
**CONSTITUTION OF
ABACUS GROUP HOLDINGS LIMITED
(ABN 31 080 604 619)**

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1. PRELIMINARY

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

“AGM” means an annual general meeting of the Company held in accordance with the requirements of section 250N of the Corporations Act;

“AGPL” means Abacus Group Projects Limited ACN 104 066 104;

“ASOL” means Abacus Storage Operations Limited ACN 112 457 075; **“ASX Settlement Operating Rules”** means the operating rules of ASX Settlement Pty Limited;

“ASX Settlement Rules” means the ASX Settlement Operating Rules and, to the extent that they are applicable, the operating rules of the Exchange and the operating rules of ASX Clear Pty Limited;

“at any time” means at any time or times and from time to time;

“Attached Securities” means Attached Units, Attached Shares and any other financial products which are from time to time Stapled or to be Stapled to an Ordinary Share;

“Attached Shares” means ordinary shares in AGPL and any other shares which are from time to time Stapled or to be Stapled to a share in the Company including, but not limited to, ordinary shares in ASOL when the Storage Fund Stapling Proposal is implemented;

“Attached Units” means Trust 1 Units, Trust 2 Units and any other units which are from time to time Stapled or to be Stapled to a share in the Company including, but not limited to, Trust 3 Units when the Storage Fund Stapling Proposal is implemented;

“business day” means:

- (a) if the Company is listed, a day which is a business day under the Listing Rules; and
- (b) if the Company is not listed, a day on which trading banks are open for banking business in New South Wales (not being a Saturday, Sunday or public holiday);

“the common seal” means the common seal of the Company, if any, and includes any duplicate seal of the Company;

“the Company” means the company incorporated in Australia under the Corporations Act and taken to be registered in New South Wales and given Australian Business Number 31 080 604 619;

“Constitution” means the Clauses that comprise the Constitution of the Company in force for the time being;

“corporate representative” means a natural person appointed by a member which is a body corporate to be that body’s representative to exercise all or any of the powers the body may exercise at meetings of members of the Company;

“corporate representative certificate” means a certificate evidencing the appointment of a corporate representative, that certificate complying with this Constitution;

“Corporations Act” means the Corporations Act 2001 (Cth) and the Corporations Regulations;

“Corresponding Number” in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Ordinary Share at that time;

“the directors” means the directors of the Company in office for the time being, or a quorum of the directors present at a meeting of the directors;

“dividend” includes bonus;

“EM” means the Notice of Meeting and Explanatory Memorandum dated on or around January 2012 in relation to the Storage Fund Stapling Proposal;

“Excluded Foreign Holder” a foreign member ineligible to participate in a Stapling Proposal, and in particular, to receive Stapled Securities, including a foreign member specified in the EM as ineligible to participate in the Storage Fund Stapling Proposal;

“the Exchange” means ASX Limited (ACN 008 624 691);

“group directors’ fees” means the remuneration of non-executive directors of the Company for their ordinary services as directors (whether or not executive or other paid work is undertaken) of the Company and, if applicable, any of its wholly - owned subsidiaries at any time;

“individual” means a natural person;

“listed” means, in relation to the Company, the Company being and remaining admitted to the Official List of the Exchange;

“the Listing Rules” means the Listing Rules of the Exchange and any other rules of the Exchange which are applicable while the Company is listed, each as amended

or replaced from time to time, except to the extent of any express written waiver by the Exchange;

“market transfer” means:

- (a) any proper ASTC transfer (as defined in the Corporations Act); and
- (b) any other transfer of a share where the transfer is pursuant to, or connected with, a transaction entered into on a stock market operated by the Exchange,

where, in either case, the ASX Settlement Operating Rules, the Listing Rules or the Corporations Act does not allow the directors to refuse to register the transfer;

“a meeting of members” means a meeting of members, which includes an AGM, duly called and constituted in accordance with this Constitution, and any adjourned holding of it;

“member”, “shareholder”, or “holder” means any person entered in the register as a member for the time being of the Company;

“a member present” means a member present at any meeting of members, in person or by proxy or attorney or, in the case of a corporation, by its corporate representative;

“ordinary resolution” means a resolution of a meeting of members where more than one half of the total votes cast on the resolution are in favour of the resolution;

“Ordinary Shares” means ordinary voting shares in the capital of the Company having the rights and being subject to the restrictions specified in this Constitution or by the directors;

“person” includes an individual, company, other body corporate, partnership, association or other entity;

“proxy” means an individual duly appointed under a proxy form by a member who is entitled to attend and vote at a meeting of members, to attend and vote instead of the member at the meeting;

“proxy form” means an instrument for appointing a proxy, that instrument complying with this Constitution;

“record date” has the same meaning as it has in the Listing Rules;

“register” means the register of members kept under the Corporations Act and includes any overseas branch register and any computerised or electronic sub-register established and administered under the ASX Settlement Operating Rules;

“the registered office” means the registered office for the time being of the Company;

“Schedule One” is part of this Constitution;

“secretary” means any individual appointed to perform the duties of secretary of the Company and includes an assistant secretary or any individual appointed to act as such temporarily;

“Section” means a Clause or group of Clauses in this Constitution identified by a specified heading or by the same initial number;

“Security” has the meaning given to that term in section 92(1) of the Corporations Act;

“shares” means, except where the context otherwise requires, the shares into which the capital of the Company is at any time divided;

“show of hands” includes the voices;

“special resolution” means a resolution of a meeting of members:

- (a) of which notice as set out in section 249L(c) of the Corporations Act has been given; and
- (b) where at least 75% of the total votes cast on the resolution are in favour of the resolution;

“Stapled” means the linking together of Ordinary Shares and Attached Securities so that, subject to the terms of issue of either, one may not be dealt with without the other or others, and the word **“Stapling”** has a corresponding meaning;

“Stapled Entity” means the Trusts, AGPL and any other corporation or trust whose financial products are Stapled to the Ordinary Shares including, but not limited to, ASOL and Trust 3 when the Storage Fund Stapling Proposal is implemented;

“Stapled Security” means an Ordinary Share and each Attached Security that are Stapled together and registered in the name of the Member;

“Stapled Security Register” means the register of Stapled Securities to be established and maintained by or on behalf of the Company in accordance with **Clause 34.10**;

“Stapling Date” means the date and time determined by the Company to be the first day and time on which all Ordinary Shares on issue in the Company are Stapled to an Attached Security or Attached Securities;

“Stapling Proposal” means the proposal to Staple any Security to the Stapled Securities, including without limitation the Storage Fund Stapling Proposal.

“Stapling Resolution” means the resolution to approve amendments to this Constitution and to, among other things, give effect to the Storage Fund Stapling Proposal.

“Storage Fund Stapling Proposal” means the proposal to Staple the shares of ASOL and the units of Trust 3 to the shares of the Company and AGPL and the units of the Trusts.

“Trust 1” means the registered managed investment scheme known as Abacus Trust ARSN 096 572 128;

“Trust 2” means the registered managed investment scheme known as Abacus Income Trust ARSN 104 934 287;

“Trust 3” means the registered managed investment scheme known as Abacus Storage Property Trust ARSN 111 629 559; **“Trust 1 Unit”** means a Unit in Trust 1;

“Trust 2 Unit” means a Unit in Trust 2;

“Trust 3 Unit” means a Unit in Trust 3; **“Trusts”** means Trust 1 and Trust 2;

“Unit” means an ordinary unit;

“Unmarketable Parcel” means a number of shares or Stapled Securities which is less than that required for the time being to constitute a marketable parcel of shares or Stapled Securities, as the case may be, as defined by the Listing Rules.

“Unstapled” means an Ordinary Share and each Attached Security not, or no longer, being Stapled; and

“Unstapling Date” means the date when Stapling ceases to apply, determined pursuant to **Clause 34.8**.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded, except for the purpose of identifying a Section;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding Clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

1.3 Listing Rules

In this Constitution:

- (a) a reference to the Listing Rules is to have effect if, and only if, at the relevant time, the Company is listed and otherwise is to be disregarded; and
- (b) if the provisions of the Corporations Act and the Listing Rules conflict on the same matter, the provisions of the Corporations Act prevail.

1.4 Exclusion of replaceable rules

All of the replaceable rules contained in the Corporations Act are displaced by this Constitution and do not apply to the Company.

1.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which, but for such omission, would have been valid unless it is proved to the satisfaction of the directors, or a majority of them, that such omission has directly prejudiced any member financially. The decision of the directors is conclusive and final and binds all members.

2. SHARE CAPITAL

2.1 Control of the directors

Subject to the provisions of this Constitution, the Listing Rules and the Corporations Act, and without prejudice to any special rights previously conferred on the holders of any existing shares:

- (a) the shares in the Company are under the control of the directors; and
- (b) the directors may allot, grant options over, or otherwise dispose of, the shares to such persons, at such times, on such terms and conditions, and having attached to them such preferred, deferred or other rights, and at such issue price, for cash or non-cash consideration, with the issue price paid or unpaid, as the directors think fit.

2.2 Variation of rights

If at any time the issued shares are divided into different classes, the rights attached to any class of shares (unless the terms of issue of that class otherwise provide) may only be varied or cancelled with either:

- (a) the sanction of a special resolution passed at a separate meeting of the holders of shares of that class; or
- (b) the written consent of members with at least 75% of the votes in the class.

2.3 Class meetings

In relation to any such separate meeting of the holders of shares in a class, the provisions of this Constitution which relate to meetings of members apply, as far as

they are capable of application and changed as necessary, except that any member present holding shares of the class may demand a poll.

2.4 Further issues of shares in the same class

The rights attached to a class of shares are not to be considered as varied if further shares of that class are issued on identical terms, except if the terms of issue of that class of shares otherwise provide.

2.5 Reclassification of shares

Subject to this Constitution, the Listing Rules and the Corporations Act, the Company may at any time by ordinary resolution convert and reclassify all or any of the issued shares of one class into shares of another class or classes.

2.6 Brokerage and commission

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company. Payments by way of brokerage or commission (in respect of the issue of any shares) may be satisfied by the payment of cash, by the allotment of fully or partly paid shares, or a combination of these.

2.7 Recognition of third party interests

Except as required by law or in this Constitution, the Company must not recognise any person as holding any share upon any trust. The Company is not bound by, or compelled in any way to recognise (even when having notice of it), any equitable, contingent, future or partial interest in any share or unit of a share or (except only as otherwise provided by this Constitution or by law) any other right in respect of any share except an absolute right of ownership of it in the registered holder.

2.8 Conversion of shares into larger or smaller number

The Company may by ordinary resolution convert all or any of its shares into a larger or smaller number of shares. Any amount unpaid on shares being converted is to be divided equally among the shares that replace those shares.

2.9 Adjustments

The directors may do all things necessary to give effect to any such resolution including where a member becomes entitled to a fraction of a share on consolidation any or all of:

- (a) making provision for the issue of fractional certificates;
- (b) making cash payments;
- (c) determining that all or any fractions may be disregarded;
- (d) appointing a trustee to deal with any fractions on behalf of members; and
- (e) rounding each fractional entitlement to the nearest whole share.

and may discriminate in the treatment of fractional entitlements of members where the directors consider it to be fair and in the interests of members as a whole in all the circumstances.

2.10 Capital Reallocation

- (a) Notwithstanding any other provision of this Constitution, the Company may at any time issue shares (**Capital Reallocation Shares**) in either of the following circumstances:
 - (i) to the holders of Stapled Securities if a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Shares as agent for the holders of Stapled Securities and applies a distribution paid out of that Stapled Entity towards the issue price for those Capital Reallocation Shares; or
 - (ii) to any Stapled Entity if the company is satisfied that immediately following the issue of such Capital Reallocation Shares, those Capital Reallocation Shares will be distributed pro rata to the holders of Stapled Securities,so long as:
 - (iii) immediately following the issue of Capital Reallocation Shares referred to in paragraph (i) above or the in-specie distribution referred to in paragraph (ii) above, the company immediately consolidates the Capital Reallocation Shares with all other shares then on issue in the company such that the total number of shares on issue after the consolidation is equal to the total number of shares on issue immediately prior to the issue of the Capital Reallocation Shares; and
 - (iv) the members have by ordinary resolution approved the consolidation of shares referred to in paragraph (iii) above.
- (b) The share resulting from the consolidation of a share (**Original Share**) with a Capital Reallocation Share pursuant to **Clause 2.10(a)** will be taken for all purposes to be stapled to the same Attached Securities as that to which the Original Share was stapled.

2.11 Application of capital reduction to capitalise Stapled Entity

The company may by ordinary resolution reduce its share capital by equal reduction and the members may by ordinary resolution authorise the company, as agent for and in the name of each member, to apply the amount of the reduction that the member is otherwise entitled to, as additional capital to a Stapled Entity pro rata in proportion to the number of securities held by the member in that Stapled Entity.

3. CERTIFICATES

3.1 Uncertificated mode

Despite any other provision of this Constitution:

- (a) the Company need not issue a certificate, and may cancel any certificate without issuing a certificate in substitution, in respect of any marketable security of the Company in any circumstances where the non-issue of that certificate is permitted by law; and
- (b) where paragraph (a) applies, any reference to a certificate in this Constitution is to be disregarded in relation to that marketable security.

3.2 Holding statements

Where the directors have determined not to issue a certificate or to cancel a certificate in respect of any marketable security of the Company, a member is entitled to receive a statement of the holdings of the member setting out the number of marketable securities and any other matter of which the Company is required to provide particulars under this Constitution, the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules.

3.3 If certificates required

To the extent that certificates are required for marketable securities of the Company:

- (a) the Company must issue certificates of title to marketable securities of the Company in accordance with the Corporations Act and, if the Company is listed, the Listing Rules;
- (b) a member is entitled, without charge, to one certificate for the marketable securities of the Company of each class registered in the member's sole name or to several certificates each for a reasonable part of those marketable securities;
- (c) if any marketable securities of the Company are held by 2 or more persons, the Company is only required to issue the same number of certificates as if those marketable securities were held by one person and delivery of a certificate so issued to any of those persons is sufficient delivery to all of them; and
- (d) if a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the directors, they may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Corporations Act and, if the Company is listed, the Listing Rules.

4. LIEN

4.1 Lien for calls

The Company has a first and paramount lien for unpaid calls and instalments, and interest on such sums, and expenses incurred in relation to those items upon the specific shares registered in the name of each member (whether solely or jointly with others) in respect of which such money is due and unpaid. Such lien extends to all dividends at any time declared or distributed in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares operates as a waiver of the Company's lien on any such shares.

4.2 Lien on payments required to be made by the Company

If any law for the time being of any place imposes or purports to impose any immediate, future or possible liability upon the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any shares registered in the register as held either jointly or solely by any member, or in respect of any dividends or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any such shares, or for or on account of or in respect of any member and whether in consequence of:

- (a) the death of such member;
- (b) the liability for income tax or other tax by such member;
- (c) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of the member's estate; or
- (d) any other act or thing;

in every such case the Company:

- (i) must be fully indemnified by such member or the member's executor or administrator from all liability;
- (ii) has a first and paramount lien upon all shares registered in the register as held either jointly or solely by such member and upon all dividends and other money payable in respect of such shares for any liability arising under or in consequence of any such law and for any amount paid in complete or partial satisfaction of such liability and for interest on any amount so paid at the rate per cent per annum set by the directors from the date of payment to the date of repayment and may deduct from or set off against any such dividend or other money so payable any moneys so paid or payable by the Company together with that interest;
- (iii) may recover as a debt due from such member or the member's executor or administrator wherever constituted any money paid by the Company under or in consequence of any such law and interest

or such money at the rate and for that period in excess of any dividend or other such money then due or payable by the Company to such member;

- (iv) if such shares are not CHESS approved securities under the ASX Settlement Operating Rules, may, if any such money is paid or payable by the Company under any such law, refuse to register a transfer of any such shares by any such member or the member's executor or administrator until such money with that interest is set off or deducted or in case the same exceeds the amount of any such dividend or other money then due or payable by the Company to such member until such excess is paid to the Company; or
- (v) if such shares are CHESS approved securities under the ASX Settlement Operating Rules, and, if any such money is paid or payable by the Company under any such law, may if the Exchange has authorised the Company in writing to do so, request the securities clearing house to apply a holding lock to such shares.

4.3 Other remedies of the Company

Nothing in this Constitution prejudices or affects any right or remedy which any such law may confer or purport to confer on the Company and, as between the Company and every such member, the member's executor, administrator and estate, wherever constituted or situated, any right or remedy which such law confers or purports to confer on the Company is enforceable by the Company.

4.4 Sale under lien

The Company may sell, or cause to be sold, in such manner as the directors think fit any shares on which the Company has a lien and any Attached Securities if:

- (a) a sum in respect of which the lien exists is presently payable;
- (b) a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled to it by reason of death or bankruptcy; and
- (c) that notice remains unsatisfied 14 days after it was given.

4.5 Transfer

To give effect to any such sale the directors may authorise some person to transfer the shares and Attached Securities sold to the purchaser of the shares. The purchaser must be registered as the holder of the shares and Attached Securities comprised in any such transfer and the purchaser is not bound to see to the application of the purchase money nor is the purchaser's title to the shares and Attached Securities affected by any irregularity or invalidity in connection with the sale.

4.6 Application of proceeds

The proceeds of the sale of the shares must be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, must (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares immediately prior to the time of the sale. If the Company or its nominee receives consideration for any Attached Security, it must account to each Stapled Entity for that portion of the consideration received in respect of that Attached Security, having regard to the fair value of the shares and each of the Attached Securities.

4.7 Effect of forfeiture

Any member whose shares have been forfeited is, despite that fact, liable to pay and must immediately pay to the Company and the relevant Stapled Entities all calls, instalments, interest and expenses owing upon or in respect of such shares and Attached Securities at the time of the forfeiture together with interest on such items from the time of forfeiture until payment at such rate as the directors may determine. The directors may enforce the payment of such money, or any part of it if they think fit, but they are not under any obligation to do so.

5. CALLS ON SHARES

5.1 Calls made by the directors

Subject to the terms of issue of any shares, the directors may at any time make such calls as they think fit upon the members in respect of any money unpaid on the shares held by them respectively. A call may be made payable by instalments. A call may be revoked, postponed or extended as the directors determine.

5.2 Time of call

A call is deemed to be made at the time when the resolution of the directors authorising such call was passed.

5.3 Payment of call

Upon receiving at least 14 days' notice specifying the time and place of payment, each member must pay to the Company, by the time and at the place so specified, the amount called on the member's shares. The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the members does not invalidate the call.

5.4 Fixed payments

If by the terms of issue of any shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment is payable as if it were a call duly made by the directors and of which due notice had been given. In case of non-payment, the provisions of this Constitution as to payment of interest, expenses, and forfeiture or otherwise apply as if such sum had become payable by virtue of a call duly made and notified.

5.5 Stapled Securities

A partly paid Ordinary Share which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Company has received all unpaid money in relation to that Ordinary Share; and
- (b) the Stapled Entities have received all unpaid money in relation to the Attached Securities to which it is Stapled.

5.6 Interest on unpaid call

If a sum called is not paid on or before the date for payment of it the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid from time to time) at such rate as the directors may determine calculated from the day appointed for the payment of it until the time of actual payment. The directors may waive such interest in whole or in part.

5.7 Joint holders' liability

The joint holders of a share are jointly and severally liable to pay all amounts of instalments and calls in respect of the share.

5.8 Differences in terms of issue

The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and times of payment.

5.9 Recovery action

If a call is not paid the Company may proceed to recover it with interest and expenses (if any) by action, suit or otherwise. The right of action, suit or otherwise is without prejudice to the right to forfeit the share of any member so in arrears and either or both of such rights may be exercised by the directors.

5.10 Proof of call

On the trial of any action for the recovery of any call or of any interest or expenses upon or in respect of any call it is sufficient to prove that:

- (a) the name of the member sued is entered in the register as the holder, or one of the holders, of the shares in respect of which such debt accrued;
- (b) the resolution making the call is duly recorded in the minute book;
- (c) notice of such call was duly given to the registered holder of the shares or, in the case of calls or instalments payable at fixed times, by the terms of issue of any share or otherwise to prove such terms; and
- (d) such sum or call has not been paid.

It is not necessary to prove the appointment of the directors who made the allotment or call or the passing of the resolution nor any other matters whatever. Proof of the matters in (a) to (d) is conclusive evidence of the debt.

5.11 Prepayment of calls

Subject to the terms of issue of any shares, the directors may at any time receive from any member all or any part of the amount unpaid on a share although no part of that amount has been called up. The directors may at any time pay interest upon the whole or any part of the moneys so paid in advance until the amount becomes payable at such a rate as the member paying such sum and the directors agree upon. Any amount being paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which such advance has been made. The directors may at any time repay the amount so advanced upon giving to such member one month's notice in writing.

6. TRANSFER OF SHARES

6.1 Securities clearing house authorisation

The directors may do anything permitted by the Corporations Act and the Listing Rules which the directors consider necessary or desirable in connection with the participation of the Company in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in shares including, without limitation, electronic registration of transfers of shares.

6.2 Market transfer

Subject to this Constitution, a member may transfer all or any of the member's shares by a market transfer in accordance with any computerised or electronic system established or recognised by the Listing Rules or the Corporations Act for the purpose of facilitating transfers in shares, including a transfer that takes effect pursuant to the ASX Settlement Operating Rules or some other computerised or electronic transfer process. The Company must comply with any obligations which are imposed on it by the Listing Rules or the ASX Settlement Operating Rules in connection with that transfer of shares.

6.3 Non-interference with market transfers

Despite any other provision of this Constitution, the directors may not prevent, delay or interfere with, the registration of a market transfer where to do so would be contrary to any provision of the Listing Rules or the ASX Settlement Operating Rules.

6.4 Instrument of transfer

If not done by a market transfer then, subject to this Constitution, a member may transfer all or any of the member's shares by instrument in writing which is:

- (a) a sufficient instrument of transfer of securities under the Corporations Act;
- (b) in a form approved by the Exchange;

- (c) in any other usual or common form; or
- (d) in any other form approved by the directors.

6.5 Proper instrument

If a member seeks to transfer all or any of the member's shares in accordance with the preceding Clause, the Company may only register a transfer of shares where an instrument satisfying the preceding Clause is delivered to the Company (including, for this purpose, a person authorised by the Company to receive instruments, such as a share registrar of the Company) and the instrument:

- (a) is duly stamped, if necessary;
- (b) is executed by the transferor and (unless the directors otherwise determine in a particular case, relating only to fully paid shares) the transferee, except where execution by either transferor or transferee is not required by law or is deemed by law to be present;
- (c) except where otherwise permitted by law, is accompanied by the certificate for the shares the subject of the transfer where a certificate has been issued, unless the directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate;
- (d) is accompanied by such other evidence as the directors may require to prove the title of the transferor or the transferor's right to transfer the shares; and
- (d) relates only to shares of one class.

6.6 Free registration

Except as provided in:

- (a) **Clause 6.7** (restrictions on transfer);
- (b) **Clause 32** (restricted securities); or
- (d) the terms of issue of the shares concerned,

the directors must register each transfer of shares which complies with the 2 preceding Clauses, and do so without charging a fee.

6.7 Restrictions on transfer

The directors:

- (a) may decline to register a transfer of shares where to do so would not contravene the Listing Rules; and
- (b) must decline to register a transfer of shares when required by law, by the Listing Rules or by the ASX Settlement Operating Rules.

6.8 Transferor remains member

The transferor of a share remains the holder of that share until the transfer is registered and the name of the transferee is entered in the register in respect of that share.

6.9 Retention of instruments

If an instrument of transfer or a purported instrument of transfer is delivered to the Company, property to and title in that instrument (but not the shares the subject of it) passes to the Company which is entitled, as against all persons, to the possession of the instrument.

6.10 Notification of refusal to register

If the directors refuse to register a transfer of shares they must give written notice of the refusal to the transferee and the reasons for the refusal:

- (a) if the Company is listed, within 5 business days after the date on which the transfer was lodged with the Company;
- (b) otherwise, within 2 months after the date on which the transfer was lodged with the Company.

6.11 Powers of attorney

All powers of attorney granted by members for the purpose, amongst other things, of transferring shares which may be lodged, produced or exhibited to the Company are, as between the Company and the grantor of such powers, treated as remaining in full force and effect and they may be acted upon until such time as express notice in writing of the revocation of them or of death of the grantor has been lodged at the registered office.

6.12 Unmarketable parcels

If the Company is listed and a member holds an Unmarketable Parcel, the provisions of **Schedule One** apply to that Unmarketable Parcel.

7. TRANSMISSION OF SHARES

7.1 Entitlement to shares on death

If a member dies:

- (a) the survivor or survivors where the deceased was a joint holder; and
- (b) the legal personal representative where the deceased was a sole holder is,

upon producing satisfactory proof of death, the only person recognised by the Company as having any title to the deceased's interest in the share. Nothing in this Constitution releases the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by the deceased.

7.2 Registration of persons entitled

If a person becomes entitled to a share in consequence of the death or bankruptcy of a member or to a share of a mentally incapable member then:

- (a) that person may, upon such information being produced as is properly required by the directors, and subject to paragraphs (b) and (c), elect either to be registered as the holder of the share or to have some other person (nominated by the person becoming entitled) registered as the transferee of the share;
- (b) if the person so becoming entitled elects to be registered, that person must deliver or send to the Company a notice in writing signed by that person stating that election;
- (c) if the person so becoming entitled elects to have another person registered, the person becoming entitled must execute a transfer of the share to that other person; and
- (d) all the provisions of this Constitution relating to the right to transfer and the registration of transfers apply to any such notice or transfer as if the notice or transfer were a transfer executed by that member.

7.3 Dividends and other rights

A person entitled to be registered as a member in respect of a share by virtue of the 2 preceding Clauses is, upon the production of such evidence as may at any time be properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been. If 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they are, for the purposes of this Constitution, treated as joint holders of the share.

8. FORFEITURE AND SURRENDER OF SHARES

8.1 Payment required

If any member fails to pay the whole or any part of any call or instalment on or before the day appointed for payment of the call or instalment, the directors may, at any time while the same remains unpaid, serve a notice on the member requiring the member to pay the same together with any interest that may have accrued thereon and interest up to the date of payment and any expense that may have been incurred by the Company by reason of such non-payment.

8.2 Forfeiture notice

The notice must:

- (a) name a future date (not earlier than the expiry of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made;

- (b) identify the place where payment is to be made; and
- (c) state that if payment is not made by the due date and at the place appointed, the shares in respect of which such payment is due are liable to be forfeited.

8.3 Forfeiture

If the requirements of any such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter, if payment required by the notice has still not been made, be forfeited by a resolution of the directors to that effect. Such forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture. The right to forfeit the shares does not affect the right of the Company to sue for any allotment moneys, calls, instalments, interest and expenses due in respect of such shares.

8.4 Cancellation of forfeiture

Subject to the Listing Rules, the directors may, at any time before the forfeited shares have been sold or otherwise disposed of, annul the forfeiture of them upon such conditions as they think fit.

8.5 Directors may sell

A forfeited share becomes the property of the Company. Subject to the Listing Rules, any forfeited share may be sold or otherwise disposed of upon such terms and in such manner as the directors think fit.

8.6 Effect of forfeiture

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares. However, that person remains liable to pay and must immediately pay to the Company all money payable by such person in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment at such rate as the directors may determine. The Company may enforce the payment of such money but is not under any obligation to do so.

8.7 Evidence of forfeiture

A statement in writing by a director or the secretary of the Company that a share in the Company has been duly forfeited on the date stated in the statement is conclusive evidence of the facts so stated as against all persons claiming to be entitled to the share.

8.8 Transfer of forfeited shares

The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition of the share and may appoint some person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of. The transferee must then be registered as the holder of the share and is not bound to see to the application of the purchase money, if any. The transferee's title

to the share is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

8.9 Surrender as forfeiture

The directors may accept the surrender of any fully paid share by way of compromise of any question as to the holder being properly registered in respect of it. Any share so surrendered may be disposed of in the same manner as a forfeited share.

8.10 Fixed amounts taken to be calls

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

9. MEETINGS OF MEMBERS

9.1 Calling of meetings

A meeting of members may be called by:

- (a) the directors; or
- (b) if the Company is listed, a single director.

9.2 Requisition of meetings

Except as provided in section 249E or section 249F of the Corporations Act, no member or members may call a meeting of members.

9.3 Notice of meeting

Every notice of a meeting of members must:

- (a) set out the place, day and time of meeting;
- (b) in the case of special business, state the general nature of the business;
- (c) if a special resolution is to be proposed, set out an intention to propose the special resolution and state the resolution;
- (d) in the case of an election of directors, give the names of the candidates for election;
- (e) contain a statement of the right to appoint a proxy, being to the effect that:
 - (i) a member entitled to attend and vote is entitled to appoint a proxy;
 - (ii) a proxy need not be a member;
 - (iii) 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. If there is no such specification, each proxy may exercise half of the votes;

- (f) specify a place and a fax number (and may specify an electronic address) for the purpose of receipt of proxy forms;
- (g) contain a statement, in accordance with Corporations Regulation 7.11.37, that the directors have determined that a person's entitlement to vote at the meeting of members will be the entitlement of that person set out in the register as at the time and date so determined by the directors.

9.4 Business of AGM

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of directors;
- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

All other business transacted at an AGM, and all business transacted at other meetings of members, is deemed special.

9.5 Entitlement to notice

Written notice of a meeting of members must be given individually to:

- (a) each member (apart from any member who under this Constitution or by the terms of issue of any share is not entitled either to the notice or to vote at the meeting); and
- (b) the auditor; and
- (c) each director.

9.6 Entitlement to proxy form

A proxy form (in a form determined by the directors) must be given to each member entitled to attend and vote at the meeting of members.

9.7 Omission to give notice

The accidental omission to give notice of a meeting of members (or proxy form) to, or the non-receipt of any such notice (or proxy form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

9.8 Period of notice

Subject to the next Clause, at least 21 clear days' (or if the Company is listed, 28 clear days') notice must be given of a meeting of members. This means that both the day the notice was deemed to be given and the day of the meeting of members itself are excluded.

9.9 Consent to short notice

With the consent of the requisite number of members, any meeting of members (except a meeting referred to in the next Clause) may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly. The required number is:

- (a) in the case of an AGM, all the members entitled to attend and vote at the AGM;
- (b) in the case of other meetings of members, those members entitled to attend and vote at that meeting who, between them, hold at least 95% of the votes that may be cast at the meeting.

9.10 Shorter notice not allowed

At least 21 clear days' (or if the Company is listed, 28 clear days') notice must be given of a meeting of members at which a resolution will be moved to:

- (a) remove a director under section 203D of the Corporations Act; or
- (b) appoint a director in place of a director removed under section 203D of the Corporations Act; or
- (c) remove an auditor under section 329 of the Corporations Act.

9.11 Cancellation or postponement of meeting

The directors may cancel or postpone the holding of any meeting of members at any time prior to the meeting for any reason unless the meeting was called by requisitioning members, or in response to a requisition by members, in which case the directors may only cancel or postpone the meeting for 30 days or more with the consent of a majority of the requisitioning members.

9.12 Notice of cancellation of meeting

Notice of the cancellation of a meeting of members must be given to every member.

9.13 Notice of day, time and place of postponed meeting

Notice of the day, time and place to which the meeting has been postponed must be given to every member at least 5 business days prior to the postponed meeting.

9.14 Proxy, attorney, or corporate representatives for postponed or cancelled meetings

Where

- (a) the terms of an instrument appointing a proxy, attorney or corporate representative provide that such appointment is valid only for a meeting of members 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

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the member appointing the proxy, attorney or corporate representative gives written notice specifying otherwise to the Company 48 hours prior to the time to which the meeting has been postponed (and in that event the member may at the same time appoint a new proxy, attorney or representative in accordance with the relevant provisions of Clause 10, with necessary modifications).

10. REPRESENTATION AT MEETINGS

10.1 Persons entitled to attend

The right to attend a meeting of members is as follows:

- (a) each member may attend, apart from any member who under this Constitution or by the terms of issue of any share is not entitled to attend;
- (b) each director, secretary and auditor may attend;
- (c) the auditor, or a person authorised in writing as their representative, may attend;
- (d) each individual, whether a member or not, who is a proxy, corporate representative or attorney of a member may attend;
- (e) other individuals may attend only with leave of the meeting or its chair and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chair of the meeting both at law and under this Constitution.

10.2 Proxy eligibility

A proxy need not be a member.

10.3 Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member if, and only if, the proxy form complies with the requirements of this Constitution concerning form, execution and lodgment.

10.4 Proxy form

The proxy form:

- (a) must contain the member's name and address;
- (b) must contain the proxy's name or the office held by the proxy;
- (c) may make provision for the chair of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members;
- (d) must contain the Company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one;
- (e) must enable the member to at least instruct the proxy to vote for or against each notified resolution.

10.5 Chair as fall-back proxy

If a proxy form is otherwise effective except that it does not specify the proxy, the member is treated as validly appointing the chair of the meeting of members as the proxy in respect of all shares of that member.

10.6 Proxy execution by individuals

In the case of members who are individuals, the proxy form must be either:

- (a) signed:
 - (i) if the shares are held by one person, by that member;
 - (ii) if the shares are held in joint names, by any one of them; or
- (b) authenticated in a manner prescribed by regulations under the Corporations Act.

10.7 Proxy execution by companies

In the case of members which are companies, the proxy form must be either:

- (a) signed:
 - (i) if it has a sole director who is also sole secretary, by that director (and stating that fact next to or under the signature on the proxy form);
 - (iii) in the case of any other company, by either 2 directors or a director and secretary.
- (b) authenticated in a manner prescribed by regulations under the Corporations Act.

The use of the common seal of the company (if any), in addition to those required signatures, is optional.

10.8 Proxy execution by other authorised persons

If the person signing, or otherwise authenticating in a manner prescribed by regulations under the Corporations Act, the proxy form is doing so under power of attorney, or is an officer of a company outside of the preceding Clause but authorised to sign the proxy form, the power of attorney or other authorisation (or a certified copy of it), as well as the proxy form, must be received by the Company by the time and at the place required for lodgment of the proxy form.

10.9 Proxy lodgment deadline

A proxy form must be lodged at the place specified in the subsequent Clause at least 48 hours before the time of the meeting unless the directors determine that the proxy forms may be received less than 48 hours before the meeting.

10.10 Proxy lodgment place and method

A proxy form must be lodged:

- (a) as an original, at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members); or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members); or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members; or
- (d) by such other electronic means (and as prescribed by regulations under the Corporations Act) as is, at the election of the directors, specified for the purpose in the notice calling the meeting of members.

10.11 Expiration of proxy form

No proxy form is valid after the expiration of 12 months from the date of its execution.

10.12 Corporate representative recognition

A corporate representative is recognised as having been appointed by a member (which is a body corporate) and entitled to act as a corporate representative of that member if, and only if:

- (a) the appointment is evidenced by a corporate representative certificate which complies with the requirements of this Constitution in relation to form, execution and lodgment; or

- (b) the appointment is evidenced by some other form of documentation satisfactory to the chair of the meeting and it is lodged at the place, and by the deadline, required for corporate representative certificates.

10.13 Form of corporate representative certificate

The corporate representative certificate:

- (a) must contain the member's name;
- (b) must specify at least one individual, by name or by reference to a position held, to act as the body's corporate representative (but if more than one is appointed only one may exercise the body's powers at any one time);
- (c) may specify another individual, by name or by reference to a position held, to act as the body's corporate representative if the individual primarily nominated fails to attend;
- (d) must contain the Company's name and either identify the meetings of members at which the representative may act, or be identified as a standing one;
- (e) may set out restrictions on the corporate representative's powers.

10.14 Execution of corporate representative certificate

A corporate representative certificate must be executed:

- (a) in any case, under the common seal of the body corporate; or
- (b) where the body corporate is a company registered under the Corporations Act, in any manner identified in section 127 of the Corporations Act.

10.15 Corporate representative certificate lodgment

The corporate representative certificate (or a photocopy of it or a facsimile of it) must be lodged:

- (a) at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), by 4.00pm (Sydney time) on the day before the meeting; or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), by 4.00pm (Sydney time) on the day before the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, by 4.00pm (Sydney time) on the day before the meeting.

