause 6.10(a), if, at a meeting of Members:-
- (i) a chairperson of the meeting has not been elected by the Directors pursuant to Clause 6.10(b); or
  - (ii) the chairperson elected by the Directors is not willing to chair all or part of the meeting,
- the Members present must elect another person present and willing to act to chair all or part of the meeting.

## **6.11 General Conduct of Meetings**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members:-
- (i) is responsible for the general conduct of, and the procedures to be adopted at, the meeting;
  - (ii) may make rulings or adjourn the meeting without putting a question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
  - (iii) may determine the procedures to be adopted for the casting or recording of votes;
  - (iv) may determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
  - (v) may terminate debate or discussion on any matter being considered at the meeting and require that matter to be put to a vote;
  - (vi) may refuse to allow debate or discussion on any matter which is not business referred to in the notice of meeting or is not business referred to in Clause 6.3(b);
  - (vii) may refuse to allow any amendment to be moved to a resolution set out in the notice of meeting; and
  - (viii) may delegate to any person any power conferred by this Clause 6.11(a).
- (b) The powers conferred on the chairperson of a meeting of Members pursuant to Clause 6.11(a) shall not limit the powers otherwise conferred by law.
- (c) Unless the approval of the chairperson of the meeting of Members is obtained, no person may move at any meeting of Members:-

- (i) any resolution (other than a resolution in the same terms as specified in the notice of meeting); or
- (ii) any amendment of a resolution, in respect of any business other than:-
  - (A) the consideration of the annual financial report, Director's report and Auditor's report;
  - (B) the election of Directors;
  - (C) the appointment of the Auditor; and
  - (D) the fixing of the Auditor's remuneration.

## **6.12 Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- (b) Unless a poll is demanded pursuant to Clause 6.13, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) On a show of hands, a declaration by the chairperson of a meeting of Members is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received.

## **6.13 Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members except on a resolution concerning:-
  - (i) the election of a chairperson of that meeting; or
  - (ii) the adjournment of that meeting.
- (b) A poll on a resolution at a meeting of Members may be demanded by:-
  - (i) at least 5 Members present and entitled to vote on the resolution;
  - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:-
  - (i) before a vote is taken; or
  - (ii) before or immediately after the voting results on a show of hands are declared.
- (d) A demand for a poll on a resolution at a meeting of Members may be withdrawn at any time.
- (e) A poll demanded on a resolution at a meeting of Members (other than for the election of the chairperson of that meeting or the adjournment of that

meeting) must be taken when, and in the manner, the chairperson directs.

- (f) A demand for a poll on a resolution at a meeting of Members shall not prevent:-
  - (i) the continuation of the meeting; or
  - (ii) the transaction of any other business of the meeting.

#### **6.14 Adjourned, Cancelled and Postponed Meetings**

- (a) Subject to the Corporations Act, the chairperson:-
  - (i) may adjourn a meeting of Members to any date, time and place as the chairperson determines; and
  - (ii) must adjourn a meeting of Members (to a date, time and place to be determined by the chairperson) if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so.
- (b) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (c) A resolution passed at a meeting of Members resumed after an adjournment is passed on the day it was passed.
- (d) Only unfinished business may be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to the Corporations Act and this Clause 6.14, the Directors may, at any time, postpone or cancel a meeting of Members by giving notice, not less than 5 Business Days before the time at which the meeting was to be held, to:-
  - (i) each Member;
  - (ii) each Director;
  - (iii) each Alternate Director (if any); and
  - (iv) the Auditor, as at the date of the notice.
- (f) A meeting of Members called pursuant to Clause 6.2(b) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
- (g) A meeting of Members called pursuant to Clause 6.2(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- (h) A notice of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

## **6.15 Voting Rights**

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Members, every Member present has one vote.
- (b) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Members, every Member present has:-
  - (i) one vote for each fully paid up Share (whether the issue price of the Share was paid up or credited or both) that the Member holds; and
  - (ii) for each partly paid up Share that the Member holds, a fraction of one vote equal to the proportion which the amount paid or credited on that Share (excluding any amounts paid up in advance of the relevant due date for payment) bears to the total amounts paid and payable (including amounts credited) on that Share.
- (c) If the total number of votes to which a Member is entitled on a poll does not constitute a whole number, the Company shall disregard the fractional part of that total.
- (d) In the case of an equality of votes, on a resolution at a meeting of Members (whether on a show of hands or on a poll), the chairperson of the meeting has a casting vote in addition to any vote the chairperson of the meeting has in respect of that resolution.
- (e) If a Share is held jointly and more than one Member votes in respect of that Share, only the vote of the Member whose name appears first in the Register counts.
- (f) A person may vote in respect of a Share at a meeting of Members if:-
  - (i) the person is entitled to be registered as the holder of that Share because of a Transmission Event; and
  - (ii) the person satisfies the Directors of that entitlement not less than 48 hours before the meeting.
- (g) A Member present at a meeting of Members is not entitled to vote on any resolution in respect of any Shares on which any calls (or any other amounts due and payable in respect of those Shares) have not been paid.
- (h) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (i) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.

- (j) The authority of a proxy, attorney or Representative for a Member to speak or vote at a meeting of Members in respect of the Shares to which the authority relates is suspended while the Member is present in person at that meeting.
- (k) If more than one proxy, attorney or Representative for a Member is present at a meeting of Members:-
  - (i) none of them are entitled to vote on a show of hands; and
  - (ii) on a poll, the vote of each one is of no effect where the aggregate number or proportion of the Member's votes for which they have been appointed exceeds the total number or proportion of votes that could be cast by that Member.

#### **6.16 Objections to Voting**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:-
  - (i) before the meeting, to the Directors; or
  - (ii) at the meeting (or any resumed meeting if the meeting is adjourned), to the chairperson of that meeting.
- (b) Any objection pursuant to Clause 6.16(a), must be decided in good faith by the Directors or the chairperson of the meeting of Members (as the case may be), whose decision shall be final and conclusive.

#### **6.17 Proxies, Attorneys and Representatives**

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:-
  - (i) in person or, if the Member is a body corporate, by its Representative;
  - (ii) by proxy or, if the Member is entitled to cast 2 or more votes at the meeting, by not more than 2 proxies; or
  - (iii) by attorney or, if the Member is entitled to cast 2 or more votes at the meeting, by not more than 2 attorneys.
- (b) A proxy, attorney or Representative of a Member need not be a Member.
- (c) A Member may appoint a proxy, attorney or Representative for:-
  - (i) all or any number of meetings of Members; or
  - (ii) a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:-
  - (i) the name and address of that Member;
  - (ii) the name of the Company;

- (iii) the name of the proxy or the name of the office held by the proxy; and
  - (iv) the meeting of Members at which the proxy may be used.
- (e) While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.
- (f) An appointment of a proxy may be a standing one.
- (g) The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Clause 6.17(d).
- (h) An instrument appointing an attorney or Representative must be in a form that the Directors prescribe or accept from time to time.
- (i) Subject to the Corporations Act, the decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or Representative is final and conclusive.
- (j) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may:-
  - (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
  - (ii) agree to a resolution being either proposed or passed (or both) at a meeting of Members which is called by shorter notice than is required by the Corporations Act or this Constitution;
  - (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (v) demand, or join in demanding, a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (k) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may vote on:-
  - (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, even if the appointment directs the proxy or attorney how to vote on that resolution.



- (l) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member shall be:-
  - (i) the person specified by the Company in the form of proxy in the case the Member does not choose; or
  - (ii) if no person is so specified, the chairperson of that meeting.
- (m) A Member may specify the manner in which a proxy or attorney votes on a particular resolution at a meeting of Members.
- (n) The appointment of a proxy or attorney by a Member may specify the proportion or number of the Member's votes that the proxy or attorney may exercise.
- (o) If a Member appoints 2 persons as proxy or attorney and the appointment does not specify the proportion or number of the Member's votes those persons may exercise, then those persons may exercise half of the votes of the Member.
- (p) If the total number of votes to which a proxy or attorney is entitled to exercise does not constitute a whole number, the Company must disregard the fractional part of that total.
- (q) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time scheduled for commencement of that meeting (or any adjournment of that meeting).
- (r) Unless the Company has received notice in writing of the matter not less than 48 hours before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy, attorney or Representative shall subject to this Constitution, be valid even if, before the person votes:-
  - (i) there is a Transmission Event in respect of that Member;
  - (ii) that Member revokes the appointment of that person;
  - (iii) that Member revokes the authority under which the person was appointed by a third party; or
  - (iv) that Member transfers the Shares in respect of which the appointment is made.

## 7 Directors

### 7.1 Number of Directors

- (a) The Company must have at least 3, and not more than 10, Directors.
- (b) The Company in general meeting may, by ordinary resolution, alter the minimum or maximum number of Directors provided that the minimum is not less than 3.

- (c) Subject to this Clause 7.1, the Directors must determine the number of Directors provided that the Directors cannot reduce the number of Directors below the number in office at the time that determination takes effect.
- (d) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except:-
  - (i) in emergencies;
  - (ii) to appoint one or more Directors in order to make up a quorum for a meeting of Directors; or
  - (iii) to call and arrange to hold a meeting of Members.

## **7.2 Appointment of Directors**

- (a) The first Directors are the persons specified as Directors in the application for registration of the Company required under the Corporations Act.
- (b) Subject to Clause 7.1, the Directors may appoint any person as a Director.
- (c) The Company in general meeting may, by ordinary resolution, appoint any person as a Director.
- (d) A Director need not be a Member.
- (e) The Company must hold an election of Directors each year.
- (f) The Company must accept nominations for the election of a Director at any time from the Business Day prior to the date of the relevant notice of meeting up to:-
  - (i) in the case of a meeting called pursuant to Clause 6.2(b) or 6.2(c), 30 Business Days; and
  - (ii) in all other cases, 35 Business Days, prior to the date of the meeting of Members at which the Director may be elected.
- (g) A nomination of a person for Director (other than a Director retiring in accordance with this Constitution) must be a notice in writing signed by a Member entitled to attend and vote at the meeting of Members at which the election is proposed, and be accompanied by a notice in writing signed by the nominee consenting to the nomination.

## **7.3 Vacation of Office**

- (a) If the Company has 3 or more Directors, one third of the Directors (rounded down to the nearest whole number) must retire at each AGM.
- (b) If the Company has less than 3 Directors, one Director must retire at each AGM.
- (c) The Directors to retire under Rules 7.3(a) and 7.3(b) shall be:-

- (i) those who have held their office as Director the longest period of time since their last appointment at that office; and
  - (ii) if 2 or more Directors have held office for the same period of time, those Directors determined by the drawing of lots, unless those Directors agree otherwise.
- (d) A Director who retires under Clause 7.3(a) or 7.3(h) is eligible for re-election.
- (e) Rules 7.3(a) and 7.3(b) do not apply to the managing director of the Company, or if more than one, the managing director of the Company determined by the Directors.
- (f) A Director appointed under Clause 7.2(b) may retire at the next meeting of Members and is eligible for re-election at that meeting.
- (g) Unless a Director appointed under Clause 7.2(b) has retired under Clause 7.3(f), that Director must retire at the next AGM, and is eligible for re-election at that meeting.
- (h) Rules 7.3(f) and 7.3(g) do not apply to the managing director of the Company, or if more than one, the managing director of the Company determined by the Directors.
- (i) A Director may resign from office by giving a written notice of resignation to the Company at its registered office.
- (j) Subject to the Corporations Act, the Company in general meeting may, by ordinary resolution, remove any Director and, if thought fit, appoint another person in place of that Director.
- (k) A Director ceases to be a Director if:-
  - (i) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health;
  - (ii) the Director is absent (without the consent of the Directors) from all meetings of the Directors held during a period of 6 months and the other Directors resolve that his or her office be vacated;
  - (iii) the Director resigns or is removed in accordance with this Constitution;
  - (iv) the Director is an Executive Director and ceases to be an employee of the Company or of a Related Corporation;
  - (v) the Director becomes an insolvent under administration; or
  - (vi) the Corporations Act so provides.

#### **7.4 Alternate Directors**

- (a) With the approval of a majority of the other Directors, a Director may appoint a person as an Alternate Director of that Director for any period.
- (b) An Alternate Director need not be a Member.