10.16 Power of attorney lodgment

An attorney is recognised as entitled to act as attorney for a member at a meeting of members if, and only if, the relevant power of attorney (or a photocopy of it or a facsimile of it) is lodged at the place, and by the deadline, required for proxy forms.

11. PROCEEDINGS AT MEETINGS OF MEMBERS

11.1 Quorum

No business may be transacted at any meeting of members unless a quorum of members is present at the time when the meeting proceeds to business.

11.2 Quorum requirements

The quorum for a meeting of members is:

- (a) at least 2 members present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or
- (b) if the Company only has one member who may vote on a resolution, that member.

11.3 Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a meeting of members the meeting is adjourned to the same day in the following week at the same time and place unless:

- (a) the meeting was called by, or in response to, the requisition of members made under the Corporations Act, in which case the meeting is dissolved; or
- (b) the directors determine otherwise by giving written notice to the members of the day, time and place to which the meeting has been adjourned.

11.4 Quorum at meeting adjourned under preceding Clause

At any meeting adjourned under the preceding Clause if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

11.5 Special business

No special business may be transacted at any meeting of members other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Corporations Act to be transacted at such meeting.

11.6 Chair of meeting

The chair of the directors, or in that individual's absence the deputy chair of the directors (if any), is entitled to take the chair at each meeting of members. If neither of those individuals is present at any meeting of members within 15

minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the directors present may choose one of their number as a chair and if no director present is willing to take the chair the directors may choose an individual, whether a member or not, as chair of the meeting, failing which the members present must elect an individual, whether a member or not, to be chair of the meeting.

11.7 Passing the chair

If the chair of a meeting of members is unwilling or unable to be the chair for any part of the business of the meeting:

- (a) that chair may withdraw as chair for that part of the business and may nominate any individual who would be entitled under the preceding Clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the individual so nominated must cease to chair the meeting upon the request of the prior chair and the prior chair is entitled to resume as the chair of the meeting.

11.8 Responsibilities of chair

The chair of a meeting of members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that individual determines it is desirable for the better conduct of the meeting;
- (b) move any motion even though the chair is not a shareholder;
- (c) make, vary or rescind rulings;
- (d) prescribe, vary or revoke procedures;
- (e) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that individual determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (f) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

11.9 Admission to meetings

The chair of a meeting of members may refuse any individual admission to, or require any individual to leave and remain out of, the meeting where that individual:

- (a) fails to comply with searches, restrictions or other security arrangements the chair considers appropriate; or

- (b) is in possession of a pictorial-recording device, sound-recording device or broadcasting device; or
- (c) is in possession of a placard or banner; or
- (d) is in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption; or
- (e) refuses to produce or to permit examination of any article, or the contents of any article, in the individual's possession; or
- (f) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (g) is not entitled under this Constitution to attend the meeting.

This power may be exercised:

- (i) in respect of an individual regardless of whether that individual is a member or would otherwise have been entitled to attend the meeting or not; and
- (ii) by either the chair personally or by an individual acting with the authority of the chair of the meeting.

11.10 Adjournment of meeting

The chair of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

11.11 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

12. VOTING AT MEETINGS OF MEMBERS

12.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any shares, each individual who is present at a meeting of members may vote if he or she is a member or a recognised proxy, attorney or corporate representative of a member.

12.2 Number of votes

Each individual who is, under the preceding Clause, entitled to vote has:

- (a) on a show of hands only one vote, regardless of how many members the individual may represent; and

- (b) on a poll:
 - (i) in respect of a fully paid share - one vote for each share held by the individual or held by members for whom the individual is the recognised proxy, attorney or corporate representative; and
 - (ii) in respect of a partly paid share - a fraction of a vote for each share held by the individual or held by members for whom the individual is the recognised proxy, attorney or corporate representative equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited), ignoring amounts paid in advance of a call.

12.3 Voting restrictions

If the Company is listed and either:

- (a) in accordance with the requirements of the Listing Rules; or
- (b) to ensure that a resolution on which the Corporations Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Corporations Act,

the notice of a meeting of members specifies that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a special resolution or an ordinary resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution. However, a person who is not entitled to vote on a resolution as a member, may vote as a recognised proxy for another member who can vote if the proxy form specifies the way the recognised proxy is to vote on the resolution and the recognised proxy votes that way.

12.4 Calls unpaid

A person is not entitled to vote in respect of particular shares at a meeting of members unless all calls and other sums presently payable by the member in respect of those shares have been paid.

12.5 Attendance of member suspends the proxy

If a member is present at any meeting of members in person (or in the case of a body corporate, by its corporate representative) the proxy or attorney of that member may not exercise the voting rights of the member while the member is present.

12.6 Revocation of proxies

A vote given or act done in accordance with the terms of a proxy form or power of attorney is valid despite the previous death of the principal, or revocation of the proxy or power of attorney, or transfer of the share in respect of which the vote is

given, or act done, provided no intimation in writing of the death, revocation or transfer has been received at the registered office or by the chair of the meeting before the vote is given or act done. Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting. The decision of the chair as to whether a proxy has been revoked is final and conclusive.

12.7 Proxy must vote on a poll as directed

A proxy form may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (c) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

Nothing in this Clause affects the way that the individual who is a proxy can cast any votes they hold as a member.

12.8 Proxy must abstain if directed

A proxy form may specify that the proxy is to abstain from voting on a particular resolution. If it does the proxy must not vote on that resolution.

12.9 Method of voting

The chair of the meeting may determine that any question to be submitted to a meeting of members be determined by a poll without first submitting the question to the meeting to be decided by a show of hands. Unless the chair of the meeting makes such a determination, each question put to a vote at a meeting of members (except where there is an election of directors by ballot) must be determined by a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded.

12.10 Who may demand a poll

At a meeting of members a demand for a poll may be made by:

- (a) the chair of the meeting; or
- (b) at least 5 individuals present having the right to vote at on the resolution; or
- (c) any one or more individuals present having the right to vote at least 5% of the votes that may be cast on the resolution on a poll.

12.11 When poll may be demanded

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

12.12 Declaring result of vote on show of hands

At any meeting of members (unless a poll is so demanded) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

12.13 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

12.14 No casting vote for chair

If, on a show of hands or on a poll, the votes are equal:

- (a) the chair of the meeting does not have a casting vote in addition to the vote, if any, of the chair as a member; and
- (b) the motion is defeated.

12.15 Joint holders' vote

In the case of joint holders, any one of them may vote. If on a particular occasion more than one of the joint holders votes, only the first to vote is counted. If it is not practical to determine which was first, the earliest named in the register to exercise such right (to the exclusion of those named later) prevails. Any such determination (by the chair or returning officer as the case may be) is final and conclusive. Several executors or administrators of a deceased member are, for the purposes of this Clause treated as joint holders of the share.

12.16 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid.

12.17 Ruling on votes

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

13. APPOINTMENT AND REMOVAL OF DIRECTORS

13.1 Number of directors

The number of directors must be not less than 3 nor more than 12.

13.2 No share qualification

There is no share qualification for directors.

13.3 Initial directors

The directors holding office at the date of adoption of this Clause continue in office subject to this Constitution, with their retirement determined under **Clause 13.5** and **Clause 13.6**, as the case may be.

13.4 Casual appointment

The directors may at any time appoint any individual as a director, either to fill a casual vacancy or as an addition to the directors. Until that individual is re-elected at a meeting of members, that director is a “**casual appointee**”.

13.5 Retirement of casual appointee

A casual appointee holds office only until the conclusion of the AGM following his or her appointment by the directors and is then eligible for re-election. A casual appointee is not taken into account in determining the number of directors, if any, who are to retire by rotation at such AGM.

13.6 Retirement by rotation

At the conclusion of every AGM, one-third of the eligible directors (as determined by the next 2 Clauses) must retire from office. No director (except the continuing managing director) may retain office for more than 3 years (or until the conclusion of the third AGM following his or her last election, whichever is the longer) without submitting himself or herself for re-election even though such submission results in more than one-third retiring from office.

13.7 Those who retire

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being, but excluding:
 - (i) all alternate directors;
 - (ii) the continuing managing director;

- (iii) all casual appointees;
 - (iv) any director who, by reason of his or her age, must seek re-appointment at the AGM under section 201C of the Corporations Act;
- (b) if the number of eligible directors is not a multiple of 3, then the whole number nearest to but not exceeding one-third must retire;
- (c) if as a result of rounding down pursuant to paragraph (b), there would be no director due to retire from office at the conclusion of an AGM and no casual appointee is due to so retire, then one director must retire by rotation at the conclusion of that AGM and is eligible for re-election.

13.8 Selection of rotating directors

In every year the director or directors to retire are the one-third or other nearest whole number who have been longest in office since their last election. As between 2 or more directors who have been in office an equal length of time, the director or directors to retire must, in default of agreement between them, be decided by the secretary by lot. Such agreement or decision, when confirmed in writing by the secretary to the directors concerned, may not be varied or revoked unless all the directors concerned agree. A retiring director is eligible for re-election.

13.9 Appointment at AGM

Unless the directors decide to reduce the number of directors in office (such reduction to be effective from the conclusion of the next AGM), the Company at any AGM at which any director retires may fill the vacated office by either re-electing the same individual or electing some other individual.

13.10 Deemed re-appointment

If at any AGM the vacated office is not filled, the retiring director, if willing and not disqualified, is treated as having been re-elected unless an ordinary resolution for the re-election of that director is put and lost.

13.11 Candidates requiring nomination

No individual, except, first, a director retiring by rotation, second, a casual appointee or, third, an individual recommended by the directors for election, is eligible for election to the office of director at any meeting of members (whether an AGM or otherwise) unless duly nominated.

13.12 Valid nominations

Nominations must be made to the secretary at the registered office. Nominations close at 5.00 p.m. (Sydney time) on the day which is 35 business days before the date for the holding of the meeting of members. For a nomination to be valid:

- (a) the nomination must name the candidate and be signed by not less than 5 members; and

- (b) the individual nominated must consent to act if elected. The consent is sufficient if the individual signs a form of consent on the nomination paper but the secretary may accept any other form of consent, whether accompanying the nomination paper or not, that the secretary deems satisfactory, and such acceptance is final; and
- (c) the nomination and consent must be received before the close of nominations.

13.13 Resignation of director

Any director may retire from office by giving notice in writing to the Company of the director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date 3 months from the giving of the notice, whichever is the earlier. A written resignation which has not yet taken effect may be withdrawn by the director, by written notice to the Company, at any time prior to the resignation taking effect.

13.14 Vacation of office

In addition to the circumstances in which the office of director becomes vacant by virtue of the Corporations Act or other provisions of this Constitution, the office of director, by the very fact, is vacated if the director:

- (a) becomes an insolvent under administration; or
- (b) cannot manage the Company because of their mental incapacity and is an individual whose estate or property has had a personal representative or trustee appointed to administer it; or
- (c) is absent from meetings of directors for a continuous period of 6 months without leave of absence from the directors; or
- (d) fails to pay any call due on any shares held by that director for the space of one month, or such further time as the directors allow, after the time when the call has been made; or
- (e) is removed from office by an ordinary resolution.

13.15 Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) to appoint directors up to that minimum number; or
- (b) to call a meeting of members; or
- (c) in emergencies.

14. ALTERNATE DIRECTORS

14.1 Power to appoint alternate director

Each director may at any time appoint any individual approved for that purpose by a majority of his or her co-directors to act as an alternate director in the appointor's place.

14.2 Suspension of appointment

The appointor may vary, suspend, or terminate the appointment of any alternate.

14.3 Notice of appointment

Notice of each such appointment, suspension or termination must be made in writing to the alternate, signed by the appointor, and a copy served on the Company.

14.4 Electronic notifications

Any notice under the preceding Clause or the next Clause may be served by electronic transmission and any such transmission purporting to be signed by a director is treated as being in writing signed by such director.

14.5 Role of alternate

An alternate director, in that capacity:

- (a) is not entitled to receive notice of meetings of the directors, unless the appointor has, by notice in writing to the Company, required it do so either generally or in particular circumstances;
- (b) may attend and vote at a meeting of the directors if the appointor is not present at that meeting;
- (c) is entitled to sign a circular resolution under **Clause 17.10**, unless the appointor has, by notice in writing to the Company, suspended that right either generally or in particular circumstances;
- (d) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a director (subject to this Clause);
- (e) does not have a conflict of interest solely by reason of the fact that the appointor has (or vice versa); and
- (f) is not taken into account in determining either the number of directors or the rotation of directors.

14.6 Remuneration of alternate

An alternate's only rights (if any) as to remuneration for ordinary service as a director are against the appointor and not the Company.

14.7 Multiple votes

A director or any other individual may act as alternate director to represent more than one director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one director.

14.8 Termination of appointment

The appointment of an alternate director, by the very fact, is terminated:

- (a) if, by writing under the hand of the alternate, left at the registered office, the alternate resigns such appointment; or
- (b) if the appointment of the alternate is terminated by the appointor; or
- (c) if a majority of the co-directors of the appointor withdraw the approval of the individual to act as an alternate; or
- (d) if the appointor vacates office as a director; or
- (e) if the appointment is to act as alternate for one or more directors and all of those named directors have vacated office as directors; or
- (f) on the happening of any event which, if the alternate were a director, would cause the alternate to vacate the office of director.

15. MANAGING DIRECTOR

15.1 Appointment of managing directors

The directors may at any time:

- (a) appoint one or more of their body to be managing director (or managing directors) or to some other executive office of the Company;
- (b) define, limit and restrict that individual's powers;
- (c) fix that individual's remuneration and duties;
- (d) vary any of the powers so conferred; and
- (e) remove that individual from that office (but not as a director) and appoint another (or others) in that individual's place or places.

15.2 Continuing managing directors

If the directors appoint more than one managing director, then the directors must nominate one of the managing directors as "the continuing managing director". The directors may terminate or change the nomination of the continuing managing

director at any time. If there is one managing director, then he or she is regarded as the continuing managing director.

15.3 Application of other clauses to managing director

A continuing managing director is not, while that individual continues to hold that office, subject to retirement by rotation and that individual is not taken into account in determining the rotation of retirement of directors. A managing director, subject to the provisions of any contract between that individual and the Company and subject to this Constitution, is subject to the same provisions as to resignation, disqualification and removal as the other directors and if that individual ceases to hold the office of director from any cause that individual, by the very fact, immediately ceases to be a managing director.

15.4 Acting managing director

If a managing director becomes at any time in any way incapable of acting as such, the directors may appoint any other director to act temporarily as managing director.

15.5 Remuneration of executive directors

Subject to the provisions of any agreement entered into in a particular case, the remuneration of a managing director or other director appointed to an executive office, may at any time be fixed by the directors. Such remuneration may be by way of fixed salary, participation in profits of the Company or of any other company in which the Company is interested, or by any or all of those modes but, while the Company is listed, must not be by way of commission on, or percentage of, the operating revenue of the Company.

16. REMUNERATION OF DIRECTORS

16.1 Group directors' fees

A meeting of members may at any time, by ordinary resolution, approve a fixed sum that may be paid in each financial year of the Company as group directors' fees.

16.2 Proposal to increase fees for ordinary services

If there is a proposal to increase group directors' fees, the notice calling the meeting of members at which such increase is to be proposed must state the amount of the proposed increase and the maximum sum that may be paid if the increase is approved.

16.3 Fees for ordinary services of directors of the Company

In each financial year of the Company the directors must be paid out of the funds of the Company as remuneration, for their ordinary services as directors of the Company, such sum as the directors determine, but it must not exceed that last fixed under **Clause 16.1**. The sum so determined must be divided among the directors in such proportion and manner as they may at any time determine or, in default of determination, equally.

16.4 Fees for ordinary services of directors of other group companies

The Company, through its control of its wholly-owned subsidiaries, must ensure that, after taking into account the sum determined under the preceding Clause, the group directors' fees paid in each financial year do not exceed that last fixed under **Clause 16.1**.

16.5 Expenses of directors

Each director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at board meetings and meetings of members or otherwise in connection with the business of the Company.

16.6 Additional remuneration for extra services

Any director who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond the director's ordinary duties or to go or reside abroad or otherwise for any of the purposes of the Company is entitled to be remunerated either by a fixed sum or a salary as may be determined by the directors. Such remuneration may be either in addition to, or in substitution for, that director's share in the remuneration referred to in **Clause 16.3**.

16.7 Daily accrual

The remuneration of each director for ordinary services accrues from day to day and is apportionable accordingly. A resolution of directors cancelling, suspending, reducing or postponing payment of such remuneration or any part of it binds all the directors for the time being.

16.8 Payment of retirement benefit

Upon a director ceasing, or at any time after his or her ceasing whether by retirement or otherwise, to hold that office, the directors may pay to the former director, or in the case of death to the former director's legal personal representatives, or to the director's dependants or any of them, a lump sum payment in respect of past services of such director (either in that capacity or as an officer of a related body corporate of the Company) of an amount not exceeding the amount permitted by the Corporations Act and the Listing Rules. The Company may contract with any director to secure payment of any such sum to him or her, to the director's legal personal representatives, dependants or any of them.

16.9 Contributions to a superannuation fund

The Company may at any time make contributions to a superannuation or similar fund for the benefit of any director. Any such contribution is in addition to, and not regarded as part of, the remuneration approved by members under this Constitution.

17. PROCEEDINGS OF DIRECTORS

17.1 Mode of meeting

The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The directors may conduct their meetings by telephone or other form of communication without a director being in the physical presence of another director or other directors providing all directors have a reasonable opportunity to hear and be heard by each other.

17.2 Quorum

A quorum for a meeting of the directors is 2 directors.

17.3 Chair calling a meeting

The chair of the directors may at any time call a meeting of the directors to be held at such time and place as the chair chooses and such meeting shall not be invalidated by reason only of lack of convenience if a quorum of directors forms.

17.4 Secretary calling a meeting

The secretary, upon the request of any other director, must call a meeting of the directors to be held at such time and place as is convenient to the directors.

17.5 Notice of meeting

Notice of each meeting of the directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all eligible directors and all eligible alternate directors.

17.6 Recipients of notice

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being but excluding, first, all alternate directors, second, those given leave of absence, and third, those who in the belief of the individual calling the meeting are absent from Australia;
- (b) the “**eligible alternate directors**” are those alternate directors in respect of whom an appointor has, under **Clause 14.5**, required the Company to give such a notice to the alternate, but excluding those alternate directors who, in the belief of the individual calling the meeting, are absent from Australia; and
- (c) the accidental omission to give notice of any meeting of the directors to, or the non-receipt of any such notice by, an individual entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

17.7 Appointment of chair

The directors may elect one of their number to be chair of their meetings and may determine the period for which that individual is to hold that office. Such individual is entitled to use the title “Chairman”, “Chairperson” or “Chair”. If no chair is elected or if at any meeting of the directors the chair is not present within 15 minutes of the time appointed for holding the meeting, subject to the next Clause, the directors present must choose one of their number to be chair of such meeting.

17.8 Appointment of deputy chair

The directors may elect one of their number to be the deputy chair of their meetings and may determine the period for which that individual is to hold that office. Such individual is entitled to use the title “Deputy Chairman”, “Deputy Chairperson” or “Deputy Chair”. In the absence of the chair at a meeting of the directors, the deputy chair may exercise all the powers and authorities of the chair.

17.9 Votes of directors

Questions arising at any meeting of the directors must be decided by a majority of votes cast and each director has one vote. An individual who is an alternate director is entitled (in addition to his or her own vote if a director) to one vote on behalf of each director whom the alternate represents (as an alternate director at the meeting) and who is not personally present. If there is an equality of votes, provided more than 2 directors present are competent to vote on the question at issue but not otherwise, the chair may exercise a second or casting vote.

17.10 Circular resolution of directors

If a majority in number of the eligible directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the directors held on the day on which the document was signed or, if the directors sign the documents on different days, on the day on which the document was last signed by a director thereby constituting a majority in number of the eligible directors unless the document, by its terms, is said to take effect from an earlier date.

17.11 Signing of circular resolution

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being but excluding, first, all alternate directors, second, those who, at a meeting of directors, would not be entitled to vote on the resolution and, third, those then outside Australia;
- (b) each director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if an individual who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;

- (d) unless the right has been suspended by the appointor under **Clause 14.5**, each alternate director may sign the document in the appointor's place if the alternate director reasonably believes that the appointor is unavailable to sign the document. An alternate may sign even if the available appointor could not have voted on the resolution. An alternate director who represents more than one director may sign as many times accordingly;
- (e) if there is only one eligible director, he or she may sign the document and it then takes effect under the preceding Clause;
- (f) an electronic transmission purporting to be signed by a director or alternate director is treated as being in writing signed by such individual; and
- (g) 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors are together treated as constituting one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

17.12 Deemed minute

The document or documents referred to in the 2 preceding Clauses are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

17.13 Validity of acts of directors

All acts done at any meeting of the directors or of a committee of directors or other persons or by any individual acting as a director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a director or attorney and was entitled to vote.

18. MATERIAL PERSONAL INTERESTS OF DIRECTORS

18.1 Requirement to leave the meeting

A director who has a material personal interest in a matter that is being considered at a meeting of directors must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

18.2 Exemptions from having to leave

The preceding Clause does not apply if:

- (a) the interest does not need to be disclosed under section 191 of the Corporations Act (whose terms are reflected in **Clause 18.3**) by reason of an

exemption under section 191(2) (whose terms are reflected in **Clause 18.4**); or

- (b) the director is permitted to do so by a declaration or order made by the Australian Securities and Investments Commission under section 196 of the Corporations Act; or
- (c) if there are not enough directors to form a quorum for a directors' meeting because of **Clause 18.1**, one or more of the directors (including those who have a material personal interest in the matter) may call a general meeting to consider a proposed resolution to deal with the matter; or
- (d) if directors who do not have a material personal interest in the matter have passed a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
 - (ii) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

18.3 Director's duty to notify

A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest unless the next Clause says otherwise.

18.4 Exemptions from having to give notice

The director does not need to give notice of an interest under the preceding Clause if:

- (a) the interest:
 - (i) arises because the director is a member of the Company and is held in common with the other members of the Company; or
 - (ii) arises in relation to the director's remuneration as a director of the Company; or
 - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the Company if it is not approved by the members; or
 - (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraph (iv); or
 - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Company

(but only if the contract does not make the Company or a related body corporate the insurer); or

- (vii) relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under section 199A of the Corporations Act or any contract relating to such an indemnity; or
 - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) all the followings conditions are satisfied:
- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under **Clause 18.3**; and
 - (ii) if an individual who was not a director of the Company at the time when the notice under **Clause 18.3** was given is appointed as a director of the Company, the notice is given (by someone) to that individual; and
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest under **Clause 18.6** and the standing notice is still effective in relation to the interest (as to which see **Clauses 18.10 and 18.11**).

18.5 Notice of material personal interest

The notice required by **Clause 18.3** must:

- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a meeting of the directors as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

18.6 Standing notice about an interest

A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with the next Clause. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. The standing notice may be given to the other directors before the interest becomes a material personal interest.

18.7 Form of standing notice

The notice under the preceding Clause must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
 - (i) at a meeting of the directors (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under paragraph (b)(ii) when it has been given to every director.

18.8 Standing notice must be tabled if given to directors individually

If the standing notice is given to the other directors individually in writing, it must be tabled at the next meeting of the directors after it is given.

18.9 Nature and extent of interest must be recorded in minutes

The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

18.10 Dates of effect and expiry of standing notice

The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if an individual who was not a director of the Company at the time when the notice was given is appointed as a director of the Company.

A standing notice that ceases to have effect under the paragraph (b) commences to have effect again if it is given (by someone) to the individual referred to in that paragraph.

18.11 Effect of material increase in nature or extent of interest

The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

18.12 Effect of contravention

A contravention of any of the Clauses in this Section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

19. POWERS AND DUTIES OF DIRECTORS

19.1 Powers generally

Subject to the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors who may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Corporations Act expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change had not been adopted or passed.

19.2 Sale of main undertaking

If the Company is listed, any sale or disposal of the Company's main undertaking is conditional upon approval or ratification by ordinary resolution at a meeting of members held in accordance with the Listing Rules.

19.3 Borrowing

The directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

19.4 Security

Without limiting the generality of the preceding Clause, the directors have power to make such loans to, and to provide such guarantees and security for obligations undertaken by, directors of the Company as may be permitted by the Corporations Act or by resolution of the Company in accordance with the Corporations Act.

19.5 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the directors at any time determine.

19.6 Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such

attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

20. DELEGATION

20.1 Delegates of powers

The directors may delegate any of their powers to:

- (a) a committee (as to which see **Section 21**); or
- (b) a director; or
- (c) an employee of the Company; or
- (d) any other individual.

20.2 Exercise of powers

The delegate must exercise the powers delegated in accordance with any directions of the directors.

20.3 Effect of exercise of powers

The exercise of the power by the delegate is as effective as if the directors had exercised it.

20.4 Concurrent power

The directors may still act in exercise of the same power so delegated.

20.5 Revocation of power

The directors may at any time, and without having to give a reason, alter or revoke any delegation of power.

20.6 Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

21. COMMITTEES

21.1 Delegation to committee

The directors may:

- (a) delegate any of their powers to committees consisting of such one or more individuals, whether directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of directors) consisting of such individual or individuals as they think fit.

21.2 Committee powers

Any committee so formed or individual or individuals so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be imposed by the directors.

21.3 Committee meetings

The meetings and proceedings of any committee consisting of 2 or more individuals are governed by the provisions in this Constitution for regulating the meetings and proceedings of the directors so far as they are capable of application and not affected by any resolution made, or direction given, by the directors under the preceding Clause.

21.4 Committee members as officers

Each individual appointed to a committee under paragraph (a) of **Clause 21.1**, if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

21.5 Other constraints

In addition to the matters in **Clauses 20.2 to 20.5**, a committee is governed by the following:

- (a) unless expressly authorised by the directors, a committee to which the directors have delegated power cannot, in turn, sub-delegate that power;
- (b) the directors may at any time remove any individual from a committee and need not give a reason for doing so.

22. SECRETARY

22.1 Appointment of secretary

The secretary must be appointed by the directors and holds office until the secretary's services are terminated by the directors.

22.2 Duties of secretary

The secretary must perform such duties as are required of that individual by the Corporations Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

22.3 Assistant secretary

The directors may also appoint an assistant secretary or assistant secretaries and temporary substitutes for the secretary. Any such assistant secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the secretary subject to any limitation prescribed by the directors.

23. MINUTES

Any minutes of a meeting of members or of the directors, if purporting to be signed by any individual purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

24. COMMON SEAL

24.1 Optional

The Company may at any time have a common seal.

24.2 Use of common seal

The common seal must not be fixed to any document unless it is done by the authority of directors or of a committee of them.

24.3 Mode of execution by common seal

Every document to which the common seal is fixed must be signed, to witness the fixing of the common seal, by 2 individuals. One must be a director. The other must be the secretary, a second director, or such other individual as the directors may appoint for that purpose. No individual may sign in more than one capacity.

24.4 Presence during execution

It is not necessary for an individual signing under the preceding Clause to be present either when the common seal is fixed or when another individual signs the document under the preceding Clause.

24.5 Delegation of authority to use common seal

The directors may delegate to the managing director or any other director power and authority to fix the common seal to such documents as the directors may at any time by resolution determine. When so fixed and signed by the managing director or such other director, it is binding on the Company in all respects as if it were duly signed by 2 directors.

24.6 Certificate seal

The Company may at any time have a duplicate common seal to be known as the certificate seal which must be a facsimile of the common seal with the addition on

its face of the words “share seal” or “certificate seal”. Any certificate may be issued under such a duplicate seal and if so issued is treated as being sealed with the common seal of the Company.

24.7 Fixing the certificate seal

The certificate seal and the signature of any director, secretary or other individual attesting the same may be reproduced and fixed by some mechanical means on to certificates which have first been approved for sealing by an individual appointed for that purpose by the Company and bear evidence of such approval.

24.8 Certificates

For the purpose of the 2 preceding Clauses, “**certificate**” means a certificate in respect of shares, stock, stock units, debentures, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

25. EXECUTION OF DOCUMENT WITHOUT A COMMON SEAL

25.1 Use of common seal optional

The Clauses in this Section operate regardless of whether the Company has a common seal.

25.2 Mode of execution

The Company may execute a document (including a deed if it is expressed to be executed as a deed) without using a common seal if the document is signed by 2 individuals. One must be a director. The other must be the secretary or a second director. No individual may sign in more than one capacity.

25.3 Presence during execution

It is not necessary for an individual signing under the preceding Clause to be present when another individual signs the document under the preceding Clause.

26. OVERSEAS BRANCH REGISTER

26.1 Transactions on overseas branch registers

The directors may make such provisions as they think fit respecting the keeping of any branch register of members at a place outside Australia. The directors may appoint any such person as they think fit to approve and register or reject transfers and make entries in any overseas branch register and to issue certificates in respect of shares on the overseas branch register and may make such other provisions relating to it as they may think fit.

26.2 Transfers between registers

The directors may transfer shares from one register to another and charge a fee in respect of any such transfer. The directors may at any time discontinue any overseas branch register.

27. DIVIDENDS AND RESERVES

27.1 Directors declare dividends

The directors may at any time declare a dividend to be paid to the members entitled to it. The directors must fix the record date and the date for payment.

27.2 Interim dividends

The directors may at any time declare such interim dividends to be paid to the members entitled to them as appear to the directors to be justified by the profits of the Company.

27.3 No interest on dividends

A dividend does not bear interest against the Company.

27.4 Accumulation of reserves

The directors may before declaring any dividend set aside out of the profits of the Company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the directors may at any time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to appropriate.

27.5 Apportionment

Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid (not credited) on the shares in respect of which the dividend is paid. No amount paid on a share in advance of calls may be treated for the purpose of this Clause as paid on the share. All dividends must be apportioned and paid pro rata to the proportion of the total amount paid and payable (excluding amounts credited) on the shares during any portion or portions of the period in respect of which the dividend is paid. If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

27.6 Deductions from dividends

The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by the member to the Company on account of calls or otherwise in relation to the shares of the Company.

27.7 Payment of dividend in specie

The directors, when declaring a dividend, may direct payment of such dividend wholly or partly by the distribution of specific assets. This may include paid up shares, debentures or debenture stock of any other body corporate or in any one or more of such ways. Where any difficulty arises in regard to such distribution the directors may settle the same as they think expedient and fix the value for

distribution of such specific assets or any part of those assets and may determine that cash payments be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the directors.

27.8 Dispatch and payment of dividends

A dividend due to a member may, if that member elects under a plan or arrangement offered at any time by the Company, be credited directly to a bank account. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque, sent through the post directed to the registered address of the holder or in the case of joint holders to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque must be made payable to the person to whom it is sent and may be made payable to bearer. Any one of 2 or more joint holders may give effectual receipts for any dividends or other money payable in respect of the shares held by them as joint holders.

27.9 Call satisfied by dividend

The directors, when declaring a dividend, may make a call on the members of such amount as they may fix but so that the call on each member must not exceed the dividend payable to the member and so that the call is made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the member, be set off against the call.

27.10 Unclaimed dividend

All dividends declared but unclaimed may:

- (a) in the case of dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

27.11 Dividends to those on register at declared record date

All dividends belong and must be paid (subject to any lien of the Company) to those members whose names are on the register at the record date fixed by the directors, despite any subsequent transfer or transmission of shares.

27.12 Share plans

The directors may at any time adopt and implement any number of plans, on terms they determine, by which a member may elect to receive shares as, or instead of, dividends. Such plans may include:

- (a) a plan under which a member who elects to participate in respect of a share held by the member is entitled to an issue of bonus shares instead of a dividend distributed as money in respect of that share; and

- (b) a plan under which a dividend to be distributed as money to a member in respect of a share is, if the member elects that the share participate in the plan, retained by the Company and applied in subscription for fully paid shares pursuant to the terms of the plan.

27.13 Powers concerning share plans

The directors have all powers necessary or desirable to implement and carry out fully any plan adopted under the preceding Clause and may (without limitation) at any time:

- (a) amend the terms of any plan as they consider desirable; and
- (b) suspend for any period or terminate the operation of any plan as they consider desirable.

28. CAPITALISATION OF PROFITS

28.1 Capitalisation of profits or reserves

The directors may at any time resolve that it is desirable to capitalise any sum being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members and that such sum may be applied for the benefit of members in proportion to the number of shares (being shares which entitle the holder to participate in the type of distribution being made pursuant to this Clause) held by them in any of the ways mentioned in the following Clause.

28.2 Application

The ways in which a sum may be applied under the preceding Clause are:

- (a) in paying up any amounts unpaid on the issue price of shares or any Attached Securities; or
- (b) in paying up in full the issue price of unissued shares, debentures or any Attached Securities; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

28.3 Settlement of difficulties

The directors may do all things necessary to give effect to the resolution and in particular to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;
- (b) fix the value for distribution of any specific assets or any part of them;

- (c) determine that cash payments be made to any members upon the footing of the value so fixed or that fractions of less value than 50 cents may be disregarded in order to adjust rights of all parties;
- (d) vest any such cash or specific assets in trustees upon trusts for the persons entitled to the dividend or capitalised fund; and
- (e) authorise any person to make, on behalf of the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts remaining unpaid of the issue price on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (e) is effective and binding on all the members concerned.

29. NOTICES

29.1 Service of notices

Where this Constitution, the Corporations Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this Clause referred to as “**served**”), the document may be served on the person:

- (a) by delivering it to the person personally; or
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a member, to the address of the member entered in the register and the document, by such dispatch, is regarded as left at that address; or
- (c) subject to the Corporations Act, by publication in a newspaper circulating generally in the State in which the registered office is located.

29.2 Date of deemed service

A document served under the preceding Clause is treated as having been duly served, irrespective of whether it is actually received:

- (a) where paragraph (b) of that Clause applies - on the day following the day when dispatch occurred; and
- (b) where paragraph (c) of that Clause applies - on the day the newspaper is first published.

29.3 Overseas members

Where the Company proposes to send a document to a member outside Australia, the Company must send the document by air or by fax, or in another way that ensures it will be received quickly.

29.4 Notices when member dies

It is not necessary to give a notice of meeting of members to any person entitled to a share by transmission unless such person has been duly registered as a member of the Company.

29.5 Notices to joint holders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

29.6 Counting of days

Subject to the Corporations Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

29.7 Binding on others

Every person who by operation of law, transfer or other means whatever becomes entitled to any shares is bound by every notice in respect of such shares which, previous to that person's name and address being entered on the register, has been duly given to the person from whom that person derives that person's title and to every previous holder of such shares.

29.8 Service on Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

29.9 Signature

The signature to any document to be given by the Company may be written, printed or stamped.

30. INDEMNITY, INSURANCE AND ACCESS

30.1 Indemnity for officers

To the extent that the law allows it, each officer of the Company and each officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

30.2 Insurance premiums

The directors may at any time pay premiums in respect of a contract insuring an individual (whether with others or not) who is an officer of the Company against a liability incurred by the individual as such an officer, or as an officer of a related body corporate. The liability insured against must not include that which the law prohibits. Any such premium in relation to a director is in addition to, and not regarded as part of, the remuneration approved by members under this Constitution.

30.3 Access

The directors may at any time give an officer or former officer of the Company access to certain papers, including documents provided or available to the directors and other papers referred to in those documents.

30.4 Contract

The Company may contract with any officer in relation to the matters referred to in the 3 preceding Clauses, not only while that individual is an officer but also after that individual has ceased to be an officer of the Company.

31. WINDING UP

31.1 Power of directors

The directors may authorise the presentation of a petition for the winding up of the Company by the court.

31.2 Distribution if insufficient assets

Subject to the terms of issue of a share, if the Company is wound up and the assets available for distribution among the members (in that capacity) are insufficient to repay all the paid up capital, those assets must be distributed so that, to the greatest possible extent, the amount distributed to a member in respect of each share is proportional to the capital amount paid up (or which at the commencement of the winding up ought to have been paid up) on that share compared with the total paid up capital of the Company.

31.3 Distribution of surplus assets

Subject to the terms of issue of a share, if the Company is wound up and after distribution of assets to repay paid up capital there remain assets available for distribution to the members (in that capacity), those assets must be distributed so that, to the greatest possible extent, the amount distributed to a member in respect of each share is proportional to the capital amount paid up (or which at the commencement of the winding up ought to have been paid up) on that share compared with the total paid up capital of the Company.