- (c) The appointing Director may terminate the appointment of his or her Alternate Director at any time.
- (d) A notice of appointment (or termination of appointment) of an Alternate Director is effective only if:-
  - (i) the notice is in writing;
  - (ii) the notice is signed by the Director who appointed that Alternate Director: and
  - (iii) the Company is given a copy of the notice.
- (e) If the Director who appointed an Alternate Director is not present at a meeting of Directors, that Alternate Director may, subject to this Constitution and the Corporations Act:-
  - (i) attend, count in the quorum of, speak at, and vote at that meeting in place of that appointing Director; and
  - (ii) exercise any other powers (except the power under Clause 7.4(a)) that the appointing Director may exercise.
- (f) An Alternate Director cannot exercise any powers of his or her appointing Director if that appointing Director ceases to be a Director.
- (g) A person does not cease to be a Director under Clause 7.4(f) if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.
- (h) Subject to the Clause 7.5(g), the Company is not required to pay any remuneration to an Alternate Director.

## **7.5 Remuneration of Directors**

- (a) Subject to the Corporations Act and the Listing Rules, the Company may pay to the Non-executive Directors a maximum total amount of director's fees (excluding salaries or other employee benefits), determined by the Company in general meeting.
- (b) The remuneration of the Non-executive Directors must not be set as a commission on, or percentage of, profits or operating revenue.
- (c) The Directors may determine the manner in which all or part of the amount in Clause 7.5(a) is divided between the Non-executive Directors, and until so determined, the amount in Clause 7.5(a) must be divided between the Non-executive Directors equally.
- (d) The remuneration of the Non-executive Directors is taken to accrue from day to day.
- (e) The remuneration of the Executive Directors must:-
  - (i) subject to the provisions of any contract between each of them and the Company, be fixed by the Directors: and

- (ii) not be set as a commission on, or percentage of, operating revenue.
- (f) If a Director performs extra or special services, including being:-
  - (i) a member on a committee of Directors; or
  - (ii) the chairperson of Directors or deputy chairperson of Directors, the Company may, subject to the Corporations Act and this Clause 7.5, pay such additional remuneration or provide such benefits to that Director as the Directors resolve.
- (g) The Company must pay all reasonable travelling, accommodation and other expenses properly incurred by a Director or Alternate Director:-
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members; and
  - (iii) in connection with the business of the Company.
- (h) Subject to the Corporations Act and the Listing Rules, any Director may participate in any fund, trust or scheme for the benefit of:-
  - (i) past or present Directors or employees of the Company or a Related Corporation; or
  - (ii) the dependents of, or persons connected with, any person referred to in Clause 7.5(h)(i).
- (i) Subject to the Corporations Act and the Listing Rules, the Company may give, or agree to give, a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in the Company or a Related Corporation.

## **7.6 Interests of Directors**

- (a) A Director may:-
  - (i) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve;
  - (ii) hold an office, or otherwise be interested in, any Related Corporation, Stapled Entity or other body corporate in which the Company is interested or;
  - (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any Related Corporation, Stapled Entity or other body corporate in which the Company is interested, and retain the benefits of doing so if the Director discloses (in accordance with the Corporations Act and the Listing Rules) the interest giving rise to those benefits.
- (b) If a Director discloses any interest giving rise to a benefit to the Director in accordance with Clause 7.6(a):-

- (i) the Director may contract or make an arrangement with the Company, a Related Corporation, a Stapled Entity or a body corporate in which the Company is interested, in any matter and in any capacity;
  - (ii) the Director may, subject to the Corporations Act, be counted in a quorum for a meeting of Directors considering that contract or arrangement;
  - (iii) the Director may, subject to the Corporations Act, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract, arrangement or interest;
  - (iv) the Director may sign on behalf of the Company, or witness the affixing of the Seal to, any document in respect of the contract or arrangement;
  - (v) the Director may retain the benefits under the contract or arrangement; and
  - (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.
- (c) The failure of a Director to:-
- (i) disclose an interest;
  - (ii) not be present while a matter in which the Director is interested is being considered at a meeting of Directors; or
  - (iii) not vote on a matter, in accordance with the Corporations Act,
- does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

## **7.7 No Share Qualification**

A Director is not required to hold any Shares.

# **8 Officers**

## **8.1 Managing Director**

- (a) The Directors may appoint one or more of their number as a managing director, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a managing director, the Directors may remove or dismiss a managing director at any time, with or without cause.
- (c) The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- (d) The Directors may revoke or vary:-
  - (i) the appointment of a managing director; or

- (ii) any power delegated to a managing director.
- (e) A managing director must exercise the powers delegated to him or her in accordance with any directions of the Directors.
- (f) The exercise of a power by a managing director is as effective as if the Directors exercised the power.
- (g) A person ceases to be a managing director if the person ceases to be a Director.

## **8.2 Secretary**

- (a) The first Secretary is the person specified as Secretary in the application for registration of the Company required under the Corporations Act.
- (b) The Directors may appoint one or more Secretaries for any period, and on any terms (including as to remuneration), as the Directors resolve.
- (c) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time with or without cause.
- (d) The Directors may revoke or vary the appointment of a Secretary.
- (e) An act by a person as a Secretary is effective even if the appointment of that person, or the continuance of that appointment, is invalid because the Company or that person did not comply with this Constitution or any provision of the Corporations Act.
- (f) Clause 8.2(e) does not deal with the question whether an effective act by a person:-
  - (i) binds the Company in its dealings with other people; or
  - (ii) makes the Company liable to another person.

## **8.3 Indemnity and Insurance**

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against:-
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (b) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (c) To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:-
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (d) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has

been, an officer of a Subsidiary, under which the Company must do all or any of the following:-

- (i) keep books of the Company and allow either (or both) that person and that person's advisers access to such books on the terms agreed;
  - (ii) indemnify that person against any Liability;
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs; and
  - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of a Subsidiary, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).
- (e) Nothing in this Clause 8.3 precludes the Company from indemnifying employees (other than Officers) and consultants or sub-contractors where the Directors, in their absolute discretion, deem it to be necessary or appropriate.

## **9 Powers of the Company and Directors**

### **9.1 General Powers**

- (a) The Company may exercise, in any manner permitted by the Corporations Act, any power which a public company limited by shares may exercise under the Corporations Act.
- (b) Subject to the Corporations Act, the Listing Rules and this Constitution, the business of the Company shall be managed by, or under the direction of, the Directors who may:-
  - (i) pay all expenses incurred in forming and promoting the Company; and
  - (ii) exercise such powers of the Company as are not, by the Corporations Act, the Listing Rules or this Constitution, required to be exercised by the Company in general meeting.

### **9.2 Director's powers in relation to Stapling**

- (a) While Stapling applies and notwithstanding any other provision of this Constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred upon them, the Directors may, subject to the Corporations Act, have regard to the interests of the Members of the Company and the members of the Stapled Entities as a whole and not only the interests of the Members of the Company.
- (b) If Shares comprise part of Stapled Securities, subject to the Corporations Act and, while the Shares are Officially Quoted, the Listing Rules and approval by the Company in general meeting, the Directors may at any



time apply to have the Stapled Securities unstapled and, if the Stapled Securities are Officially Quoted, removed from quotation.

- (c) The Directors may, subject to the Corporations Act and, while the Shares are Officially Quoted, subject to the Listing Rules, cause the Stapling of any other security or securities to the Shares.

### **9.3 Execution of Documents**

- (a) If the Company has a Seal, the Company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:-
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by:-
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (c) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Clause 9.3(a) or 9.3(b).
- (d) The Directors may resolve, generally or in a particular case, that any signature on certificates for securities of the Company may be affixed by mechanical or other means.
- (e) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by, or on behalf of, the Company in such manner and by such persons as the Directors resolve.

### **9.4 Borrowings**

Without limiting the generality of Clause 9.1, the Directors may at any time:-

- (a) exercise all powers of the Company to:-
  - (i) borrow money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
- (b) sell or otherwise dispose of the whole or any part of the assets, undertakings and other properties of the Company, or any that may be acquired, on such terms and conditions as they deem appropriate, but:-

- (i) the Company must comply with the Listing Rules;
  - (ii) any sale or disposition of the Company's main undertaking must be made subject to the ratification of the sale or disposal by the Company in general meeting; and
  - (iii) on the sale or disposition of the Company's main undertaking or on the liquidation of the Company, no commission or fee shall be paid to any Director or Directors or to any liquidator of the Company unless it is ratified by the Company in general meeting, with prior notification of the amount of the proposed payment or payments having been disclosed to all Members in the relevant notice of meeting at which any such payment is to be considered; and
- (c) take any action necessary or desirable to enable the Company to comply with the Listing Rules.

## **9.5 Committees and Delegates**

- (a) The Directors may delegate any of their powers (including the power to delegate) to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) The Directors may revoke or vary any power delegated under Clause 9.5(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The exercise of a power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Clause 10 applies with the necessary changes to meetings of a committee of Directors.

## **9.6 Attorney or Agent**

- (a) The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Directors may revoke or vary:-
  - (i) an appointment under Clause 9.6(a); or
  - (ii) any power delegated to an attorney or agent.

# **10 Proceedings of Directors**

## **10.1 Written Resolutions of Directors**

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all the Directors entitled to vote on the resolution assent to a

document containing a statement that they are in favour of the resolution set out in the document.

- (b) Separate copies of the document referred to in Clause 10.1(a) may be used for assenting to by the Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Clause 10.1 by signing the document or by notifying the Company of the assent of the Director:-
  - (i) in a manner permitted by Clause 14.3; or
  - (ii) by any technology including telephone.
- (d) Where a Director signifies assent to a document pursuant to Clause 10.1(c) other than by signing the document, the Director must, by way of confirmation, sign the document before or at the next meeting of Directors attended by that Director.
- (e) The resolution, the subject of a document under Clause 10.1(b), is not invalid if a Director does not comply with Clause 10.1(d).

## **10.2 Convening of Directors' Meetings**

- (a) A Director may call a meeting of Directors at any time.
- (b) On the request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (d) A meeting of Directors may be held using any technology consented to by a majority of the Directors.
- (e) The consent of a Director under Clause 10.2(d):-
  - (i) may be for all meetings of Directors or for any number of meetings; and
  - (ii) may only be withdrawn by that Director within a reasonable period before a meeting of Directors.
- (f) If a meeting of Directors is held in 2 or more places pursuant to Clause 10.2(d):-
  - (i) a Director present at one of the places is taken to be present at the meeting unless, or until, the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
  - (ii) the chairperson of the meeting may determine at which place the meeting is taken to be held.

### **10.3 Notice of Directors' Meetings**

- (a) Notice of a meeting of Directors must be given to each Director and Alternate Director.
- (b) A notice of meeting of Directors must:-
  - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  - (ii) state the general nature of the business of the meeting.
- (c) Unless all Directors agree otherwise, the Company must give at least 48 hours notice of a meeting of Directors.
- (d) A Director or Alternate Director may waive notice of a meeting of Directors by notice in writing to the Company to that effect.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Directors is not invalid if either or both:-
  - (i) a Director or Alternate Director does not receive notice of the meeting; or
  - (ii) the Company accidentally does not give notice of the meeting to a Director or Alternate Director, provided that, in the case of a failure to give notice to a Director or Alternate Director:-
    - (A) that person (or in the case of an Alternate Director, the Director appointing that person) gives notice in writing to the Company that he or she waives the right to receive notice of the meeting or agrees to the thing done at the meeting; and
    - (B) that person (or in the case of an Alternate Director, the Director appointing that person) attends the meeting.
- (f) Subject to the Corporations Act, the attendance of a person at a meeting of Directors waives any objection that person and:-
  - (i) if the person is a Director, an Alternate Director appointed by that person; or
  - (ii) if the person is an Alternate Director, the Director who appointed that person as an Alternate Director,may have to a failure to give notice of the meeting to that person in accordance with this Constitution.

### **10.4 Quorum**

- (a) Subject to the Corporations Act, a quorum for a meeting of Directors. is:-
  - (i) if the Directors have fixed a number for the quorum, that number of Directors; and
  - (ii) in any other case, 2 Directors entitled to vote on a resolution that may be proposed at that meeting.