31.4 Distribution in specie

If the Company is wound up and a special resolution is passed authorising that it be done, the liquidator may distribute to the members all or any part of the assets

to be distributed to them in specie (whether they are property of the same kind or not). For that purpose the liquidator may, if so authorised by the special resolution:

- (a) set the value of each asset to be distributed that the liquidator considers fair; and
- (b) determine how the distribution is to be carried out (including by allocating the assets) as between the members of different classes of members,

but so that no member must accept any shares or other property in respect of which there is any liability.

31.5 Vesting in trustee

If so authorised by a special resolution, the liquidator of the Company may vest all or any part of the assets to be distributed to the members in a trustee on terms of trust for the benefit of the members as the liquidator considers appropriate.

32. RESTRICTED SECURITIES

If the Company is listed and has on issue any securities which are classified under the Listing Rules or by the Exchange as restricted securities, then despite any other provisions of this Constitution:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or the Exchange;
- (b) the Company must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or the Exchange;
- (c) 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 dividend or distribution, or voting rights, in respect of the restricted securities.

33. COMPLIANCE WITH LISTING RULES

If the Company is listed, the following clauses apply:

- (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.

34. STAPLING PROVISIONS

34.1 Power to Staple Ordinary Shares

- (a) The directors may, subject to this **Clause 34**, the Corporations Act and, if Ordinary Shares are quoted on the Exchange, the Listing Rules, cause the Stapling of any Security to any Ordinary Share and may cause the Stapling of further Securities to the Stapled Securities whether those Securities are a different class of Securities of a Stapled Entity from those stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in **Clause 34.1(a)** takes effect from the Stapling Date.

34.2 Stapling Resolution

Without limiting **Clauses 34.3 to 34.5**, if the Stapling Resolution is passed by members by the requisite majorities set out in the EM and all conditions to that resolution are satisfied, **Clauses 34.3 to 34.5** will take effect in respect of the Storage Fund Stapling Proposal.

34.3 Power to implement Stapling Proposal

Subject to the Corporations Act, and if the Ordinary Shares are Officially Quoted, the Listing Rules, the Company has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Stapling Proposal and such powers apply notwithstanding, and are not limited by, any provision of this Constitution.

34.4 Appointment of Company as agent and attorney

- (a) The Company is irrevocably appointed as the agent and attorney of each member to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the member, including, without limitation:
 - (i) taking all necessary action to compulsorily transfer all Stapled Securities held by each Excluded Foreign Holder including without limitation, in the manner contemplated by, and at the times set out in the EM;
 - (ii) applying for Securities in the name of the member, including Securities in a Stapled Entity;

(iii) agreeing on behalf of the member to be bound by the constitution of a Stapled Entity;

(iv) accepting transfers of Securities for the member,

to effect a Stapling Proposal or to give effect to any issue of Securities contemplated by **Clauses 2.10, 2.11, 27.12 or 28.**

(b) The Company is authorised to execute these documents and do these things without needing any further authority or approval from the members.

34.5 Paramountcy

(a) Subject only to the Corporations Act, and if the Ordinary Shares are Officially Quoted, the Listing Rules, this **Clause 34** has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with this **Clause 34** does not operate to the extent of any inconsistency.

(b) If there is an inconsistency between any provision of this constitution relating to Stapling (including this **Clause 34**) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, ASX Settlement Rules, the Corporations Act or any other law. The provision relating to Stapling prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this constitution.

34.6 Operation of Stapling Provisions

Clauses 34.7 to 34.13 apply only, and for so long as, an Ordinary Share is a component of a Stapled Security.

34.7 Ordinary Shares to be Stapled

(a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be recorded in the Stapled Security Register.

(b) Subject to the Corporations Act, while the Company is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Ordinary Shares and Attached Securities.

(c) The number of issued Ordinary Shares must equal the number of Attached Securities at that time divided by the Corresponding Number.

(d) The Company must not issue Ordinary Shares unless satisfied that each of those Ordinary Shares will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.

(e) The Company and the member must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing

so (as the case may be) would result directly or indirectly in any Ordinary Share no longer being a component of a Stapled Security. In particular:

- (i) the Company must not offer an Ordinary Share for subscription or sale (including by way of offering of options over Ordinary Shares) unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
- (ii) any offer of an Ordinary Share for subscription or sale (including by way of offering of options over Ordinary Shares) must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
- (iii) a holder of Ordinary Shares must not sell an Ordinary Share to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
- (iv) the Company must not issue or sell an Ordinary Share to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
- (v) the Company must not consolidate, split, sub-divide, cancel or otherwise reorganise any Ordinary Shares unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
- (vi) the Company must not forfeit an Ordinary Share unless the Corresponding Number of each Attached Security is also forfeited; and
- (vii) the Company must not register the transmission or transfer of Ordinary Shares including pursuant to **Clause 6.12**, unless the Corresponding Number of each Attached Security is also transmitted or transferred (as the case may be).

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of options.

34.8 Unstapling Date

- (a) Subject to approval by a special resolution of the holders of Ordinary Shares and members of each Stapled Entity respectively, the Company may determine that Stapling provisions of this constitution will cease to apply and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from the Unstapling Date, each Ordinary Share ceases to be Stapled to the Attached Securities and the Company must do all things reasonably necessary to procure that each Ordinary Share is Unstapled.

- (d) If the directors determine to Unstaple the Stapled Securities pursuant to this **Clause 34.8**, this does not prevent the directors from subsequently determining that the Stapling provisions should recommence.

34.9 Transfers of Stapled Securities

- (a) A transfer of an Ordinary Share forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirement of **Clause 5** the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of an Ordinary Share which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Company as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which an Ordinary Share is Stapled which is not accompanied by a transfer of the Ordinary Share will be taken to authorise the Company as agent for the transferor to effect a transfer of the Ordinary Share and any other Attached Securities to which the Ordinary Share is Stapled from the same transferor to the same transferee.
- (d) Each holder of Ordinary Shares irrevocably appoints the Company as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the directors reasonably consider is necessary or desirable) to effect on a date to be determined by the directors, the transfer to the Company or to a person determined by the directors of any Attached Security which was Stapled to a forfeited Ordinary Share which has been cancelled or sold.

34.10 Stapled Security Register

The directors must maintain or cause to be maintained a Stapled Security Register which:

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

34.11 Variation of Stapling provisions

The consent of each other Stapled Entity must be obtained to any amendment to this constitution which:

- (a) directly affects the terms on which Ordinary Shares are Stapled; or

- (b) removes any restriction on the transfer of an Ordinary Share if that restriction also exists for all other Attached Securities unless that restriction is simultaneously removed for all Attached Securities.

34.12 Maintenance of listing and consistency with other constitutions

- (a) The Company must use every reasonable endeavour to procure that the Stapled Securities are and continue to be officially quoted on the Exchange as one joint security.
- (b) The Company must use every reasonable endeavour to procure 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.

34.13 Director's Duties

The directors are is entitled to have regard to the fact that the Company is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Company and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of their obligations, the directors may, except to the extent otherwise required by law, have regard to the interests of members as holders of other Attached Securities.

**SCHEDULE ONE
(CLAUSE 6.12)**

UNMARKETABLE PARCELS

1. First notice

If at any time a member holds an Unmarketable Parcel (including shares or Stapled Securities held jointly with other members) ("**the Relevant Shares**"), the directors may give a notice ("**the First Notice**") to that member stating that unless the member gives notice to the Company by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Shares, then the Relevant Shares are liable to be sold or disposed of under this Schedule but no First Notice may be given by the directors in relation to the Relevant Shares less than 12 calendar months after a previous First Notice given in relation to the Relevant Shares.

2. Subsequent changes

Until the member gives a notice under Clause 6 of this Schedule, the provisions of this Schedule continue to apply to the Relevant Shares despite the fact that they have, after the giving of the First Notice, ceased to comprise an Unmarketable Parcel.

3. Power of directors to sell

Subject to the following provisions of this Schedule, where a member has been given a First Notice the directors may sell or otherwise dispose of ("**Divest**") the Relevant Shares (together with all rights attaching to them including any dividends declared but unpaid).

4. Advertisement and second notice

Where the directors propose to Divest any Relevant Shares under this Schedule:

- (a) the Company must publish in a newspaper circulating generally in the area in which the member holding the Relevant Shares has its address for the purposes of being given notices by the Company, a notice specifying:
 - (i) the intention to Divest the Relevant Shares;
 - (ii) the name of the relevant member; and
 - (iii) the number of the Relevant Shares; and
- (b) the Company must give a notice of intention to Divest the Relevant Shares ("**the Second Notice**") to the member advising the member that the Relevant Shares are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

5. Notice to all joint holders

Where a First Notice or a Second Notice is given in respect of Relevant Shares which are held by members jointly, that notice must be given to each of those joint holders.

6. Member may require sale not to proceed

Each member to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Company prior to the Relevant Shares being Divested, require the Company not to Divest the Relevant Shares, in which case the Relevant Shares may not be Divested unless a new First Notice is given to that member.

7. Jointly held shares

If a member who gives notice under Clause 6 of this Schedule is a joint holder of a parcel of Relevant Shares, that notice only prevents those Relevant Shares being Divested but does not prevent other Relevant Shares held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Shares applies only to those other Relevant Shares.

8. Terms of sale

Any Relevant Shares to be Divested may be Divested on the terms and in the manner and at the time the directors determine (including by means of the Relevant Shares being bought back by the Company). For the purpose of the Relevant Shares being Divested:

- (a) the member appoints the Company as its agent; and
- (b) the member appoints the Company and each of the directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Relevant Shares.

9. Costs of Sale

The Company must pay all costs and expenses in connection with the Divestiture of any Relevant Shares under this Schedule unless to do so would be to give financial assistance in a manner not permitted under the Corporations Act.

10. Validity of sale

The transferee of any Relevant Shares Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Shares, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Company exclusively.

11. Receipt of proceeds

Where the Company receives any consideration as a result of the Divestiture of any

Relevant Shares, the Company's receipt is a good discharge to the transferee of those Relevant Shares and any person claiming through that transferee.

12. Title of transferee

The title of the transferee to any Relevant Shares Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Shares to the transferee.

13. Application of proceeds

The proceeds of Divestiture of Relevant Shares under this Schedule (following deduction of any unpaid calls and interest and expenses) ("**the Sale Consideration**") must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Company for that purpose only;
- (b) the Sale Consideration must be held in trust for the member whose Relevant Shares were Divested;
- (c) the Company must, immediately following the receipt of the Sale Consideration, notify the member in writing that the Sale Consideration in respect of the Relevant Shares has been received by the Company and is being held by the Company pending instructions from the member as to how it is to be dealt with;
- (d) the Company must deal with the Sale Consideration as instructed by the member on whose behalf it is held, provided that the member accompanies that instruction with the certificate for the Relevant Shares (unless the Relevant Shares are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Company; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Company may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the directors required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Relevant Shares affected by that certificate and of the right and title of the Company to Divest the same.

15. Cancellation of certificates

Except where the Relevant Shares are uncertificated securities, the Company must cancel the share certificates for all Relevant Shares Divested.

16. Takeovers

The Company may not proceed with the Divestiture of any Relevant Shares where a takeover bid has been announced but the Divestiture of those Relevant Shares may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.

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**CONSTITUTION OF
ABACUS GROUP PROJECTS LIMITED
(ABN 11 104 066 104)**

CONSTITUTION
OF
ABACUS GROUP PROJECTS LIMITED
(ACN 104 066 104)

1. PRELIMINARY

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

“AGM” means an annual general meeting of the Company held in accordance with the requirements of section 250N of the Corporations Act;

“AGHL” means Abacus Group Holdings Limited ABN 31 080 604 619;

“ASOL” means Abacus Storage Operations Limited ACN 112 457 075;

“ASX Operating Rules” means the operating rules of ASX Settlement Pty Limited;

“ASX Settlement Rules” means the ASX Settlement Operating Rules and, to the extent that they are applicable, the operating rules of the Exchange and the operating rules of ASX Clear Pty Limited;

“at any time” means at any time or times and from time to time;

“Attached Securities” means Attached Units, Attached Shares and any other financial products which are from time to time Stapled or to be Stapled to an Ordinary Share;

“Attached Shares” means ordinary shares in AGHL, and any other shares which are from time to time Stapled or to be Stapled to a share in the Company including, but not limited to, ordinary shares in ASOL when the Storage Fund Stapling Proposal is implemented;

“Attached Units” means Trust 1 Units, Trust 2 Units, and any other units which are from time to time Stapled or to be Stapled to a share in the Company including, but not limited to, Trust 3 Units when the Storage Fund Stapling Proposal is implemented;

“business day” means:

- (a) if the Company is listed, a day which is a business day under the Listing Rules; and
- (b) if the Company is not listed, a day on which trading banks are open for banking business in New South Wales (not being a Saturday, Sunday or public holiday);

“the common seal” means the common seal of the Company, if any, and includes any duplicate seal of the Company;

“the Company” means the company incorporated in Australia under the Corporations Act and taken to be registered in New South Wales and given Australian Business Number 11 104 066 104;

“Constitution” means the Clauses that comprise the Constitution of the Company in force for the time being;

“corporate representative” means a natural person appointed by a member which is a body corporate to be that body’s representative to exercise all or any of the powers the body may exercise at meetings of members of the Company;

“corporate representative certificate” means a certificate evidencing the appointment of a corporate representative, that certificate complying with this Constitution;

“Corporations Act” means the Corporations Act 2001 (Cth) and the Corporations Regulations;

“Corresponding Number” in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Ordinary Share at that time;

“the directors” means the directors of the Company in office for the time being, or a quorum of the directors present at a meeting of the directors;

“dividend” includes bonus;

“EM” means the Notice of Meeting and Explanatory Memorandum dated on or around January 2012 in relation to the Storage Fund Stapling Proposal;

“Excluded Foreign Holder” a foreign member ineligible to participate in a Stapling Proposal, and in particular, to receive Stapled Securities, including a foreign member specified in the EM as ineligible to participate in the Storage Fund Stapling Proposal;

“the Exchange” means ASX Limited (ACN 008 624 691);

“group directors’ fees” means the remuneration of non-executive directors of the Company for their ordinary services as directors (whether or not executive or other paid work is undertaken) of the Company and, if applicable, any of its wholly - owned subsidiaries at any time;

“individual” means a natural person;

“listed” means, in relation to the Company, the Company being and remaining admitted to the Official List of the Exchange;

“the Listing Rules” means the Listing Rules of the Exchange and any other rules of the Exchange which are applicable while the Company is listed, each as amended

or replaced from time to time, except to the extent of any express written waiver by the Exchange;

“market transfer” means:

- (a) any proper ASTC transfer (as defined in the Corporations Act); and
- (b) any other transfer of a share where the transfer is pursuant to, or connected with, a transaction entered into on a stock market operated by the Exchange,

where, in either case, the ASX Settlement Operating Rules, the Listing Rules or the Corporations Act does not allow the directors to refuse to register the transfer;

“a meeting of members” means a meeting of members, which includes an AGM, duly called and constituted in accordance with this Constitution, and any adjourned holding of it;

“member”, “shareholder”, or “holder” means any person entered in the register as a member for the time being of the Company;

“a member present” means a member present at any meeting of members, in person or by proxy or attorney or, in the case of a corporation, by its corporate representative;

“ordinary resolution” means a resolution of a meeting of members where more than one half of the total votes cast on the resolution are in favour of the resolution;

“Ordinary Shares” means ordinary voting shares in the capital of the Company having the rights and being subject to the restrictions specified in this Constitution or by the directors;

“person” includes an individual, company, other body corporate, partnership, association or other entity;

“proxy” means an individual duly appointed under a proxy form by a member who is entitled to attend and vote at a meeting of members, to attend and vote instead of the member at the meeting;

“proxy form” means an instrument for appointing a proxy, that instrument complying with this Constitution;

“record date” has the same meaning as it has in the Listing Rules;

“register” means the register of members kept under the Corporations Act and includes any overseas branch register and any computerised or electronic sub-register established and administered under the ASX Settlement Operating Rules;

“the registered office” means the registered office for the time being of the Company;

“Schedule One” is part of this Constitution;

“secretary” means any individual appointed to perform the duties of secretary of the Company and includes an assistant secretary or any individual appointed to act as such temporarily;

“Section” means a Clause or group of Clauses in this Constitution identified by a specified heading or by the same initial number;

“Security” has the meaning given to that term in section 92(1) of the Corporations Act;

“shares” means, except where the context otherwise requires, the shares into which the capital of the Company is at any time divided;

“show of hands” includes the voices;

“special resolution” means a resolution of a meeting of members:

- (a) of which notice as set out in section 249L(c) of the Corporations Act has been given; and
- (b) where at least 75% of the total votes cast on the resolution are in favour of the resolution;

“Stapled” means the linking together of Ordinary Shares and Attached Securities so that, subject to the terms of issue of either, one may not be dealt with without the other or others, and the word **“Stapling”** has a corresponding meaning;

“Stapled Entity” means the Trusts, AGHL and any other corporation or trust whose financial products are Stapled to the Ordinary Shares including, but not limited to, ASOL and Trust 3 when the Storage Fund Stapling Proposal is implemented;

“Stapled Security” means an Ordinary Share and each Attached Security that are Stapled together and registered in the name of the Member;

“Stapled Security Register” means the register of Stapled Securities to be established and maintained by or on behalf of the Company in accordance with **Clause 34.10**;

“Stapling Date” means the date and time determined by the Company to be the first day and time on which all Ordinary Shares on issue in the Company are Stapled to an Attached Security or Attached Securities;

“Stapling Proposal” means the proposal to Staple any Security to the Stapled Securities, including without limitation the Storage Fund Stapling Proposal.

“Stapling Resolution” means the resolution to approve amendments to this Constitution and to, among other things, give effect to the Storage Fund Stapling Proposal.

“Storage Fund Stapling Proposal” means the proposal to Staple the shares of ASOL and the units of Trust 3 to the shares of the Company and AGHL and the units of the Trusts.

“Trust 1” means the registered managed investment scheme known as Abacus Trust ARSN 096 572 128;

“Trust 2” means the registered managed investment scheme known as Abacus Income Trust ARSN 104 934 287;

“Trust 3” means the registered managed investment scheme known as Abacus Storage Property Trust ARSN 111 629 559;

“Trust 1 Unit” means a Unit in Trust 1;

“Trust 2 Unit” means a Unit in Trust 2;

“Trust 3 Unit” means a Unit in Trust 3;

“Trusts” means Trust 1 and Trust 2;

“Unit” means an ordinary unit;

“Unmarketable Parcel” means a number of shares or Stapled Securities which is less than that required for the time being to constitute a marketable parcel of shares or Stapled Securities, as the case may be, as defined by the Listing Rules.

“Unstapled” means an Ordinary Share and each Attached Security not, or no longer, being Stapled; and

“Unstapling Date” means the date when Stapling ceases to apply, determined pursuant to **Clause 34.8.**

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded, except for the purpose of identifying a Section;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding Clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

1.3 Listing Rules

In this Constitution:

- (a) a reference to the Listing Rules is to have effect if, and only if, at the relevant time, the Company is listed and otherwise is to be disregarded; and
- (b) if the provisions of the Corporations Act and the Listing Rules conflict on the same matter, the provisions of the Corporations Act prevail.

1.4 Exclusion of replaceable rules

All of the replaceable rules contained in the Corporations Act are displaced by this Constitution and do not apply to the Company.

1.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which, but for such omission, would have been valid unless it is proved to the satisfaction of the directors, or a majority of them, that such omission has directly prejudiced any member financially. The decision of the directors is conclusive and final and binds all members.

2. SHARE CAPITAL

2.1 Control of the directors

Subject to the provisions of this Constitution, the Listing Rules and the Corporations Act, and without prejudice to any special rights previously conferred on the holders of any existing shares:

- (a) the shares in the Company are under the control of the directors; and
- (b) the directors may allot, grant options over, or otherwise dispose of, the shares to such persons, at such times, on such terms and conditions, and having attached to them such preferred, deferred or other rights, and at such issue price, for cash or non-cash consideration, with the issue price paid or unpaid, as the directors think fit.

2.2 Variation of rights

If at any time the issued shares are divided into different classes, the rights attached to any class of shares (unless the terms of issue of that class otherwise provide) may only be varied or cancelled with either:

- (a) the sanction of a special resolution passed at a separate meeting of the holders of shares of that class; or
- (b) the written consent of members with at least 75% of the votes in the class.

2.3 Class meetings

In relation to any such separate meeting of the holders of shares in a class, the provisions of this Constitution which relate to meetings of members apply, as far as

they are capable of application and changed as necessary, except that any member present holding shares of the class may demand a poll.

2.4 Further issues of shares in the same class

The rights attached to a class of shares are not to be considered as varied if further shares of that class are issued on identical terms, except if the terms of issue of that class of shares otherwise provide.

2.5 Reclassification of shares

Subject to this Constitution, the Listing Rules and the Corporations Act, the Company may at any time by ordinary resolution convert and reclassify all or any of the issued shares of one class into shares of another class or classes.

2.6 Brokerage and commission

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company. Payments by way of brokerage or commission (in respect of the issue of any shares) may be satisfied by the payment of cash, by the allotment of fully or partly paid shares, or a combination of these.

2.7 Recognition of third party interests

Except as required by law or in this Constitution, the Company must not recognise any person as holding any share upon any trust. The Company is not bound by, or compelled in any way to recognise (even when having notice of it), any equitable, contingent, future or partial interest in any share or unit of a share or (except only as otherwise provided by this Constitution or by law) any other right in respect of any share except an absolute right of ownership of it in the registered holder.

2.8 Conversion of shares into larger or smaller number

The Company may by ordinary resolution convert all or any of its shares into a larger or smaller number of shares. Any amount unpaid on shares being converted is to be divided equally among the shares that replace those shares.

2.9 Adjustments

The directors may do all things necessary to give effect to any such resolution including where a member becomes entitled to a fraction of a share on consolidation any or all of:

- (a) making provision for the issue of fractional certificates;
- (b) making cash payments;
- (c) determining that all or any fractions may be disregarded;
- (d) appointing a trustee to deal with any fractions on behalf of members; and
- (e) rounding each fractional entitlement to the nearest whole share.

and may discriminate in the treatment of fractional entitlements of members where the directors consider it to be fair and in the interests of members as a whole in all the circumstances.

2.10 Capital Reallocation

(a) Notwithstanding any other provision of this Constitution, the Company may at any time issue shares (**Capital Reallocation Shares**) in either of the following circumstances:

- (i) to the holders of Stapled Securities if a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Shares as agent for the holders of Stapled Securities and applies a distribution paid out of that Stapled Entity towards the issue price for those Capital Reallocation Shares; or
- (ii) to any Stapled Entity if the company is satisfied that immediately following the issue of such Capital Reallocation Shares, those Capital Reallocation Shares will be distributed pro rata to the holders of Stapled Securities,

so long as:

- (iii) immediately following the issue of Capital Reallocation Shares referred to in paragraph (i) above or the in-specie distribution referred to in paragraph (ii) above, the company immediately consolidates the Capital Reallocation Shares with all other shares then on issue in the company such that the total number of shares on issue after the consolidation is equal to the total number of shares on issue immediately prior to the issue of the Capital Reallocation Shares; and
 - (iv) the members have by ordinary resolution approved the consolidation of shares referred to in paragraph (iii) above.
- (b) The share resulting from the consolidation of a share (**Original Share**) with a Capital Reallocation Share pursuant to **Clause 2.10(a)** will be taken for all purposes to be stapled to the same Attached Securities as that to which the Original Share was stapled.

2.11 Application of capital reduction to capitalise Stapled Entity

The company may by ordinary resolution reduce its share capital by equal reduction and the members may by ordinary resolution authorise the company, as agent for and in the name of each member, to apply the amount of the reduction that the member is otherwise entitled to, as additional capital to a Stapled Entity pro rata in proportion to the number of securities held by the member in that Stapled Entity.

3. CERTIFICATES

3.1 Uncertificated mode

Despite any other provision of this Constitution:

- (a) the Company need not issue a certificate, and may cancel any certificate without issuing a certificate in substitution, in respect of any marketable security of the Company in any circumstances where the non-issue of that certificate is permitted by law; and
- (b) where paragraph (a) applies, any reference to a certificate in this Constitution is to be disregarded in relation to that marketable security.

3.2 Holding statements

Where the directors have determined not to issue a certificate or to cancel a certificate in respect of any marketable security of the Company, a member is entitled to receive a statement of the holdings of the member setting out the number of marketable securities and any other matter of which the Company is required to provide particulars under this Constitution, the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules.

3.3 If certificates required

To the extent that certificates are required for marketable securities of the Company:

- (a) the Company must issue certificates of title to marketable securities of the Company in accordance with the Corporations Act and, if the Company is listed, the Listing Rules;
- (b) a member is entitled, without charge, to one certificate for the marketable securities of the Company of each class registered in the member's sole name or to several certificates each for a reasonable part of those marketable securities;
- (c) if any marketable securities of the Company are held by 2 or more persons, the Company is only required to issue the same number of certificates as if those marketable securities were held by one person and delivery of a certificate so issued to any of those persons is sufficient delivery to all of them; and
- (d) if a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the directors, they may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Corporations Act and, if the Company is listed, the Listing Rules.

4. LIEN

4.1 Lien for calls

The Company has a first and paramount lien for unpaid calls and instalments, and interest on such sums, and expenses incurred in relation to those items upon the specific shares registered in the name of each member (whether solely or jointly with others) in respect of which such money is due and unpaid. Such lien extends to all dividends at any time declared or distributed in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares operates as a waiver of the Company's lien on any such shares.

4.2 Lien on payments required to be made by the Company

If any law for the time being of any place imposes or purports to impose any immediate, future or possible liability upon the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any shares registered in the register as held either jointly or solely by any member, or in respect of any dividends or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any such shares, or for or on account of or in respect of any member and whether in consequence of:

- (a) the death of such member;
- (b) the liability for income tax or other tax by such member;
- (c) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of the member's estate; or
- (d) any other act or thing;

in every such case the Company:

- (i) must be fully indemnified by such member or the member's executor or administrator from all liability;
- (ii) has a first and paramount lien upon all shares registered in the register as held either jointly or solely by such member and upon all dividends and other money payable in respect of such shares for any liability arising under or in consequence of any such law and for any amount paid in complete or partial satisfaction of such liability and for interest on any amount so paid at the rate per cent per annum set by the directors from the date of payment to the date of repayment and may deduct from or set off against any such dividend or other money so payable any moneys so paid or payable by the Company together with that interest;
- (iii) may recover as a debt due from such member or the member's executor or administrator wherever constituted any money paid by the Company under or in consequence of any such law and interest

or such money at the rate and for that period in excess of any dividend or other such money then due or payable by the Company to such member;

- (iv) if such shares are not CHESS approved securities under the ASX Settlement Operating Rules, may, if any such money is paid or payable by the Company under any such law, refuse to register a transfer of any such shares by any such member or the member's executor or administrator until such money with that interest is set off or deducted or in case the same exceeds the amount of any such dividend or other money then due or payable by the Company to such member until such excess is paid to the Company; or
- (v) if such shares are CHESS approved securities under the ASX Settlement Operating Rules, and, if any such money is paid or payable by the Company under any such law, may if the Exchange has authorised the Company in writing to do so, request the securities clearing house to apply a holding lock to such shares.

4.3 Other remedies of the Company

Nothing in this Constitution prejudices or affects any right or remedy which any such law may confer or purport to confer on the Company and, as between the Company and every such member, the member's executor, administrator and estate, wherever constituted or situated, any right or remedy which such law confers or purports to confer on the Company is enforceable by the Company.

4.4 Sale under lien

The Company may sell, or cause to be sold, in such manner as the directors think fit any shares on which the Company has a lien and any Attached Securities if:

- (a) a sum in respect of which the lien exists is presently payable;
- (b) a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled to it by reason of death or bankruptcy; and
- (c) that notice remains unsatisfied 14 days after it was given.

4.5 Transfer

To give effect to any such sale the directors may authorise some person to transfer the shares and Attached Securities sold to the purchaser of the shares. The purchaser must be registered as the holder of the shares and Attached Securities comprised in any such transfer and the purchaser is not bound to see to the application of the purchase money nor is the purchaser's title to the shares and Attached Securities affected by any irregularity or invalidity in connection with the sale.

4.6 Application of proceeds

The proceeds of the sale of the shares must be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, must (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares immediately prior to the time of the sale. If the Company or its nominee receives consideration for any Attached Security, it must account to each Stapled Entity for that portion of the consideration received in respect of that Attached Security, having regard to the fair value of the shares and each of the Attached Securities.

4.7 Effect of forfeiture

Any member whose shares have been forfeited is, despite that fact, liable to pay and must immediately pay to the Company and the relevant Stapled Entities all calls, instalments, interest and expenses owing upon or in respect of such shares and Attached Securities at the time of the forfeiture together with interest on such items from the time of forfeiture until payment at such rate as the directors may determine. The directors may enforce the payment of such money, or any part of it if they think fit, but they are not under any obligation to do so.

5. CALLS ON SHARES

5.1 Calls made by the directors

Subject to the terms of issue of any shares, the directors may at any time make such calls as they think fit upon the members in respect of any money unpaid on the shares held by them respectively. A call may be made payable by instalments. A call may be revoked, postponed or extended as the directors determine.

5.2 Time of call

A call is deemed to be made at the time when the resolution of the directors authorising such call was passed.

5.3 Payment of call

Upon receiving at least 14 days' notice specifying the time and place of payment, each member must pay to the Company, by the time and at the place so specified, the amount called on the member's shares. The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the members does not invalidate the call.

5.4 Fixed payments

If by the terms of issue of any shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment is payable as if it were a call duly made by the directors and of which due notice had been given. In case of non-payment, the provisions of this Constitution as to payment of interest, expenses, and forfeiture or otherwise apply as if such sum had become payable by virtue of a call duly made and notified.

5.5 Stapled Securities

A partly paid Ordinary Share which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Company has received all unpaid money in relation to that Ordinary Share; and
- (b) the Stapled Entities have received all unpaid money in relation to the Attached Securities to which it is Stapled.

5.6 Interest on unpaid call

If a sum called is not paid on or before the date for payment of it the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid from time to time) at such rate as the directors may determine calculated from the day appointed for the payment of it until the time of actual payment. The directors may waive such interest in whole or in part.

5.7 Joint holders' liability

The joint holders of a share are jointly and severally liable to pay all amounts of instalments and calls in respect of the share.

5.8 Differences in terms of issue

The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and times of payment.

5.9 Recovery action

If a call is not paid the Company may proceed to recover it with interest and expenses (if any) by action, suit or otherwise. The right of action, suit or otherwise is without prejudice to the right to forfeit the share of any member so in arrears and either or both of such rights may be exercised by the directors.

5.10 Proof of call

On the trial of any action for the recovery of any call or of any interest or expenses upon or in respect of any call it is sufficient to prove that:

- (a) the name of the member sued is entered in the register as the holder, or one of the holders, of the shares in respect of which such debt accrued;
- (b) the resolution making the call is duly recorded in the minute book;
- (c) notice of such call was duly given to the registered holder of the shares or, in the case of calls or instalments payable at fixed times, by the terms of issue of any share or otherwise to prove such terms; and
- (d) such sum or call has not been paid.

It is not necessary to prove the appointment of the directors who made the allotment or call or the passing of the resolution nor any other matters whatever. Proof of the matters in (a) to (d) is conclusive evidence of the debt.

5.11 Prepayment of calls

Subject to the terms of issue of any shares, the directors may at any time receive from any member all or any part of the amount unpaid on a share although no part of that amount has been called up. The directors may at any time pay interest upon the whole or any part of the moneys so paid in advance until the amount becomes payable at such a rate as the member paying such sum and the directors agree upon. Any amount being paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which such advance has been made. The directors may at any time repay the amount so advanced upon giving to such member one month's notice in writing.

6. TRANSFER OF SHARES

6.1 Securities clearing house authorisation

The directors may do anything permitted by the Corporations Act and the Listing Rules which the directors consider necessary or desirable in connection with the participation of the Company in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in shares including, without limitation, electronic registration of transfers of shares.

6.2 Market transfer

Subject to this Constitution, a member may transfer all or any of the member's shares by a market transfer in accordance with any computerised or electronic system established or recognised by the Listing Rules or the Corporations Act for the purpose of facilitating transfers in shares, including a transfer that takes effect pursuant to the ASX Settlement Operating Rules or some other computerised or electronic transfer process. The Company must comply with any obligations which are imposed on it by the Listing Rules or the ASX Settlement Operating Rules in connection with that transfer of shares.

6.3 Non-interference with market transfers

Despite any other provision of this Constitution, the directors may not prevent, delay or interfere with, the registration of a market transfer where to do so would be contrary to any provision of the Listing Rules or the ASX Settlement Operating Rules.

6.4 Instrument of transfer

If not done by a market transfer then, subject to this Constitution, a member may transfer all or any of the member's shares by instrument in writing which is:

- (a) a sufficient instrument of transfer of securities under the Corporations Act;
- (b) in a form approved by the Exchange;

- (c) in any other usual or common form; or
- (d) in any other form approved by the directors.

6.5 Proper instrument

If a member seeks to transfer all or any of the member's shares in accordance with the preceding Clause, the Company may only register a transfer of shares where an instrument satisfying the preceding Clause is delivered to the Company (including, for this purpose, a person authorised by the Company to receive instruments, such as a share registrar of the Company) and the instrument:

- (a) is duly stamped, if necessary;
- (b) is executed by the transferor and (unless the directors otherwise determine in a particular case, relating only to fully paid shares) the transferee, except where execution by either transferor or transferee is not required by law or is deemed by law to be present;
- (c) except where otherwise permitted by law, is accompanied by the certificate for the shares the subject of the transfer where a certificate has been issued, unless the directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate;
- (d) is accompanied by such other evidence as the directors may require to prove the title of the transferor or the transferor's right to transfer the shares; and
- (d) relates only to shares of one class.

6.6 Free registration

Except as provided in:

- (a) **Clause 6.7** (restrictions on transfer);
- (b) **Clause 32** (restricted securities); or
- (d) the terms of issue of the shares concerned,

the directors must register each transfer of shares which complies with the 2 preceding Clauses, and do so without charging a fee.

6.7 Restrictions on transfer

The directors:

- (a) may decline to register a transfer of shares where to do so would not contravene the Listing Rules; and
- (b) must decline to register a transfer of shares when required by law, by the Listing Rules or by the ASX Settlement Operating Rules.

6.8 Transferor remains member

The transferor of a share remains the holder of that share until the transfer is registered and the name of the transferee is entered in the register in respect of that share.

6.9 Retention of instruments

If an instrument of transfer or a purported instrument of transfer is delivered to the Company, property to and title in that instrument (but not the shares the subject of it) passes to the Company which is entitled, as against all persons, to the possession of the instrument.

6.10 Notification of refusal to register

If the directors refuse to register a transfer of shares they must give written notice of the refusal to the transferee and the reasons for the refusal:

- (a) if the Company is listed, within 5 business days after the date on which the transfer was lodged with the Company;
- (b) otherwise, within 2 months after the date on which the transfer was lodged with the Company.

6.11 Powers of attorney

All powers of attorney granted by members for the purpose, amongst other things, of transferring shares which may be lodged, produced or exhibited to the Company are, as between the Company and the grantor of such powers, treated as remaining in full force and effect and they may be acted upon until such time as express notice in writing of the revocation of them or of death of the grantor has been lodged at the registered office.

6.12 Unmarketable parcels

If the Company is listed and a member holds an Unmarketable Parcel, the provisions of **Schedule One** apply to that Unmarketable Parcel.

7. TRANSMISSION OF SHARES

7.1 Entitlement to shares on death

If a member dies:

- (a) the survivor or survivors where the deceased was a joint holder; and
- (b) the legal personal representative where the deceased was a sole holder is,

upon producing satisfactory proof of death, the only person recognised by the Company as having any title to the deceased's interest in the share. Nothing in this Constitution releases the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by the deceased.