- (b) In determining whether a quorum for a meeting of Directors is present:-
  - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
  - (ii) where a person is present as Director and an Alternate Director for another Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present; and
  - (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.
- (c) A quorum for a meeting of Directors must be present at all times during the meeting.
- (d) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a meeting of Members and the meeting of Members may pass a resolution to deal with the matter.

## **10.5 Chairperson**

- (a) The Directors may elect a Director as chairperson of Directors or deputy chairperson of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director.
- (b) The Directors may remove the chairperson of Directors or deputy chairperson of Directors at any time.
- (c) The chairperson of Directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) chair each meeting of Directors.
- (d) If:-
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for a meeting of Directors; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,

if the Directors have elected a deputy chairperson of Directors, the deputy chairperson of Directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) chair all or part of the meeting of Directors.
- (e) Subject to Rules 10.5(c) and 10.5(d), if:-
  - (i) there is no deputy chairperson of Directors;

- (ii) the deputy chairperson of Directors is not present within 15 minutes after the time appointed for the meeting of Directors: or
  - (iii) the deputy chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,
  - (iv) the Directors present must elect one of themselves to chair all or part of the meeting of Directors.
- (f) A person does not cease to be a chairperson of Directors or deputy chairperson of Directors if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.

## **10.6 Resolutions of Directors**

- (a) A resolution of Directors is passed if more votes are cast in favour of the resolution than against it.
- (b) Subject to Clause 7.6 and this Clause 10.6, each Director has one vote on a matter arising at a meeting of Directors.
- (c) In determining the number of votes a Director has on a matter arising at a meeting of Directors:-
  - (i) where a person is present as a Director and an Alternate Director for another Director, that person has one vote as a Director and, subject to Clause 7.4(e), one vote as an Alternate Director; and
  - (ii) where a person is present as an Alternate Director for more than one Director, that person has, subject to Clause 7.4(e), one vote for each appointment.
- (d) Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution.

## **10.7 Effectiveness of Acts by Directors**

- (a) An act done by a Director is effective even if the appointment of that Director, or the continuance of that appointment, is invalid because the Company or that Director did not comply with this Constitution or any provision of the Corporations Act.
- (b) Clause 10.7(a) does not deal with the question whether an effective act by a Director:-
  - (i) binds the Company in its dealings with other people; or
  - (ii) makes the Company liable to another person.

## **11 Dividends and Profits**

### **11.1 Payment of Dividends**

- (a) Subject to the Corporations Act, the Listing Rules and any rights or restrictions attached to a class of Shares, the Company may pay Dividends as the Directors resolve but only out of profits of the Company.
- (b) The Directors may determine that a Dividend is payable without a meeting of Members and may fix:-
  - (i) the amount of the Dividend;
  - (ii) if the Dividend is franked, the franking percentage and the franking class;
  - (iii) the time for determining entitlements to the Dividend;
  - (iv) the time for payment of the Dividend; and
  - (v) the method of payment of the Dividend.
- (c) The method of payment of a Dividend may include any or all of the payment of cash, the issue of Shares, other securities or, while Stapling applies, Stapled Securities, the grant of options and the transfer of assets, in accordance with the provisions of this Constitution.
- (d) If the method of payment of a Dividend includes an issue or transfer of securities in a body corporate, each Member:-
  - (i) agrees to become a member of that body corporate; and
  - (ii) in the case of a transfer, appoints the Company and each Director as its agent to execute an instrument of transfer or other document required to transfer the relevant security to that Member.
- (e) A Dividend in respect of a Share must be paid to the person whose name is entered in the Register as the holder of that Share:-
  - (i) where the Directors have fixed a time under Clause 11.1(b)(iii), at that time; or
  - (ii) in any other case, on the date the Dividend is declared.

### **11.2 Dividends for Different Classes**

The Directors may determine that Dividends be paid:-

- (a) on Shares of one class but not on another class; and
- (b) at different rates for different classes of Shares.

### **11.3 Dividends Proportional to Paid Up Capital**

- (a) Subject to any rights or restrictions attached to a class of Shares, the person entitled to a Dividend on a Share is entitled to:-
  - (i) if the Share is fully paid (whether the issue price of the Share was paid or credited or both), the entire Dividend; or

- (ii) if the Share is partly paid, a proportion of that Dividend equal to the proportion which the amount paid (including amounts credited) on that Share bears to the total amount paid or payable (including amounts credited) on that Share.
- (b) Amounts paid in advance of a call on a Share are ignored when calculating the proportion under Clause 11.3(a)(ii).

#### **11.4 Effect of a Transfer on Dividends**

If a transfer of a Share is registered after the time determined for entitlements to a Dividend on that Share but before the Dividend is paid, the person transferring the Share is entitled to that Dividend.

#### **11.5 No Interest on Dividends**

The Company is not required to pay any interest on a Dividend.

#### **11.6 Unpaid Amounts**

The Company may retain the whole or part of any Dividend in respect of which the Company has a lien and apply that amount in total or part satisfaction of any amount secured by that lien.

#### **11.7 Joint distributions with Stapled Entities**

While Stapling applies, subject to the Corporations Act and the Listing Rules, the Company may from time to time enter into an arrangement with any Stapled Entity under which dividends of the Company and distributions from the Stapled Entity are paid together either by the Company or the Stapled Entity.

#### **11.8 Capitalisation of Profits**

- (a) Subject to the Listing Rules, the Directors may capitalise any profits of the Company and distribute that capital to the Members, in the same proportions as the Members are entitled to a distribution by Dividend.
- (b) The Directors may fix the time for determining entitlements to a capitalisation of profits.
- (c) The Directors may decide to apply any capital arising from a capitalisation of profits under Clause 11.8(a) in either or both of the following ways:-
  - (i) in paying up an amount unpaid on Shares already issued; and
  - (ii) in paying up in full any unissued Shares or other securities in the Company.
- (d) The Members must accept an application of capital pursuant to Clause 11.8(c) in full satisfaction of their interest in that capital.

#### **11.9 Distributions of Assets**

The Directors may settle any dispute in relation to a distribution of capital under Clause 11 in any way including, but not limited to:-

- (a) rounding amounts up or down to the nearest whole number;



- (b) ignoring fractions;
- (c) valuing assets for distribution;
- (d) paying cash to any Member on the basis of that valuation; and
- (e) vesting assets in a trustee on trust for the Members entitled.

#### **11.10 Dividend Plans**

Subject to the Corporations Act and the Listing Rules:-

- (a) the Directors may establish a dividend selection plan or bonus share plan on such terms as the Directors resolve, under which participants may elect in respect of all or part of their Shares:-
  - (i) to receive a Dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or
  - (ii) to forego a Dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust;
- (b) the Directors may establish a dividend reinvestment plan on such terms as the Directors resolve, under which participants may elect in respect of all or part of their Shares to apply the whole or any part of a Dividend from the Company in subscribing for securities of the Company or a Related Corporation or, while Stapling applies, Stapled Securities;
- (c) the Directors may implement, amend, suspend or terminate any plan established under this Clause 11.10; and
- (d) while Stapling applies, any plan adopted under this Clause 11.10 must be established and maintained in such a manner so as not to be inconsistent with the terms of any Stapling.

## **12 Winding Up**

### **12.1 Distributions Proportional to Paid Up Capital**

Subject to the Corporations Act, the Listing Rules and any rights or restrictions attached to a class of Shares, on a winding up of the Company any surplus must be divided among the Members in the proportion which the amount paid (including amounts credited) on the Shares of a Member bears to the total amount paid and payable (including amounts credited) on the Shares of all Members.

### **12.2 Distributions of Assets**

Subject to the Corporations Act, the Listing Rules and any rights or restrictions attached to a class of Shares, on a winding up of the Company, the liquidator may, with the sanction of a special resolution of the Members:

- (a) distribute among the Members the whole or any part of the property of the Company;

- (b) decide how to distribute the property as between the Members or different classes of Members;
- (c) settle any dispute concerning a distribution under this Clause 12 in any way including, but not limited to:-
  - (i) rounding amounts up or down to the nearest whole number;
  - (ii) ignoring fractions;
  - (iii) valuing assets for distribution;
  - (iv) paying cash to any Member on the basis of that valuation; and
  - (v) vesting assets in a trustee on trust for the Members entitled, provided that a Member need not accept any property, including Shares or other securities, carrying a liability.

### **12.3 Remuneration of Liquidator**

The Company in general meeting must not fix the remuneration to be paid to a liquidator of the Company appointed pursuant to the Corporations Act unless at least 14 days notice of the meeting has been given to the Members specifying the amount of the proposed remuneration.

### **12.4 Notice to Stapled Entities**

While Stapling applies, on or before the commencement of a winding up of the Company the liquidator must give each Stapled Entity written notice that the Company is to be wound up.

## **13 Records**

### **13.1 Minutes**

- (a) The Company must keep minute books in which it records within one month:-
  - (i) proceedings and resolutions of meetings of Members;
  - (ii) proceedings and resolutions of meetings of Directors (including meetings of committees of Directors);
  - (iii) resolutions passed by Members without a meeting;
  - (iv) resolutions passed by the Directors without a meeting; and
  - (v) if the Company has only one Director, the making of declarations by that Director.
- (b) The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
  - (i) the chairperson of that meeting; or
  - (ii) the chairperson of the next meeting.

- (c) The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after that resolution is passed.
- (d) If the Company has only one Director, that Director must sign the minutes of the making of a declaration by that Director within a reasonable time after that resolution is passed.
- (e) A minute recorded and signed in accordance with this Clause 13.1 is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### **13.2 Register**

- (a) The Company must set up and maintain the Register in accordance with section 169 of the Corporations Act.
- (b) The Company may set up and maintain a branch register of Members in accordance with the Corporations Act.
- (c) The Company must allow inspection of the Register only in accordance with the Corporations Act
- (d) Unless the contrary is otherwise proved, the Register is sufficient evidence of the matters shown in the Register.
- (e) While Stapling applies, the Company must establish and maintain a Stapling Register which records the names of the Members, the number of Shares held, the corresponding number of Attached Securities held by the Members and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the Directors. The Directors may establish and maintain the Stapling Register jointly with the Stapled Entities.
- (f) For the purposes of Clause 13.2(a) and (e) and subject to the Corporations Act, a single register may be kept in which details of the holders of the Shares and the holders of Attached Securities are recorded.

### **13.3 Financial Records**

The Company must keep financial records in accordance with the Corporations Act.

### **13.4 Inspection**

Unless authorised by a resolution of Directors or the Corporations Act, a Member is not entitled to inspect the books of the Company.

## **14 Notices and Payments**

### **14.1 Notice to Members**

- (a) The Company may give notice to a Member:-
  - (i) in person;

- (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member; or
  - (iii) by sending it to the facsimile number or electronic address (if any) nominated by that Member.
- (b) If the address of a Member in the Register is not within Australia, the Company must send all documents to that Member by air-mail, facsimile or electronic address.
- (c) The Company must give any notice to Members who are joint holders of a Share to the person named first in the Register in respect of that Share, and such notice is deemed to be notice to all holders of that Share.
- (d) The Company may give notice to a person entitled to a Share because of a Transmission Event in any manner specified in Clause 14.1(a).
- (e) Notice to a person entitled to a Share because of a Transmission Event is taken to be notice to the Member of that Share.
- (f) Subject to the Corporations Act, a notice to a Member is sufficient, even if:-
  - (i) a Transmission Event occurs in respect of that Member (whether or not a joint holder of a Share); or
  - (ii) that Member is an externally administered body corporate, and regardless of whether or not the Company has notice of that event.
- (g) A person entitled to a Share because of a transfer, Transmission Event or otherwise, is bound by every notice given in respect of that Share.
- (h) Any notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

## **14.2 Notice to Directors**

The Company may give notice to a Director or Alternate Director:-

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the facsimile number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

## **14.3 Notice to the Company**

A person may give notice to the Company:-

- (a) by leaving it at the registered office of the Company;
- (b) by sending it by post to the registered office of the Company;

- (c) by sending it to the facsimile number at the registered office of the Company;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means permitted by the Corporations Act.

#### **14.4 Time of Service**

- (a) A notice sent by post is taken to be given:-
  - (i) in the case of a notice of meeting, one Business Day after it is posted; and
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by facsimile or electronic address is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address.
- (c) The giving of a notice by post is sufficiently proved by evidence that the notice:-
  - (i) was addressed to the correct address of the recipient; and
  - (ii) was placed in the post or delivered to the air courier.
- (d) A certificate by a Director or Secretary of a matter referred to in Clause 14.4(c) is sufficient evidence of the matter, unless it is proved to the contrary.

#### **14.5 Signatures**

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

#### **14.6 Payments**

- (a) The Company may pay a person entitled to an amount payable in respect of a Share (including a Dividend) by:-
  - (i) crediting an account nominated in writing by that person;
  - (ii) cheque made payable to the person entitled to the amount or any other person the person entitled directs in writing; or
  - (iii) any other manner as the Directors resolve.
- (b) The Company may post a cheque referred to in Clause 14.6(a)(ii) to:-
  - (i) the address of the relevant Member in the Register;
  - (ii) if that Share is jointly held, the address of the relevant Member named first in the Register; or
  - (iii) any other address which that person directs in writing.

- (c) Any joint holder of a Share may give effective receipt for an amount (including a Dividend) paid in respect of the Share.
- (d) The Directors may:-
  - (i) realise into money any paid but unclaimed Dividends; and
  - (ii) invest for the benefit of the Company any paid but unclaimed Dividends until they are claimed or required to be dealt with in a particular manner by law.

## 15 ASX Listing Rules

If the Company is admitted to the Official List, the following provisions apply:-

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is, or becomes, inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

## 16 Stapling

### 16.1 When Stapling provisions came into effect

The provisions of this constitution relating to Stapling take effect on and from the Stapling Commencement Date and apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.

### 16.2 Amending provisions

While Stapling applies, no provision of this Constitution which relates to or is connected with Stapling may be amended without the approval of the Stapled Entities.

### 16.3 Paramountcy of Stapling provisions

Subject to Clause 15, the provisions of this Constitution relating to Stapling prevail over all other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of

the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

#### **16.4 Maintenance of Listing and Consistency with Constitutions of the Stapled Entities**

The Company must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

#### **16.5 Stapling - general information**

The Shares are intended to be stapled to the Stapled Units in the ratio of one Share to one Stapled Unit as from the Stapling Commencement Date. The intention is that, so far as the law permits, a Share and a Stapled Unit which are Stapled together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Shares the intention is that, so far as the law permits, a Share and one of each of the Attached Securities which are Stapled together shall be treated as one security.

**Evolution Trustees Limited (“Responsible Entity”)**

(ACN 611 839 519)

# **Constitution of Aspen Property Trust**

ARSN 104 807 767

**Copy as amended by deed poll on 18 December 2019**

This consolidated conformed version of the Constitution of the Trust incorporates the original Deed dated 10<sup>th</sup> May 2003 and subsequent amendments to the Deed made up to **18 December 2019**.

For completeness, subsequent amendments are constituted by the following documents:

Deed of Amendment No.1. dated 14 September 2005 Deed  
of Amendment No.2. dated 20 June 2007

Deed of Amendment No.3. dated 1 March 2011

Deed of Amendment No.4. dated 16 June 2011

Deed of Amendment No.5. dated 29 November 2011

Deed of Amendment No. 6 dated 16 June 2017



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This deed poll is declared by the Responsible Entity to be the constitution of the Aspen Property Trust.

## **1 Name of Trust**

### **1.1 Name**

The Trust is called the Aspen Property Trust or by such other name as the Responsible Entity determines from time to time.

### **1.2 If Manager is removed**

If the Manager retires or is removed as investment manager for the Trust, its successor entity must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

## **2 Assets held on trust**

### **2.1 Assets held on trust**

The Responsible Entity must hold the Assets on trust for Members.

### **2.2 Assets vest in Responsible Entity**

The Assets vest in the Responsible Entity, but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.

## **3 Units and Options**

### **3.1 Beneficial interest divided into Units**

The beneficial interest in the Trust is divided into Units.

### **3.2 Units confer equal undivided interest**

Each Fully Paid Unit confers an equal undivided interest and, unless this Constitution states otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate according to the amount paid up on the Unit.

### **3.3 Interest in Assets**

A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

### **3.4 Stapling provisions**

The provisions of this Constitution relating to Stapling take effect on and from the Stapling Commencement Date and apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.

### **3.5 Creation of Options**

The Responsible Entity may create and issue Options on such terms and conditions as the Responsible Entity determines. Options may be issued with Units or separately.

### **3.6 Issue of Options**

Subject to this Constitution, the Corporations Act (and the conditions of any applicable ASIC relief from it) and, if relevant, the Listing Rules, the Responsible Entity may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Responsible Entity, provided that the exercise price is less than the price that would otherwise apply under this Constitution by a percentage not exceeding 50%; and
- (c) conferring on the holder of the Option such other entitlements under this Constitution as the Responsible Entity determines,

and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity. The terms of issue of the Option may allow the Responsible Entity to buy back the Options.

### **3.7 Offers of Options**

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC relief from it), if the Responsible Entity is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Responsible Entity is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia and New Zealand.

### **3.8 Exercise of Options**

- (a) On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.

### **3.9 Rights attaching to Units and Options**

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.

### **3.10 No fractions of Units**

Fractions of a Unit may not be issued by the Responsible Entity.

### **3.11 Rounding of fractions**

Where any calculation performed under this Constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this Constitution, to be rounded down to the nearest whole Unit.

### **3.12 Rounding**

Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset of the Trust.

### **3.13 Consolidation and division of Units and Options**

Subject to the Listing Rules and the Corporations Act, Units and Options may be consolidated or divided as determined by the Responsible Entity.

### **3.14 Consolidation and division while stapling applies**

While Stapling applies, Units may only be consolidated or divided if the related Attached Securities are also consolidated or divided at the same time and to the same extent.

### **3.15 Transfer of Units and Options if Officially Quoted**

If the Units and/or Options are Officially Quoted, Units and/or Options may be transferred in any manner permitted by the CHES System. The Responsible Entity may require before registration of any such transfer that there be provided to the Responsible Entity any documents which the rules of the uncertificated system require or permit the Responsible Entity to require be provided to it to authorise registration. This clause 3.15 prevails over any other provision of this Constitution that may be inconsistent with it but it does not permit the Responsible Entity to refuse to register a proper SCH transfer.



### **3.16 Form of transfer**

Subject to this Constitution, a Unit or Option may be transferred in any form approved by the Responsible Entity, accompanied by any evidence reasonably required by the Responsible Entity to show the right of the transferor to make the transfer and (if the Responsible Entity requires) be presented for Registration duly stamped.

### **3.17 Registration**

A transfer is not effective until Registered.

### **3.18 Responsible Entity may request holding lock or refuse to register transfer**

If Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Responsible Entity may:

- (a) request SCH to apply a holding lock to prevent a transfer of CHESS Approved Securities registered on the CHESS subregister; or
- (b) refuse to register a transfer of other Units in the Trust.

### **3.19 Responsible Entity must request holding lock or refuse to register transfer**

The Responsible Entity must:

- (a) request SCH to apply a holding lock to prevent a transfer of CHESS Approved Securities registered on the CHESS subregister; or
- (b) refuse to register any transfer of other Units in the Trust; if:
- (c) the Listing Rules require the Trust to do so;
- (d) registration of the transfer is prohibited by clause 3.23(b);
- (e) clause 3.31(a) requires the Responsible Entity not to register the transfer; or
- (f) the transfer is in breach of the Listing Rules or Restriction Agreement.

### **3.20 Notice of holding locks and refusal to register transfer**

If in the exercise of its rights under clause 3.18 and 3.19 the Responsible Entity requests application of a holding lock to prevent a transfer of CHESS Approved Securities or refuse to register a transfer of a security they must give written notice of the request to the holder of the Units, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Responsible Entity.

### **3.21 Responsible Entity must retain instruments of transfer**

The Trust must retain every instrument of transfer which is registered for such period as the Responsible Entity determines.

### **3.22 Return of refused transfers**

If the Responsible Entity refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### **3.23 Proportional takeover offers**

Notwithstanding clauses 3.15, 3.16 and 3.17, if offers are made under a proportional takeover bid for Units of the Trust in accordance with the Corporations Act:

- (a) clauses 3.23 to 3.28 apply;
- (b) the registration of a transfer giving effect to takeover contract resulting from acceptance of an offer made under the takeover bid is prohibited unless and until a resolution to approve the bid is passed in accordance with clauses 3.24 and 3.25; and

- (c) the Responsible Entity must ensure that a resolution to approve the bid is voted on in accordance with clause 3.24 to 3.27 before the fourteenth day before the last day of the bid period.

### **3.24 Approval of takeover bids**

The Responsible Entity may determine whether the approving resolution is voted on:

- (a) at a meeting of persons entitled to vote on the resolution convened and conducted, subject to the provisions of clause 3.26, as if it were a meeting of Members convened and conducted in accordance with this Constitution and the Corporations Act with such modifications as the Responsible Entity determines the circumstances require; or
- (b) by means of a postal ballot conducted in accordance with the following procedures:
  - (i) a notice of postal ballot and ballot paper must be sent to all persons entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such less period as the Responsible Entity determines the circumstances require;
  - (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a person entitled to receive them does not invalidate the postal ballot or any resolution passed under the postal ballot;
  - (iii) the notice of postal ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the Responsible Entity considers appropriate;
  - (iv) each ballot paper must specify the name of the person entitled to vote;
  - (v) a postal ballot is only valid if the ballot paper is duly completed and:
    - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
    - (B) if the person entitled to vote is a corporation, executed under seal or as permitted in the Corporations Act or under the hand of a duly authorised officer or duly authorised attorney;
  - (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power of attorney certified as a true copy by statutory declaration is or are received by the Trust before close of business on the date specified in the notice of postal ballot for closing of all postal ballot at the office of the Responsible Entity or unit registry of the Trust or at such other place as specified for that purpose in the notice of postal ballot; and
  - (vii) a person may revoke a postal ballot vote by notice in writing to be received by the Responsible Entity before the close of business on the date for closing of the postal ballot.

### **3.25 Entitlement to vote on approving resolution**

The only persons entitled to vote on the approving resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class securities. Each person who is entitled to vote is entitled to one vote for each bid class security held by that person at that time.

Neither the bidder nor any associate of the bidder is entitled to vote on the resolution.

### **3.26 When approving resolution passed**

If the resolution is voted on in accordance with clauses 3.23 to 3.25 then it is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is taken to have been rejected.

### **3.27 If approving resolution has not been voted on**

If a resolution to approve the bid has not been voted on as at the end of the day before the fourteenth day before the last day of the offer period, then a resolution to approve the bid is taken to have been passed in accordance with clauses 3.24 to 3.26.

### **3.28 Cessation of clauses 3.23 to 3.27**

Clauses 3.23 to 3.27 cease to have effect on the day three years after the later of their adoption or last renewal.

### **3.29 Transfers if Units or Options not Officially Quoted**

If Units or Options are not Officially Quoted, the Responsible Entity may only refuse to record any transfer in the Register if, in the opinion of the Responsible Entity:

- (a) the transfer does not comply with clause 3.16;
- (b) the creditworthiness of the proposed transferee suggests that the transfer would be materially prejudicial to the interests of the balance of the other Members or the Responsible Entity;
- (c) the transferee is not an investor who has the financial ability and willingness to accept the risks and lack of liquidity inherent in an investment in the Trust; or
- (d) there are material legal, tax or regulatory reasons which mean the transfer would be prejudicial to the balance of the other Members or the Responsible Entity.

### **3.30 Restricted Securities**

The Responsible Entity must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Responsible Entity under the Listing Rules in relation to the Restricted Securities. During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

### **3.31 Single instrument of transfer for Stapled Securities**

While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:

- (a) the Responsible Entity must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities and any provision of clauses 3.15 to 3.19 of this Constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
- (b) a reference in clauses 3.15 to 3.19 inclusive and clause 3.23 to a Unit will be deemed to be a reference to a Stapled Security.

### **3.32 Joint tenancy**

Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

### **3.33 Death, legal disability of Member**

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in

any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.

### **3.34 Number of Units**

While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category.

### **3.35 Restriction on issue and redemption of Units**

The Responsible Entity must not issue or redeem Units after the 80th anniversary of the date of commencement of the Trust if that issue or redemption would cause a contravention of the rule against perpetuities or any other similar rule of law or equity."