7.2 Registration of persons entitled

If a person becomes entitled to a share in consequence of the death or bankruptcy of a member or to a share of a mentally incapable member then:

- (a) that person may, upon such information being produced as is properly required by the directors, and subject to paragraphs (b) and (c), elect either to be registered as the holder of the share or to have some other person (nominated by the person becoming entitled) registered as the transferee of the share;
- (b) if the person so becoming entitled elects to be registered, that person must deliver or send to the Company a notice in writing signed by that person stating that election;
- (c) if the person so becoming entitled elects to have another person registered, the person becoming entitled must execute a transfer of the share to that other person; and
- (d) all the provisions of this Constitution relating to the right to transfer and the registration of transfers apply to any such notice or transfer as if the notice or transfer were a transfer executed by that member.

7.3 Dividends and other rights

A person entitled to be registered as a member in respect of a share by virtue of the 2 preceding Clauses is, upon the production of such evidence as may at any time be properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been. If 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they are, for the purposes of this Constitution, treated as joint holders of the share.

8. FORFEITURE AND SURRENDER OF SHARES

8.1 Payment required

If any member fails to pay the whole or any part of any call or instalment on or before the day appointed for payment of the call or instalment, the directors may, at any time while the same remains unpaid, serve a notice on the member requiring the member to pay the same together with any interest that may have accrued thereon and interest up to the date of payment and any expense that may have been incurred by the Company by reason of such non-payment.

8.2 Forfeiture notice

The notice must:

- (a) name a future date (not earlier than the expiry of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made;

- (b) identify the place where payment is to be made; and
- (c) state that if payment is not made by the due date and at the place appointed, the shares in respect of which such payment is due are liable to be forfeited.

8.3 Forfeiture

If the requirements of any such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter, if payment required by the notice has still not been made, be forfeited by a resolution of the directors to that effect. Such forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture. The right to forfeit the shares does not affect the right of the Company to sue for any allotment moneys, calls, instalments, interest and expenses due in respect of such shares.

8.4 Cancellation of forfeiture

Subject to the Listing Rules, the directors may, at any time before the forfeited shares have been sold or otherwise disposed of, annul the forfeiture of them upon such conditions as they think fit.

8.5 Directors may sell

A forfeited share becomes the property of the Company. Subject to the Listing Rules, any forfeited share may be sold or otherwise disposed of upon such terms and in such manner as the directors think fit.

8.6 Effect of forfeiture

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares. However, that person remains liable to pay and must immediately pay to the Company all money payable by such person in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment at such rate as the directors may determine. The Company may enforce the payment of such money but is not under any obligation to do so.

8.7 Evidence of forfeiture

A statement in writing by a director or the secretary of the Company that a share in the Company has been duly forfeited on the date stated in the statement is conclusive evidence of the facts so stated as against all persons claiming to be entitled to the share.

8.8 Transfer of forfeited shares

The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition of the share and may appoint some person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of. The transferee must then be registered as the holder of the share and is not bound to see to the application of the purchase money, if any. The transferee's title

to the share is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

8.9 Surrender as forfeiture

The directors may accept the surrender of any fully paid share by way of compromise of any question as to the holder being properly registered in respect of it. Any share so surrendered may be disposed of in the same manner as a forfeited share.

8.10 Fixed amounts taken to be calls

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

9. MEETINGS OF MEMBERS

9.1 Calling of meetings

A meeting of members may be called by:

- (a) the directors; or
- (b) if the Company is listed, a single director.

9.2 Requisition of meetings

Except as provided in section 249E or section 249F of the Corporations Act, no member or members may call a meeting of members.

9.3 Notice of meeting

Every notice of a meeting of members must:

- (a) set out the place, day and time of meeting;
- (b) in the case of special business, state the general nature of the business;
- (c) if a special resolution is to be proposed, set out an intention to propose the special resolution and state the resolution;
- (d) in the case of an election of directors, give the names of the candidates for election;
- (e) contain a statement of the right to appoint a proxy, being to the effect that:
 - (i) a member entitled to attend and vote is entitled to appoint a proxy;
 - (ii) a proxy need not be a member;
 - (iii) 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. If there is no such specification, each proxy may exercise half of the votes;

- (f) specify a place and a fax number (and may specify an electronic address) for the purpose of receipt of proxy forms;
- (g) contain a statement, in accordance with Corporations Regulation 7.11.37, that the directors have determined that a person's entitlement to vote at the meeting of members will be the entitlement of that person set out in the register as at the time and date so determined by the directors.

9.4 Business of AGM

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of directors;
- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

All other business transacted at an AGM, and all business transacted at other meetings of members, is deemed special.

9.5 Entitlement to notice

Written notice of a meeting of members must be given individually to:

- (a) each member (apart from any member who under this Constitution or by the terms of issue of any share is not entitled either to the notice or to vote at the meeting); and
- (b) the auditor; and
- (c) each director.

9.6 Entitlement to proxy form

A proxy form (in a form determined by the directors) must be given to each member entitled to attend and vote at the meeting of members.

9.7 Omission to give notice

The accidental omission to give notice of a meeting of members (or proxy form) to, or the non-receipt of any such notice (or proxy form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

9.8 Period of notice

Subject to the next Clause, at least 21 clear days' (or if the Company is listed, 28 clear days') notice must be given of a meeting of members. This means that both the day the notice was deemed to be given and the day of the meeting of members itself are excluded.

9.9 Consent to short notice

With the consent of the requisite number of members, any meeting of members (except a meeting referred to in the next Clause) may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly. The required number is:

- (a) in the case of an AGM, all the members entitled to attend and vote at the AGM;
- (b) in the case of other meetings of members, those members entitled to attend and vote at that meeting who, between them, hold at least 95% of the votes that may be cast at the meeting.

9.10 Shorter notice not allowed

At least 21 clear days' (or if the Company is listed, 28 clear days') notice must be given of a meeting of members at which a resolution will be moved to:

- (a) remove a director under section 203D of the Corporations Act; or
- (b) appoint a director in place of a director removed under section 203D of the Corporations Act; or
- (c) remove an auditor under section 329 of the Corporations Act.

9.11 Cancellation or postponement of meeting

The directors may cancel or postpone the holding of any meeting of members at any time prior to the meeting for any reason unless the meeting was called by requisitioning members, or in response to a requisition by members in which case the directors may only cancel or postpone the meeting for 30 days or more with the consent of a majority of the requisitioning members.

9.12 Notice of cancellation of meeting

Notice of the cancellation of a meeting of members must be given to every member.

9.13 Notice of day, time and place of postponed meeting

Notice of the day, time and place to which the meeting has been postponed must be given to every member at least 5 business days prior to the postponed meeting.

9.14 Proxy, attorney, or corporate representatives for postponed or cancelled meetings

Where

- (a) the terms of an instrument appointing a proxy, attorney or corporate representative provide that such appointment is valid only for a meeting of members 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

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the member appointing the proxy, attorney or corporate representative gives written notice specifying otherwise to the Company 48 hours prior to the time to which the meeting has been postponed (and in that event the member may at the same time appoint a new proxy, attorney or representative in accordance with the relevant provisions of Clause 10, with necessary modifications).

10. REPRESENTATION AT MEETINGS

10.1 Persons entitled to attend

The right to attend a meeting of members is as follows:

- (a) each member may attend, apart from any member who under this Constitution or by the terms of issue of any share is not entitled to attend;
- (b) each director, secretary and auditor may attend;
- (c) the auditor, or a person authorised in writing as their representative, may attend;
- (d) each individual, whether a member or not, who is a proxy, corporate representative or attorney of a member may attend;
- (e) other individuals may attend only with leave of the meeting or its chair and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chair of the meeting both at law and under this Constitution.

10.2 Proxy eligibility

A proxy need not be a member.

10.3 Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member if, and only if, the proxy form complies with the requirements of this Constitution concerning form, execution and lodgment.

10.4 Proxy form

The proxy form:

- (a) must contain the member's name and address;
- (b) must contain the proxy's name or the office held by the proxy;
- (c) may make provision for the chair of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members;
- (d) must contain the Company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one;
- (e) must enable the member to at least instruct the proxy to vote for or against each notified resolution.

10.5 Chair as fall-back proxy

If a proxy form is otherwise effective except that it does not specify the proxy, the member is treated as validly appointing the chair of the meeting of members as the proxy in respect of all shares of that member.

10.6 Proxy execution by individuals

In the case of members who are individuals, the proxy form must be either:

- (a) signed:
 - (i) if the shares are held by one person, by that member;
 - (ii) if the shares are held in joint names, by any one of them; or
- (b) authenticated in a manner prescribed by regulations under the Corporations Act.

10.7 Proxy execution by companies

In the case of members which are companies, the proxy form must be either:

- (a) signed:
 - (i) if it has a sole director who is also sole secretary, by that director (and stating that fact next to or under the signature on the proxy form);
 - (ii) in the case of any other company, by either 2 directors or a director and secretary.

The use of the common seal of the company (if any), in addition to those required signatures, is optional; or

- (b) authenticated in a manner prescribed by regulations under the Corporations Act.

10.8 Proxy execution by other authorised persons

If the person signing, or otherwise authenticating in a manner prescribed by regulations under the Corporations Act, the proxy form is doing so under power of attorney, or is an officer of a company outside of the preceding Clause but authorised to sign the proxy form, the power of attorney or other authorisation (or a certified copy of it), as well as the proxy form, must be received by the Company by the time and at the place required for lodgment of the proxy form.

10.9 Proxy lodgment deadline

A proxy form must be lodged at the place specified in the subsequent Clause at least 48 hours before the time of the meeting unless the directors determine that the proxy forms may be received less than 48 hours before the meeting.

10.10 Proxy lodgment place and method

A proxy form must be lodged:

- (a) as an original, at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members); or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members); or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members; or
- (d) by such other electronic means (and as prescribed by regulations under the Corporations Act) as is, at the election of the directors, specified for the purpose in the notice calling the meeting of members.

10.11 Expiration of proxy form

No proxy form is valid after the expiration of 12 months from the date of its execution.

10.12 Corporate representative recognition

A corporate representative is recognised as having been appointed by a member (which is a body corporate) and entitled to act as a corporate representative of that member if, and only if:

- (a) the appointment is evidenced by a corporate representative certificate which complies with the requirements of this Constitution in relation to form, execution and lodgment; or

- (b) the appointment is evidenced by some other form of documentation satisfactory to the chair of the meeting and it is lodged at the place, and by the deadline, required for corporate representative certificates.

10.13 Form of corporate representative certificate

The corporate representative certificate:

- (a) must contain the member's name;
- (b) must specify at least one individual, by name or by reference to a position held, to act as the body's corporate representative (but if more than one is appointed only one may exercise the body's powers at any one time);
- (c) may specify another individual, by name or by reference to a position held, to act as the body's corporate representative if the individual primarily nominated fails to attend;
- (d) must contain the Company's name and either identify the meetings of members at which the representative may act, or be identified as a standing one;
- (e) may set out restrictions on the corporate representative's powers.

10.14 Execution of corporate representative certificate

A corporate representative certificate must be executed:

- (a) in any case, under the common seal of the body corporate; or
- (b) where the body corporate is a company registered under the Corporations Act, in any manner identified in section 127 of the Corporations Act.

10.15 Corporate representative certificate lodgment

The corporate representative certificate (or a photocopy of it or a facsimile of it) must be lodged:

- (a) at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), by 4.00pm (Sydney time) on the day before the meeting; or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), by 4.00pm (Sydney time) on the day before the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, by 4.00pm (Sydney time) on the day before the meeting.

10.16 Power of attorney lodgment

An attorney is recognised as entitled to act as attorney for a member at a meeting of members if, and only if, the relevant power of attorney (or a photocopy of it or a facsimile of it) is lodged at the place, and by the deadline, required for proxy forms.

11. PROCEEDINGS AT MEETINGS OF MEMBERS

11.1 Quorum

No business may be transacted at any meeting of members unless a quorum of members is present at the time when the meeting proceeds to business.

11.2 Quorum requirements

The quorum for a meeting of members is:

- (a) at least 2 members present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or
- (b) if the Company only has one member who may vote on a resolution, that member.

11.3 Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a meeting of members the meeting is adjourned to the same day in the following week at the same time and place unless:

- (a) the meeting was called by, or in response to, the requisition of members made under the Corporations Act, in which case the meeting is dissolved; or
- (b) the directors determine otherwise by giving written notice to the members of the day, time and place to which the meeting has been adjourned.

11.4 Quorum at meeting adjourned under preceding Clause

At any meeting adjourned under the preceding Clause if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

11.5 Special business

No special business may be transacted at any meeting of members other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Corporations Act to be transacted at such meeting.

11.6 Chair of meeting

The chair of the directors, or in that individual's absence the deputy chair of the directors (if any), is entitled to take the chair at each meeting of members. If neither of those individuals is present at any meeting of members within 15

minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the directors present may choose one of their number as a chair and if no director present is willing to take the chair the directors may choose an individual, whether a member or not, as chair of the meeting, failing which the members present must elect an individual, whether a member or not, to be chair of the meeting.

11.7 Passing the chair

If the chair of a meeting of members is unwilling or unable to be the chair for any part of the business of the meeting:

- (a) that chair may withdraw as chair for that part of the business and may nominate any individual who would be entitled under the preceding Clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the individual so nominated must cease to chair the meeting upon the request of the prior chair and the prior chair is entitled to resume as the chair of the meeting.

11.8 Responsibilities of chair

The chair of a meeting of members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that individual determines it is desirable for the better conduct of the meeting;
- (b) move any motion even though the chair is not a shareholder;
- (c) make, vary or rescind rulings;
- (d) prescribe, vary or revoke procedures;
- (e) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that individual determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (f) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

11.9 Admission to meetings

The chair of a meeting of members may refuse any individual admission to, or require any individual to leave and remain out of, the meeting where that individual:

- (a) fails to comply with searches, restrictions or other security arrangements the chair considers appropriate; or

- (b) is in possession of a pictorial-recording device, sound-recording device or broadcasting device; or
- (c) is in possession of a placard or banner; or
- (d) is in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption; or
- (e) refuses to produce or to permit examination of any article, or the contents of any article, in the individual's possession; or
- (f) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (g) is not entitled under this Constitution to attend the meeting.

This power may be exercised:

- (i) in respect of an individual regardless of whether that individual is a member or would otherwise have been entitled to attend the meeting or not; and
- (ii) by either the chair personally or by an individual acting with the authority of the chair of the meeting.

11.10 Adjournment of meeting

The chair of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

11.11 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

12. VOTING AT MEETINGS OF MEMBERS

12.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any shares, each individual who is present at a meeting of members may vote if he or she is a member or a recognised proxy, attorney or corporate representative of a member.

12.2 Number of votes

Each individual who is, under the preceding Clause, entitled to vote has:

- (a) on a show of hands only one vote, regardless of how many members the individual may represent; and

- (b) on a poll:
 - (i) in respect of a fully paid share - one vote for each share held by the individual or held by members for whom the individual is the recognised proxy, attorney or corporate representative; and
 - (ii) in respect of a partly paid share - a fraction of a vote for each share held by the individual or held by members for whom the individual is the recognised proxy, attorney or corporate representative equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited), ignoring amounts paid in advance of a call.

12.3 Voting restrictions

If the Company is listed and either:

- (a) in accordance with the requirements of the Listing Rules; or
- (b) to ensure that a resolution on which the Corporations Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Corporations Act,

the notice of a meeting of members specifies that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a special resolution or an ordinary resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution. However, a person who is not entitled to vote on a resolution as a member, may vote as a recognised proxy for another member who can vote if the proxy form specifies the way the recognised proxy is to vote on the resolution and the recognised proxy votes that way.

12.4 Calls unpaid

A person is not entitled to vote in respect of particular shares at a meeting of members unless all calls and other sums presently payable by the member in respect of those shares have been paid.

12.5 Attendance of member suspends the proxy

If a member is present at any meeting of members in person (or in the case of a body corporate, by its corporate representative) the proxy or attorney of that member may not exercise the voting rights of the member while the member is present.

12.6 Revocation of proxies

A vote given or act done in accordance with the terms of a proxy form or power of attorney is valid despite the previous death of the principal, or revocation of the proxy or power of attorney, or transfer of the share in respect of which the vote is

given, or act done, provided no intimation in writing of the death, revocation or transfer has been received at the registered office or by the chair of the meeting before the vote is given or act done. Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting. The decision of the chair as to whether a proxy has been revoked is final and conclusive.

12.7 Proxy must vote on a poll as directed

A proxy form may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (c) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

Nothing in this Clause affects the way that the individual who is a proxy can cast any votes they hold as a member.

12.8 Proxy must abstain if directed

A proxy form may specify that the proxy is to abstain from voting on a particular resolution. If it does the proxy must not vote on that resolution.

12.9 Method of voting

The chair of the meeting may determine that any question to be submitted to a meeting of members be determined by a poll without first submitting the question to the meeting to be decided by a show of hands. Unless the chair of the meeting makes such a determination, each question put to a vote at a meeting of members (except where there is an election of directors by ballot) must be determined by a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded.

12.10 Who may demand a poll

At a meeting of members a demand for a poll may be made by:

- (a) the chair of the meeting; or
- (b) at least 5 individuals present having the right to vote at on the resolution; or
- (c) any one or more individuals present having the right to vote at least 5% of the votes that may be cast on the resolution on a poll.

12.11 When poll may be demanded

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

12.12 Declaring result of vote on show of hands

At any meeting of members (unless a poll is so demanded) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

12.13 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

12.14 No casting vote for chair

If, on a show of hands or on a poll, the votes are equal:

- (a) the chair of the meeting does not have a casting vote in addition to the vote, if any, of the chair as a member; and
- (b) the motion is defeated.

12.15 Joint holders' vote

In the case of joint holders, any one of them may vote. If on a particular occasion more than one of the joint holders votes, only the first to vote is counted. If it is not practical to determine which was first, the earliest named in the register to exercise such right (to the exclusion of those named later) prevails. Any such determination (by the chair or returning officer as the case may be) is final and conclusive. Several executors or administrators of a deceased member are, for the purposes of this Clause treated as joint holders of the share.

12.16 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid.

12.17 Ruling on votes

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

13. APPOINTMENT AND REMOVAL OF DIRECTORS

13.1 Number of directors

The number of directors must be not less than 3 nor more than 12.

13.2 No share qualification

There is no share qualification for directors.

13.3 Initial directors

The directors holding office at the date of adoption of this Clause continue in office subject to this Constitution, with their retirement determined under **Clause 13.5** and **Clause 13.6**, as the case may be.

13.4 Casual appointment

The directors may at any time appoint any individual as a director, either to fill a casual vacancy or as an addition to the directors. Until that individual is re-elected at a meeting of members, that director is a “**casual appointee**”.

13.5 Retirement of casual appointee

A casual appointee holds office only until the conclusion of the AGM following his or her appointment by the directors and is then eligible for re-election. A casual appointee is not taken into account in determining the number of directors, if any, who are to retire by rotation at such AGM.

13.6 Retirement by rotation

At the conclusion of every AGM, one-third of the eligible directors (as determined by the next 2 Clauses) must retire from office. No director (except the continuing managing director) may retain office for more than 3 years (or until the conclusion of the third AGM following his or her last election, whichever is the longer) without submitting himself or herself for re-election even though such submission results in more than one-third retiring from office.

13.7 Those who retire

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being, but excluding:
 - (i) all alternate directors;
 - (ii) the continuing managing director;

- (iii) all casual appointees;
 - (iv) any director who, by reason of his or her age, must seek re-appointment at the AGM under section 201C of the Corporations Act;
- (b) if the number of eligible directors is not a multiple of 3, then the whole number nearest to but not exceeding one-third must retire;
- (c) if as a result of rounding down pursuant to paragraph (b), there would be no director due to retire from office at the conclusion of an AGM and no casual appointee is due to so retire, then one director must retire by rotation at the conclusion of that AGM and is eligible for re-election.

13.8 Selection of rotating directors

In every year the director or directors to retire are the one-third or other nearest whole number who have been longest in office since their last election. As between 2 or more directors who have been in office an equal length of time, the director or directors to retire must, in default of agreement between them, be decided by the secretary by lot. Such agreement or decision, when confirmed in writing by the secretary to the directors concerned, may not be varied or revoked unless all the directors concerned agree. A retiring director is eligible for re-election.

13.9 Appointment at AGM

Unless the directors decide to reduce the number of directors in office (such reduction to be effective from the conclusion of the next AGM), the Company at any AGM at which any director retires may fill the vacated office by either re-electing the same individual or electing some other individual.

13.10 Deemed re-appointment

If at any AGM the vacated office is not filled, the retiring director, if willing and not disqualified, is treated as having been re-elected unless an ordinary resolution for the re-election of that director is put and lost.

13.11 Candidates requiring nomination

No individual, except, first, a director retiring by rotation, second, a casual appointee or, third, an individual recommended by the directors for election, is eligible for election to the office of director at any meeting of members (whether an AGM or otherwise) unless duly nominated.

13.12 Valid nominations

Nominations must be made to the secretary at the registered office. Nominations close at 5.00 p.m. (Sydney time) on the day which is 35 business days before the date for the holding of the meeting of members. For a nomination to be valid:

- (a) the nomination must name the candidate and be signed by not less than 5 members; and

- (b) the individual nominated must consent to act if elected. The consent is sufficient if the individual signs a form of consent on the nomination paper but the secretary may accept any other form of consent, whether accompanying the nomination paper or not, that the secretary deems satisfactory, and such acceptance is final; and
- (c) the nomination and consent must be received before the close of nominations.

13.13 Resignation of director

Any director may retire from office by giving notice in writing to the Company of the director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date 3 months from the giving of the notice, whichever is the earlier. A written resignation which has not yet taken effect may be withdrawn by the director, by written notice to the Company, at any time prior to the resignation taking effect.

13.14 Vacation of office

In addition to the circumstances in which the office of director becomes vacant by virtue of the Corporations Act or other provisions of this Constitution, the office of director, by the very fact, is vacated if the director:

- (a) becomes an insolvent under administration; or
- (b) cannot manage the Company because of their mental incapacity and is an individual whose estate or property has had a personal representative or trustee appointed to administer it; or
- (c) is absent from meetings of directors for a continuous period of 6 months without leave of absence from the directors; or
- (d) fails to pay any call due on any shares held by that director for the space of one month, or such further time as the directors allow, after the time when the call has been made; or
- (e) is removed from office by an ordinary resolution.

13.15 Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) to appoint directors up to that minimum number; or
- (b) to call a meeting of members; or
- (c) in emergencies.

14. ALTERNATE DIRECTORS

14.1 Power to appoint alternate director

Each director may at any time appoint any individual approved for that purpose by a majority of his or her co-directors to act as an alternate director in the appointor's place.

14.2 Suspension of appointment

The appointor may vary, suspend, or terminate the appointment of any alternate.

14.3 Notice of appointment

Notice of each such appointment, suspension or termination must be made in writing to the alternate, signed by the appointor, and a copy served on the Company.

14.4 Electronic notifications

Any notice under the preceding Clause or the next Clause may be served by electronic transmission and any such transmission purporting to be signed by a director is treated as being in writing signed by such director.

14.5 Role of alternate

An alternate director, in that capacity:

- (a) is not entitled to receive notice of meetings of the directors, unless the appointor has, by notice in writing to the Company, required it do so either generally or in particular circumstances;
- (b) may attend and vote at a meeting of the directors if the appointor is not present at that meeting;
- (c) is entitled to sign a circular resolution under **Clause 17.10**, unless the appointor has, by notice in writing to the Company, suspended that right either generally or in particular circumstances;
- (d) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a director (subject to this Clause);
- (e) does not have a conflict of interest solely by reason of the fact that the appointor has (or vice versa); and
- (f) is not taken into account in determining either the number of directors or the rotation of directors.

14.6 Remuneration of alternate

An alternate's only rights (if any) as to remuneration for ordinary service as a director are against the appointor and not the Company.

14.7 Multiple votes

A director or any other individual may act as alternate director to represent more than one director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one director.

14.8 Termination of appointment

The appointment of an alternate director, by the very fact, is terminated:

- (a) if, by writing under the hand of the alternate, left at the registered office, the alternate resigns such appointment; or
- (b) if the appointment of the alternate is terminated by the appointor; or
- (c) if a majority of the co-directors of the appointor withdraw the approval of the individual to act as an alternate; or
- (d) if the appointor vacates office as a director; or
- (e) if the appointment is to act as alternate for one or more directors and all of those named directors have vacated office as directors; or
- (f) on the happening of any event which, if the alternate were a director, would cause the alternate to vacate the office of director.

15. MANAGING DIRECTOR

15.1 Appointment of managing directors

The directors may at any time:

- (a) appoint one or more of their body to be managing director (or managing directors) or to some other executive office of the Company;
- (b) define, limit and restrict that individual's powers;
- (c) fix that individual's remuneration and duties;
- (d) vary any of the powers so conferred; and
- (e) remove that individual from that office (but not as a director) and appoint another (or others) in that individual's place or places.

15.2 Continuing managing directors

If the directors appoint more than one managing director, then the directors must nominate one of the managing directors as "the continuing managing director". The directors may terminate or change the nomination of the continuing managing

director at any time. If there is one managing director, then he or she is regarded as the continuing managing director.

15.3 Application of other clauses to managing director

A continuing managing director is not, while that individual continues to hold that office, subject to retirement by rotation and that individual is not taken into account in determining the rotation of retirement of directors. A managing director, subject to the provisions of any contract between that individual and the Company and subject to this Constitution, is subject to the same provisions as to resignation, disqualification and removal as the other directors and if that individual ceases to hold the office of director from any cause that individual, by the very fact, immediately ceases to be a managing director.

15.4 Acting managing director

If a managing director becomes at any time in any way incapable of acting as such, the directors may appoint any other director to act temporarily as managing director.

15.5 Remuneration of executive directors

Subject to the provisions of any agreement entered into in a particular case, the remuneration of a managing director or other director appointed to an executive office, may at any time be fixed by the directors. Such remuneration may be by way of fixed salary, participation in profits of the Company or of any other company in which the Company is interested, or by any or all of those modes but, while the Company is listed, must not be by way of commission on, or percentage of, the operating revenue of the Company.

16. REMUNERATION OF DIRECTORS

16.1 Group directors' fees

A meeting of members may at any time, by ordinary resolution, approve a fixed sum that may be paid in each financial year of the Company as group directors' fees.

16.2 Proposal to increase fees for ordinary services

If there is a proposal to increase group directors' fees, the notice calling the meeting of members at which such increase is to be proposed must state the amount of the proposed increase and the maximum sum that may be paid if the increase is approved.

16.3 Fees for ordinary services of directors of the Company

In each financial year of the Company the directors must be paid out of the funds of the Company as remuneration, for their ordinary services as directors of the Company, such sum as the directors determine, but it must not exceed that last fixed under **Clause 16.1**. The sum so determined must be divided among the directors in such proportion and manner as they may at any time determine or, in default of determination, equally.

16.4 Fees for ordinary services of directors of other group companies

The Company, through its control of its wholly-owned subsidiaries, must ensure that, after taking into account the sum determined under the preceding Clause, the group directors' fees paid in each financial year do not exceed that last fixed under **Clause 16.1**.

16.5 Expenses of directors

Each director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at board meetings and meetings of members or otherwise in connection with the business of the Company.

16.6 Additional remuneration for extra services

Any director who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond the director's ordinary duties or to go or reside abroad or otherwise for any of the purposes of the Company is entitled to be remunerated either by a fixed sum or a salary as may be determined by the directors. Such remuneration may be either in addition to, or in substitution for, that director's share in the remuneration referred to in **Clause 16.3**.

16.7 Daily accrual

The remuneration of each director for ordinary services accrues from day to day and is apportionable accordingly. A resolution of directors cancelling, suspending, reducing or postponing payment of such remuneration or any part of it binds all the directors for the time being.

16.8 Payment of retirement benefit

Upon a director ceasing, or at any time after his or her ceasing whether by retirement or otherwise, to hold that office, the directors may pay to the former director, or in the case of death to the former director's legal personal representatives, or to the director's dependants or any of them, a lump sum payment in respect of past services of such director (either in that capacity or as an officer of a related body corporate of the Company) of an amount not exceeding the amount permitted by the Corporations Act and the Listing Rules. The Company may contract with any director to secure payment of any such sum to him or her, to the director's legal personal representatives, dependants or any of them.

16.9 Contributions to a superannuation fund

The Company may at any time make contributions to a superannuation or similar fund for the benefit of any director. Any such contribution is in addition to, and not regarded as part of, the remuneration approved by members under this Constitution.

17. PROCEEDINGS OF DIRECTORS

17.1 Mode of meeting

The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The directors may conduct their meetings by telephone or other form of communication without a director being in the physical presence of another director or other directors providing all directors have a reasonable opportunity to hear and be heard by each other.

17.2 Quorum

A quorum for a meeting of the directors is 2 directors.

17.3 Chair calling a meeting

The chair of the directors may at any time call a meeting of the directors to be held at such time and place as the chair chooses and such meeting shall not be invalidated by reason only of lack of convenience if a quorum of directors forms.

17.4 Secretary calling a meeting

The secretary, upon the request of any other director, must call a meeting of the directors to be held at such time and place as is convenient to the directors.

17.5 Notice of meeting

Notice of each meeting of the directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all eligible directors and all eligible alternate directors.

17.6 Recipients of notice

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being but excluding, first, all alternate directors, second, those given leave of absence, and third, those who in the belief of the individual calling the meeting are absent from Australia;
- (b) the “**eligible alternate directors**” are those alternate directors in respect of whom an appointor has, under **Clause 14.5**, required the Company to give such a notice to the alternate, but excluding those alternate directors who, in the belief of the individual calling the meeting, are absent from Australia; and
- (c) the accidental omission to give notice of any meeting of the directors to, or the non-receipt of any such notice by, an individual entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

17.7 Appointment of chair

The directors may elect one of their number to be chair of their meetings and may determine the period for which that individual is to hold that office. Such individual is entitled to use the title “Chairman”, “Chairperson” or “Chair”. If no chair is elected or if at any meeting of the directors the chair is not present within 15 minutes of the time appointed for holding the meeting, subject to the next Clause, the directors present must choose one of their number to be chair of such meeting.

17.8 Appointment of deputy chair

The directors may elect one of their number to be the deputy chair of their meetings and may determine the period for which that individual is to hold that office. Such individual is entitled to use the title “Deputy Chairman”, “Deputy Chairperson” or “Deputy Chair”. In the absence of the chair at a meeting of the directors, the deputy chair may exercise all the powers and authorities of the chair.

17.9 Votes of directors

Questions arising at any meeting of the directors must be decided by a majority of votes cast and each director has one vote. An individual who is an alternate director is entitled (in addition to his or her own vote if a director) to one vote on behalf of each director whom the alternate represents (as an alternate director at the meeting) and who is not personally present. If there is an equality of votes, provided more than 2 directors present are competent to vote on the question at issue but not otherwise, the chair may exercise a second or casting vote.

17.10 Circular resolution of directors

If a majority in number of the eligible directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the directors held on the day on which the document was signed or, if the directors sign the documents on different days, on the day on which the document was last signed by a director thereby constituting a majority in number of the eligible directors unless the document, by its terms, is said to take effect from an earlier date.

17.11 Signing of circular resolution

For the purposes of the preceding Clause:

- (a) the “**eligible directors**” are all directors for the time being but excluding, first, all alternate directors, second, those who, at a meeting of directors, would not be entitled to vote on the resolution and, third, those then outside Australia;
- (b) each director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if an individual who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;

- (d) unless the right has been suspended by the appointor under **Clause 14.5**, each alternate director may sign the document in the appointor's place if the alternate director reasonably believes that the appointor is unavailable to sign the document. An alternate may sign even if the available appointor could not have voted on the resolution. An alternate director who represents more than one director may sign as many times accordingly;
- (e) if there is only one eligible director, he or she may sign the document and it then takes effect under the preceding Clause;
- (f) an electronic transmission purporting to be signed by a director or alternate director is treated as being in writing signed by such individual; and
- (g) 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors are together treated as constituting one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

17.12 Deemed minute

The document or documents referred to in the 2 preceding Clauses are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

17.13 Validity of acts of directors

All acts done at any meeting of the directors or of a committee of directors or other persons or by any individual acting as a director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a director or attorney and was entitled to vote.

18. MATERIAL PERSONAL INTERESTS OF DIRECTORS

18.1 Requirement to leave the meeting

A director who has a material personal interest in a matter that is being considered at a meeting of directors must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

18.2 Exemptions from having to leave

The preceding Clause does not apply if:

- (a) the interest does not need to be disclosed under section 191 of the Corporations Act (whose terms are reflected in **Clause 18.3**) by reason of an

exemption under section 191(2) (whose terms are reflected in **Clause 18.4**); or

- (b) the director is permitted to do so by a declaration or order made by the Australian Securities and Investments Commission under section 196 of the Corporations Act; or
- (c) if there are not enough directors to form a quorum for a directors' meeting because of **Clause 18.1**, one or more of the directors (including those who have a material personal interest in the matter) may call a general meeting to consider a proposed resolution to deal with the matter; or
- (d) if directors who do not have a material personal interest in the matter have passed a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
 - (ii) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

18.3 Director's duty to notify

A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest unless the next Clause says otherwise.

18.4 Exemptions from having to give notice

The director does not need to give notice of an interest under the preceding Clause if:

- (a) the interest:
 - (i) arises because the director is a member of the Company and is held in common with the other members of the Company; or
 - (ii) arises in relation to the director's remuneration as a director of the Company; or
 - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the Company if it is not approved by the members; or
 - (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraph (iv); or
 - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Company

(but only if the contract does not make the Company or a related body corporate the insurer); or

- (vii) relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under section 199A of the Corporations Act or any contract relating to such an indemnity; or
 - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) all the followings conditions are satisfied:
- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under **Clause 18.3**; and
 - (ii) if an individual who was not a director of the Company at the time when the notice under **Clause 18.3** was given is appointed as a director of the Company, the notice is given (by someone) to that individual; and
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest under **Clause 18.6** and the standing notice is still effective in relation to the interest (as to which see **Clauses 18.10 and 18.11**).

18.5 Notice of material personal interest

The notice required by **Clause 18.3** must:

- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a meeting of the directors as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

18.6 Standing notice about an interest

A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with the next Clause. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. The standing notice may be given to the other directors before the interest becomes a material personal interest.

18.7 Form of standing notice

The notice under the preceding Clause must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
 - (i) at a meeting of the directors (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under paragraph (b)(ii) when it has been given to every director.

18.8 Standing notice must be tabled if given to directors individually

If the standing notice is given to the other directors individually in writing, it must be tabled at the next meeting of the directors after it is given.

18.9 Nature and extent of interest must be recorded in minutes

The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

18.10 Dates of effect and expiry of standing notice

The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if an individual who was not a director of the Company at the time when the notice was given is appointed as a director of the Company.

A standing notice that ceases to have effect under the paragraph (b) commences to have effect again if it is given (by someone) to the individual referred to in that paragraph.

18.11 Effect of material increase in nature or extent of interest

The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

18.12 Effect of contravention

A contravention of any of the Clauses in this Section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

19. POWERS AND DUTIES OF DIRECTORS

19.1 Powers generally

Subject to the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors who may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Corporations Act expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change had not been adopted or passed.

19.2 Sale of main undertaking

If the Company is listed, any sale or disposal of the Company's main undertaking is conditional upon approval or ratification by ordinary resolution at a meeting of members held in accordance with the Listing Rules.

19.3 Borrowing

The directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

19.4 Security

Without limiting the generality of the preceding Clause, the directors have power to make such loans to, and to provide such guarantees and security for obligations undertaken by, directors of the Company as may be permitted by the Corporations Act or by resolution of the Company in accordance with the Corporations Act.

19.5 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the directors at any time determine.

19.6 Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such

attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

20. DELEGATION

20.1 Delegates of powers

The directors may delegate any of their powers to:

- (a) a committee (as to which see **Section 21**); or
- (b) a director; or
- (c) an employee of the Company; or
- (d) any other individual.

20.2 Exercise of powers

The delegate must exercise the powers delegated in accordance with any directions of the directors.

20.3 Effect of exercise of powers

The exercise of the power by the delegate is as effective as if the directors had exercised it.

20.4 Concurrent power

The directors may still act in exercise of the same power so delegated.

20.5 Revocation of power

The directors may at any time, and without having to give a reason, alter or revoke any delegation of power.

20.6 Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

21. COMMITTEES

21.1 Delegation to committee

The directors may:

- (a) delegate any of their powers to committees consisting of such one or more individuals, whether directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of directors) consisting of such individual or individuals as they think fit.