## **4 Partly Paid Units**

### **4.1 Payment of Application Price by instalments**

The Application Price of Units may be payable by instalments as set out in this clause 4.

### **4.2 Must also issue partly paid Attached Securities**

While Stapling applies, Units may not be issued on the basis that they are Partly Paid Units unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid. While Stapling applies any issue of Partly Paid Units shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

### **4.3 Determination of amount and timing of instalments**

The Responsible Entity may determine at any time that Units to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Responsible Entity determines or, if the Responsible Entity so determines, by a single instalment payable at such time as the Responsible Entity determines.

### **4.4 Variation or waiver of terms and conditions**

Subject to any applicable statutory duty requiring the Responsible Entity to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 4.3, those terms and conditions may be varied or compliance therewith waived only with the consent of the Responsible Entity. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

### **4.5 Notice of instalments**

The Responsible Entity must give Members:

- (a) if the Trust is not Listed, at least 3 Business Days' notice; or
- (b) if the Trust is Listed, at least 30 Business Days' notice (but not more than 40 Business Days' notice), of the time and date each instalment is due to be paid (the First Notice).  
If the Trust is Listed:
- (c) the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
- (d) at least 4 Business Days before the date each instalment is due to be paid, the Responsible Entity must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

#### **4.6 Interest on instalments**

If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Responsible Entity determines not exceeding BBSW plus 3% per annum. Interest is calculated daily and payable monthly in arrears. The Responsible Entity may waive payment of that interest in whole or part.

- (a) The Responsible Entity may revoke or postpone the payment of an instalment.
- (b) Subject to the Listing Rules, an instalment shall be deemed to be due on the date determined by the Responsible Entity.
- (c) Subject to the Listing Rules, the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Member, shall not invalidate the instalment being due.
- (d) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units and such extinguishment shall extend to any moneys unpaid on Attached Securities.
- (e) Subject to the Listing Rules, any instalment which, by the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment which the Responsible Entity has given Members notice of in accordance with clause 4.4. In the case of non-payment, all the provisions of this Constitution as to payment of interest, forfeiture or otherwise shall apply as if such notice had been given.

#### **4.7 Failure to pay instalments**

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Responsible Entity may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable expenses incurred by the Responsible Entity as a result of the non-payment.

The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and an equal number of Stapled Shares will also be liable to be forfeited. If Units are Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

#### **4.8 If requirements of any notice not complied with**

If the requirements of any notice issued under clause 4.5 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Responsible Entity so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit and the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Responsible Entity.

#### **4.9 Disposal of forfeited Units**

Subject to the Listing Rules if Units are Officially Quoted, a forfeited Unit (together with the Attached Securities) may be sold or otherwise disposed of as a Fully Paid Unit (together with the Attached Securities), either:

- (a) subject to any necessary relief from ASIC, at a price equal to that received from the sale of the Stapled Security in the normal course of business on the Australian Stock Exchange less the sum of 2 cents or the fair value as determined by the Responsible Entity for the Stapled Share and the fair value of any other Attached Securities as determined by the Responsible Entity; or
- (b) by private treaty or public auction, if ASIC has given any necessary relief from the provisions of the Corporations Act and if the Responsible Entity complies with the conditions of that relief.

At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Responsible Entity thinks fit.

#### **4.10 Holder of forfeited Units**

The holder of Partly Paid Units and Attached Securities which have been forfeited ceases to be a Member in respect of the forfeited Units and ceases to be a member of each Stapled Entity in respect of the Attached Securities (and has no claims or demands against the Responsible Entity or the Trust in respect of the forfeited Units and the forfeited Attached Securities) but remains liable to pay to the Responsible Entity all moneys which at the date of forfeiture were payable by the former Member to the Responsible Entity in respect of the forfeited Units (including interest owing under 4.6 and expenses) but the former Member's liability ceases if and when the Responsible Entity receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

#### **4.11 Evidence of forfeiture**

A statement signed by a duly authorised officer of the Responsible Entity that a Partly Paid Unit and the Attached Securities have been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units and the Attached Securities.

#### **4.12 Consideration for forfeited Units**

Where a Partly Paid Unit and relevant Attached Securities are forfeited pursuant to this clause 4 the Responsible Entity may receive the consideration, if any, given for a forfeited Unit and forfeited relevant Attached Securities on the sale or disposal, and the Responsible Entity may execute a transfer of such Unit and relevant Attached Securities in favour of the person to whom the Unit and relevant Attached Securities is sold or disposed of and that person must then be registered as the holder of that Unit and relevant Attached Securities and is not obliged to ensure that any part of the money which the person has paid for the Unit and relevant Attached Securities is paid to the former holder of the Unit nor shall the person's title to that Unit or the Attached Securities be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit or the relevant Attached Securities.

#### **4.13 Deductions from consideration for forfeited Units**

Where forfeited Units are sold or disposed of for cash, the Responsible Entity must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing.

The Responsible Entity may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.

#### **4.14 Joint holders**

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

#### **4.15 Rights and obligations attaching to a Partly Paid Unit are proportionate**

Subject to the Corporations Act and the provisions of this Constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

### **5 Classes of Units**

Subject to the Corporations Act and any other provisions of this Constitution that may be inconsistent with this clause 5, the Responsible Entity may issue different classes of Units with different rights, obligations and restrictions attaching to them as to:

- (a) the calculation of the management fee;
- (b) the Application Price;
- (c) the Distributable Income;
- (d) the amount payable on termination of the Trust; and
- (e) any other matter the Responsible Entity determines.

### **6 Application Price for Units**

#### **6.1 Units issued on or before First Closing Date**

- (a) The first 129,066,098 Units ("Initial Units") to be issued on the initial settlement of the Trust in accordance with clause 22.1 will be issued at an aggregate Application Price of \$100, or approximately 0.000077 cents per Unit.
- (b) If, between the date of initial settlement of the Trust and the First Closing Date, the number of shares in the Stapled Company increases beyond 129,066,098 (whether due to the exercise of options or otherwise), a number of Units equal to that increase in the number of shares will be issued to the Stapled Company at the same Application Price per Unit as the Units issued under clause 6.1(a).
- (c) Subject to clauses 6.1(a) and (b), all Units to be issued on or before the First Closing Date will be issued at an Application Price of approximately \$0.17 per Unit.

#### **6.2 While Units are not Officially Quoted**

While Units are not Officially Quoted the Application Price for a Unit issued in respect of an application accepted after the First Closing Date shall be calculated as:

Net Asset Value + Transaction Costs + Aggregate Unpaid Amount number of Units in issue

#### **6.3 Determination of variables in clause 6.2**

Each of the variables in clause 6.2 must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; or
- (b) the Responsible Entity receives the application money, or the property against which Units are to be issued or vested in the Responsible Entity,

whichever happens later.

## **6.4 While Units are Officially Quoted**

While Units are Officially Quoted, the application price for any Unit will be equal to the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of the Attached Securities, or the amount determined by the Responsible Entity in accordance with clause 6.5. However, the Responsible Entity may determine a different Application Price in relation to the issue of any (i) Units, (ii) Options or (iii) performance rights under an employee incentive scheme to the extent permitted by and in accordance with ASIC relief and the Listing Rules (to the extent relevant) which in the case of:

- (a) offers made at substantially the same time to only and all the then Members (whether or not the right to acquire those Units is renounceable) but not including persons whose address on the Register is in a place other than Australia or New Zealand, is not less than 50% of the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities on the Business Day preceding the date on which the intention to make the offer or issue is announced on the ASX;
- (b) a distribution reinvestment at the Application Price determined in accordance with clause 11.14;
- (c) Units issued upon the exercise of an Option will be issued at an Application Price determined in accordance with clause 3.6(b);
- (d) a placement at a price determined by the Responsible Entity;
- (e) the issue of Units, Options or performance rights in accordance with any employee incentive scheme (including a long term performance rights plan) approved at a meeting of Members, at an Application Price (if any) determined under that scheme or plan.

## **6.5 Determination of Application Price where Stapled Securities are issued**

Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (c) this Constitution contains a provision for the calculation or determination of the application price for the Stapled Security but not for the Unit,

the Responsible Entity must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this Constitution.

Unless otherwise agreed between the Responsible Entity and the Stapled Company the application price of a Stapled Security will be allocated between the Application Price of the Unit and the application price of the Stapled Share in the ratio that the net assets (adjusted for the net market value of their investments) of each of the Trust and the Stapled Company at the end of the relevant period immediately prior to the issue bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of both the Trust and the Company at that time.

# **7 Application procedure**

## **7.1 Application form**

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



## **7.2 Application for identical number of Attached Securities**

While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Attached Securities.

## **7.3 Payment**

Payment 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 the Responsible Entity requires), must:

- (a) accompany the application;
- (b) be received by or made available to the Responsible Entity or the custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Partly Paid Unit contemplate; or
- (c) comprise a reinvestment of a distribution in accordance with this Constitution.

If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Responsible Entity decides.

## **7.4 Responsible Entity may reject**

The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.

## **7.5 Minimum amounts**

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

## **7.6 Responsible Entity must reject application**

While Stapling applies, the Responsible Entity must reject an application for Units if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

## **7.7 Issue Date**

Except in the case of a reinvestment of distribution in accordance with this Constitution, Units are taken to be issued when:

- (a) the Responsible Entity accepts the application; or
- (b) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.

Units which are issued on a reinvestment of distribution in accordance with this Constitution are taken to be issued on the day the distribution is applied in payment for the Units. The Responsible Entity may hold applications without accepting them for such period as it determines and, in particular, may hold applications received prior to the First Closing Date until the First Closing Date.

## **7.8 Uncleared funds**

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

## **7.9 Register**

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

## **7.10 Holding statements**

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

## **7.11 Income Entitlement of Units**

Except as otherwise expressly provided in this Constitution, the Responsible Entity may in its discretion issue Units on terms that such Units:

- (a) participate fully for Income of the Trust in respect of the Distribution Period in which they are issued;
- (b) do not entitle the holder of such Units to receive a distribution of Income of the Trust in respect of the Distribution Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a distribution of Income of the Trust in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Income of the

Trust to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

# **8 Redemption Price of Units**

## **8.1 Redemption Price**

A Unit must only be redeemed at a Redemption Price calculated as:

Net Asset Value - Transaction Costs + Aggregate Unpaid Amount number of Units in issue  
less:

- (a) in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid; and
- (b) the Accrued Income Entitlement attributable to the Unit.

## **8.2 Determination of variables**

Each of the variables in clause 8.1 must be determined:

- (a) while the Trust is Liquid, as at the next Valuation Time after the Responsible Entity receives the redemption request, or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

## **8.3 Rounding**

The Redemption Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1 cent.

## **8.4 Distribution of Accrued Income Entitlement**

Immediately prior to the redemption of the Unit the Responsible Entity is to distribute to the Member and the Member becomes presently entitled to the Accrued Income Entitlement in respect of the Unit. The Accrued Income Entitlement is to be paid at the time of payment of the Redemption Price.

## **8.5 If Accrued Income Entitlement not an income distribution**

If the right of a Member to receive at the time of redemption of Units the Accrued Income Entitlement in relation to the Units would in the opinion of the Responsible Entity not be fully recognised as being an income distribution for the purposes of any Tax, the Responsible Entity may determine that the right shall not apply and in that event paragraph (b) in clause 8.1 and clause 8.4 will not operate.

# **9 Redemption procedures**

## **9.1 While Officially Quoted**

While Units are Officially Quoted, none of the provisions of this clause apply, except clause 9.17.

## **9.2 Request for redemption**

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Responsible Entity and, while the Trust is Liquid, the Responsible Entity may (but is not required to) give effect to that request at the time and in the manner set out in this clause 9.

## **9.3 Where the Trust is Liquid - Responsible Entity may redeem**

While the Trust is Liquid, the Responsible Entity may decide to satisfy a redemption request either in relation to all or some of the Units which are the subject of the request.

## **9.4 Where the Trust is Liquid - time for payment of Redemption Price**

While the Trust is Liquid, if the Responsible Entity decides to satisfy a redemption request in respect of a Unit it must pay from the Assets the Redemption Price calculated in accordance with this Constitution. The payment must be made within 60 days of the Responsible Entity's decision.

## **9.5 Responsible Entity not obliged to pay Redemption Price out of own funds**

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

## **9.6 Aggregate Redemption Price less than minimum holding amount**

While the Trust is Liquid, if compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Member's holding.

## **9.7 Increase of minimum holding amount**

While the Trust is Liquid, if the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

## **9.8 When Trust is not Liquid**

While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity, which if the Trust is a registered scheme is in accordance with the provisions of the Corporations Act and, if Units are Officially Quoted is in accordance with the Listing Rules. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

## **9.9 Responsible Entity not obliged to make a withdrawal offer**

The Responsible Entity is not at any time obliged to make a withdrawal offer.

**9.10 Redemption request received before withdrawal offer**

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.

**9.11 Clauses applicable whether or not the Trust is Liquid**

Clauses 9.12 and 9.13 apply whether or not the Trust is Liquid.

**9.12 Sums owed to Responsible Entity**

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

**9.13 Transfer of Assets**

The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

**9.14 Responsible Entity's power of compulsory redemption**

Subject to the Listing Rules the Responsible Entity may redeem the Units of any Member without the need for a redemption request if the Member holds less than the Minimum Holding.

**9.15 Buy-back of Units**

While the Trust is Listed, the Responsible Entity may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase Units or where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Responsible Entity may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Responsible Entity must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

**9.16 Redemption while Stapling applies**

While Stapling applies the Responsible Entity may not redeem a Unit unless each Stapled Entity also redeems or buys back and cancels the corresponding Attached Securities or the Attached Securities are unstapled from the Unit to be redeemed.

**9.17 Discretionary redemption**

Subject to the Corporations Act and the Listing Rules, if the Responsible Entity is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

**10 Valuation of Assets**

**10.1 Responsible Entity may value**

The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.

**10.2 Determination of Net Asset Value**

The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

### **10.3 Valuation methods and policies**

The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating 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, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

## **11 Income and distributions to Members**

### **11.1 Responsible Entity must determine distributable income**

The Responsible Entity must determine the distributable income of the Trust for each Financial Year.

### **11.2 Distributable income**

Unless the Responsible Entity determines otherwise prior to the end of the Financial Year, the distributable income of the Trust will be the net income of the Trust calculated in accordance with the Tax Act reduced by any amount which would be included in the assessable income of the Trust in accordance with section 6AC or section 160AQT of the Tax Act.

### **11.3 Trust accounts**

Notwithstanding that the distributable income of the Trust may, in accordance with this clause 11, be calculated in the same manner as the taxable income, the accounts of the Trust may be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the distributable income of the Trust pursuant to clauses 11.1 and 11.2. The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

### **11.4 Distributable account**

The distributable income of the Trust in respect of a Distribution Period is to be transferred to a special account in the name of the Responsible Entity and designated a distributable account. Any amount in the distribution account does not form part of the Assets but must be held by the Responsible Entity, on trust for distribution among the Members entitled to that distributable income. The Responsible Entity may invest any moneys standing to the credit of the distribution account pending disbursement and the Responsible Entity shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

### **11.5 Present entitlement**

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the distributable income of the Trust for the Financial Year, in the proportion that the Income Distributions made (or allocated under the clause next following) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) to all persons who are or have been Members at any time during the Financial Year.

### **11.6 Income Distributions**

An Income Distribution in respect of a Member means an amount calculated by the Responsible Entity as follows:

- (a) subject to the terms of issue of any Units, in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:

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

where

- A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the last Business Day of the Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with clause 7.11, the aggregate number of such Units by that Member multiplied by the relevant proportion;
- B is the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with clause 7.11, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on that last Business Day of that Distribution Period; and
- C is an estimate of the distributable income for the Distribution Period calculated as if the Distribution Period were a year of income but after deducting all distributions of Accrued Income Entitlements arising during the Distribution Period; and
- (b) subject to the terms of issue of any Units, in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

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

where

- A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the last Business Day of the Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with clause 7.11, the aggregate number of such Units by that Member multiplied by the relevant proportion;
- B is the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with clause 7.11, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on that last Business Day of that Distribution Period; and
- C is the amount (if any) by which the distributable income for the Financial Year exceeds the aggregate of the estimates of distributable income calculated for the purposes of variable C in paragraph (a) above in respect of the previous

Distribution Periods of the Financial Year but after deducting all distributions of Accrued Income Entitlements arising during the Financial Year; and

- (c) in respect of a redemption, any Accrued Income Entitlement arising during the Financial Year.

#### **11.7 Satisfaction of present entitlement**

The present entitlement of a Member to distributable income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within two-three months after the Distribution Calculation Date or in accordance with clause 8.4. The Responsible Entity must have distributed all of the distributable income of the Trust for the Financial Year within two-three months after the end of the Financial Year.

#### **11.8 Minimum distribution**

The Responsible Entity may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the Responsible Entity as trustee of the Trust becoming assessable to pay tax under the Tax Act.

#### **11.9 Other distributions**

The Responsible Entity may at any time distribute any amount of capital to Members pro rata according to the number of Units held as at a time decided by the Responsible Entity (including a distribution pursuant to clause 11.18) or distribute income to Members in accordance with the proportions in clause 11.6. The distribution may be in cash or by way of additional Units.

#### **11.10 Responsible Entity may permit or require reinvestment**

The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

#### **11.11 Notification of reinvestment procedures**

If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

#### **11.12 Deemed application if reinvestment applies**

If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the Responsible Entity is required to deduct on the date upon which the distribution is to be paid.

#### **11.13 Acquisition of identical number of Attached Securities**

While Stapling applies no reinvestment may occur unless contemporaneously with the reinvestment in additional Units the Member subscribes for or purchases an identical number of Attached Securities which when issued or acquired (respectively) are then Stapled to the additional Units. The Responsible Entity may make provision for and make payment of the subscription or purchase price for such Attached Securities out of the distribution or income (as applicable) which is otherwise available for reinvestment.

#### **11.14 Application Price while listed if reinvestment applies**

If reinvestment applies, while the Units in the Trust are Listed the aggregate of the Application Price for each additional Unit and the application price for the Attached Securities upon reinvestment is the weighted average of all sales of Stapled Securities recorded on the ASX during the first 5 Trading Days following the end of the Period to which the distribution relates (unless the Responsible Entity believes that this calculation does not provide a fair reflection of the market price of the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Stapled Security as determined by an expert independent of the Responsible Entity whose identity and

instructions will be determined by the Responsible Entity) less such discount, if any, not exceeding 10% as the Responsible Entity may determine. The allocation of the application price for a Stapled Security between the Application Price for each Unit and the application price for the Attached Securities is to be determined in accordance with clause 6.5. If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Trust and the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Responsible Entity and the Stapled Entities may determine on behalf of the relevant Stapled Security Holder. If Stapling ceases to apply the Application Price for each Unit is to be calculated in the manner above but based on the sale price of the Units.

#### **11.15 Money held for future reinvestment**

Whenever under this Constitution or by law money is held on behalf of a Member for future reinvestment the money so held may in the discretion of the Responsible Entity be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit and the application price of a Stapled Share be applied in the subscription for a new Unit and new Attached Securities for issue to the Member.

#### **11.16 Units issued on reinvestment**

Units issued under clauses 11.10 to 11.15 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

#### **11.17 Position on transfer of Units**

Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

#### **11.18 Position on transfer of Assets**

The Responsible Entity may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Responsible Entity wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Responsible Entity:

- (a) to act as their agent to agree to obtain the Assets; and
- (b) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

#### **11.19 Deductions from distributable income**

The Responsible Entity may deduct from any distributable income or other distribution payable to a Member any sums of money presently payable by the Member to the Responsible Entity on account of an instalment due in respect of Units or otherwise.

#### **11.20 Capital reallocation**

- (a) In determining an amount to be paid under clause 11.9 (*'Other distributions'*) at any time before the end of the financial year ending 30 June 2020, the Responsible Entity may designate the amount as a "Capital Reallocation Amount", in which event clause 11.20(b) applies in relation to the payment of the amount.



- (b) Each Member entitled to be paid a proportion of a Capital Reallocation Amount irrevocably agrees and directs that:
  - (i) the Responsible Entity must pay the proportion to the Stapled Company (or as otherwise directed by the Stapled Company) on behalf of the Member in discharge of a liability of the Member (in its capacity as a holder of Stapled Shares) imposed or to be imposed on the Member in accordance with the constitution of the Stapled Company, to contribute an amount equal to the proportion of the share capital of the Stapled Company held by the Member; and
  - (ii) the only means by which the Member's entitlement to the proportion of the Capital Reallocation Amount may be paid by the Responsible Entity is as expressly provided in clause 11.20(b)(i) and payment of that proportion in accordance with that clause is a good and final discharge of any obligation or other liability of the Responsible Entity to pay or otherwise account for the Capital Reallocation Amount or any proportion of the Capital Reallocation Amount, and this agreement of and direction by the Member applies despite any prior direction given by the Member in respect of payments out of the Trust.

## **12 Payments**

### **12.1 Manner of payment to Members**

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

### **12.2 Unpresented cheques**

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Responsible Entity for the Member or paid by the Responsible Entity in accordance with the legislation relating to unclaimed money unless the Responsible Entity in its discretion decides to reinvest the money in Units and Attached Securities in which event the provisions of clauses 11.10 to 11.16 will apply.

### **12.3 Unsuccessful transfers**

Where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

### **12.4 Only whole cents to be paid**

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

### **12.5 Payment to joint Members**

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

### **12.6 Responsible Entity may deduct amounts**

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

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Responsible Entity or any other person, which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Responsible Entity considers should be deducted.

## **13 Powers of the Responsible Entity**

### **13.1 General powers**

Subject to this Constitution, the Responsible Entity has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity.

### **13.2 Contracting powers**

Without limiting the effect of clause 13.1, the Responsible Entity in its capacity as trustee of the Trust has power to:

- (a) incur all types of obligations and liabilities including guarantees; and
- (b) enter into an arrangement with a person to underwrite the subscription or purchase of Units or Options on such terms as the Responsible Entity determines. Unless the agreement between the Responsible Entity and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Responsible Entity.

### **13.3 Borrowing powers**

The Responsible Entity may borrow or raise money whether or not on security over the Assets.

### **13.4 Investment powers**

Without limiting the effect of clause 13.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

For the purpose of giving effect to the investment policy specified in clause 13.5 but without limiting any other provision of this Constitution the Responsible Entity may:

- (a) invest the Assets in cash and cash equivalents, interests, securities or other instruments issued by the Stapled Company (except Stapled Shares) or any other Stapled Entity;
- (b) make loans to or provide any other financial accommodation to the Stapled Company or any other Stapled Entity; and
- (c) enter into hedging contracts in connection with any actual or prospective investment of the Trust or any borrowing by the Trust.

### **13.5 Principal Investment Policy**

The principal investment policy of the Responsible Entity in relation to the Trust is investment either directly or indirectly (for example through the purchase of interests in a managed investment scheme, equities or debentures if and to the extent that the terms of the Responsible Entity's Australian Financial Service Licence allow) in real property and the making of such other investments with the Assets of the Trust Fund

which in the Responsible Entity's opinion are not from time to time required for that purpose. The Responsible Entity may vary the principal investment policy, provided reasonable notice is given to Members in order that Members may, if they see fit, dispose of their Units prior to the variation taking effect.

### **13.6 Power of delegation**

The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.

**13.7 Protection and assistance for those dealing with agents and delegates**

The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.

**13.8 Agents and delegates may be associates**

The agent or delegate may be an associate of the Responsible Entity.

**13.9 Exercise of discretion**

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

**13.10 Instructions from Members with respect to voting rights attached to Assets**

The Responsible Entity may in its absolute discretion seek, and act on, instructions from Members on how the Responsible Entity should exercise voting rights attached to Assets.

**13.11 Registration and Listing of the Trust**

Without limiting the effect of clause 13.1, the Responsible Entity may in its capacity as trustee of the Trust apply for registration of the Trust as a registered scheme and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.

**13.12 Timing of Listing of the Trust**

The Responsible Entity may apply for the Trust to be Listed and Units to be Officially Quoted, including as Stapled Securities, at any time after the First Closing Date and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Member to do all things necessary to effect a Listing.