21.2 Committee powers

Any committee so formed or individual or individuals so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be imposed by the directors.

21.3 Committee meetings

The meetings and proceedings of any committee consisting of 2 or more individuals are governed by the provisions in this Constitution for regulating the meetings and proceedings of the directors so far as they are capable of application and not affected by any resolution made, or direction given, by the directors under the preceding Clause.

21.4 Committee members as officers

Each individual appointed to a committee under paragraph (a) of **Clause 21.1**, if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

21.5 Other constraints

In addition to the matters in **Clauses 20.2 to 20.5**, a committee is governed by the following:

- (a) unless expressly authorised by the directors, a committee to which the directors have delegated power cannot, in turn, sub-delegate that power;
- (b) the directors may at any time remove any individual from a committee and need not give a reason for doing so.

22. SECRETARY

22.1 Appointment of secretary

The secretary must be appointed by the directors and holds office until the secretary's services are terminated by the directors.

22.2 Duties of secretary

The secretary must perform such duties as are required of that individual by the Corporations Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

22.3 Assistant secretary

The directors may also appoint an assistant secretary or assistant secretaries and temporary substitutes for the secretary. Any such assistant secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the secretary subject to any limitation prescribed by the directors.

23. MINUTES

Any minutes of a meeting of members or of the directors, if purporting to be signed by any individual purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

24. COMMON SEAL

24.1 Optional

The Company may at any time have a common seal.

24.2 Use of common seal

The common seal must not be fixed to any document unless it is done by the authority of directors or of a committee of them.

24.3 Mode of execution by common seal

Every document to which the common seal is fixed must be signed, to witness the fixing of the common seal, by 2 individuals. One must be a director. The other must be the secretary, a second director, or such other individual as the directors may appoint for that purpose. No individual may sign in more than one capacity.

24.4 Presence during execution

It is not necessary for an individual signing under the preceding Clause to be present either when the common seal is fixed or when another individual signs the document under the preceding Clause.

24.5 Delegation of authority to use common seal

The directors may delegate to the managing director or any other director power and authority to fix the common seal to such documents as the directors may at any time by resolution determine. When so fixed and signed by the managing director or such other director, it is binding on the Company in all respects as if it were duly signed by 2 directors.

24.6 Certificate seal

The Company may at any time have a duplicate common seal to be known as the certificate seal which must be a facsimile of the common seal with the addition on

its face of the words “share seal” or “certificate seal”. Any certificate may be issued under such a duplicate seal and if so issued is treated as being sealed with the common seal of the Company.

24.7 Fixing the certificate seal

The certificate seal and the signature of any director, secretary or other individual attesting the same may be reproduced and fixed by some mechanical means on to certificates which have first been approved for sealing by an individual appointed for that purpose by the Company and bear evidence of such approval.

24.8 Certificates

For the purpose of the 2 preceding Clauses, “**certificate**” means a certificate in respect of shares, stock, stock units, debentures, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

25. EXECUTION OF DOCUMENT WITHOUT A COMMON SEAL

25.1 Use of common seal optional

The Clauses in this Section operate regardless of whether the Company has a common seal.

25.2 Mode of execution

The Company may execute a document (including a deed if it is expressed to be executed as a deed) without using a common seal if the document is signed by 2 individuals. One must be a director. The other must be the secretary or a second director. No individual may sign in more than one capacity.

25.3 Presence during execution

It is not necessary for an individual signing under the preceding Clause to be present when another individual signs the document under the preceding Clause.

26. OVERSEAS BRANCH REGISTER

26.1 Transactions on overseas branch registers

The directors may make such provisions as they think fit respecting the keeping of any branch register of members at a place outside Australia. The directors may appoint any such person as they think fit to approve and register or reject transfers and make entries in any overseas branch register and to issue certificates in respect of shares on the overseas branch register and may make such other provisions relating to it as they may think fit.

26.2 Transfers between registers

The directors may transfer shares from one register to another and charge a fee in respect of any such transfer. The directors may at any time discontinue any overseas branch register.

27. DIVIDENDS AND RESERVES

27.1 Directors declare dividends

The directors may at any time declare a dividend to be paid to the members entitled to it. The directors must fix the record date and the date for payment.

27.2 Interim dividends

The directors may at any time declare such interim dividends to be paid to the members entitled to them as appear to the directors to be justified by the profits of the Company.

27.3 No interest on dividends

A dividend does not bear interest against the Company.

27.4 Accumulation of reserves

The directors may before declaring any dividend set aside out of the profits of the Company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the directors may at any time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to appropriate.

27.5 Apportionment

Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid (not credited) on the shares in respect of which the dividend is paid. No amount paid on a share in advance of calls may be treated for the purpose of this Clause as paid on the share. All dividends must be apportioned and paid pro rata to the proportion of the total amount paid and payable (excluding amounts credited) on the shares during any portion or portions of the period in respect of which the dividend is paid. If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

27.6 Deductions from dividends

The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by the member to the Company on account of calls or otherwise in relation to the shares of the Company.

27.7 Payment of dividend in specie

The directors, when declaring a dividend, may direct payment of such dividend wholly or partly by the distribution of specific assets. This may include paid up shares, debentures or debenture stock of any other body corporate or in any one or more of such ways. Where any difficulty arises in regard to such distribution the directors may settle the same as they think expedient and fix the value for

distribution of such specific assets or any part of those assets and may determine that cash payments be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the directors.

27.8 Dispatch and payment of dividends

A dividend due to a member may, if that member elects under a plan or arrangement offered at any time by the Company, be credited directly to a bank account. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque, sent through the post directed to the registered address of the holder or in the case of joint holders to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque must be made payable to the person to whom it is sent and may be made payable to bearer. Any one of 2 or more joint holders may give effectual receipts for any dividends or other money payable in respect of the shares held by them as joint holders.

27.9 Call satisfied by dividend

The directors, when declaring a dividend, may make a call on the members of such amount as they may fix but so that the call on each member must not exceed the dividend payable to the member and so that the call is made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the member, be set off against the call.

27.10 Unclaimed dividend

All dividends declared but unclaimed may:

- (a) in the case of dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

27.11 Dividends to those on register at declared record date

All dividends belong and must be paid (subject to any lien of the Company) to those members whose names are on the register at the record date fixed by the directors, despite any subsequent transfer or transmission of shares.

27.12 Share plans

The directors may at any time adopt and implement any number of plans, on terms they determine, by which a member may elect to receive shares as, or instead of, dividends. Such plans may include:

- (a) a plan under which a member who elects to participate in respect of a share held by the member is entitled to an issue of bonus shares instead of a dividend distributed as money in respect of that share; and

- (b) a plan under which a dividend to be distributed as money to a member in respect of a share is, if the member elects that the share participate in the plan, retained by the Company and applied in subscription for fully paid shares pursuant to the terms of the plan.

27.13 Powers concerning share plans

The directors have all powers necessary or desirable to implement and carry out fully any plan adopted under the preceding Clause and may (without limitation) at any time:

- (a) amend the terms of any plan as they consider desirable; and
- (b) suspend for any period or terminate the operation of any plan as they consider desirable.

28. CAPITALISATION OF PROFITS

28.1 Capitalisation of profits or reserves

The directors may at any time resolve that it is desirable to capitalise any sum being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members and that such sum may be applied for the benefit of members in proportion to the number of shares (being shares which entitle the holder to participate in the type of distribution being made pursuant to this Clause) held by them in any of the ways mentioned in the following Clause.

28.2 Application

The ways in which a sum may be applied under the preceding Clause are:

- (a) in paying up any amounts unpaid on the issue price of shares or any Attached Securities; or
- (b) in paying up in full the issue price of unissued shares, debentures or any Attached Securities; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

28.3 Settlement of difficulties

The directors may do all things necessary to give effect to the resolution and in particular to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;
- (b) fix the value for distribution of any specific assets or any part of them;

- (c) determine that cash payments be made to any members upon the footing of the value so fixed or that fractions of less value than 50 cents may be disregarded in order to adjust rights of all parties;
- (d) vest any such cash or specific assets in trustees upon trusts for the persons entitled to the dividend or capitalised fund; and
- (e) authorise any person to make, on behalf of the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts remaining unpaid of the issue price on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (e) is effective and binding on all the members concerned.

29. NOTICES

29.1 Service of notices

Where this Constitution, the Corporations Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this Clause referred to as “**served**”), the document may be served on the person:

- (a) by delivering it to the person personally; or
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a member, to the address of the member entered in the register and the document, by such dispatch, is regarded as left at that address; or
- (c) subject to the Corporations Act, by publication in a newspaper circulating generally in the State in which the registered office is located.

29.2 Date of deemed service

A document served under the preceding Clause is treated as having been duly served, irrespective of whether it is actually received:

- (a) where paragraph (b) of that Clause applies - on the day following the day when dispatch occurred; and
- (b) where paragraph (c) of that Clause applies - on the day the newspaper is first published.

29.3 Overseas members

Where the Company proposes to send a document to a member outside Australia, the Company must send the document by air or by fax, or in another way that ensures it will be received quickly.

29.4 Notices when member dies

It is not necessary to give a notice of meeting of members to any person entitled to a share by transmission unless such person has been duly registered as a member of the Company.

29.5 Notices to joint holders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

29.6 Counting of days

Subject to the Corporations Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

29.7 Binding on others

Every person who by operation of law, transfer or other means whatever becomes entitled to any shares is bound by every notice in respect of such shares which, previous to that person's name and address being entered on the register, has been duly given to the person from whom that person derives that person's title and to every previous holder of such shares.

29.8 Service on Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

29.9 Signature

The signature to any document to be given by the Company may be written, printed or stamped.

30. INDEMNITY, INSURANCE AND ACCESS

30.1 Indemnity for officers

To the extent that the law allows it, each officer of the Company and each officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

30.2 Insurance premiums

The directors may at any time pay premiums in respect of a contract insuring an individual (whether with others or not) who is an officer of the Company against a liability incurred by the individual as such an officer, or as an officer of a related body corporate. The liability insured against must not include that which the law prohibits. Any such premium in relation to a director is in addition to, and not regarded as part of, the remuneration approved by members under this Constitution.

30.3 Access

The directors may at any time give an officer or former officer of the Company access to certain papers, including documents provided or available to the directors and other papers referred to in those documents.

30.4 Contract

The Company may contract with any officer in relation to the matters referred to in the 3 preceding Clauses, not only while that individual is an officer but also after that individual has ceased to be an officer of the Company.

31. WINDING UP

31.1 Power of directors

The directors may authorise the presentation of a petition for the winding up of the Company by the court.

31.2 Distribution if insufficient assets

Subject to the terms of issue of a share, if the Company is wound up and the assets available for distribution among the members (in that capacity) are insufficient to repay all the paid up capital, those assets must be distributed so that, to the greatest possible extent, the amount distributed to a member in respect of each share is proportional to the capital amount paid up (or which at the commencement of the winding up ought to have been paid up) on that share compared with the total paid up capital of the Company.

31.3 Distribution of surplus assets

Subject to the terms of issue of a share, if the Company is wound up and after distribution of assets to repay paid up capital there remain assets available for distribution to the members (in that capacity), those assets must be distributed so that, to the greatest possible extent, the amount distributed to a member in respect of each share is proportional to the capital amount paid up (or which at the commencement of the winding up ought to have been paid up) on that share compared with the total paid up capital of the Company.

31.4 Distribution in specie

If the Company is wound up and a special resolution is passed authorising that it be done, the liquidator may distribute to the members all or any part of the assets

to be distributed to them in specie (whether they are property of the same kind or not). For that purpose the liquidator may, if so authorised by the special resolution:

- (a) set the value of each asset to be distributed that the liquidator considers fair; and
- (b) determine how the distribution is to be carried out (including by allocating the assets) as between the members of different classes of members,

but so that no member must accept any shares or other property in respect of which there is any liability.

31.5 Vesting in trustee

If so authorised by a special resolution, the liquidator of the Company may vest all or any part of the assets to be distributed to the members in a trustee on terms of trust for the benefit of the members as the liquidator considers appropriate.

32. RESTRICTED SECURITIES

If the Company is listed and has on issue any securities which are classified under the Listing Rules or by the Exchange as restricted securities, then despite any other provisions of this Constitution:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or the Exchange;
- (b) the Company must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or the Exchange;
- (c) 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 dividend or distribution, or voting rights, in respect of the restricted securities.

33. COMPLIANCE WITH LISTING RULES

If the Company is listed, the following clauses apply:

- (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.

34. STAPLING PROVISIONS

34.1 Power to Staple Ordinary Shares

- (a) The directors may, subject to this **Clause 34**, the Corporations Act and, if Ordinary Shares are quoted on the Exchange, the Listing Rules, cause the Stapling of any Security to any Ordinary Share and may cause the Stapling of further Securities to the Stapled Securities whether those Securities are a different class of Securities of a Stapled Entity from those stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in **Clause 34.1(a)** takes effect from the Stapling Date.

34.2 Stapling Resolution

Without limiting **Clauses 34.3 to 34.5**, if the Stapling Resolution is passed by members by the requisite majorities set out in the EM and all conditions to that resolution are satisfied, **Clauses 34.3 to 34.5** will take effect in respect of the Storage Fund Stapling Proposal.

34.3 Power to implement Stapling Proposal

Subject to the Corporations Act, and if the Ordinary Shares are Officially Quoted, the Listing Rules, the Company has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Stapling Proposal and such powers apply notwithstanding, and are not limited by, any provision of this Constitution.

34.4 Appointment of Company as agent and attorney

- (a) The Company is irrevocably appointed as the agent and attorney of each member to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the member, including, without limitation:
 - (i) taking all necessary action to compulsorily transfer all Stapled Securities held by each Excluded Foreign Holder including without limitation, in the manner contemplated by, and at the times set out in the EM;
 - (ii) applying for Securities in the name of the member, including Securities in a Stapled Entity;

(iii) agreeing on behalf of the member to be bound by the constitution of a Stapled Entity;

(iv) accepting transfers of Securities for the member,

to effect a Stapling Proposal or to give effect to any issue of Securities contemplated by **Clauses 2.10, 2.11, 27.12 or 28**.

(b) The Company is authorised to execute these documents and do these things without needing any further authority or approval from the members.

34.5 Paramountcy

(a) Subject only to the Corporations Act, and if the Ordinary Shares are Officially Quoted, the Listing Rules, this **Clause 34** has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with this **Clause 34** does not operate to the extent of any inconsistency.

(b) If there is an inconsistency between any provision of this constitution relating to Stapling (including this **Clause 34**) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, ASX Settlement Rules, the Corporations Act or any other law. The provision relating to Stapling prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this constitution.

34.6 Operation of Stapling Provisions

Clauses 34.7 to 34.13 apply only, and for so long as, an Ordinary Share is a component of a Stapled Security.

34.7 Ordinary Shares to be Stapled

(a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be recorded in the Stapled Security Register.

(b) Subject to the Corporations Act, while the Company is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Ordinary Shares and Attached Securities.

(c) The number of issued Ordinary Shares must equal the number of Attached Securities at that time divided by the Corresponding Number.

(d) The Company must not issue Ordinary Shares unless satisfied that each of those Ordinary Shares will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.

(e) The Company and the member must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing

so (as the case may be) would result directly or indirectly in any Ordinary Share no longer being a component of a Stapled Security. In particular:

- (i) the Company must not offer an Ordinary Share for subscription or sale (including by way of offering of options over Ordinary Shares) unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
- (ii) any offer of an Ordinary Share for subscription or sale (including by way of offering of options over Ordinary Shares) must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
- (iii) a holder of Ordinary Shares must not sell an Ordinary Share to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
- (iv) the Company must not issue or sell an Ordinary Share to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
- (v) the Company must not consolidate, split, sub-divide, cancel or otherwise reorganise any Ordinary Shares unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
- (vi) the Company must not forfeit an Ordinary Share unless the Corresponding Number of each Attached Security is also forfeited; and
- (vii) the Company must not register the transmission or transfer of Ordinary Shares including pursuant to **Clause 6.12**, unless the Corresponding Number of each Attached Security is also transmitted or transferred (as the case may be).

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of options.

34.8 Unstapling Date

- (a) Subject to approval by a special resolution of the holders of Ordinary Shares and members of each Stapled Entity respectively, the Company may determine that Stapling provisions of this constitution will cease to apply and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from the Unstapling Date, each Ordinary Share ceases to be Stapled to the Attached Securities and the Company must do all things reasonably necessary to procure that each Ordinary Share is Unstapled.

- (d) If the directors determine to Unstaple the Stapled Securities pursuant to this **Clause 34.8**, this does not prevent the directors from subsequently determining that the Stapling provisions should recommence.

34.9 Transfers of Stapled Securities

- (a) A transfer of an Ordinary Share forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirement of **Clause 5** the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of an Ordinary Share which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Company as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which an Ordinary Share is Stapled which is not accompanied by a transfer of the Ordinary Share will be taken to authorise the Company as agent for the transferor to effect a transfer of the Ordinary Share and any other Attached Securities to which the Ordinary Share is Stapled from the same transferor to the same transferee.
- (d) Each holder of Ordinary Shares irrevocably appoints the Company as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the directors reasonably consider is necessary or desirable) to effect on a date to be determined by the directors, the transfer to the Company or to a person determined by the directors of any Attached Security which was Stapled to a forfeited Ordinary Share which has been cancelled or sold.

34.10 Stapled Security Register

The directors must maintain or cause to be maintained a Stapled Security Register which:

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

34.11 Variation of Stapling provisions

The consent of each other Stapled Entity must be obtained to any amendment to this constitution which:

- (a) directly affects the terms on which Ordinary Shares are Stapled; or

- (b) removes any restriction on the transfer of an Ordinary Share if that restriction also exists for all other Attached Securities unless that restriction is simultaneously removed for all Attached Securities.

34.12 Maintenance of listing and consistency with other constitutions

- (a) The Company must use every reasonable endeavour to procure that the Stapled Securities are and continue to be officially quoted on the Exchange as one joint security.
- (b) The Company must use every reasonable endeavour to procure 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.

34.13 Director's Duties

The directors are is entitled to have regard to the fact that the Company is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Company and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of their obligations, the directors may, except to the extent otherwise required by law, have regard to the interests of members as holders of other Attached Securities.

**SCHEDULE ONE
(CLAUSE 6.12)**

UNMARKETABLE PARCELS

1. First notice

If at any time a member holds an Unmarketable Parcel (including shares or Stapled Securities held jointly with other members) ("**the Relevant Shares**"), the directors may give a notice ("**the First Notice**") to that member stating that unless the member gives notice to the Company by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Shares, then the Relevant Shares are liable to be sold or disposed of under this Schedule but no First Notice may be given by the directors in relation to the Relevant Shares less than 12 calendar months after a previous First Notice given in relation to the Relevant Shares.

2. Subsequent changes

Until the member gives a notice under Clause 6 of this Schedule, the provisions of this Schedule continue to apply to the Relevant Shares despite the fact that they have, after the giving of the First Notice, ceased to comprise an Unmarketable Parcel.

3. Power of directors to sell

Subject to the following provisions of this Schedule, where a member has been given a First Notice the directors may sell or otherwise dispose of ("**Divest**") the Relevant Shares (together with all rights attaching to them including any dividends declared but unpaid).

4. Advertisement and second notice

Where the directors propose to Divest any Relevant Shares under this Schedule:

- (a) the Company must publish in a newspaper circulating generally in the area in which the member holding the Relevant Shares has its address for the purposes of being given notices by the Company, a notice specifying:
 - (i) the intention to Divest the Relevant Shares;
 - (ii) the name of the relevant member; and
 - (iii) the number of the Relevant Shares; and
- (b) the Company must give a notice of intention to Divest the Relevant Shares ("**the Second Notice**") to the member advising the member that the Relevant Shares are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

5. Notice to all joint holders

Where a First Notice or a Second Notice is given in respect of Relevant Shares which are held by members jointly, that notice must be given to each of those joint holders.

6. Member may require sale not to proceed

Each member to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Company prior to the Relevant Shares being Divested, require the Company not to Divest the Relevant Shares, in which case the Relevant Shares may not be Divested unless a new First Notice is given to that member.

7. Jointly held shares

If a member who gives notice under Clause 6 of this Schedule is a joint holder of a parcel of Relevant Shares, that notice only prevents those Relevant Shares being Divested but does not prevent other Relevant Shares held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Shares applies only to those other Relevant Shares.

8. Terms of sale

Any Relevant Shares to be Divested may be Divested on the terms and in the manner and at the time the directors determine (including by means of the Relevant Shares being bought back by the Company). For the purpose of the Relevant Shares being Divested:

- (a) the member appoints the Company as its agent; and
- (b) the member appoints the Company and each of the directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Relevant Shares.

9. Costs of Sale

The Company must pay all costs and expenses in connection with the Divestiture of any Relevant Shares under this Schedule unless to do so would be to give financial assistance in a manner not permitted under the Corporations Act.

10. Validity of sale

The transferee of any Relevant Shares Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Shares, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Company exclusively.

11. Receipt of proceeds

Where the Company receives any consideration as a result of the Divestiture of any

Relevant Shares, the Company's receipt is a good discharge to the transferee of those Relevant Shares and any person claiming through that transferee.

12. Title of transferee

The title of the transferee to any Relevant Shares Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Shares to the transferee.

13. Application of proceeds

The proceeds of Divestiture of Relevant Shares under this Schedule (following deduction of any unpaid calls and interest and expenses) ("**the Sale Consideration**") must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Company for that purpose only;
- (b) the Sale Consideration must be held in trust for the member whose Relevant Shares were Divested;
- (c) the Company must, immediately following the receipt of the Sale Consideration, notify the member in writing that the Sale Consideration in respect of the Relevant Shares has been received by the Company and is being held by the Company pending instructions from the member as to how it is to be dealt with;
- (d) the Company must deal with the Sale Consideration as instructed by the member on whose behalf it is held, provided that the member accompanies that instruction with the certificate for the Relevant Shares (unless the Relevant Shares are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Company; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Company may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the directors required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Relevant Shares affected by that certificate and of the right and title of the Company to Divest the same.

15. Cancellation of certificates

Except where the Relevant Shares are uncertificated securities, the Company must cancel the share certificates for all Relevant Shares Divested.

16. Takeovers

The Company may not proceed with the Divestiture of any Relevant Shares where a takeover bid has been announced but the Divestiture of those Relevant Shares may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.

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ABACUS TRUST CONSTITUTION

OPERATIVE PROVISIONS

1. OPERATION OF THIS DEED

This Deed shall take effect as the constitution of the Trust (which was originally constituted by a deed dated 18 April 2001) immediately upon the lodgement of this Deed with ASIC pursuant to section 601GC(2) of the Corporations Act.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Deed and in all instruments issued under this Deed, the following expressions, in the absence of contrary intention, have the following meanings:

Acquisition Costs: the cost of acquiring any Real Property;

AGHL: Abacus Group Holdings Limited ACN 080 604 619;

AGHL Share: an ordinary share in AGHL;

AGPL: Abacus Group Projects Limited ACN 104 066 104;

AGPL Share: an ordinary share in AGPL;

ASIC: the Australian Securities and Investments Commission, including its delegates;

ASOL: Abacus Storage Operations Limited ACN 112 457 075;

ASOL Share: an ordinary share in ASOL;

ASPT: Abacus Storage Property Trust ARSN 111 629 559;

ASX Settlement: ASX Settlement Pty Limited ACN 008 504 532;

ASX Settlement Rules: the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time;

ASX: ASX Limited (ACN 008 624 691);

Associate: a reference to an associate of a person (the primary person) includes a reference:

- (a) where the primary person is a body corporate, to a director or secretary of the body, a related body corporate or a director or secretary of a related body corporate;
- (b) in any other case (including the case where the primary person is a body corporate), to
 - (i) a person in concert with whom the primary person is acting, or proposes to act;
 - (ii) the trustee of a trust in relation to which the primary person is a beneficiary whether presently or prospectively, or could reasonably be regarded by virtue

of any arrangement or understanding whether formal or informal and whether or not enforceable as capable of benefiting directly or indirectly under the relevant trust, or in relation to which the primary person is capable of controlling, sanctioning, limiting or restraining the actions of the trustee;

- (iii) a person in partnership with whom the primary person carries on business but does not include a reference to a person who gives advice to the primary person, or acts on behalf of the primary person, in the proper performance of the functions attaching to a professional capacity or a business relationship;

Attached Securities: Attached Units, Attached Shares and any other financial products which are from time to time Stapled or to be Stapled to a Unit;

Attached Shares: ordinary shares in AGHL, AGPL and any other shares which are from time to time Stapled or to be Stapled to a Unit including, but not limited to, ordinary shares in ASOL when the Storage Fund Stapling Proposal is implemented;

Attached Units: units in the Stapled Trust and any other units which are from time to time Stapled or to be Stapled to a Unit including, but not limited to, units in ASPT when the Storage Fund Stapling Proposal is implemented ;

Auditor: the Auditor of the Trust;

Benchmark Rate: is 3% per annum over the average of the 90 day Bank Bill Swap Reference Rate (source: Bloomberg) reported in the Australian Financial Review on the last business day of each month in the year under review;

Business Day: a day other than a Saturday or Sunday or public holiday in Sydney on which trading banks in Sydney are generally open for business and the ASX is open in Sydney;

CHESS Approved Securities: securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASX Settlement) in accordance with the ASX Settlement Rules;

Capital Return: is the net capital gain on any sale of Real Property as determined in accordance with generally accepted accounting principles, being the Net Sale Proceeds less the Acquisition Cost incurred by the Trust or by the relevant Sub-Trust;

Circumstance: any circumstance set out in subsections (2) to (8), inclusive, of section 601GAA as notionally inserted into the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief;

Compliance Committee: the compliance committee for the purposes of Part 5C.5 of the Corporations Act;

Compliance Plan: the compliance plan prepared by the Responsible Entity in accordance with Part 5C.4 of the Corporations Act;

Corporations Act: the Corporations Act 2001 (Cth);

Corresponding Number: in relation to an Attached Security, at any time the number of those Attached Securities that are Stapled to an issued Unit at that time;

Current Market Value: on any day for Stapled Securities that are Officially Quoted:

- (a) the average of the daily weighted average of all sale prices for each day on which fully paid Stapled Securities were sold on the ASX during the last 10 Business Days immediately preceding the relevant day;

- (b) should there be no sales during that period, the last bid price for such Stapled Securities during that period;

Current Unit Value: an amount equal to the Net Asset Value of the Trust divided by the number of Units in issue;

Deed: this Deed as amended from time to time;

Derivatives: a contract whose value depends on or derives from the value of an underlying asset, reference rate or index and includes, without limitation, options, futures, swaps and forward contracts;

Disclosure Document: includes a disclosure document or product disclosure statement as defined in the Corporations Act or any other offer document comprising an offer of Units in the Trust;

Distributable Income: the distributable income of the Trust determined in accordance with **Clause 18**;

Distribution Date: the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period, being not later than 90 days after the end of a Distribution Period;

Distribution Period: a period of 3 months or other period not exceeding 12 months as determined by the Responsible Entity and notified to the Unit Holders or specified in a Disclosure Document. Where the termination of the Trust occurs during a Distribution Period, the last Distribution Period will end on the date of termination. The Responsible Entity may change the duration or dates of the commencement or end of Distribution Periods;

EM: the Notice of Meeting and Explanatory Memorandum dated on or around January 2012 in relation to the Storage Fund Stapling Proposal.

Excluded Foreign Unitholder: a foreign unitholder ineligible to participate in a Stapling Proposal, and in particular, to receive Stapled Securities, including a foreign unitholder specified in the EM as ineligible to participate in the Storage Fund Stapling Proposal;

Executive Award Plan: the Abacus Property Group Executive Performance Award Plan as approved by the Responsible Entity from time to time;

Financial Year: a period of 12 months ending on 30 June or on such other date determined by the Responsible Entity. Where the Trust is terminated, the last Financial Year of the Trust will end on the date the Trust is wound up pursuant to **Clause 16**;

Income Tax Assessment Act: the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997, as may be applicable;

Indicative Buy Back Price:

- (a) where a Unit does not form part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or
- (b) where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day.

Issue Price: the price at which Units or Options are issued or sold;

Liquid and not Liquid: has the meaning given in Part 5C.6 of the Corporations Act;

Listed: admitted to and not removed from the Official List of the ASX and **Listing** has a corresponding meaning;

Listing Rules: the Listing Rules of the ASX and any other rules of the ASX which are applicable whilst the Trust is admitted to the Official List of the ASX, each as amended or replaced from time to time, subject to the extent of any written waiver by the ASX;

Market Value: the current market value of an investment calculated in a manner determined by the Responsible Entity, in consultation with the Auditor or such other person independent of the Responsible Entity approved by the Compliance Committee;

month: calendar month;

Net Asset Value: the Total Asset Value of the Trust, less liabilities and provisions which the Responsible Entity considers appropriate (including provisions for the costs of acquiring or realising investments);

Net Sale Proceeds: the sale price of any Real Property after deduction of all selling costs and expenses, including (but not limited to) advertising costs and agents' commissions;

Official List: the Official List of the ASX;

Official Quotation: quotation on the Official List and **Officially Quoted** has a corresponding meaning;

Option: an option to subscribe for a Unit (including a Performance Right);

Option Holder: a person registered as the holder of an Option and includes persons jointly registered;

Partly Paid Unit: a Unit on which the Issue Price has not been paid in full (whether or not called);

Performance Right: a right granted or issued to be provided with a Unit by way of issue upon satisfaction of relevant conditions under the Executive Award Plan;

person: includes, corporation, trust, fund, firm, body or individual;

Real Property: real property or an interest in real property;

Register: the register of Unit Holders or Option Holders maintained in accordance with **Clause 12**;

Relevant VWAP: has the meaning given in **Clause 7.1(c)**.

Relief: a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Responsible Entity or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument;

Responsible Entity: Abacus Funds Management Limited ABN 66 007 415 590 or other responsible entity for the time being of the Trust for the purposes of Part 5C.2 of the Corporations Act;

Restricted Securities: has the same meaning as in the Listing Rules;

Security: has the meaning given to that term in section 92(1) of the Corporations Act;

Stapled: the linking together of Units and Attached Securities so that, subject to their terms of issue, none of them may be dealt with without the others, and the word **Stapling** has a corresponding meaning;

Stapling Date: the date and time determined by the Responsible Entity to be the first day and time on which all the Units on issue are Stapled to an Attached Security or Attached Securities;

Stapled Entity: the Stapled Trust, AGHL, AGPL and any other corporation or trust whose financial products are Stapled to the Units including, but not limited to, ASOL and ASPT when the Storage Fund Stapling Proposal is implemented;

Stapled Security Register: the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with **Clause 6.11**;

Stapled Security: a Unit and each Attached Security that are Stapled together and registered in the name of the Unit Holder;

Stapled Trust: the registered managed investment scheme known as Abacus Income Trust ARSN 104 934 287;

Stapling Proposal: the proposal to Staple any Security to the Stapled Securities, including without limitation the Storage Fund Stapling Proposal;

Stapling Resolution: the resolution to approve amendments to this constitution and to, among other things, give effect to the Storage Fund Stapling Proposal;

Storage Fund Stapling Proposal: the proposal to Staple the Units of the Trust, the Stapled Trust and the shares in AGHL and AGPL to the shares of ASOL and the units of ASPT;

Sub-Trust: a trust in which all issued units are owned (directly or through another trust or trusts) by the Trust;

tax: includes any tax, (including goods and services tax) duty (including stamp duty), impost and the like and includes any interest or penalty or the like imposed on those amounts;

Total Asset Value: the aggregate of:

- (a) the Market Value of all the assets of the Trust, including cash and amounts owing to the Trust;
- (b) any prepayment of expenditure;
- (c) any unpaid current liability amounts;
- (d) such other increments or decrements as the Auditor approves be included; and
- (e) any capital expenditure not included in the Market Value of the assets of the Trust;

Trust: the trust governed by this Deed called the Abacus Trust or other name chosen by the Responsible Entity;

Trust Fund: all investments and property held by the Responsible Entity on the trusts of this Deed from time to time but excluding such Distributable Income as has been credited to a distribution account in accordance with **Clause 18**;

unpaid amount: the amount of the Issue Price in respect of a Unit which has not been paid (whether called or not);

Unit: an interest in the Trust Fund in accordance with this Deed;

Unit Holder: a person for the time being registered as the holder of a Unit and includes persons jointly registered and unless the context requires otherwise, a reference in this Deed, the Corporations Act or any document to a member, is to be construed as a reference to a Unit Holder;

Unmarketable Parcel means a number of Units or Stapled Securities which is less than that required for the time being to constitute a marketable parcel of Units or Stapled Securities, as the case may be, as defined by the Listing Rules;

Unstapled: a Unit and each Attached Security not, or no longer, being Stapled;

Unstapling Date: has the meaning given in **Clause 6.9**; and

Withdrawal Offer: an offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act to allow for redemption of Units.

2.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this deed;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Deed and a reference to this Deed includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable.
- (k) words and expressions defined in the Corporations Act as at the date of this Deed have the meanings given to them in the Corporations Act at that date.
- (l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

- (m) a reference to 'relevant day' in the definition of Current Market Value means, for the purpose of clause 5.5(c)(i)(B), the earlier of the day on which the intention to offer or issue the Stapled Securities is announced to the ASX, and the date of the agreement to issue the Stapled Securities.
- (n) a reference to a "relevant day" in the definition of Current Market Value means, for the purposes of clause 5.5(c)(i)(B), the earlier of the day on which the intention to offer or issue the Stapled Securities is announced to the ASX, and the date of the agreement to issue the Stapled Securities.

2.3 Rounding

All calculations under this Deed may be rounded up or down to the nearest whole number as determined by the Responsible Entity.

2.4 Record date

Subject to the Listing Rules, the Responsible Entity will determine the record date for determining Unit Holders' entitlements including their entitlements to participate in new issues and distributions of income and capital.

3. CORPORATIONS ACT RELIEF

- 3.1 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief, the provisions of this Deed operate subject to the Relief.
- 3.2 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief if this Deed includes specified provisions, then the provisions:
 - (a) are taken to be included in this Deed; and
 - (b) prevail over the other provisions of this Deed to the extent of any inconsistency.
- 3.3 If the relief is granted by class order (rather than specifically in relation to the Trust), the Relief applies, and the specified provisions referred to in **Clause 3** are taken to be included in this Deed, unless the Responsible Entity states in writing that that is not the case.

4. CONSTITUTION AND DURATION OF THE TRUST AND EFFECT OF THIS DEED

4.1 Commencement and duration of Trust

The Trust commenced on 18 April 2001 and subject to this Constitution the Trust will terminate in accordance with the Corporations Act, the Listing Rules, or in accordance with any requirement of law or equity or pursuant to **Clause 16**.

4.2 Constitution and its enforceability

This Deed is the constitution of the Trust for the purposes of the Corporations Act and its provisions shall be legally enforceable by the Unit Holders against the Responsible Entity and by the Responsible Entity against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

4.3 Vesting of Trust Fund

The Trust Fund is and will be vested in and held by the Responsible Entity on trust for the Unit Holders on the terms of this Deed.

4.4 **Binding effect of Deed**

This Deed will be binding on the Responsible Entity and each Unit Holder and Option Holder and all persons claiming through them as if they are parties to this Deed.

5. **CREATION AND SALE OF UNITS**

5.1 **Units**

The beneficial interest in the Trust is and will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Trust but not an interest in any particular part of the Trust.

5.2 **Transaction Costs**

In each case where an Issue Price is determined under this **Clause 5** or **Clause 7** there will be added to the Issue Price such transaction costs (if any) as the Responsible Entity determines and is permitted to include pursuant to any Relief.

5.3 **Issue Price for rights issues**

In the case of Units offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date:

- (a) where the Units form part of Stapled Securities, are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; and
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made.

5.4 **Issue Price for income reinvestment**

In the case of reinvestment of any income or capital entitlement:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:

- (i) the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; and
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements.

5.5 Issue Price for placements

In the case of any Units not issued under any other provision of this Deed:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer or issue is announced to the ASX; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion;
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer or issue is made; or
 - (ii) subject to **Clause 5.5(c)**, where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion.
- (c) Where Units are to be issued in the Circumstance set out in subsection 601GAA(2A) of the Corporations Act as notionally inserted into the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief, the Responsible Entity must ensure that either of the following applies:
 - (i) both of the following applies:
 - (A) the issue, together with any Related Issue, in the previous year does not, immediately before the issue, comprise more than 15% of the Units in that class;

- (B) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the Current Market Value of Stapled Securities does not exceed 10% of the Current Market Value; or
- (ii) all of the following apply:
 - (A) Unit Holders who hold Stapled Securities of which the Units form a component part approve the issue by a Placement Resolution;
 - (B) unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of members in another class – members in that other class approve the issue by a Placement Resolution;
 - (C) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue.

In this **Clause 5.5(c)**:

Placement Resolution: in relation to the approval of an issue of Units, a special resolution where both of the following apply:

- (a) votes are only cast in respect of Units (the **eligible Units**):
 - (i) that are held by a Unit Holder who will not acquire any of the Units that are to be issued; or
 - (ii) that are held by a Unit Holder for the benefit of another person who will not obtain beneficial ownership of any of the Units that are to be issued;
- (b) the value of the eligible Units held by the Unit Holders who vote represents at least 25% of the total value of eligible Units;

Related Issue: in relation to an issue of Units, an issue of Units in the same class at a price set by the Responsible Entity, which has not been approved or ratified by Unit Holders in accordance with **Clause 5.5(c)(ii)** or issued in accordance with other provisions of this Deed.

5.6 Satisfaction of Issue Price

The Issue Price may be satisfied in such manner as the Responsible Entity determines including by payment of cash or by transfer to the Responsible Entity (or other persons nominated by the Responsible Entity or as agreed between the Responsible Entity and the applicant) of investments acceptable to the Responsible Entity, or any other methods as determined by the Responsible Entity. Any expenses incurred in respect of a transfer of investments must be paid by the Unit Holder.

5.7 Apportionment of Issue Price

Subject to the terms of any Relief, where:

- (a) a Unit forms part of a Stapled Security and, as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (b) pursuant to this Deed (including **Clause 7**), the Issue Price of the Unit, when aggregated with the issue price of the Attached Securities, is the Current Market Value or the Relevant VWAP (as the case may be) as at the relevant date,

the Issue Price of the Unit will be determined as follows:

- (c) the Stapled Entities will determine what part of the amount payable for the issue of a Stapled Security is to represent the issue prices of the Unit and each Attached Security, respectively;
- (d) unless otherwise determined by the Stapled Entities, the allocation is to be done on the basis of the relative fair value of each component of the Stapled Security as at immediately prior to the issue of the Stapled Security; and
- (e) if the Stapled Entities are unable to reach agreement within a reasonable time then the allocation must be determined by a chartered accountant of not less than ten years' standing appointed by agreement between them or, failing agreement, by the President for the time being of the Institute of Chartered Accounts in Australia. The independent accountant must determine the allocation based on fair value as determined by the accountant having regard to the respective net tangible asset backing of each of the component securities immediately before the issue and anything else the accountant considers relevant. The independent accountant will act as an expert not as an arbitrator and the decision is final and binding on the parties. The costs of the resolution of the dispute must be borne in accordance with the determination of the independent accountant.

5.8 Issue of Units to the Responsible Entity

- (a) Subject to the Corporations Act and the conditions of any Relief, the Responsible Entity may hold and be issued Units in the Trust.
- (b) The Issue Price for Units issued to the Responsible Entity may be satisfied, in addition to the manner specified in **Clause 5.6** and without limitation, by a waiver or abatement of the fees the Responsible Entity is entitled to receive pursuant to **Clause 19.1** or by the provision of services by the Responsible Entity to the Trust for the balance (or part of the balance) of the term of the Trust
- (c) Where the Issue Price of Units issued to the Responsible Entity is satisfied by a waiver or abatement of the fees of the Responsible Entity or otherwise in accordance with paragraph (b), the Responsible Entity will amend this Deed (if necessary) to reflect the reduction in fees payable to the Responsible Entity.

5.9 Different classes of Units

The Responsible Entity may issue Units with special rights or restrictions and those rights and restrictions will prevail over any inconsistent provisions of this Deed.

5.10 Capital Reallocation

- (a) Notwithstanding any other provision of this Deed, the Responsible Entity may at any time issue Units (**Capital Reallocation Units**) in either of the following circumstances:
 - (i) to the holders of Stapled Securities if a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for the holders of Stapled Securities and applies a distribution paid out of that Stapled Entity towards the Issue Price for those Capital Reallocation Units; or
 - (ii) to any Stapled Entity if the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities,

so long as immediately following the issue of Capital Reallocation Units referred to in paragraph (i) above or the in-specie distribution referred to in paragraph (ii) above,

the Responsible Entity immediately consolidates the Capital Reallocation Units with all other Units then on issue in the Trust such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue immediately prior to the issue of Capital Reallocation Units.

- (b) The Unit resulting from the consolidation of a Unit (**Original Unit**) with a Capital Reallocation Unit pursuant to **Clause 5.10(a)** will be taken for all purposes to be stapled to the same Attached Security as that to which the Original Unit was stapled.
- (c) Notwithstanding any other provision of this Deed, the Responsible Entity may at any time upon receipt of funds from or on behalf of the members of a Stapled Entity provided to the Responsible Entity for the purpose, apply those funds in paying up Units which are a component of a Stapled Security on a pro rata basis as if those Units were Partly Paid Units and the amount applied to each Unit was payment in full of an instalment of the Issue Price which was then due and payable.

5.11 Application of capital reduction to capitalise Stapled Entity

The Responsible Entity may reduce the capital of the Trust and may, as agent for and in the name of each Unit Holder, apply the amount of the reduction that the Unit Holder is otherwise entitled to, to the purchase of Securities in any other Stapled Entity pro rata in proportion to the number of Securities held by the Unit Holder in that Stapled Entity.

6. STAPLING OF UNITS

6.1 Stapling authorisation and power to Staple Securities

- (a) The Responsible Entity may, subject to this **Clause 6**, the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to any Unit and may cause the Stapling of further Securities to the Stapled Securities whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in **Clause 6.1(a)** takes effect from the Stapling Date.

6.2 Stapling Resolution

Without limiting **Clauses 6.3 to 6.6**, if the Stapling Resolution is passed by Unit Holders by the requisite majorities set out in the EM and all conditions to that resolution are satisfied, **Clauses 6.3 to 6.6** will take effect in respect of the Storage Fund Stapling Proposal.

6.3 Power to implement Stapling Proposal and limitation of liability

- (a) Subject to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, the Responsible Entity has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Stapling Proposal and such powers apply notwithstanding, and are not limited by, any provision of this Deed.
- (b) The Responsible Entity will not have any liability of any nature to Unit Holders (which exceeds the extent to which it is actually indemnified out of the assets of the Trust Fund) arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the proper implementation of the Stapling Proposal.

6.4 Appointment of Responsible Entity as agent and attorney

- (a) The Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unit Holder, including, without limitation:

- (i) taking all necessary action to compulsorily transfer all Stapled Securities held by each Excluded Foreign Unitholder including without limitation, in the manner contemplated by, and at the times set out in the EM;
- (ii) applying for Securities in the name of the Unit Holder, including Securities in a Stapled Entity;
- (iii) agreeing on behalf of the Unit Holder to be bound by the constitution of a Stapled Entity;
- (iv) accepting transfers of Securities for the Unit Holder,

to effect a Stapling Proposal or to give effect to any issue of Securities contemplated by **Clauses 5.10, 5.11, 18.5 or 18.6**.

- (b) The Responsible Entity is authorised to execute these documents and do these things without needing any further authority or approval from the Unit Holders.

6.5 Interested dealings by the Responsible Entity

Subject to the Corporations Act, the Responsible Entity or an officer, employee or associate of the Responsible Entity may do the things described in **Clauses 6.3 and 6.4** even if it has an interest in the outcome.

6.6 Paramountcy

- (a) Subject only to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, this **Clause 6** has effect notwithstanding any other provision of this Deed and any provision of this Deed which is inconsistent with this **Clause 6** does not operate to the extent of any inconsistency.
- (b) If there is an inconsistency between any provision of this Deed relating to Stapling (including this **Clause 6**) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, ASX Settlement Rules, the Corporations Act or any other law. The provision relating to Stapling prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Deed.

6.7 Operation of Stapling provisions

Clauses 6.8 to 6.15 apply only, and for so long as, a Unit is a component of a Stapled Security.

6.8 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) 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.
- (c) The number of issued Units at any time must equal the number of issued Attached Securities divided by the relevant Corresponding Number.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.

- (e) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
- (i) the Responsible Entity must not offer a Unit for subscription or sale (including by way of offering of Options) unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
 - (ii) any offer of a Unit for subscription or sale (including by way of offering of Options) must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (iii) a Unit Holder must not sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (iv) the Responsible Entity must not issue or sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (v) the Responsible Entity must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
 - (vi) the Responsible Entity must not forfeit a Unit Holder's Unit unless the Corresponding Number of each Attached Security is also forfeited; and
 - (vii) the Responsible Entity must not register the transmission or transfer of Units pursuant to Clause 14 or Clause 32 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of Options.

6.9 Unstapling Date

- (a) Subject to approval by a special resolution of the Unit Holders and the members or unitholders of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling provisions of this Deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (d) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this **Clause 6.9**, this does not prevent the Responsible Entity from subsequently determining that the Stapling provisions should recommence.

6.10 Transfers of Stapled Securities

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of **Clause 14** the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which a Unit is Stapled which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.
- (d) Each Unit Holder irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the Responsible Entity reasonably considers is necessary or desirable) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Unit forfeited pursuant to **Clause 8** and which has been cancelled or sold.

6.11 Stapled Security Register

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

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

6.12 Variation of Stapling provisions

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

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

6.13 Maintenance of Listing and Consistency with Constitutions of Stapled Entities

- (a) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are and continue to be Officially Quoted as one joint security.
- (b) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are dealt with under this Deed in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

6.14 Responsible Entity's Duties

The Responsible Entity is entitled to have regard to the fact that the Trust is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of its obligations, the Responsible Entity may, except to the extent otherwise required by law, have regard to the interests of Unit Holders as holders of other Attached Securities.

(a)

7. OPTIONS

7.1 Issue of Options

The Responsible Entity may issue Options on such terms and conditions as it determines, provided that:

- (a) subject to paragraph (b), the Issue Price of Options shall, if permitted under the Corporations Act or any Relief (and subject to the conditions of that Relief), be such price (including nil) as the Responsible Entity determines in its discretion, but if not so permitted, the Issue Price shall be nil;
- (b) subject to paragraph (c), the Issue Price of a Unit issued pursuant to the exercise of an Option, shall be determined as follows:
 - (i) subject to paragraph (iii), where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be equal to the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX; and
 - (ii) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be where permitted by, and subject to the conditions of, any Relief, such price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the issue of Options is made; and
 - (iii) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) – in the case of Options offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date, the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be where permitted by, and subject to the conditions of, any Relief, not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX;
- (c) subject to paragraph (d), the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of an Option issued under the Executive Award Plan) shall be, when aggregated with the issue prices of each Attached Security, an amount equal to the daily volume weighted average price per Stapled Security sold on the market operated by the ASX (excluding any special crossings and overnight sales) for the period of 7 ASX trading days immediately preceding the issue of the Options (whether or not a sale was recorded on any particular day) (**Relevant VWAP**);

- (d) the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of a Performance Right issued under the Executive Award Plan) shall be an amount equal to zero.

7.2 Interest of Option Holders

An Option shall not confer any interest in the Trust or any right to participate in the income or capital of the Trust.

7.3 Voting rights of Option Holders

Option Holders shall be entitled to receive notices of, and to attend meetings of Unit Holders but shall not, subject to the Corporations Act and to any Relief, be entitled to speak or vote at any such meeting.

8. PARTLY PAID UNITS

8.1 Terms of Issue

The Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines.

8.2 Calls

Each holder of a Partly Paid Unit shall be liable to pay the amount of a call in accordance with the terms and conditions of issue of the Unit.

8.3 Stapled Securities

A Partly Paid Unit which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Responsible Entity has received all unpaid money in relation to that Unit;
- (b) each Stapled Entity has received all unpaid money in relation to the relevant Attached Security to which the Unit is Stapled; and

8.4 Interest on late payment of calls

If any call is not paid on or before the day appointed for payment, the holder of such Partly Paid Unit shall pay interest thereon (such interest to accrue for the benefit of the Trust) from the day appointed for the payment to the time of actual payment, at such rate as is from time-to-time determined by the Responsible Entity.

8.5 Non-receipt of notice of call

The non-receipt of a notice required to be given in respect of any call, or the accidental omission to give such a notice of a call, to any Unit Holder shall not invalidate the call.

8.6 Deductions for unpaid calls

If all or part of a call is not paid on or before the date appointed for payment, then until such time as the call is paid, the Responsible Entity may deduct or set off such unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity by reason of the non-payment) from any amount payable to the relevant Unit Holder pursuant to **Clauses 15, 16 and 18**.

8.7 Forfeiture of Units

If a call is not paid on or before the day appointed for the payment, the Responsible Entity may in its discretion at any time thereafter before the payment of the amount of the call, interest accrued thereon and the costs and expenses incurred by the Responsible Entity by reason of non-payment, cause the Units in respect of which any such amount is payable, to be forfeited with effect from a date determined by the Responsible Entity. Such forfeiture shall include forfeiture of all distributions and other moneys payable to the Unit Holder in respect of the forfeited Units and not actually paid before the forfeiture.

8.8 Entry on Register

Where any Unit has been forfeited in accordance with the foregoing provisions, an entry of the forfeiture and the date thereof, shall forthwith be made in the Register.

8.9 Disposal of forfeited units

Where permitted by any Relief, a forfeited Unit may be sold by the Responsible Entity at any price.

8.10 Annulment of forfeiture

The Responsible Entity may, at any time before a forfeited Unit is sold, annul the forfeiture upon such conditions as the Responsible Entity determines.

8.11 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of a forfeited Unit, receive the selling price and effect in the name of the Unit Holder whose Unit has been forfeited, a transfer in favour of the transferee of the Unit.
- (b) Upon effecting the transfer, the transferee shall be registered as the holder of the Unit and the transferee's title to the Unit shall not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Unit.

8.12 Liability notwithstanding forfeiture

Any Unit Holder whose Units have been forfeited will, notwithstanding such forfeiture, be liable to pay to the Responsible Entity the amount not paid and all other moneys payable in accordance with the foregoing provisions of this **Clause 8**.

8.13 Responsible Entity's lien

The Responsible Entity shall have a first and paramount lien upon every Unit for amounts not paid and other moneys payable to the Responsible Entity by the Unit Holder in respect of a Unit and such lien shall extend to all distributions and other moneys from time to time payable in respect of that Unit.

8.14 Sale of units to enforce lien

The Responsible Entity may sell the Units subject thereto, in the same manner, mutatis mutandis, as if the Units had been forfeited.

8.15 Proceeds of sale

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien shall be applied:

- (a) firstly, in payment of all costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale;

- (b) secondly, in satisfaction of the amount of the unpaid call and interest thereon; and
- (c) the residue (if any) shall be paid to the person registered as the Unit Holder in respect of the subject Units immediately prior to the sale.

8.16 Underwriting of calls

- (a) Where:
 - (i) the Responsible Entity has appointed an underwriter to underwrite the payment of a call in respect of Partly Paid Units;
 - (ii) in discharging its obligations the underwriter has purchased Units at a public auction held under **Clause 8.9** (with the relevant call credited as paid) at a price which is more than the Current Market Value ; and
 - (iii) the Responsible Entity is liable to pay the underwriter in respect of each Unit purchased in accordance with paragraph (ii) of this Clause, an amount equal to the amount by which the Current Market Value is less than the price paid by the underwriter for the Unit (up to the amount of the relevant call),

then the former holder of Partly Paid Units that were forfeited and sold at that public auction, is liable to the Responsible Entity in respect of those forfeited Units, and may be sued for:

- (iv) all monies payable by the Responsible Entity to the underwriter as contemplated by paragraph (iii) of this Clause;
 - (v) interest (as provided in **Clause 8.4**); and
 - (vi) all costs incurred by the Responsible Entity in procuring payment from the former Unit Holder.
- (b) The Responsible Entity must ensure that where the Responsible Entity is liable to the underwriter as contemplated by paragraph (a)(iii) of this Clause, the Responsible Entity's liability to the underwriter may be satisfied by the assignment of the Responsible Entity's right of action under **Clause 8.16(a)(iv)** against the former Unit Holder in full satisfaction of such liability of the Responsible Entity to the underwriter.
- (c) For the avoidance of doubt, a Unit Holder's liability under **Clauses 8.16(a)(v) and (vi)** will not be affected by the assignment by the Responsible Entity of its right of action under **Clause 8.16(a)(vi)**.
- (d) A Unit Holder's liability in respect of forfeited Units for the purposes of **Clause 8.12** will be satisfied to the extent that monies are paid by the Unit Holder in respect of those forfeited Units pursuant to **Clause 8.16**.

9. APPLICATION FOR AND ISSUE OF UNITS AND OPTIONS

9.1 Form of application

An application for Units or Options must be in such form as the Responsible Entity determines. Subject to the terms of any Relief, the Responsible Entity may determine that:

- (a) such application need not be in writing; and/or
- (b) such application need not be signed by the applicant for the Units or Options.

9.2 Refusal of applications

The Responsible Entity may, without giving any reason, refuse or accept all or part of an application.

9.3 Issue of Units and Options

Units and Options will be issued with effect from the date determined by the Responsible Entity.

9.4 Restriction on issue of Units

Units may not be issued 80 years after the commencement of the Trust if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

9.5 Overseas Unit Holders

Subject to the Listing Rules during such periods as the Trust is Listed, the Responsible Entity may, in relation to an offer of Units or Options to Unit Holders, elect to offer Units or Options only to Unit Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this Deed, such offer will be deemed to have been made to all Unit Holders.

9.6 Underwriting of Issue

- (a) The Responsible Entity may determine that any issue of Units or Options or payments of calls be underwritten and all expenses of the underwriter, underwriting fees and commissions, sub-underwriting fees, brokerage, handling fees and the like (including where payable to any Associate of the Responsible Entity) will be paid out of the Trust Fund.
- (b) The underwriter or its nominee may subscribe for such Units or Options in accordance with the relevant underwriting agreement at an Issue Price not less than that at which the Units or Options were offered under the relevant Disclosure Document.

9.7 Uncleared funds

Where uncleared funds representing application moneys are not cleared in the ordinary course, any Units or Options thus created are void.

10. INVESTMENT ADVICES

10.1 The Responsible Entity may determine whether or not investment advices or other forms of confirmation of investment will be issued for Units or Options.

10.2 The Responsible Entity may cancel or replace any investment advices in the circumstances and subject to the conditions determined by the Responsible Entity.

10.3 Investment advices may be prepared as the Responsible Entity determines and need not be signed.

10.4 Investment advices will not be evidence of ownership of Units or Options.

11. RIGHTS AND LIABILITIES OF UNIT HOLDERS

11.1 Rights of Unit Holders

A Unit Holder is entitled to a beneficial interest in the Trust Fund but may not:

- (a) interfere with the exercise of the Responsible Entity's powers; or
- (b) exercise any rights in respect of any investment or require the transfer of any property.

11.2 Limitation of Unit Holders' liability

- (a) The Responsible Entity may, in the absence of a separate agreement with a Unit Holder, only enforce any right of indemnity against the Trust Fund.
- (b) In the absence of such a separate agreement, no Unit Holder will be personally liable to the Responsible Entity or any creditor of the Trust.

12. REGISTER

A Register of Unit Holders and Option Holders (where required), whether loose-leaf or computer-stored and otherwise of the type determined by the Responsible Entity, will be kept by or on behalf of the Responsible Entity. The Responsible Entity will determine the information to be recorded in the Register. Entry of a person on the Register as the holder of a Unit or an Option shall be conclusive evidence of that person's ownership of that Unit or Option.

13. CONSOLIDATION AND SUBDIVISION OF UNITS

- 13.1 The Responsible Entity may consolidate or subdivide Units provided that the consolidation or subdivision does not alter the ratio of Units held by any Unit Holder to the aggregate number of Units in issue.

13.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Responsible Entity, and the value of and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the trustee may consolidate such fractions.
- (c) The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:
 - (i) immediately amend the Register to record the consolidation or split;
 - (ii) notify the Unitholder within 30 days of the consolidation or split;
 - (iii) ensure that each Unit is consolidated or split on the same basis as each other Attached Security.
- (d) The Responsible Entity has the power, in giving effect to any consolidation or split of Units, to:
 - (i) make provision for the issue of fractional certificates;
 - (ii) make cash payments;
 - (iii) determine that all or any fractions may be disregarded;
 - (iv) appoint a trustee to deal with any fractions on behalf of the Unit Holders; and
 - (v) rounding each fractional entitlement to the nearest whole Unit.

14. TRANSFER AND TRANSMISSION OF UNITS

- 14.1 All transfers of Units and Options must be made in the manner and form (whether in writing or not) required by the Responsible Entity and, for so long as the Trust is Listed, the ASX or other exchange regulator.
- 14.2 Without limiting **Clause 14.1**, the Responsible Entity may in its absolute discretion waive any requirement that any transfer be signed by the transferor, transferee or both.
- 14.3 Every transfer must be delivered to the Responsible Entity, together with the certificate or certificates (if issued) in respect of the Units or Options to be transferred.
- 14.4 The Responsible Entity may in its absolute discretion refuse to register any transfer of Units or Options, but where Units or Options are Officially Quoted, may only do so where permitted by the Listing Rules. The Responsible Entity is not required to give any reason for refusing to register a transfer.
- 14.5 If a Unit Holder or Option Holder dies or becomes subject to a legal disability, only the survivor or legal personal representatives (as the case may be) will be recognised as having any claim to Units or Options registered in the relevant holder's name.

15. REDEMPTION

15.1 No obligation to redeem Units

Subject to this Deed, the Responsible Entity is not obliged to redeem or buy-back any Units.

15.2 Withdrawal Offers

- (a) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (c) 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.

15.3 Redeeming Unit Holder

Unless the Responsible Entity otherwise determines, the redemption amount paid to a Unit Holder consists of capital only. The Responsible Entity may, however, having regard to all relevant equitable obligations, determine that some or all of the redemption amount consists of Distributable Income (which may include net capital gains), rather than capital, of the Financial Year in which the redemption occurs and advise the Unit Holder accordingly (and in any event as soon as practicable after the end of the Financial Year in which the redemption occurred).

Buy-back of Units

- (a) While the Trust is Listed, the Responsible Entity may buy back Units, subject to and in accordance with the Corporations Act (as modified from time to time) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this **Clause 15.4** the Units purchased are cancelled.

- (c) Where a Unit forms part of a Stapled Security, the Responsible Entity may only buy back and cancel Units if the Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this **Clause 15.4** will be determined by the Responsible Entity (or its nominee) as follows:
 - (i) for any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5% (or such greater amount as may be allowed under the Listing Rules); and
 - (ii) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

16. WINDING-UP OF TRUST

16.1 Winding-up by Responsible Entity

In addition to the circumstances in which the Trust may be wound-up under the Corporations Act or the Listing Rules, the Responsible Entity may wind up the Trust with the prior approval of a resolution of the Unit Holders.

16.2 Termination

The Responsible Entity must wind up the Trust when it has been terminated.

16.3 Procedure on winding-up

- (a) On winding-up of the Trust, and subject to paragraph (c), the Responsible Entity must realise the assets of the Trust as soon as reasonably practicable, rather than await an improvement in the Market Value of the investments of the Trust.
- (b) Subject to **Clause 8.6**, and to the rights of the holders of different classes of Units, the net proceeds of realisation, after discharging or providing for all liabilities and meeting the expenses (including anticipated expenses) of winding-up, must be distributed to Unit Holders in proportion to the number of Units of which they are the registered holders on the date the Trust is required to be wound-up in accordance with this clause or Part 5C.9 of the Corporations Act or on the date of termination of the Trust in accordance with **Clause 4.1**.
- (c) The Responsible Entity may agree with a Unit Holder that the Unit Holder's entitlement in whole or in part on the winding-up of the Trust be satisfied by transferring assets of the Trust to that Unit Holder at their Market Value.
- (d) The Responsible Entity must arrange for an independent audit of the final accounts for the Trust after the winding-up of the Trust has been completed.

17. MANAGEMENT AND INVESTMENT OF THE TRUST FUND

17.1 Responsible Entity's powers

The Responsible Entity has the legal capacity and all the powers in respect of the Trust which it is possible for both a natural person and a body corporate to have as if the natural person and body corporate respectively was the absolute owner of the Trust Fund, including:

- (a) to invest the Trust Fund in any form of investment;
- (b) to deal with any asset of the Trust;
- (c) to borrow or obtain other financial accommodation;
- (d) to grant security over the Trust Fund;
- (e) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (f) to make loans, including to associated or related entities;
- (g) to fetter future discretion;
- (h) to invest in Derivatives; and
- (i) to act as trustee of Sub-Trusts.

17.2 Appointment of Agents

The Responsible Entity may engage agents, consultants, experts, advisers or other persons and appoint delegates (including custodians) for any purpose in the exercise of its powers, and any such consultant, expert, person or delegate may be an Associate of the Responsible Entity.

17.3 Appointment of Custodian

Without limiting the Responsible Entity's power under **Clause 17.2**, subject to the Corporations Act and the terms of any Relief the Responsible Entity may appoint one or more custodians to hold title to some or all of the assets of the Trust.

18. DISTRIBUTION OF INCOME AND CAPITAL

18.1 Determination of Distributable Income

- (a) The Distributable Income of the Trust for a Distribution Period will be such amount as the Responsible Entity determines in its discretion, provided that the Distributable Income for a Distribution Period can be no less than the net income of the Trust (within the meaning of the Income Tax Assessment Act) for that period.
- (b) The Unit Holders will be entitled to the Distributable Income of the Trust for a Distribution Period in accordance with the proportions specified in **Clause 18.2**.

18.2 Income entitlement

- (a) The Distributable Income of the Trust Fund shall accrue in respect of a Unit immediately following the creation and allotment of the Unit and shall accrue from month to month and shall be apportionable in respect of time accordingly (***the Unit Distribution***).

The present entitlement in respect of a Partly Paid Unit shall be as follows:

- (i) the entitlement shall be that proportion of the Unit Distribution which the amount received by the Responsible Entity in respect of the Unit bears to the Issue Price of the Unit;
- (ii) where the Issue Price of the Unit has been received by the Responsible Entity in instalments, each instalment shall (notwithstanding the date of actual receipt)

be deemed to have been received on the first day of the month immediately following the receipt of the relevant instalment.

- (b) Subject to the terms of issue of any Units and to Clause 8.6 and Clause 18.2(a), the Distributable Income of the Trust for each Distribution Period that remains after deducting any distributions already made in relation to that Distribution Period pursuant to Clause 15.3 will be credited to a distribution account and after payment of all taxes will be distributed to Unit Holders registered at the close of business on the last day of the Distribution Period, or, where Units are Officially Quoted, to Unit Holders registered, at the close of business on the date fixed for the closing of the Register to determine income entitlements for that Distribution Period, in proportion to the number of Units of which they are the registered holders at such time.

18.3 Time for distribution of income

The Distributable Income for a Distribution Period must be distributed by the Responsible Entity to Unit Holders no later than the applicable Distribution Date.

18.4 Present entitlement to income of the Trust

Persons who were entitled to Distributable Income pursuant to **Clause 18.2** in respect of a Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) to that income in the proportions set out in **Clause 18.2** on the last day of the Financial Year, but if the Responsible Entity does not make a determination for the purposes of **Clause 18.1** for the last Distribution Period in a Financial Year, then persons who are registered Unit Holders at the close of business on the last day of that Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) at that time to that part of the Distributable Income of the Trust for that Financial Year to which no Unit Holder has been presently entitled in an earlier Distribution Period for that Financial Year by virtue of **Clause 18.2** and/or **Clause 15.3**.

18.5 Unit plans

- (a) The Responsible Entity may at any time adopt and implement any number of plans, on terms it determines, by which a Unit Holder may elect to receive Units as, or instead of, income or capital entitlements. Such plans may include:
 - (i) a plan under which a Unit Holder who elects to participate in respect of a Unit held by the Unit Holder is entitled to an issue of bonus Units instead of an income or capital entitlement distributed as money in respect of that Unit; and
 - (ii) a plan under which an income or capital entitlement to be distributed as money to a Unit Holder in respect of a Unit is, if the Unit Holder elects that the Unit participate in the plan, retained by the Trust and applied in subscription for fully paid Units pursuant to the terms of the plan.
- (b) The Responsible Entity has all powers necessary or desirable to implement and carry out fully any plan adopted under this **Clause 18.5** and may (without limitation) at any time:
 - (i) amend the terms of any plan as it considers desirable; and
 - (ii) suspend for any period or terminate the operation of any plan as it considers desirable.

18.6 Capital and other distributions

- (a) The Responsible Entity may at any time distribute capital to the Unit Holders (including without limitation as part of an income distribution) by the payment of cash, the issue of Units, the distribution of assets or in any other manner the Responsible

Entity determines in proportion to the number of Units of which they are the registered holders at such time as is determined by the Responsible Entity.

- (b) In the case of an issue of Units, the terms of the issue of Units will be determined by the Responsible Entity.

18.7 **Income categories**

The Responsible Entity may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unit Holder.

19. **REMUNERATION**

19.1 **Responsible Entity's fee**

- (a) For a period of five (5) years from 1 July 2001 to 30 June 2006, the Responsible Entity will be paid out of the income or capital of the Trust an annual fee of 0.35% of the gross assets (on a consolidated basis including, without limitation, the gross assets of all Sub-Trusts) of the Trust, or any lesser fee agreed by the Responsible Entity.
- (b) From 1 July 2006, the Responsible Entity will be paid out of the income or capital of the Trust an annual fee of 1% of the gross assets (on a consolidated basis including, without limitation, the gross assets of all Sub-Trusts) of the Trust, or any lesser fee agreed by the Responsible Entity.
- (c) Such fee will accrue from day to day and be payable monthly in arrears, based on the gross assets calculated under paragraph (a) on the last day of each month.
- (d) The Responsible Entity's fee will continue to be paid up to the date of completion of the final winding up of the Trust.

19.2 **Performance Fee**

On the sale of any Real Property of the Trust or Sub-Trust acquired after 1 July 2001, the Responsible Entity will be entitled to receive a performance fee calculated at 10% of the excess of the Net Sale Proceeds over the Purchase Price subject to the following conditions:

- (a) the performance fee shall not be payable until the Net Sale Proceeds exceeds 110% of the Purchase Price;
- (b) the maximum performance fee payable under this paragraph shall be 4.5% of the Net Sale Proceeds;
- (c) the performance fee shall not reduce the return to Unit Holders of Net Sale Proceeds below 110% of the Purchase Price.

In this **Clause 19.2** the term 'Purchase Price' includes Acquisition Cost, finance costs in relation to the financing of the acquisition of the Real Property and, where applicable, costs associated with the issue of a Disclosure Document to raise equity for that acquisition.

19.3 Real Property Acquisition Fee

In consideration of sourcing and conducting due diligence in acquiring Real Property on behalf of the Trust or Sub-Trust, the Responsible Entity will be entitled to receive an acquisition fee of up to 1% of the purchase price of any Real Property purchased by the Trust or sub-Trust after 1 July 2001.

19.3A Capital Raising Fee

In consideration of it procuring and conducting due diligence in respect of any capital raising for the Trust, the Responsible Entity will be entitled to receive a capital raising fee of 0.75 cents for each Stapled Security issued, whether pursuant to public offer, private placement, rights issue or any other method or combination used for that capital raising.

19.4 Reimbursement and indemnity

The Responsible Entity will be paid or reimbursed out of the Trust Fund on a full indemnity basis for all expenses and liabilities which it may incur in connection with the Trust and any Sub-Trust or in performing its obligations or exercising its powers under this Deed including in connection with the following matters:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) registers, accounting and other records;
- (c) Unit Holder meetings;
- (d) any transaction or proposed transaction in relation to the Trust, including, without limitation, the acquisition, disposition, development and management of assets of the Trust;
- (e) management of the Trust's assets including leasing and valuation;
- (f) accounts;
- (g) taxes, rates, charges (including bank charges), duties and other imposts, including any goods and services or similar tax collectable from, or incurred or payable by, the Responsible Entity in connection with the Trust, or the management or administration of the Trust (including taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (h) regulatory and compliance matters;
- (i) any restructuring or Listing of the Trust;
- (j) offers or invitations, to apply for, or issues or transfers of, Units or Options;
- (k) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including without limitation, legal and accounting advisers and members of any Compliance Committee;
- (l) researching property and securities markets;
- (m) this Deed;
- (n) custody of the Trust Fund (including custodian's fees);

- (o) computer hardware and software and other equipment (including development and maintenance of internet facilities);
- (p) any court proceedings, arbitration or dispute;
- (q) retirement or removal of the Responsible Entity;
- (r) Compliance Committees;
- (s) preparing documentation in relation to the Trust and the Trust Fund;
- (t) insurances including insurance premiums payable in respect of insurance policies for Trust assets and for the Responsible Entity, its directors, and Compliance Committee members;
- (u) promoting the Trust to, or communicating with, Unit Holders, potential investors and their advisers;
- (v) audit fees, including compliance plan audit fees;
- (w) Unit Holder complaints resolution;
- (x) provision of guarantees and indemnities by the Responsible Entity; and
- (y) travel and accommodation expenses.

19.5 **Payments to Associates**

Payments under **Clauses 19.1, 19.2, 19.3, 19.3A and 19.4** may be made to an Associate of the Responsible Entity.

19.6 **Compliance Committee**

Subject to the Corporations Act, the Responsible Entity may reimburse or indemnify out of the Trust Fund any member of the Compliance Committee for any cost, expense or liability incurred in connection with the Trust or sub-Trust or such membership.

19.7 **Waiver or postponement**

The Responsible Entity may waive or postpone payment of all or part of its fee under **Clauses 19.1, 19.2, 19.3 or 19.3A** or reimbursement under **Clause 19.4** on such terms and conditions as it determines in its absolute discretion.

19.8 **Rebate**

- (a) Subject to the Corporations Act and applicable ASIC class orders, the Responsible Entity may waive, assign or rebate all or part of its fee under **Clauses 19.1, 19.2, 19.3 and 19.3A** in favour of any person (including one or more Unit Holders) on such terms and conditions as it determines in its absolute discretion.
- (b) If the payment of the Responsible Entity's fees under Clauses 19.1, 19.2, 19.3 and 19.3A or the Responsible Entity's reimbursement under Clause 19.4 is unable to be made when such fees or amounts are payable due to their being insufficient liquid assets in the Trust, then the Responsible Entity will be entitled to receive interest at a commercial rate determined by it.

19.9 **Goods and Services Tax ('GST')**

- (a) If any GST becomes payable in respect of any taxable supply by the Responsible Entity in connection with its rights and obligations under this Deed, the Responsible Entity is entitled to increase the consideration for that supply by the amount of the GST on that supply (less, in the case of a reimbursement of expenses, the amount of any input tax credit it is entitled to in relation to the reimbursement payment). The Responsible Entity is entitled to be paid or reimbursed that GST out of the assets of the Trust. For the avoidance of doubt, the Responsible Entity is entitled to determine the amount of the GST for which it may be liable on the percentage fees and reimbursement and to adjust the percentage accordingly.
- (b) If the Responsible Entity makes a taxable supply in connection with its rights and obligations under this Deed, the Responsible Entity must issue the recipient of that taxable supply a tax invoice prior to:
 - (i) the date payment for the taxable supply is due; or
 - (ii) if there is no due date for payment for the taxable supply, the date the Responsible Entity is paid or reimbursed out of the Trust Fund for the taxable supply.
- (c) Any invoice issued by the Responsible Entity to the Trust under this Deed must be a tax invoice.
- (d) Words or expressions used in this **Clause 19.9** which are defined in the *A New Tax System (Goods and Services) Tax Act 1999 (Cth)* have the same meaning in this Clause.

20. RETIREMENT AND REMOVAL OF RESPONSIBLE ENTITY

20.1 Removal of Responsible Entity

The Responsible Entity must cease to act as responsible entity if removed as responsible entity in accordance with the Corporations Act or, for as long as the Trust is Listed, the Listing Rules.