**13.13 Power to unstack Units**

If Units comprise part of Stapled Securities, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules and approval by Resolution, the Responsible Entity may at any time apply to have the Stapled Securities unstacked and, if the Stapled Securities are Officially Quoted, removed from quotation.

**13.14 Power to stack additional Securities**

The Responsible Entity may, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stacking of any other security or securities to the Units.

**13.15 Investment Responsible Entity**

Without limiting the generality of any other provision of this Constitution:

- (a) the Responsible Entity may appoint an Investment Responsible Entity of the Trust, to act in relation to the investments of the Trust or any part of the Trust, on the terms determined by the Responsible Entity;
- (b) the Responsible Entity may also appoint an external Responsible Entity to provide investment services to the Trust, to act in relation to the investments of the Trust or any part of the Trust, on the terms determined by the Responsible Entity and contained in an Investment Management Agreement, and under the control of the Investment Responsible Entity;
- (c) an Investment Responsible Entity of the Trust has the powers in relation to the investments of the Trust determined by the Responsible Entity, which may include the power to delegate all or any of the powers granted to the Investment Responsible Entity by the Responsible Entity as described in the Investment Management Agreement;

- (d) the Responsible Entity has the power to revoke the appointment of an Investment Responsible Entity of the Trust; and
- (e) the remuneration of the Investment Responsible Entity and all expenses properly incurred in connection with acting as Investment Responsible Entity of the Trust are payable as an expense of the Trust out of the Assets of the Trust and do not reduce the remuneration payable to the Responsible Entity.

### **13.16 Capital Reallocation**

Each Eligible Member irrevocably appoints and directs the Responsible Entity to:

- (a) consent in writing (which consent may be a single document or two or more documents executed by the Responsible Entity on behalf of all Eligible Members) to any variation of the rights attaching to any shares in the Stapled Company Stapled to Units held by the Eligible Member constituted by:
  - (i) any modification of the constitution of the Stapled Company that increases or provides for an increase in the liability of the Eligible Member in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company; and
  - (ii) that increase in that liability;
- (b) agree in writing (which agreement may be a single document or two or more documents executed by the Responsible Entity on behalf of all Eligible Members) to the increase in the Eligible Member's liability to contribute to the share capital of the Stapled Company in accordance with the constitution of the Stapled Company;
- (c) apply on behalf of the Eligible Member the amount of the Eligible Member's entitlement to be paid a proportion of a Capital Reallocation Amount to discharge in full the increase in the Eligible Member's liability in its capacity as a holder of Stapled Shares to contribute to the share capital of the Stapled Company;
- (d) do all things the Responsible Entity considers necessary or expedient (including dealing with fractional entitlements and resolving any difficulty) to give effect to the payment of the Capital Reallocation Amount in accordance with this constitution.

## **14 Retirement of Responsible Entity**

### **14.1 Voluntary retirement**

The Responsible Entity may retire as the responsible entity of the Trust as permitted by law. If permitted by law or by any relief from the Corporations Act granted by the ASIC, the Responsible Entity may appoint its successor by deed.

### **14.2 Compulsory retirement**

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

### **14.3 Release**

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

### **14.4 Retirement benefit**

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

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

(b) its retirement as Responsible Entity,

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

## **15 Notices to Members**

### **15.1 Form of notices**

Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Responsible Entity determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.

### **15.2 Cheques payable to Members**

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.

### **15.3 Joint Members**

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

### **15.4 Receipt of communications**

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax (except a fax containing a notice of meeting of Members) is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

## **16 Notices to the Responsible Entity**

### **16.1 Form of notices**

A notice required under this Constitution to be given to the Responsible Entity must be given in writing (which includes a fax), or in such other manner as the Responsible Entity determines.

### **16.2 When notice effective**

The notice is effective only at the time of receipt.

### **16.3 Signing of notices**

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Responsible Entity dispenses with this requirement.

## **17 Meetings of Members**

### **17.1 Convening of meetings**

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

### **17.2 Responsible Entity may determine**

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

### **17.3 Notice of meeting**

Notice of a meeting of Members must be given in accordance with the Corporations Act.

### **17.4 Quorum**

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

### **17.5 No quorum**

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Responsible Entity decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### **17.6 Chairman**

Subject to the Corporations Act the Responsible Entity may appoint a person to chair a meeting of Members.

### **17.7 Role of chairman**

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting, and a decision by the chairman under this clause 17.7 is final.

### **17.8 Postponement or cancellation**

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

### **17.9 Notice of Cancellation or postponement of meeting**

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

### **17.10 Contents of notice or postponement of meeting**

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;

- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

**17.11 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

**17.12 Business at postponed meeting**

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

**17.13 Proxy, attorney or representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Responsible Entity notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

**17.14 Proxies and voting**

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

**17.15 Proxies containing some of the required information**

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

**17.16 Adjournment of meeting**

The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**17.17 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

**17.18 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

**17.19 Declaration of poll**

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

**17.20 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

**17.21 Poll**

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.

**17.22 Equality of votes - no casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

**17.23 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of Units and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of Units which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

**17.24 Voting on a poll for Partly Paid Units**

If a Member holds Partly Paid Units, the number of votes the Member has in respect of those Units on a poll is one dollar of the value of the Partly Paid Units.

**17.25 Joint Unitholders' vote**

If a Unit is held jointly and more than one Member votes in respect of that Unit, only the vote of the Member whose name appears first in the Register counts.



#### **17.26 Vote of shareholder of unsound mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

#### **17.27 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **17.28 Validity of vote in certain circumstances**

A vote cast by a person as a proxy, attorney or representative is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Responsible Entity or by the chairman of the meeting before the vote is cast.

#### **17.29 Proxy form while Stapling applies**

While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

#### **17.30 Meetings by technology**

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

#### **17.31 Other attendees**

While Stapling applies, the Responsible Entity, the auditor of the Trust and the representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.

#### **17.32 Joint meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of such meetings as the Responsible Entity determines.

#### **17.33 Meetings of Option holders**

If any meeting of Option holders is required to be held the foregoing provisions of this clause 17 will apply with any necessary amendments.

### **18 Rights and liabilities of Responsible Entity**

#### **18.1 Holding Units**

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

#### **18.2 Other capabilities**

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

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

### **18.3 Responsible Entity may rely**

The Responsible Entity may take and may act upon:

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

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

### **18.4 Responsible Entity's duties in relation to Stapling**

Notwithstanding any other provision of this Constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the Responsible Entity may, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Members of the Trust and the members of the Stapled Entities as a whole and not only to the interests of the Members of the Trust alone.

### **18.5 Reference to exercising power or discretion**

The reference to exercising any power or discretion includes carrying out the Responsible Entity's functions and duties and identifying Members' rights and interests.

## **19 Limitation of liability and indemnity in favour of Responsible Entity**

### **19.1 Responsible Entity not liable except to the extent Corporations Act imposes liability**

The Responsible Entity is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

### **19.2 Limitation on Responsible Entity's liability**

Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Responsible Entity's ability to be indemnified from the Assets.

### **19.3 Indemnity in favour of Responsible Entity**

The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.

### **19.4 Indemnity includes acts and omissions of an agent or delegate**

To the extent permitted by the Corporations Act, the indemnity under clause 19.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

### **19.5 Indemnity in addition to indemnity allowed by law**

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed from the office it holds in relation to the Trust.

## **20 Liability of Members**

### **20.1 Liability limited**

Subject to clauses 20.2 and 20.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

### **20.2 Recourse limited to the Assets**

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

### **20.3 Tax and User Pays Fees**

The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

### **20.4 Joint Members**

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which clause 20.3 applies, and User Pays Fees.

### **20.5 Deficiency in the Assets**

A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust.

### **20.6 Restrictions on Members**

Except as otherwise set out in this Constitution, a Member:

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

### **20.7 Power of Attorney**

Each Member, by execution of an application form, and each transferee by the instrument of transfer by which that Member acquired its Unit, irrevocably appoints the Responsible Entity and any director, attorney or substitute nominated by the Responsible Entity for the purpose to be its attorney to execute and deliver on its behalf any notice, election, document or form which, in the reasonable opinion of the Responsible Entity, is necessary or desirable in relation to or in connection with:

- (a) the formation of the Trust;

- (b) the death, bankruptcy, legal disability, liquidation, admission or retirement of the Member;
- (c) any transfer of Units in the Trust; and
- (d) any other matter specified in the application form or the instrument of transfer by which the Member acquired its Unit.

## **21 Remuneration and expenses of the Responsible Entity**

### **21.1 Management fee**

Subject to the Corporations Act, the Responsible Entity is entitled to a maximum annual management fee made up of:

- (a) in respect of that part of the value of the Assets of the Trust that is less than \$10 million, a fee of 0.5% of the value of the Assets of the Trust; and
- (b) in respect of that part of the value of the Assets of the Trust that exceeds \$10 million, a fee of 0.25% of the value of the Assets of the Trust,

calculated monthly at the rate of one twelfth of the relevant percentage of the value of the Assets of the Trust as at the last day of each month, and payable in arrears within 5 Business Days after the last day of the relevant month, from the date the Trust commences to the date of final distribution in accordance with clause 23.3.

### **21.2 Investment Management Fee**

Subject to the Corporations Act and clause 21.3(b), the Responsible Entity is entitled to a maximum annual investment management fee of 0.5% of the value of the Assets of the Trust, calculated monthly at the rate of one twelfth of 0.5% of the value of the Assets of the Trust as at the last day of each month and payable in arrears within 5 Business Days after the last day of the relevant month, from the date the Trust commences to the date of final distribution in accordance with clause 23.3.

### **21.3 Waiver of fees**

- (a) The Responsible Entity may accept lower fees than it is entitled to receive under this Constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.
- (b) For so long as the Responsible Entity engages an external party as Investment Responsible Entity under clause 13.15:
  - (i) the Responsible Entity waives the investment management fee in clause 21.2; but
  - (ii) that fee is payable as an expense of the Trust under clause 21.4.

### **21.4 Expenses**

All expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Trust are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this Constitution and the formation of the Trust and registration of the Trust as a registered scheme;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units and/or Stapled Securities and other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;

- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) underwriting of any subscription or purchase of Units and/or Stapled Securities including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members and attending any meeting of the Stapled Entities;
- (i) Tax, including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (j) financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (l) preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 21.4(n) must be repaid;
- (o) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation **(Claim)** arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Responsible Entity;
- (p) the compliance committee established by the Responsible Entity in connection with the Trust (if any), including 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 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) the preparation, implementation, amendment and audit of the compliance plan;
- (s) the appointment of any compliance officer to undertake compliance work for the Trust;

- (t) the preparation of reports including compliance reports;
- (u) the promotion of the Trust generally;
- (v) recording, responding to and dealing with any complaints from Members in connection with the Trust;
- (w) complying with any law, and any request or requirement of the ASIC; and
- (x) the admission of the Trust to any stock exchange, the Official Quotation of Units or Stapled Securities and compliance with the rules of such an exchange.

## **21.5 GST**

The User Pays Fees and the fees payable out of the Assets to the Responsible Entity under this Constitution do not include any amount referable to GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

## **22 Duration of the Trust**

### **22.1 Initial settlement**

The Trust commences when the Responsible Entity's nominee subscribes \$100 for Units in the Trust. The Responsible Entity's nominee must be issued with 129,066,098 fully paid Units in return for that payment.

### **22.2 Termination**

The Trust terminates on the earlier of:

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

## **23 Procedure on termination**

### **23.1 Realisation of Assets**

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

### **23.2 Audit of winding up**

If and to the extent that ASIC policy so requires, the Responsible Entity must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

### **23.3 Distribution following termination**

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

$$\frac{(A + X) \times B}{Y \times C}$$

Where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 23.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and
- C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any) ; and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination.

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 23.3 results in a negative dollar amount, then that Member must pay to the Responsible Entity within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Responsible Entity may distribute proceeds of realisation in instalments.

#### **23.4 Constitution applies until date of final distribution**

Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 23.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member.

#### **23.5 Responsible Entity may buy in**

At any realisation of Assets in accordance with this clause 23, the Responsible Entity or any associate, related body corporate, director or other officer of the Responsible Entity may "buy in" provided that they do so on arms-length terms and must act with utmost good faith to all Members.