20.2 Retirement of Responsible Entity

The Responsible Entity may retire as responsible entity subject to compliance with the requirements of the Corporations Act.

20.3 Appointment of new Responsible Entity

On the retirement of the Responsible Entity pursuant to **Clause 20.2**, the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the Responsible Entity.

20.4 Retirement Payment

The Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Unit Holders for such remuneration or benefit.

21. RESPONSIBLE ENTITY'S POWERS, LIABILITIES AND INDEMNITIES

21.1 General Provisions

- (a) Without prejudice to its rights under **Clause 19.4**, the Responsible Entity shall be indemnified out of the Trust Fund for all liabilities incurred by it, or on its behalf, to the

extent to which such liabilities are incurred in relation to the proper performance of the Responsible Entity's duties.

- (b) The Responsible Entity may rely on the validity of any document (including any electronic communication) unless it reasonably believes the document not to be genuine.
- (c) The Responsible Entity shall not be under any liability for failure to perform any act if prevented by law.
- (d) The Responsible Entity shall not be liable to account for any payment or retention of moneys made in good faith, or to meet a liability, to a duly empowered fiscal authority.
- (e) The Responsible Entity may rely upon the advice of counsel or solicitors in relation to any matter in connection with the Trust (including the interpretation of this Deed).
- (f) The Responsible Entity may rely on advice or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are believed in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Responsible Entity.
- (g) The Responsible Entity is not obliged to enter into any transaction unless its personal liability is excluded or limited as required by it.

21.2 Recovery of duties, charges etc

The Responsible Entity will not be required to undertake any transaction in respect of a Unit Holder unless the Unit Holder has paid or provided for to the Responsible Entity's satisfaction all duties, taxes and the like in respect of such transaction.

21.3 Responsible Entity's interest in the Trust and in transactions

- (a) The Responsible Entity and its Associates may hold Units or Options.
- (b) The Responsible Entity or its Associates may:
 - (i) deal with the Trust or any Unit Holder or Option Holder; or
 - (ii) be interested in any contract or transaction with the Trust or any Unit Holder or Option Holder or retain for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (iii) act in the same or a similar capacity in relation to any other scheme.
- (c) Without limiting the effect of paragraph (b), the Responsible Entity may deal with itself in relation to the Trust Fund where in relation to such dealings it is acting in different capacities.

21.4 Extent of Responsible Entity's discretion

The Responsible Entity has absolute discretion as to how and when to exercise its powers.

21.5 Limitation of Responsible Entity's liability

Subject to the Corporations Act, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Responsible Entity will not be liable to Unit Holders or Option Holders to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liability out of the Trust Fund.

22. MEETINGS

22.1 Convening and conducting of meeting

- (a) Subject to the Corporations Act, but without prejudice to this **Clause 22**, meetings of Unit Holders may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including without limitation requirements in relation to proxies and their use.
- (b) If a poll is demanded it will be taken in such manner and at such time as the chairman directs.
- (c) In the case of equality of votes, the chairman shall have a casting vote.

22.2 Notice of general meeting

- (a) While the Trust is a registered managed investment scheme pursuant to Part 5C.1 of the Corporations Act notice of a meeting of Unit Holders must be given in accordance with the Corporations Act. Otherwise, notice may be given in the manner determined by the Responsible Entity.
- (b) Accidental omission to give notice to, or the non-receipt of notice of meeting by a Unit Holder will not invalidate the meeting.

22.3 Quorum

- (a) Subject to the following subclause the quorum for a meeting of Unit Holders is:
 - (i) at least 2 Unit Holders present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or
 - (ii) if the Trust has only one Unit Holder who may vote on a resolution, that Unit Holder.
- (b) Where a meeting is convened to pass a special resolution to remove the Responsible Entity the quorum shall be at least 2 Unit Holders present at all times during the meeting holding at least 51% of the votes that may be cast at the meeting.

22.4 No quorum

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

- (a) adjourned to the same day in the following week at the same time and place; or
- (b) adjourned to such other day, time and place as the Responsible Entity may direct.

22.5 Notice of meeting adjourned under Clause 22.4(b)

If a meeting is adjourned in accordance with **Clause 22.4(b)**, written notice must be given to the Unit Holders of the day, time and place to which the meeting has been postponed.

22.6 Quorum at meeting adjourned under Clause 22.4(b)

At any meeting adjourned under **Clause 22.4(b)** if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

22.7 Proxies

- (a) The instrument appointing a proxy must be in writing and signed by the appointor, the appointor's attorney or corporate representative and, in the case of a body corporate, in accordance with the Corporations Act.
- (b) Subject to **Clause 22.7(c)** the instrument appointing a proxy, and where applicable the original or certified copy of the power of attorney under which it is signed, must be received at least 48 hours before the time of the meeting.
- (c) The Responsible Entity may determine that proxies may be received less than 48 hours before the meeting.
- (d) No proxy is valid after the expiration of 12 months from the date of its execution.
- (e) Unless the Responsible Entity has received written notice of the matter before the start of the meeting at which a proxy votes, a vote cast by a proxy will be valid even if, before the proxy voted:
 - (i) the Unit Holder dies;
 - (ii) the Unit Holder revokes the proxy's appointment; or
 - (iii) the Unit Holder revokes the authority under which the proxy was appointed by a third party.

22.8 Attorney of Unit Holder

A Unit Holder may appoint an attorney to act on its behalf at a meeting (or meetings) of Unit Holders. Before the first meeting at which the attorney acts on the Unit Holder's behalf, the power of attorney must be deposited at the place specified in the notice of meeting.

22.9 Representative of body corporate

A Unit Holder being a body corporate may, by resolution of its directors and in accordance with the Corporations Act, authorise any person to act as its representative at a meeting of Unit Holders. That representative will then have all the rights that could have been exercised by the authorising Unit Holder at the relevant meeting.

22.10 Form and effect of resolutions

- (a) A resolution passed at a meeting of Unit Holders shall be binding on all such members, whether or not present at such meeting. The decision of the chairman on any matter shall be final.
- (b) If all Unit Holders shall have signed a resolution, that resolution shall be deemed to have been passed by the requisite majority of members at a meeting of members on the day and at the time at which the resolution was last signed by a member. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders.

22.11 Cancellation or postponement of a meeting

Subject to the Corporations Act, the Responsible Entity may cancel or postpone a meeting of the Unit Holders at any time prior to the meeting for any reason.

22.12 Notice of cancellation

Notice of cancellation of a meeting must be given to every Unit Holder.

22.13 Notice of date, time and place of postponed meeting

Notice of the day, time and place to which the meeting has been postponed must be given to every Unit Holder at least 5 Business Days prior to the postponed meeting.

22.14 Proxy, attorney or corporate representative for postponed or cancelled meetings

Where

- (a) the terms of an instrument appointing a proxy, attorney or a corporate representative provide that such appointment is valid only for a meeting of Unit Holders 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

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the Unit Holder appointing the proxy, attorney or representative gives written notice specifying otherwise to the Responsible Entity 48 hours prior to the time to which the meeting has been postponed (and in that event the Unit Holder may at the same time appoint a new proxy, attorney or representative in accordance with the relevant provisions of this Clause 22, with necessary modifications).

22.15 Adjournment of meeting

The chairman of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

22.16 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

23. AMENDMENT TO DEED

Subject to the Corporations Act, the Responsible Entity may amend this Deed, including this Clause. Any such amendment may have prospective or retrospective effect. Where this Deed is amended by a resolution of Unit Holders the Responsible Entity may execute a supplementary deed incorporating those amendments.

24. NOTICES

Subject to the Corporations Act, the Responsible Entity may determine methods, including electronic methods, of giving notices to Unit Holders and may also determine corresponding rules relating to deemed service and proof of service.

25. MODE OF PAYMENT OF MONEYS TO UNIT HOLDERS

Moneys payable by the Responsible Entity to a Unit Holder may be paid in any manner determined by the Responsible Entity. Payment of moneys in such manner will be a good discharge to the Responsible Entity. Any joint Unit Holder may give an effective discharge to the Responsible Entity in respect of the payment.

26. CHANGE OF NAME OF TRUST

- 26.1 The Responsible Entity may in its absolute discretion change the name of the Trust without requiring any Unit Holder consent and take whatever action is necessary to effect the change in the name of the Trust.

- 26.2 Should the Responsible Entity cease to be, or to be a related body corporate of, Abacus Funds Management Limited, the title of the Trust must be changed to a name which does not contain the word Abacus and the new Responsible Entity must, without requiring any Unit Holder consent, take whatever action is necessary to ensure that that word is not used in connection with the Trust. Any current Disclosure Document must be withdrawn. This Clause may not be amended without the prior written consent of Abacus Funds Management Limited.

27. COMPLAINTS RESOLUTION

- 27.1 The Responsible Entity must take all reasonable steps to ensure that there are at all times in force appropriate arrangements for the making and resolution of complaints by Unit Holders in connection with the Trust.
- 27.2 Complaints made must be properly considered and dealt with by the Responsible Entity as soon as reasonably practicable and in any event within 60 days after they are made, or such longer period as is reasonably necessary in the circumstances.
- 27.3 Upon receiving a complaint from a Unit Holder (in whatever form), the Responsible Entity must acknowledge receipt of the complaint to the Unit Holder within 15 Business Days, at the same time outlining the remedies available to the Unit Holder.
- 27.4 Within 15 Business Days of dealing with a complaint from a Unit Holder, the Responsible Entity will notify the Unit Holder of, and the reasons for, its proposed resolution of the dispute. At the same time, the Responsible Entity will inform the Unit Holder as to what further avenues of complaint are available to the Unit Holder, including notification of an independent external dispute resolution body of which the Responsible Entity is a member.
- 27.5 In considering a complaint, the Responsible Entity will take into account such of the following factors as are relevant to the complaint:
- (a) any alleged breach of the Corporations Act, this Deed or breach of trust;
 - (b) legal advice (if any) it has received in relation to that alleged breach;
 - (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
 - (d) any material held by the Responsible Entity in relation to the alleged breach; and
 - (e) any other relevant information.
- 27.6 If the Unit Holder reasonably requests, the Responsible Entity must provide the Unit Holder with an opportunity to inspect any relevant material relating to the complaint unless to do so would prejudice the Responsible Entity or the Trust.

28. GOVERNING LAW

This Deed will be governed by the laws of the State of New South Wales.

29. SEVERABILITY

If any provision of this Deed is illegal or invalid because it offends any applicable law:

- (a) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

30. LISTING RULES

Notwithstanding anything contained in this Deed, for so long as the Trust is Listed:

- (a) If the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Deed 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 Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision.
- (e) If the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision.
- (f) If any provision of the Deed is or becomes inconsistent with the Listing Rules, the Deed is deemed not to contain that provision to the extent of the inconsistency.

31. RESTRICTED SECURITIES

If the Trust is Listed and has on issue any Units which are classified under the Listing Rules or by the ASX as restricted securities, then despite any other provisions of this Deed:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or ASX;
- (b) the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or ASX;
- (c) 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 dividend or distribution, or voting rights, in respect of the restricted securities.

32. SMALL HOLDINGS

If the Trust is Listed and a Unit Holder holds an Unmarketable Parcel, the provisions of **Schedule 1** apply to that Unmarketable Parcel.

33. ACCOUNTS

Subject to the provisions of the Corporations Act and any Relief, financial accounts will be prepared in respect of the Trust and forwarded to Unit Holders in the Trust.

34. ELECTRONIC DEALINGS

Notwithstanding any other provision of this Deed (except **Clause 1**), the Responsible Entity may facilitate dealings and transactions (including, without limitation applications and redemptions) by Unit Holders or prospective Unit Holders, on terms and conditions stipulated by the Responsible Entity, by Unit Holders or prospective Unit Holders by electronic or other means including telephone, computer, cheque book, credit card and other electronic, telecommunication or banking facilities.

SCHEDULE 1

UNMARKETABLE PARCELS

1. First notice

If at any time a Unit Holder holds an Unmarketable Parcel (including Units or Stapled Securities held jointly with other Unit Holders) (**the Relevant Units**), the Responsible Entity may give a notice (**the First Notice**) to that Unit Holder stating that unless the Unit Holder gives notice to the Responsible Entity by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Units, then the Relevant Units are liable to be sold or disposed of under this Schedule but no First Notice may be given by the Responsible Entity in relation to the Relevant Units less than 12 calendar months after a previous First Notice given in relation to the Relevant Units.

2. Subsequent changes

Until the Unit Holder gives a notice under **Clause 6** of this Schedule, the provisions of this Schedule continue to apply to the Relevant Units despite the fact that they have, after the giving of the First Notice, ceased to comprise an Unmarketable Parcel.

3. Power of Responsible Entity to sell

Subject to the following provisions of this Schedule, where a Unit Holder has been given a First Notice the Responsible Entity may sell or otherwise dispose of (**Divest**) the Relevant Units (together with all rights attaching to them including any dividends declared but unpaid).

4. Advertisement and second notice

Where the Responsible Entity propose to Divest any Relevant Units under this Schedule:

- (a) the Responsible Entity must publish in a newspaper circulating generally in the area in which the Unit Holder holding the Relevant Units has its address for the purposes of being given notices by the Responsible Entity, a notice specifying:
 - (i) the intention to Divest the Relevant Units;
 - (ii) the name of the relevant Unit Holder; and
 - (iii) the number of the Relevant Units; and
- (b) the Responsible Entity must give a notice of intention to Divest the Relevant Units (**the Second Notice**) to the Unit Holder advising the Unit Holder that the Relevant Units are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

5. Notice to all joint holders

Where a First Notice or a Second Notice is given in respect of Relevant Units which are held by Unit Holders jointly, that notice must be given to each of those joint holders.

6. Unit Holder may require sale not to proceed

Each Unit Holder to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Responsible Entity prior to the Relevant Units being Divested, require the Responsible Entity not to Divest the Relevant Units, in which case the Relevant Units may not be Divested unless a new First Notice is given to that Unit Holder.

7. Jointly held Units

If a Unit Holder who gives notice under **Clause 6** of this Schedule is a joint holder of a parcel of Relevant Units, that notice only prevents those Relevant Units being Divested but does not prevent other Relevant Units held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Units applies only to those other Relevant Units.

8. Terms of sale

Any Relevant Units to be Divested may be Divested on the terms and in the manner and at the time the Responsible Entity determines (including by means of the Relevant Units being bought back by the Responsible Entity) provided that the Responsible Entity should use best endeavours to Divest the Relevant Units for market price. For the purpose of the Relevant Units being Divested:

- (a) the Unit Holder appoints the Responsible Entity as its agent; and
- (b) the Unit Holder appoints the Responsible Entity and each of its directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Relevant Units.

9. Costs of Sale

The Responsible Entity must pay all costs and expenses in connection with the Divestiture of any Relevant Units under this Schedule to the extent permitted under the Corporations Act.

10. Validity of sale

The transferee of any Relevant Units Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Units, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Responsible Entity exclusively, subject to this Deed.

11. Receipt of proceeds

Where the Responsible Entity receives any consideration as a result of the Divestiture of any Relevant Units, the Responsible Entity's receipt is a good discharge to the transferee of those Relevant Units and any person claiming through that transferee.

12. Title of transferee

The title of the transferee to any Relevant Units Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Units to the transferee.

13. Application of proceeds

The proceeds of Divestiture of Relevant Units under this Schedule (following deduction of any unpaid calls and interest and expenses) (***the Sale Consideration***) must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Responsible Entity for that purpose only;
- (b) the Sale Consideration must be held in trust for the Unit Holder whose Relevant Units were Divested;

- (c) the Responsible Entity must, immediately following the receipt of the Sale Consideration, notify the Unit Holder in writing that the Sale Consideration in respect of the Relevant Units has been received by the Responsible Entity and is being held by the Responsible Entity pending instructions from the Unit Holder as to how it is to be dealt with;
- (d) the Responsible Entity must deal with the Sale Consideration as instructed by the Unit Holder on whose behalf it is held, provided that the Unit Holder accompanies that instruction with the certificate for the Relevant Units (unless the Relevant Units are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Responsible Entity; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Responsible Entity may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Responsible Entity was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the Responsible Entity required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Relevant Units affected by that certificate and of the right and title of the Responsible Entity to Divest the same.

15. Cancellation of certificates

Except where the Relevant Units are uncertificated securities, the Responsible Entity must cancel the Unit certificates for all Relevant Units Divested.

16. Takeovers

The Responsible Entity may not proceed with the Divestiture of any Relevant Units where a takeover bid has been announced but the Divestiture of those Relevant Units may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.

ABACUS INCOME TRUST

CONSTITUTION

THIS DEED POLL is made by **ABACUS FUNDS MANAGEMENT LIMITED** (ACN 007 415 590) of Level 34, 264-278 George Street, Sydney, New South Wales ("Responsible Entity").

BACKGROUND:

The Responsible Entity wishes to establish a trust to be known as **Abacus Income Trust** on the terms and conditions contained in this Deed.

OPERATIVE PROVISIONS:

1. OPERATION OF THIS DEED

This Deed shall take effect immediately upon registration of the Trust as a managed investment scheme pursuant to Part 5C.1 of the Corporations Act. The Trust, however, will commence as provided in **Clause 4.1**.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Deed and in all instruments issued under this Deed, the following expressions, in the absence of contrary intention, have the following meanings:

Accounting Income: for any period, all the net income of the Trust as determined by the Responsible Entity;

Acquisition Costs: stamp duty, legal and ancillary expenses incurred in connection with the acquisition of any Real Property;

AGHL: Abacus Group Holdings Limited ACN 080 604 619;

AGHL Share: an ordinary share in AGHL;

AGPL: Abacus Group Projects Limited ACN 104 066 104;

AGPL Share: an ordinary share in AGPL;

ASIC: the Australian Securities and Investments Commission, including its delegates;

ASOL: Abacus Storage Operations Limited ACN 112 457 075;

ASOL Share: an ordinary share in ASOL;

ASPT: Abacus Storage Property Trust ARSN 111 629 559;

ASX Settlement: ASX Settlement Pty Limited ACN 008 504 532;

ASX Settlement Rules: the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time;

ASX: ASX Limited (ACN 008 624 691);

Associate: an associate as defined in Division 2 of Part 1.2 of the Corporations Act and **Associated** has a corresponding meaning;

Attached Securities: Attached Units, Attached Shares and any other financial products which are from time to time Stapled or to be Stapled to a Unit;

Attached Shares: ordinary shares in AGHL, AGPL and any other shares which are from time to time Stapled or to be Stapled to a Unit including, but not limited to, ordinary shares in ASOL when the Storage Fund Stapling Proposal is implemented;

Attached Units: units in the Stapled Trust and any other units which are from time to time Stapled or to be Stapled to a Unit including, but not limited to, units in ASPT when the Storage Fund Stapling Proposal is implemented ;

Auditor: the Auditor of the Trust;

Benchmark Rate: is 3% per annum over the average of the 90 day Bank Bill Swap Reference Rate (source: Bloomberg) reported in the Australian Financial Review on the last business day of each month in the Financial Year under review;

Business Day: a day other than a Saturday or Sunday or public holiday in Sydney on which trading banks in Sydney are generally open for business and the ASX is open in Sydney;

CHESS Approved Securities: securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASX Settlement) in accordance with the ASX Settlement Rules;

Circumstance: any circumstance set out in subsections (2) to (8), inclusive, of section 601GAA as notionally inserted in the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief;

Compliance Committee: the compliance committee for the purposes of Part 5C.5 of the Corporations Act;

Corporations Act: the Corporations Act 2001 (Cth);

Corresponding Number: in relation to an Attached Security, at any time the number of those Attached Securities that are Stapled to an issued Unit at that time;

Current Market Value: on any day for Stapled Securities that are Officially Quoted:

- (a) the average of the daily weighted average of all sale prices for each day on which fully paid Stapled Securities were sold on the ASX during the last 10 Business Days immediately preceding the relevant day;

- (b) should there be no sales during that period, the last bid price for such Stapled Securities during that period;

Current Unit Value: an amount equal to the Net Asset Value of the Trust divided by the number of Units in issue;

Deed: this Deed as amended from time to time;

Derivative: a contract whose value depends on or derives from the value of an underlying asset, reference rate or index and includes, without limitation, options, futures, swaps and forward contracts;

Disclosure Document: a product disclosure statement as defined in the Corporations Act or any other offer document comprising an offer of Units in the Trust;

Distributable Income: the distributable income of the Trust determined in accordance with 18.1;

Distribution Date: the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period, being not later than 90 days after the end of a Distribution Period;

Distribution Period: a period of not more than 12 months as determined by the Responsible Entity and notified to the Unit Holders or specified in a Disclosure Document or other offer document. Where the termination of the Trust occurs during a Distribution Period, the last Distribution Period will end on the date of termination. The Responsible Entity may change the duration or dates of the commencement or end of Distribution Periods;

EM: the Notice of Meeting and Explanatory Memorandum dated on or around January 2012 in relation to the Storage Fund Stapling Proposal;

Excluded Foreign Unitholder: a foreign unitholder ineligible to participate in a Stapling Proposal, and in particular, to receive Stapled Securities, including a foreign unitholder specified in the EM as ineligible to participate in the Storage Fund Stapling Proposal;

Executive Award Plan: the Abacus Property Group Executive Performance Award Plan as approved by the Responsible Entity from time to time;

Financial Year: a period of 12 months ending on 30 June or on such other date determined by the Responsible Entity. The period from the commencement of the Trust to the next succeeding 30 June will be the first financial year of the Trust. Where the Trust is terminated, the last Financial Year of the Trust will end on the date the Trust is wound up pursuant to **Clause 16**;

Income Tax Assessment Act: the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997, as may be applicable;

Indicative Buy Back Price:

- (a) where a Unit does not form part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold

on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or

- (b) where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day;

Issue Price: the price at which Units or Options are issued or sold;

Listed: admitted to and not removed from the Official List of the ASX and **Listing** has a corresponding meaning;

Listing Rules: the Listing Rules of the ASX and any other rules of the ASX which are applicable whilst the Trust is admitted to the Official List of the ASX, each as amended or replaced from time to time, subject to the extent of any written waiver by the ASX;

Market Value: the current market value of an investment calculated in a manner determined by the Responsible Entity, in consultation with the Auditor or such other person independent of the Responsible Entity approved by the Compliance Committee;

Month: calendar month;

Net Asset Value: the Total Asset Value of the Trust, less liabilities and provisions which the Responsible Entity considers appropriate (including provisions for the costs of acquiring or realising investments);

Net Sale Proceeds: the sale price of any Real Property after deduction of all selling costs and expenses, including (but not limited to) advertising costs and agents' commissions;

Official List: the Official List of the ASX;

Official Quotation: quotation on the Official List and **Officially Quoted** has a corresponding meaning;

Option: an option to acquire a Unit by way of subscription (including a Performance Right);

Option Holder: a person registered as the holder of an Option and includes persons jointly registered;

Partly Paid Unit: a Unit on which the Issue Price has not been paid in full (whether or not called);

Person: includes, corporation, trust, fund, firm, body or individual;

Performance Right: a right granted or issued to be provided with a Unit by way of issue upon satisfaction of relevant conditions under the Executive Award Plan;

Purchase Price: in respect of any Real Property, the purchase price payable to the vendor of that Real Property;

Real Property: real property or an interest in real property;

Register: the register of Unit Holders or Option Holders maintained in accordance with **Clause 12**;

Relevant VWAP: has the meaning given in **Clause 7.1(c)**.

Relief: a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Responsible Entity or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument;

Responsible Entity: Abacus Funds Management Limited or other responsible entity for the time being of the Trust for the purposes of Part 5C.2 of the Corporations Act;

Restricted Securities: has the same meaning as in the Listing Rules;

Security: has the meaning given to that term in section 92(1) of the Corporations Act;

Stapled: the linking together of Units and Attached Securities so that, subject to their terms of issue, none of them may be dealt with without the others, and the word **Stapling** has a corresponding meaning;

Stapling Date: the date and time determined by the Responsible Entity to be the first day and time on which all the Units on issue are Stapled to an Attached Security or Attached Securities;

Stapled Entity: the Stapled Trust, AGHL, AGPL and any other corporation or trust whose financial products are Stapled to the Units including, but not limited to, ASOL and ASPT when the Storage Fund Stapling Proposal is implemented;

Stapled Security Register: the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with **Clause 6.11**;

Stapled Security: a Unit and each Attached Security that are Stapled together and registered in the name of the Unit Holder;

Stapled Trust: the registered managed investment scheme known as Abacus Trust ARSN 096 572 128;

Stapling Proposal: the proposal to Staple any Security to the Stapled Securities, including without limitation the Storage Fund Stapling Proposal;

Stapling Resolution: the resolution to approve amendments to this constitution and to, among other things, give effect to the Storage Fund Stapling Proposal;

Storage Fund Stapling Proposal: the proposal to Staple the Units of the Trust, the Stapled Trust and the shares in AGHL and AGPL to the shares of ASOL and the units of ASPT; **Sub-Trust:** a trust in which all issued units are owned (directly or through another trust or trusts) by the Trust or a trust which the Trust controls (as that term is defined in section 50AA of the Corporations Act);

Tax: includes any tax, duty (including financial institutions duty and stamp duty), impost and the like and includes any interest or penalty or the like imposed on those amounts;

Total Asset Value: the aggregate of:

- (a) the Market Value of all the assets of the Trust, including cash and amounts owing to the Trust;
- (b) any prepayment of expenditure;
- (c) any unpaid current liability amounts;
- (d) such other increments or decrements as the Auditor approves be included; and
- (e) any capital expenditure not included in the Market Value of the assets of the Trust;

Transaction costs: an amount (if any) as determined by the Responsible Entity accruing to the Trust in respect of the actual or anticipated expenses associated with an issue or redemption of Units or the investment of application moneys, or the acquisition or disposal of assets to fund the redemption;

Trust: the trust governed by this Deed called Abacus Income Trust;

Trust Fund: all investments and property held by or on behalf of the Responsible Entity on the trusts of this Deed from time to time but excluding such Distributable Income as has been credited to a distribution account in accordance with **Clause 18**;

Unit : an interest in the Trust Fund in accordance with this Deed;

Unit Holder: a person for the time being registered as the holder of a Unit, and includes persons jointly registered;

Unmarketable Parcel means a number of Units or Stapled Securities which is less than that required for the time being to constitute a marketable parcel of Units or Stapled Securities, as the case may be, as defined by the Listing Rules;

Unstapled: a Unit and each Attached Security not, or no longer, being Stapled;

Unstapling Date: has the meaning ascribed to that expression in **Clause 6.9**; and

Withdrawal Offer: an offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act to allow for redemption of Units.

2.2 Interpretation

References to statutes or other laws include all regulations and other instruments and amendments, regulations, replacements and consolidations.

Unless the context otherwise requires, definitions in the Corporations Act are used with the same meaning.

Singular includes the plural and vice versa. A gender includes the other genders. Headings do not affect the interpretation of this Deed.

References to “including” and “for example” mean “including without limitation” and “include” and “includes” have corresponding meanings.

A reference to ‘relevant day’ in the definition of Current Market Value means, for the purpose of clause 5.5(c)(i)(B), the earlier of the day on which the intention to offer or issue the Stapled Securities is announced to the ASX, and the date of the agreement to issue the Stapled Securities.

2.3 Rounding

All calculations under this Deed may be rounded up or down and to the nearest whole number.

2.4 Record date

Subject to the Listing Rules, the Responsible Entity will determine the record date for determining Unit Holders’ entitlements including their entitlements to participate in new issues and distributions of income and capital.

3. CORPORATIONS ACT RELIEF

3.1 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief, the provisions of this Deed operate subject to the Relief.

3.2 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief if this Deed includes specified provisions, then the provisions:

- (a) are taken to be included in this Deed; and
- (b) prevail over the other provisions of this Deed to the extent of any inconsistency.

3.3 If the relief is granted by class order (rather than specifically in relation to the Trust), the Relief applies, and the specified provisions referred to in **Clause 3.2** are taken to be included in this Deed, unless the Responsible Entity states in writing that that is not the case.

4. CONSTITUTION AND DURATION OF THE TRUST AND EFFECT OF THIS DEED

4.1 Commencement and duration of Trust

Subject to this Deed, the Trust will commence on such date as the Responsible Entity determines and will terminate in accordance with this Deed, the Corporations Act 2001 (Cth) or any rule of law or equity.

4.2 Constitution and its enforceability

This Deed is the constitution of the Trust for the purposes of the Corporations Act and its provisions shall be legally enforceable by the Unit Holders against the

Responsible Entity and by the Responsible Entity against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

4.3 Vesting of Trust Fund

The Trust Fund is and will be vested in and held by the Responsible Entity on trust for the Unit Holders on the terms of this Deed.

4.4 Binding effect of Deed

This Deed will be binding on the Responsible Entity and each Unit Holder and Option Holder and all persons claiming through them as if they are parties to this Deed.

5. CREATION AND SALE OF UNITS

5.1 Units

The beneficial interest in the Trust will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Trust but not an interest in any particular part of the Trust.

5.2 Transaction Costs

In each case where an Issue Price is determined under this **Clause 5** or **Clause 7** there will be added to the Issue Price such transaction costs (if any) as the Responsible Entity determines and is permitted to include pursuant to any Relief.

5.3 Issue Price for rights issue

In the case of Units offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date:

- (a) where the Units form part of Stapled Securities, are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; and
- (b) have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made; or

- (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made.

5.4 Issue Price for income reinvestment

In the case of reinvestment of any income or capital entitlement:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; and
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements.

5.5 Issue Price for placements

In the case of any Units not issued under any other provision of this Deed:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer or issue is announced to the ASX; or

- (ii) subject to **Clause 5.5(c)**, where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion;
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer or issue is made; or
 - (i) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion.
- (c) Where Units are to be issued in the Circumstance set out in subsection 601GAA(2A) of the Corporations Act as notionally inserted into the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief, the Responsible Entity must ensure that either of the following applies:
 - (i) both of the following applies:
 - (A) the issue, together with any Related Issue, in the previous year does not, immediately before the issue, comprise more than 15% of the Units in that class;
 - (B) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the Current Market Value of Stapled Securities does not exceed 10% of the Current Market Value; or
 - (ii) all of the following apply:
 - (A) Unit Holders who hold Stapled Securities of which the Units form a component part approve the issue by a Placement Resolution;
 - (B) unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of members in another class – members in that other class approve the issue by a Placement Resolution;
 - (C) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue.

In this **Clause 5.5(c)**:

Placement Resolution: in relation to the approval of an issue of Units, a special resolution where both of the following apply:

- (a) votes are only cast in respect of Units (the **eligible Units**):

- (i) that are held by a Unit Holder who will not acquire any of the Units that are to be issued; or
 - (ii) that are held by a Unit Holder for the benefit of another person who will not obtain beneficial ownership of any of the Units that are to be issued;
- (b) the value of the eligible Units held by the Unit Holders who vote represents at least 25% of the total value of eligible Units;

Related Issue: in relation to an issue of Units, an issue of Units in the same class at a price set by the Responsible Entity, which has not been approved or ratified by Unit Holders in accordance with **Clause 5.5(c)(ii)** or issued in accordance with other provisions of this Deed.

5.6 Satisfaction of Issue Price

The Issue Price may be satisfied in such manner as the Responsible Entity determines including by payment of cash or by transfer to the Responsible Entity of investments acceptable to the Responsible Entity, or by a combination of these methods. Any expenses incurred in respect of a transfer of investments must be paid by the Unit Holder.

5.7 Apportionment of Issue Price

Subject to the terms of any Relief, where:

- (a) a Unit forms part of a Stapled Security and, as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (b) pursuant to this Deed (including **Clause 7**), the Issue Price of the Unit, when aggregated with the issue price of the Attached Securities, is the Current Market Value or the Relevant VWAP (as the case may be) as at the relevant date,

the Issue Price of the Unit will be determined as follows:

- (c) the Stapled Entities will determine what part of the amount payable for the issue of a Stapled Security is to represent the issue prices of the Unit and each Attached Security, respectively;
- (d) unless otherwise determined by the Stapled Entities, the allocation is to be done on the basis of the relative fair value of each component of the Stapled Security as at immediately prior to the issue of the Stapled Security; and
- (e) if the Stapled Entities are unable to reach agreement within a reasonable time then the allocation must be determined by a chartered accountant of not less than ten years' standing appointed by agreement between them or, failing agreement, by the President for the time being of the Institute of Chartered Accounts in Australia. The independent accountant must determine the allocation based on fair value as determined by the accountant having regard to the respective net tangible asset backing of each of the component securities immediately before the issue and anything else the accountant considers relevant. The independent accountant will

act as an expert not as an arbitrator and the decision is final and binding on the parties. The costs of the resolution of the dispute must be borne in accordance with the determination of the independent accountant.

5.8 Issue of Units to the Responsible Entity

- (a) Subject to the Corporations Act and the conditions of any Relief, the Responsible Entity may hold and be issued Units in the Trust.
- (b) The Issue Price for Units issued to the Responsible Entity may be satisfied, in addition to the manner specified in **Clause 5.6** and without limitation, by a waiver or abatement of the fees the Responsible Entity is entitled to receive pursuant to **Clause 19.1** or by the provision of services by the Responsible Entity to the Trust for the balance (or part of the balance) of the term of the Trust.
- (c) Where the Issue Price of Units issued to the Responsible Entity is satisfied by a waiver or abatement of the fees of the Responsible Entity or otherwise in accordance with paragraph (b), the Responsible Entity will amend this Deed (if necessary) to reflect the reduction in fees payable to the Responsible Entity.

5.9 Different classes of Units

The Responsible Entity may issue Units with special rights or restrictions and those rights and restrictions will prevail over any inconsistent provisions of this Deed.

5.10 Capital Reallocation

- (a) Notwithstanding any other provision of this Deed, the Responsible Entity may at any time issue Units (**Capital Reallocation Units**) in either of the following circumstances:
 - (i) to the holders of Stapled Securities if a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for the holders of Stapled Securities and applies a distribution paid out of that Stapled Entity towards the Issue Price for those Capital Reallocation Units; or
 - (ii) to any Stapled Entity if the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities,

so long as immediately following the issue of Capital Reallocation Units referred to in paragraph (i) above or the in-specie distribution referred to in paragraph (ii) above, the Responsible Entity immediately consolidates the Capital Reallocation Units with all other Units then on issue in the Trust such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue immediately prior to the issue of Capital Reallocation Units.

- (b) The Unit resulting from the consolidation of a Unit (**Original Unit**) with a Capital Reallocation Unit pursuant to **Clause 5.10(a)** will be taken for all

purposes to be stapled to the same Attached Security as that to which the Original Unit was stapled.

- (c) Notwithstanding any other provision of this Deed, the Responsible Entity may at any time upon receipt of funds from or on behalf of the members of a Stapled Entity provided to the Responsible Entity for the purpose, apply those funds in paying up Units which are a component of a Stapled Security on a pro rata basis as if those Units were Partly Paid Units and the amount applied to each Unit was payment in full of an instalment of the Issue Price which was then due and payable.

5.11 Application of capital reduction to capitalise Stapled Entity

The Responsible Entity may reduce the capital of the Trust and may, as agent for and in the name of each Unit Holder, apply the amount of the reduction that the Unit Holder is otherwise entitled to to the purchase of Securities in any other Stapled Entity pro rata in proportion to the number of Securities held by the Unit Holder in that Stapled Entity.

STAPLING OF UNITS

6.1 Stapling authorisation and power to Staple Securities

- (a) The Responsible Entity may, subject to this **Clause 6**, the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to any Unit and may cause the Stapling of further Securities to the Stapled Securities whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in **Clause 6.1(a)** takes effect from the Stapling Date.

6.2 Stapling Resolution

Without limiting **Clauses 6.3 to 6.6**, if the Stapling Resolution is passed by Unit Holders by the requisite majorities set out in the EM and all conditions to that resolution are satisfied, **Clauses 6.3 to 6.6** will take effect in respect of the Storage Fund Stapling Proposal.

6.3 Power to implement Stapling Proposal and limitation of liability

- (a) Subject to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, the Responsible Entity has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Stapling Proposal and such powers apply notwithstanding, and are not limited by, any provision of this Deed.
- (b) The Responsible Entity will not have any liability of any nature to Unit Holders (which exceeds the extent to which it is actually indemnified out of the assets of the Trust Fund) arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the proper implementation of the Stapling Proposal.