### **24 Amendments to this Constitution**

#### **24.1 Responsible Entity may amend**

If the Corporations Act allows, this Constitution may be amended:

- (a) by Resolution; or
- (b) by deed executed by the Responsible Entity.

If the Constitution is amended by Resolution, the Responsible Entity may give effect to the amendments by executing a supplemental deed.

#### **24.2 Statutory requirements**

If the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. Clause 24.1 does not apply to provisions deemed by this clause 24.2 to be incorporated in the Constitution.

### **25 Compliance committee**

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

## **26 Complaints**

### **26.1 Complaint by a Member**

If a Member:

- (a) considers that it has been adversely affected by a breach of the Corporations Act or this Constitution or by a breach of trust on the part of the Responsible Entity in its administration or management of the Trust; or
- (b) has a complaint or grievance which arises in respect of the relationship between the Member and the Responsible Entity, its officers, employees and agents;

the Member may submit a written complaint to the Responsible Entity.

### **26.2 Dealing with a Complaint**

If the Responsible Entity receives a complaint from a Member under clause 26.1, it must be dealt with as follows:

- (a) the Responsible Entity must acknowledge the complaint in writing and provide to the Member a Complaints Form as soon as practicable and, in any event, within 14 days after receipt of the complaint;
- (b) the Member must complete the Complaints Form and return it to the Compliance Officer, together with any documents the Compliance Officer requires;
- (c) the Responsible Entity must ensure that the complaint receives proper consideration by the Compliance Officer and, if appropriate, by the board of the Responsible Entity or some other person or body designated by the Responsible Entity as appropriate to handle complaints;
- (d) the Responsible Entity must ensure that the consideration of the complaint results in a determination;
- (e) the Responsible Entity must act in good faith and deal with the complaint by endeavouring to correct any error that is capable of correction without affecting the rights of third parties;
- (f) the Responsible Entity may, in its discretion, give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach of duty, if any; and
- (g) the Responsible Entity must communicate to the complainant as soon as practicable and, in any event, not later 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 Member; and
  - (iii) information regarding any further avenue for complaint, if any.
- (h) If the complaint cannot be resolved in this manner by that time, the complaint must be referred to the External Disputes Service of which the Responsible Entity is a member.



## **27 Listing rules**

### **27.1 While Units Officially Quoted**

While the Trust is admitted to the official list of the ASX, the following applies.

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **27.2 Change in the text of the Constitution due to clause 27.1**

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 27.1 is not a modification of, or the repeal or replacement of the Constitution for the purposes of subsection 601GC(1) and (2) of the Corporations Act. Clause 24.1 does not apply to changes in the text of the Constitution because of the operation of clause 27.1.

## **28 Small Holdings**

### **28.1 Responsible Entity may sell or redeem holdings less than a marketable parcel**

Subject to the provisions of this clause 28, while the Trust is Listed, the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.

### **28.2 Limitations on clause 28.1**

The Responsible Entity may only sell or redeem Units pursuant to this clause 28 on one occasion in any 12 month period. The Responsible Entity must notify the Member of its intention to sell or redeem Units under this clause 28.

### **28.3 Notice period**

The Responsible Entity will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given under this clause 28; or
- (b) if, within the 6 weeks allowed under clause 28.3(a) the Member advises the Responsible Entity that the Member wishes to retain the Units.

### **28.4 Power lapses on announcement of full takeover**

The Responsible Entity's power to sell or redeem the Units lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.

### **28.5 Costs of the sale**

The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides. The proceeds of the sale or redemption will not be sent until the

Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.

## **28.6 While Stapling applies**

While Stapling applies, no redemption or sale under this clause 28 may occur unless, at the same time as Units are redeemed or sold, an identical number of Attached Securities are also redeemed or sold.

# **29 Stapling**

## **29.1 Paramountcy of Stapling provisions**

Subject to clauses 24.2 and 27.1, the provisions of this Constitution relating to Stapling prevail over all other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

## **29.2 Maintenance of Listing and Consistency with Constitutions of the Stapled Entities**

The Responsible Entity must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to the Attached Securities in the Constitutions of the Stapled Entities.

## **29.3 Stapling - general information**

The Units are intended to be stapled to the Stapled Shares in the ratio of one Unit to one Stapled Share as from the Stapling Commencement Date. The intention is that, so far as the law permits, a Unit and a Stapled Share which are Stapled together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Units the intention is that, so far as the law permits, a Unit and one of each of the Attached Securities which are Stapled together shall be treated as one Security.

# **30 References to Corporations Act**

Any provision of this Constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a registered scheme.

# **31 Interpretation**

## **31.1 Definitions**

In this Constitution these words and phrases have the following meaning unless the contrary intention appears:

**Accrued Income Entitlement:** in relation to a Unit means the Responsible Entity's estimate of the appropriate share of the distributable income of the Trust accrued from the commencement of the Distribution Period to the date for redemption of the Unit.

**Aggregate Unpaid Amount:** the aggregate of the amounts of the Application Prices of all Partly Paid Units which have not been paid.

**AMIT:** an attribution managed investment trust as that term is defined in section 276-10 of the Tax Act where the choice to be an attribution managed investment trust was made before the end of the Financial Year.

**Application Price:** the application price for a Unit calculated in accordance with this Constitution.

**Approved Valuer:** any person, independent of the Responsible Entity, who is duly qualified to value any Assets of the Trust.

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

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

**ASX:** the Australian Stock Exchange Limited or the market operated by it as the context requires.

**Attached Securities:** means a Stapled Share and any other security or securities which are from time to time Stapled or to be Stapled to a Unit.

**BBSW** for a period:

- (a) the rate determined by the Responsible Entity to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Responsible Entity to be the average of the buying rates quoted to the Responsible Entity by 3 Australian banks selected by the Responsible Entity at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

**Business Day:** a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

**Capital Reallocation Amount:** any amount that the Responsible Entity determines to be paid under clause 11.9 and designates as a Capital Reallocation Amount as provided in clause 11.20(a).

**CHESS System:** a system for the transfer of securities in respect of which approval has been given by the ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532 (or such other body corporate approved by under section 779B(1) of the Corporations Act) in accordance with the SCH Business Rules.

**Class Order** means ASIC Class Order 05/566 relating to the removal of perpetuity clauses.

**Complaints Officer:** an employee of the Responsible Entity appointed to liaise with Members and investigate any complaints made by Members.

**Complaints Form:** the document in such form as the Responsible Entity determines from time to time, that must be completed by a Member who has a complaint of the nature referred to in clause 26.1.

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

**Constitution** means this Constitution.

**Corporations Act** means the Corporations Act 2001 (Clth) as amended by the Class Order.

**Distribution Calculation Date:** the last day of each Financial Year or such other days as the Responsible Entity designates.

**Distribution Period:**

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

- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**Eligible Member:** each Member registered as a holder of Units on the Record Date.

**Financial Year:**

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

**First Closing Date:** means the date of issue of Stapled Securities pursuant to the first offering document pursuant to which Stapled Securities are offered to the public or such other date as is determined by the Responsible Entity.

**Fully Paid Unit:** a Unit on which the Application Price has been fully paid.

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

**Income:** the distributable income of the Trust determined pursuant to clause 11.

**Income Distribution:** in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 11.6.

**Investment Responsible Entity:** a party engaged by the Responsible Entity in accordance with clause 13.15.

**Investment Management Agreement:** an investment management agreement entered into by the Responsible Entity with an external party for the management of the Trust Assets.

**Liabilities:** all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust but excluding any amount representing Members' capital, undistributed income, interest attributable to Members' accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

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

**Listed:**

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of Securities, the Units or the Stapled Securities being Officially Quoted,
- (c) and **Listing** has a corresponding meaning.

**Listing Date** the date on which the Trust is first Listed.

**Listing Rules:** the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

**Manager:** Aspen Funds Management Limited ACN 104 322 278.

**Market Price:** of a Security on a particular day:

- (a) the weighted average price per Security for sales on the ASX (excluding any special crossings) for the period of 15 Trading Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or

(b) if Securities:

- (i) have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
- (ii) in the Responsible Entity's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Security,

the price per Security that an independent valuer determines to be the market price of the Security on the relevant day.

However, if the Responsible Entity believes that the calculation under paragraph (a) or (b) does not provide a fair reflection of the market price, the Market Price will be an amount calculated in a manner which complies with the Corporations Act, as set out in the offer document for the Securities and which in the opinion of an Approved Valuer will approximate the fair market price of the Security.

**Member:** the person Registered as the holder of a Unit (including persons jointly Registered) and where required by the Corporations Act or the context includes the holder of an Option.

**Minimum Holding:** means the amount from time to time determined by the Responsible Entity pursuant to clause 7.5.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 10 less the Liabilities.

**Officially Quoted:** quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Option:** an option granted by the Responsible Entity in respect of an unissued Unit.

**Paid-up Proportion:** the number obtained by adding each Partly Paid Unit multiplied by its Relevant Percentage.

**Partly Paid Unit:** a Unit on which the Application Price has not been paid in full.

**Quarter:** each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of Termination of this Trust or the date of retirement of the Responsible Entity or commences on the date of commencement of the Trust.

**Quarterly:** is to be interpreted accordingly.

**Quarter End Date:** each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Trust or retirement of the Responsible Entity is another date, that date.

**Record Date:** has the meaning given in Clause 1.3 of the constitution of the Stapled Company.

**Redemption Price:** the redemption price of a Unit calculated in accordance with this Constitution.

**Redemption Request:** a written request to the Responsible Entity to redeem Units and, while Stapling applies, to redeem the Attached Securities Stapled to the Units to be redeemed.

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

**Registered:** recorded in the Register.

**Registration:** recording in the Register.

**Relevant Percentage:** in the case of a Partly Paid Unit the percentage calculated in accordance with the following formula at the relevant time:

$$\frac{A - B}{A} \times \frac{100}{1}$$

where:

A means the sum determined by dividing Net Asset Value plus the Aggregate Unpaid Amount by the number of Units in issue;

B means the amount of the Application Price of the Unit which is unpaid.

**Responsible Entity** means Evolution Trustees Limited or any successor responsible entity of the Trust.

**Resolution:**

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

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

**Restriction Agreement:** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

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

**SCH Business Rules:** has the meaning given by the Corporations Act.

**Security:** means while the Units are Stapled a Stapled Security and while the Units are not Stapled a Unit.

**Shareholders:** means the shareholders in the Stapled Company.

**Stapled:** means the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which are quoted on the ASX jointly as a "stapled security" or such other term as the ASX permits.

**Stapled Company:** means Aspen Group Limited ABN 50 004 160 927.

**Stapled Entity:** means the Stapled Company and any other trust, corporation or managed investment scheme whose securities are Stapled to the Units.

**Stapled Security:** means a Unit and each Attached Security which are Stapled together and registered in the name of the Member.

**Stapled Security Holder:** means the Member under this Constitution and the holder of Attached Securities.

**Stapled Share:** means an ordinary share in the Stapled Company.

**Stapling:** means the process that results in Units and Attached Securities being and remaining Stapled to each other.

**Stapling Commencement Date:** means the date upon which Stapling of the Units to Stapled Shares is to commence as determined by the Responsible Entity.

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

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

**Trading Day:** those Business Days on which buying and selling occurs through the Stock Exchange Automated Trading System.

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit, the Responsible Entity's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Responsible Entity's estimate of the total cost of selling the Assets;

provided that subject to the Corporations Act the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

**Trust** means Aspen Property Trust (ARSN 104 807 767) which was registered by ASIC as a managed investment scheme for the purposes of Chapter 5C of the Corporations Act.

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

**User Pays Fees:** any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Responsible Entity considers should be borne by that Member.

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

## **31.2 Interpretation**

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- (h) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;

(i) a reference to dollars or \$ is a reference to the currency of Australia.

**31.3 Other documents**

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

**31.4 Constitution legally binding**

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

**31.5 Severance**

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

**31.6 Governing law**

This Constitution is governed by the law of Western Australia.

**31.7 Other obligations excluded**

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

**31.8 Perpetuity Period**

For the purposes of section 101 of the *Property Law Act 1969 (WA)* a period of 80 years is specified as the perpetuity period for this Constitution.



**EXECUTED** as a deed