6.4 Appointment of Responsible Entity as agent and attorney

- (a) The Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unit Holder, including, without limitation:
 - (i) taking all necessary action to compulsorily transfer all Stapled Securities held by each Excluded Foreign Unitholder including without limitation, in the manner contemplated by, and at the times set out in the EM;
 - (ii) applying for Securities in the name of the Unit Holder, including Securities in a Stapled Entity;
 - (iii) agreeing on behalf of the Unit Holder to be bound by the constitution of a Stapled Entity;
 - (iv) accepting transfers of Securities for the Unit Holder,to effect a Stapling Proposal or to give effect to any issue of Securities contemplated by **Clauses 5.10, 5.11, 18.5 or 18.6**.
- (b) The Responsible Entity is authorised to execute these documents and do these things without needing any further authority or approval from the Unit Holders.

6.5 Interested dealings by the Responsible Entity

Subject to the Corporations Act, the Responsible Entity or an officer, employee or associate of the Responsible Entity may do the things described in **Clauses 6.3 and 6.4** even if it has an interest in the outcome.

6.6 Paramountcy

- (a) Subject only to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, this **Clause 6** has effect notwithstanding any other provision of this Deed and any provision of this Deed which is inconsistent with this **Clause 6** does not operate to the extent of any inconsistency.
- (b) If there is an inconsistency between any provision of this Deed relating to Stapling (including this **Clause 6**) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, ASX Settlement Rules, the Corporations Act or any other law. The provision relating to Stapling prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Deed.

6.7 Operation of Stapling provisions

Clauses 6.8 to 6.15 apply only, and for so long as, a Unit is a component of a Stapled Security.

6.8 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) 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.
- (c) The number of issued Units at any time must equal the number of issued Attached Securities divided by the relevant Corresponding Number.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (e) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
 - (i) the Responsible Entity must not offer a Unit for subscription or sale (including by way of offering of Options) unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
 - (ii) any offer of a Unit for subscription or sale (including by way of offering of Options) must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (iii) a Unit Holder must not sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (iv) the Responsible Entity must not issue or sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (v) the Responsible Entity must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
 - (vi) the Responsible Entity must not forfeit a Unit Holder's Unit unless the Corresponding Number of each Attached Security is also forfeited; and
 - (vii) the Responsible Entity must not register the transmission or transfer of Units pursuant to **Clause 14** or **Clause 32** unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of Options.

6.9 Unstapling Date

- (a) Subject to approval by a special resolution of the Unit Holders and the members or unitholders of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling provisions of this Deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (d) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this **Clause 6.9**, this does not prevent the Responsible Entity from subsequently determining that the Stapling provisions should recommence.

6.10 Transfers of Stapled Securities

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of **Clause 14** the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which a Unit is Stapled which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.
- (d) Each Unit Holder irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the Responsible Entity reasonably considers is necessary or desirable) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Unit forfeited pursuant to **Clause 8** and which has been cancelled or sold.

6.11 Stapled Security Register

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

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

6.12 Variation of Stapling provisions

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

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

6.13 Maintenance of Listing and Consistency with Constitutions of Stapled Entities

- (a) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are and continue to be Officially Quoted as one joint security.
- (b) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are dealt with under this Deed in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

6.14 Responsible Entity's Duties

The Responsible Entity is entitled to have regard to the fact that the Trust is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of its obligations, the Responsible Entity may, except to the extent otherwise required by law, have regard to the interests of Unit Holders as holders of other Attached Securities.

OPTIONS

7.1 Issue of Options

The Responsible Entity may issue Options on such terms and conditions as it determines, provided that:

- (a) subject to paragraph (b), the Issue Price of Options shall, if permitted under the Corporations Act or any Relief (and subject to the conditions of that Relief), be such price (including nil) as the Responsible Entity determines in its discretion, but if not so permitted, the Issue Price shall be nil;
- (b) subject to paragraph (c), the Issue Price of a Unit issued pursuant to the exercise of an Option, shall be determined as follows:

- (i) subject to paragraph (iii), where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be equal to the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX; and
 - (ii) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be where permitted by, and subject to the conditions of, any Relief, such price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the issue of Options is made; and
 - (iii) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) – in the case of Options offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date, the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be where permitted by, and subject to the conditions of, any Relief, not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX;
- (c) subject to paragraph (d), the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of an Option issued under the Executive Award Plan) shall be, when aggregated with the issue prices of each Attached Security, an amount equal to the daily volume weighted average price per Stapled Security sold on the market operated by the ASX (excluding any special crossings and overnight sales) for the period of 7 ASX trading days immediately preceding the issue of the Options (whether or not a sale was recorded on any particular day) (Relevant VWAP);
 - (d) the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of a Performance Right issued under the Executive Award Plan) shall be an amount equal to zero.

7.2 Interest of Option Holders

An Option shall not confer any interest in the Trust or any right to participate in the income or capital of the Trust.

7.3 Voting rights of Option Holders

Option Holders shall be entitled to receive notices of, and to attend meetings of Unit Holders but shall not, subject to the Corporations Act and to any Relief, be entitled to speak or vote at any such meeting.

8. PARTLY PAID UNITS

8.1 Terms of Issue

The Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines.

8.2 Calls

Each holder of a Partly Paid Unit shall be liable to pay the amount of a call in accordance with the terms and conditions of issue of the Unit.

8.3 Stapled Securities

A Partly Paid Unit which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Responsible Entity has received all unpaid money in relation to that Unit;
- (b) each Stapled Entity has received all unpaid money in relation to the relevant Attached Security to which the Unit is Stapled.

8.4 Interest on late payment of calls

If any call is not paid on or before the day appointed for payment, the holder of such Partly Paid Unit shall pay interest thereon (such interest to accrue for the benefit of the Trust) from the day appointed for the payment to the time of actual payment, at such rate as is from time-to-time determined by the Responsible Entity.

8.5 Non-receipt of notice of call

The non-receipt of a notice required to be given in respect of any call, or the accidental omission to give such a notice of a call, to any Unit Holder shall not invalidate the call.

8.6 Deductions for unpaid calls

If all or part of a call is not paid on or before the date appointed for payment, then until such time as the call is paid, the Responsible Entity may deduct or set off such unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity by reason of the non-payment) from any amount payable to the relevant Unit Holder pursuant to **Clauses 15, 16** and **Clause 18**.

8.7 Forfeiture of Units

If a call is not paid on or before the day appointed for the payment, the Responsible Entity may in its discretion at any time thereafter before the payment of the amount of the call, interest accrued thereon and the costs and expenses incurred by the Responsible Entity by reason of non-payment, cause the Units in respect of which any such amount is payable, to be forfeited with effect from a date determined by the Responsible Entity. Such forfeiture shall include forfeiture of all distributions and other moneys payable to the Unit Holder in respect of the forfeited Units and not actually paid before the forfeiture.

8.8 Entry on Register

Where any Unit has been forfeited in accordance with the foregoing provisions, an entry of the forfeiture and the date thereof, shall forthwith be made in the Register.

8.9 Disposal of forfeited units

Where permitted by any Relief, a forfeited Unit may be sold by the Responsible Entity at any price.

8.10 Annulment of forfeiture

The Responsible Entity may, at any time before a forfeited Unit is sold, annul the forfeiture upon such conditions as the Responsible Entity determines.

8.11 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of a forfeited Unit, receive the selling price and effect in the name of the Unit Holder whose Unit has been forfeited, a transfer in favour of the transferee of the Unit.
- (b) Upon effecting the transfer, the transferee shall be registered as the holder of the Unit and the transferee's title to the Unit shall not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Unit.

8.12 Liability notwithstanding forfeiture

Any Unit Holder whose Units have been forfeited will, notwithstanding such forfeiture, be liable to pay to the Responsible Entity the amount not paid and all other moneys payable in accordance with the foregoing provisions of this **Clause 8**.

8.13 Responsible Entity's lien

The Responsible Entity shall have a first and paramount lien upon every Unit for amounts not paid and other moneys payable to the Responsible Entity by the Unit Holder in respect of a Unit and such lien shall extend to all distributions and other moneys from time to time payable in respect of that Unit.

8.14 Sale of units to enforce lien

The Responsible Entity may sell the Units subject thereto, in the same manner, mutatis mutandis, as if the Units had been forfeited.

8.15 Proceeds of sale

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien shall be applied:

- (a) firstly, in payment of all costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale;
- (b) secondly, in satisfaction of the amount of the unpaid call and interest thereon; and
- (c) the residue (if any) shall be paid to the person registered as the Unit Holder in respect of the subject Units immediately prior to the sale.

8.16 Underwriting of calls

- (a) Where:
- (i) the Responsible Entity has appointed an underwriter to underwrite the payment of a call in respect of Partly Paid Units;
 - (ii) in discharging its obligations the underwriter has purchased Units at a public auction held under **Clause 8.9** (with the relevant call credited as paid) at a price which is more than the Current Market Value ; and
 - (iii) the Responsible Entity is liable to pay the underwriter in respect of each Unit purchased in accordance with paragraph (ii) of this clause, an amount equal to the amount by which the Current Market Value is less than the price paid by the underwriter for the Unit (up to the amount of the relevant call),
- then the former holder of Partly Paid Units that were forfeited and sold at that public auction, is liable to the Responsible Entity in respect of those forfeited Units, and may be sued for:
- (iv) all monies payable by the Responsible Entity to the underwriter as contemplated by paragraph (iii) of this clause;
 - (v) interest (as provided in **Clause 8.4**); and
 - (vi) all costs incurred by the Responsible Entity in procuring payment from the former Unit Holder.
- (b) The Responsible Entity must ensure that where the Responsible Entity is liable to the underwriter as contemplated by paragraph (a)(iii) of this clause, the Responsible Entity's liability to the underwriter may be satisfied by the assignment of the Responsible Entity's right of action under **Clause 8.16(a)(iv)** against the former Unit Holder in full satisfaction of such liability of the Responsible Entity to the underwriter.
- (c) For the avoidance of doubt, a Unit Holder's liability under **Clauses 8.16(a)(v)** and **(vi)** will not be affected by the assignment by the Responsible Entity of its right of action under **Clause 8.16(a)(iv)**.
- (d) A Unit Holder's liability in respect of forfeited Units for the purposes of **Clause 8.12** will be satisfied to the extent that monies are paid by the Unit Holder in respect of those forfeited Units pursuant to **Clause 8.16**.

9. APPLICATION FOR AND ISSUE OF UNITS AND OPTIONS

9.1 Form of application

An application for Units or Options must be in such form as the Responsible Entity determines. Subject to the terms of any Relief, the Responsible Entity may determine that:

- (a) such application need not be in writing; and/or

- (b) such application need not be signed by the applicant for the Units or Options.

9.2 Refusal of applications

The Responsible Entity may, without giving any reason, refuse or accept all or part of an application.

9.3 Issue of Units and Options

Units and Options will be issued with effect from the date determined by the Responsible Entity.

9.4 Restriction on issue of Units

Units may not be issued 80 years after the commencement of the Trust if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

9.5 Overseas Unit Holders

Subject to the Listing Rules during such periods as the Trust is Listed, the Responsible Entity may, in relation to an offer of Units or Options to Unit Holders, elect to offer Units or Options only to Unit Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this Deed, such offer will be deemed to have been made to all Unit Holders.

9.6 Underwriting of Issue

- (a) The Responsible Entity may determine that any issue of Units or Options or payments of calls be underwritten and all expenses of the underwriter, underwriting fees and commissions, sub-underwriting fees, brokerage, handling fees and the like (including where payable to any Associate of the Responsible Entity) will be paid out of the Trust Fund.
- (b) The underwriter or its nominee may subscribe for such Units or Options in accordance with the relevant underwriting agreement at an Issue Price not less than that at which the Units or Options were offered under the relevant Disclosure Document.

9.7 Uncleared funds

Where uncleared funds representing application moneys are not cleared in the ordinary course, any Units or Options thus created are void.

10. INVESTMENT ADVICES

- 10.1 The Responsible Entity may determine whether or not investment advices or other forms of confirmation of investment will be issued for Units or Options.
- 10.2 The Responsible Entity may cancel or replace any investment advices in the circumstances and subject to the conditions determined by the Responsible Entity.

10.3 Investment advices may be prepared as the Responsible Entity determines and need not be signed.

10.4 Investment advices will not be evidence of ownership of Units or Options.

11. RIGHTS AND LIABILITIES OF UNIT HOLDERS

11.1 Rights of Unit Holders

A Unit Holder is entitled to a beneficial interest in the Trust Fund but may not:

- (a) interfere with the exercise of the Responsible Entity's powers; or
- (b) exercise any rights in respect of any investment or require the transfer of any property.

11.2 Limitation of Unit Holders' liability

- (a) The Responsible Entity may, in the absence of a separate agreement with a Unit Holder, only enforce any right of indemnity against the Trust Fund.
- (b) In the absence of such a separate agreement, no Unit Holder will be personally liable to the Responsible Entity or any creditor of the Trust.

12. REGISTER

A Register of Unit Holders and Option Holders (where required), whether loose-leaf or computer-stored and otherwise of the type determined by the Responsible Entity, will be kept by or on behalf of the Responsible Entity. The Responsible Entity will determine the information to be recorded in the Register. Entry of a person on the Register as the holder of a Unit or an Option shall be conclusive evidence of that person's ownership of that Unit or Option.

13. CONSOLIDATION AND SUBDIVISION OF UNITS

13.1 The Responsible Entity may consolidate or subdivide Units provided that the consolidation or subdivision does not alter the ratio of Units held by any Unit Holder to the aggregate number of Units in issue.

13.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Responsible Entity, and the value of and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the trustee may consolidate such fractions.
- (c) The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:
 - (i) immediately amend the Register to record the consolidation or split;
 - (ii) notify the Unit Holder within 30 days of the consolidation or split;

- (iii) ensure that each Unit is consolidated or split on the same basis as each other Attached Security.
- (d) The Responsible Entity has the power, in giving effect to any consolidation or split of Units, to:
 - (i) make provision for the issue of fractional certificates;
 - (ii) make cash payments;
 - (iii) determine that all or any fractions may be disregarded;
 - (iv) appoint a trustee to deal with any fractions on behalf of the Unit Holders; and
 - (v) rounding each fractional entitlement to the nearest whole Unit.

14. TRANSFER AND TRANSMISSION OF UNITS

- 14.1 All transfers of Units and Options must be made in the manner and form (whether in writing or not) required by the Responsible Entity and, for so long as the Trust is Listed, the ASX or other exchange regulator.
- 14.2 Every transfer must be delivered to the Responsible Entity, together with the certificate or certificates (if issued) in respect of the Units or Options to be transferred.
- 14.3 The Responsible Entity may in its absolute discretion refuse to register any transfer of Units or Options, but where Units or Options are Officially Quoted, may only do so where permitted by the Listing Rules. The Responsible Entity is not required to give any reason for refusing to register a transfer.
- 14.4 If a Unit Holder or Option Holder dies or becomes subject to a legal disability, only the survivor or legal personal representatives (as the case may be) will be recognised as having any claim to Units or Options registered in the relevant holder's name.

15. REDEMPTION

15.1 No obligation to redeem Units

Subject to this Deed, the Responsible Entity is not obliged to redeem or buy-back any Units.

15.2 Withdrawal Offers

- (a) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer.

- (c) 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.

15.3 Redeeming Unit Holder

Unless the Responsible Entity otherwise determines, the redemption amount paid to a Unit Holder consists of capital only. The Responsible Entity may, however, having regard to all relevant equitable obligations, determine that some or all of the redemption amount consists of Distributable Income (which may include net capital gains), rather than capital, of the Financial Year in which the redemption occurs and advise the Unit Holder accordingly (and in any event as soon as practicable after the end of the Financial Year in which the redemption occurred).

15.4 Buy-back of Units

- (a) While the Trust is Listed, the Responsible Entity may buy back Units, subject to and in accordance with the Corporations Act (as modified from time to time) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this **Clause 15.4** the Units purchased are cancelled.
- (c) Where a Unit forms part of a Stapled Security, the Responsible Entity may only buy back and cancel Units if the Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this **Clause 15.4** will be determined by the Responsible Entity (or its nominee) as follows:
 - (i) for any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5% (or such greater amount as may be allowed under the Listing Rules); and
 - (ii) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

16. WINDING UP OF TRUST

16.1 Winding-up by Responsible Entity

In addition to the circumstances in which the Trust may be wound up under the Corporations Act or the Listing Rules, the Responsible Entity may wind up the Trust with the prior approval of a resolution of the Unit Holders.

16.2 Termination in accordance with Clause 4.1

The Responsible Entity must wind up the Trust when it has terminated pursuant to **Clause 4.1** or **Clause 16.1** or if it is terminated by the Responsible Entity with the prior approval of a resolution of the Unit Holders.

16.3 Procedure on winding-up

- (a) On winding-up of the Trust, and subject to paragraph (c), the Responsible Entity must realise the assets of the Trust as soon as reasonably practicable, rather than await an improvement in the Market Value of the investments of the Trust.
- (b) Subject to **Clause 8.6**, and to the rights of the holders of different classes of Units, the net proceeds of realisation, after discharging or providing for all liabilities and meeting the expenses (including anticipated expenses) of winding-up, must be distributed to Unit Holders in proportion to the number of Units of which they are the registered holders on the date the Trust is required to be wound-up in accordance with this clause or Part 5C.9 of the Corporations Act or on the date of termination of the Trust in accordance with **Clauses 4.1** and **16.1**.
- (c) The Responsible Entity may agree with a Unit Holder that the Unit Holder's entitlement in whole or in part on the winding-up of the Trust be satisfied by transferring assets of the Trust to that Unit Holder at their Market Value.
- (d) The Responsible Entity must arrange for an independent audit of the final accounts for the Trust after the winding-up of the Trust has been completed.

17. MANAGEMENT AND INVESTMENT OF THE TRUST FUND

17.1 Responsible Entity's powers

The Responsible Entity has the capacity and all the powers in respect of the Trust which it is possible for both a natural person and a body corporate to have if it were the absolute owner of the Trust Fund, including:

- (a) to invest the Trust Fund in any form of investment;
- (b) to deal with any asset of the Trust;
- (c) to borrow or obtain other financial accommodation;
- (d) to grant security over the Trust Fund (including, without limitation, third party security);
- (e) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (f) to make loans, including to associated or related entities;
- (g) to fetter future discretion;
- (h) to invest in Derivatives; and
- (i) to act as trustee of Sub-Trusts.

17.2 Appointment of Agents

The Responsible Entity may engage agents, consultants, experts, advisers or other persons and appoint delegates for any purpose in the exercise of its powers, and any such consultant, expert, person or delegate may be an Associate of the Responsible Entity.

17.3 Appointment of Custodian

Without limiting the Responsible Entity's power under this **Clause 17**, subject to the Corporations Act and the terms of any Relief the Responsible Entity may appoint one or more custodians to hold title to some or all of the assets of the Trust.

18. DISTRIBUTION OF INCOME AND CAPITAL

18.1 Determination of Distributable Income

- (a) The Distributable Income of the Trust for a Distribution Period will be such amount as the Responsible Entity determines in its discretion, provided that the Distributable Income for a Distribution Period can be no less than the net income of the Trust (within the meaning of the Income Tax Assessment Act) for that period.
- (b) The Unit Holders will be entitled to the Distributable Income of the Trust for a Distribution Period in accordance with the proportions specified in **Clause 18.3**.

18.2 Time for distribution of income

The Distributable Income for a Distribution Period must be distributed by the Responsible Entity to Unit Holders no later than the applicable Distribution Date.

18.3 Income entitlement

- (a) The Distributable Income of the Trust Fund shall accrue in respect of a Unit immediately following the creation and allotment of the Unit and shall accrue from month to month and shall be apportionable in respect of time accordingly (***the Unit Distribution***).

The present entitlement in respect of a Partly Paid Unit shall be as follows:

- (i) the entitlement shall be that proportion of the Unit Distribution which the amount received by the Responsible Entity in respect of the Unit bears to the Issue Price of the Unit;
 - (ii) where the Issue Price of the Unit has been received by the Responsible Entity in instalments, each instalment shall (notwithstanding the date of actual receipt) be deemed to have been received on the first day of the month immediately following the receipt of the relevant instalment.
- (b) Subject to the terms of issue of any Units and to **Clause 8.6** and **Clause 18.3(a)**, the Distributable Income of the Trust for each Distribution Period that remains after deducting any distributions already made in relation to that Distribution Period pursuant to **Clause 15.3** will be credited to a

distribution account and after payment of all taxes will be distributed to Unit Holders registered at the close of business on the last day of the Distribution Period, or, where Units are Officially Quoted, to Unit Holders registered, at the close of business on the date fixed for the closing of the Register to determine income entitlements for that Distribution Period, in proportion to the number of Units of which they are the registered holders at such time.

18.4 Present entitlement to Accounting Income of the Trust

Persons who were entitled to Distributable Income pursuant to **Clause 18.3** in respect of a Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) to that income in the proportions set out in **Clause 18.3** on the last day of the Financial Year, but if the Responsible Entity does not make a determination for the purposes of **Clause 18.1** for the last Distribution Period in a Financial Year, then persons who are registered Unit Holders at the close of business on the last day of that Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) at that time to that part of the Distributable Income of the Trust for that Financial Year to which no Unit Holder has been presently entitled in an earlier Distribution Period for that Financial Year by virtue of **Clause 18.3** and/or **Clause 15.3**.

18.5 Unit plans

- (a) The Responsible Entity may at any time adopt and implement any number of plans, on terms it determines, by which a Unit Holder may elect to receive Units as, or instead of, income or capital entitlements. Such plans may include:
 - (i) a plan under which a Unit Holder who elects to participate in respect of a Unit held by the Unit Holder is entitled to an issue of bonus Units instead of an income or capital entitlement distributed as money in respect of that Unit; and
 - (ii) a plan under which an income or capital entitlement to be distributed as money to a Unit Holder in respect of a Unit is, if the Unit Holder elects that the Unit participate in the plan, retained by the Trust and applied in subscription for fully paid Units pursuant to the terms of the plan.
- (b) The Responsible Entity has all powers necessary or desirable to implement and carry out fully any plan adopted under this **Clause 18.5** and may (without limitation) at any time:
 - (i) amend the terms of any plan as it considers desirable; and
 - (ii) suspend for any period or terminate the operation of any plan as it considers desirable.

18.6 Capital and other distributions

- (a) The Responsible Entity may at any time distribute capital to the Unit Holders (including without limitation as part of an income distribution) by the payment of cash, the issue of Units, the distribution of assets or in any other manner the Responsible Entity determines in proportion to the number of

Units of which they are the registered holders at such time as is determined by the Responsible Entity.

- (b) In the case of an issue of Units, the terms of the issue of Units will be determined by the Responsible Entity.

18.7 Income categories

The Responsible Entity may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unit Holder.

19. REMUNERATION

19.1 Responsible Entity's fee

- (a) The Responsible Entity will be paid out of the income or capital of the Trust an annual fee of 1% of the Total Asset Value of the Trust.
- (b) Such fee is payable monthly and will accrue monthly.
- (c) The Responsible Entity's fee will continue to be paid up to the date of completion of the final winding up of the Trust.

19.2 Performance fee

- (a) In relation to the assets of the ADIF Investment Trust (***the Fund***), the Responsible Entity will be entitled to receive a performance fee in respect of each Financial Year determined as follows:
 - (i) The performance fee is 25% of the amount by which net returns of the Fund exceed an amount determined by multiplying the average funds employed by the Benchmark Rate.
 - (ii) Where the net returns of the Fund for any Financial Year fail to exceed an amount determined by multiplying the average funds employed by the Benchmark Rate, no performance fee is payable for that year.

The performance fee will be payable by the Trust and will not be taken into account in calculating the net returns of the Fund.

- (b) On the sale of any Real Property of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive a performance fee calculated at 10% of the excess of the Net Sale Proceeds over the Purchase Price plus Acquisition Costs subject to the following conditions:
 - (i) the performance fee will not be payable unless the Net Sale Proceeds exceed 110% of the Purchase Price plus Acquisition Costs;
 - (ii) the maximum performance fee payable under this paragraph shall be 4.5% of the Net Sale Proceeds;

- (iii) the performance fee will be reduced to the extent necessary to ensure that the return derived is not reduced below 110% of the Purchase Price plus Acquisition Costs.

19.3 Real Property Acquisition Fee

In consideration of sourcing and conducting due diligence in acquiring Real Property on behalf of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive an acquisition fee of \$150,000 or up to 2% of the Purchase Price of any Real Property purchased by the Trust or any Sub-Trust, whichever is the greater.

19.4 Capital Raising Fee

In consideration of procuring and conducting due diligence in respect of any capital raising for the Trust, the Responsible Entity will be entitled to receive a capital raising fee of 0.75 cents for each Stapled Security issued, whether pursuant to public offer, private placement, rights issue or any other method or combination used for that capital raising.

19.5 Reimbursement and indemnity

The Responsible Entity will be paid or reimbursed out of the Trust Fund on a full indemnity basis for all expenses and liabilities which it may incur in connection with the Trust or in performing its obligations or exercising its powers under this Deed including in connection with the following matters:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) registers, accounting and other records;
- (c) Unit Holder meetings;
- (d) any transaction or proposed transaction in relation to the Fund, including, without limitation, the acquisition, disposition, development and management of assets of the Fund;
- (e) accounts;
- (f) taxes, rates, charges, duties and other imposts, including any goods and services or similar tax collectable from, or incurred or payable by, the Responsible Entity in connection with the Trust, or the management or administration of the Trust (including taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (g) regulatory compliance, including conversion of the Trust to a managed investment scheme;
- (h) any restructuring or Listing of the Trust;
- (i) offers of invitations, to apply for, or issues or transfers of, Units or Options;

- (j) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including without limitation, members of any Compliance Committee;
- (k) researching property and securities markets;
- (l) this Deed;
- (m) custody of the Trust Fund (including custodian's fees);
- (n) computer hardware and software and other equipment;
- (o) any court proceedings, arbitration or dispute;
- (p) retirement or removal of the Responsible Entity;
- (q) Compliance Committees;
- (r) preparing documentation in relation to the Trust and the Trust Fund;
- (s) insurances, including insurance premiums payable in respect of insurance policies for the Responsible Entity, its directors, and Compliance Committee members;
- (t) audit fees, including compliance plan audit fees;
- (u) promoting the Trust to, or communicating with, Unit Holders, potential investors and their advisers; and
- (v) travel and accommodation expenses.

19.6 Payments to Associates

Payments under **Clauses 19.1, 19.2, 19.3, 19.4 and 19.5** may be made to an Associate of the Responsible Entity.

19.7 Compliance Committee

Subject to the Corporations Act, the Responsible Entity may reimburse or indemnify out of the Trust Fund any member of the Compliance Committee for any cost, expense or liability incurred in connection with the Trust or such membership.

19.8 Waiver or postponement

The Responsible Entity may waive or postpone payment of all or part of its fee under **Clauses 19.1, 19.2, 19.3 and 19.4** (respectively) or reimbursement under **Clause 19.6** on such terms and conditions as it determines in its absolute discretion.

19.9 Rebate

The Responsible Entity may waive, assign or rebate all or part of its fee under **Clauses 19.1, 19.2, 19.3 and 19.4** in favour of any person (including one or more Unit Holders) on such terms and conditions as it determines in its absolute discretion.

If the payment of the Responsible Entity's fees under **Clauses 19.1, 19.2, 19.3 and 19.4** or the Responsible Entity's reimbursement under **Clause 19.5** is unable to be made when such fees or amounts are due and payable due to there being insufficient liquid assets in the Trust, then the Responsible Entity will be entitled to receive interest at the rate of 10% per annum on unpaid fees and amounts until such fees or amounts are paid.

19.10 Goods and Services Tax ('GST')

- (a) If any GST becomes payable in respect of any taxable supply by the Responsible Entity in connection with its rights and obligations under this Deed, the Responsible Entity is entitled to increase the consideration for that supply by the amount of the GST on that supply (less, in the case of a reimbursement of expenses, the amount of any input tax credit it is entitled to in relation to the reimbursement payment). The Responsible Entity is entitled to be paid or reimbursed that GST out of the assets of the Trust. For the avoidance of doubt, the Responsible Entity is entitled to determine the amount of the GST for which it may be liable on the percentage fees and reimbursement and to adjust the percentage accordingly.
- (b) If the Responsible Entity makes a taxable supply in connection with its rights and obligations under this Deed, the Responsible Entity must issue the recipient of that taxable supply a tax invoice prior to:
 - (i) the date payment for the taxable supply is due; or
 - (ii) if there is no due date for payment for the taxable supply, the date the Responsible Entity is paid or reimbursed out of the Trust Fund for the taxable supply.
- (c) Any invoice issued by the Responsible Entity to the Trust under this Deed must be a tax invoice.
- (d) Words or expressions used in this **Clause 19** which are defined in the *A New Tax System (Goods and Services) Tax Act 1999 (Cth)* have the same meaning in this clause.

20 RETIREMENT AND REMOVAL OF RESPONSIBLE ENTITY

20.1 Removal of Responsible Entity

The Responsible Entity must retire as responsible entity in any of the circumstances specified in the Corporations Act or, for as long as the Trust is Listed, the Listing Rules.

20.2 Retirement of Responsible Entity

The Responsible Entity may retire as responsible entity subject to compliance with the requirements of the Corporations Act.

20.3 Appointment of new Responsible Entity

On the retirement of the Responsible Entity pursuant to **Clause 20.2**, the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the Responsible Entity.

20.4 Retirement Payment

The Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Unit Holders for such remuneration or benefit.

21. RESPONSIBLE ENTITY'S POWERS, LIABILITIES AND INDEMNITIES

21.1 General Provisions

- (a) Without prejudice to its rights under **Clause 19.5**, the Responsible Entity shall be indemnified out of the Trust Fund for all liabilities incurred by it, or on its behalf, to the extent to which such liabilities are incurred in relation to the proper performance of the Responsible Entity's duties.
- (b) The Responsible Entity may rely on the validity of any document (including any electronic communication) unless it reasonably believes the document not to be genuine.
- (c) The Responsible Entity shall not be under any liability for failure to perform any act if prevented by law.
- (d) The Responsible Entity shall be not liable to account for any payment or retention of moneys made in good faith, or to meet a liability, to a duly empowered fiscal authority.
- (e) The Responsible Entity may rely upon the advice of counsel or solicitors in relation to any matter in connection with the Trust (including the interpretation of this Deed).
- (f) The Responsible Entity may rely on advice or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who is believed in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Responsible Entity.
- (g) The Responsible Entity is not obliged to enter into any transaction unless its personal liability is excluded or limited as required by it.

21.2 Recovery of duties, charges etc

The Responsible Entity will not be required to undertake any transaction in respect of a Unit Holder unless the Unit Holder has paid or provided for to the Responsible Entity's satisfaction all duties, taxes and the like in respect of such transaction.

21.3 Responsible Entity's interest in the Trust and in transactions

- (a) The Responsible Entity and its Associates may hold Units or Options;
- (b) Nothing in this Deed restricts the Responsible Entity or its Associates from:
 - (i) dealing with the Trust or any Unit Holder or Option Holder; or

- (ii) being interested in any contract or transaction with the Trust or any Unit Holder or Option Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (iii) acting in the same or a similar capacity in relation to any other scheme.
- (c) Without limiting the effect of paragraph (b), the Responsible Entity may deal with itself in relation to the Trust Fund where in relation to such dealings it is acting in different capacities.

21.4 Extent of Responsible Entity's discretion

The Responsible Entity has absolute discretion as to how and when to exercise its powers.

21.5 Limitation of Responsible Entity's liability

Subject to the Corporations Act, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Responsible Entity will not be liable to Unit Holders or Option Holders to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liability out of the Trust Fund.

22. MEETINGS

22.1 Convening and conducting of meeting

- (a) Subject to the Corporations Act, but without prejudice to this **Clause 22**, meetings of Unit Holders may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including without limitation requirements in relation to proxies and their use.
- (b) If a poll is demanded it will be taken in such manner and at such time as the chairman directs.
- (c) In the case of equality of votes, the chairman shall have a casting vote.

22.2 Notice of general meeting

- (a) While the Trust is a registered managed investment scheme pursuant to Part 5C.1 of the Corporations Act notice of a meeting of Unit Holders must be given in accordance with the Corporations Act. Otherwise, notice may be given in the manner determined by the Responsible Entity.
- (b) Accidental omission to give notice to, or the non-receipt of notice of meeting by a Unit Holder will not invalidate the meeting.

22.3 Quorum

- (a) Subject to Clause 22.3(b) the quorum for a meeting of Unit Holders is:
 - (i) at least 2 Unit Holders present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or

- (ii) if the Trust has only one Unit Holder who may vote on a resolution, that Unit Holder.
- (b) Where a meeting is convened to pass a special resolution to remove the Responsible Entity the quorum shall be at least 2 Unit Holders present at all times during the meeting holding at least 51% of the votes that may be cast at the meeting.

22.4 No quorum

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

- (a) adjourned to the same day in the following week at the same time and place; or
- (b) adjourned to such other day, time and place as the Responsible Entity may direct.

22.5 Notice of meeting adjourned under Clause 22.4(b)

If a meeting is adjourned in accordance with Clause 22.4(b), written notice must be given to the Unit Holders of the day, time and place to which the meeting has been postponed.

22.6 Quorum at meeting adjourned under Clause 22.4(b)

At any meeting adjourned under Clause 22.4(b) if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

22.7 Proxies

- (a) The instrument appointing a proxy must be in writing and signed by the appointor, the appointor's attorney or corporate representative and, in the case of a body corporate, in accordance with the Corporations Act.
- (b) Subject to Clause 22.7(c) the instrument appointing a proxy, and where applicable the original or certified copy of the power of attorney under which it is signed, must be received at least 48 hours before the time of the meeting.
- (c) The Responsible Entity may determine that proxies may be received less than 48 hours before the meeting.
- (d) No proxy is valid after the expiration of 12 months from the date of its execution.
- (e) Unless the Responsible Entity has received written notice of the matter before the start of the meeting at which a proxy votes, a vote cast by a proxy will be valid even if, before the proxy voted:
 - (i) the Unit Holder dies;
 - (ii) the Unit Holder revokes the proxy's appointment; or

- (iii) the Unit Holder revokes the authority under which the proxy was appointed by a third party.

22.8 Attorney of Unit Holder

A Unit Holder may appoint an attorney to act on its behalf at a meeting (or meetings) of Unit Holders. Before the first meeting at which the attorney acts on the Unit Holder's behalf, the power of attorney must be deposited at the place specified in the notice of meeting.

22.9 Representative of body corporate

A Unit Holder being a body corporate may, by resolution of its directors and in accordance with the Corporations Act, authorise any person to act as its representative at a meeting of Unit Holders. That representative will then have all the rights that could have been exercised by the authorising Unit Holder at the relevant meeting.

22.10 Form and effect of resolutions

- (a) A resolution passed at a meeting of Unit Holders shall be binding on all such members, whether or not present at such meeting. The decision of the chairman on any matter shall be final.
- (b) If all Unit Holders shall have signed a resolution, that resolution shall be deemed to have been passed by the requisite majority of members at a meeting of members on the day and at the time at which the resolution was last signed by a member. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders.

22.11 Cancellation or postponement of a meeting

Subject to the Corporations Act, the Responsible Entity may cancel or postpone a meeting of the Unit Holders at any time prior to the meeting for any reason.

22.12 Notice of cancellation

Notice of cancellation of a meeting must be given to every Unit Holder.

22.13 Notice of date, time and place of postponed meeting

Notice of the day, time and place to which the meeting has been postponed must be given to every Unit Holder at least 5 Business Days prior to the postponed meeting.

22.14 Proxy, attorney or corporate representative for postponed or cancelled meetings

Where

- (a) the terms of an instrument appointing a proxy, attorney or a corporate representative provide that such appointment is valid only for a meeting of Unit Holders 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

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the Unit Holder appointing the proxy, attorney or representative gives written notice specifying otherwise to the Responsible Entity 48 hours prior to the time to which the meeting has been postponed (and in that event the Unit Holder may at the same time appoint a new proxy, attorney or representative in accordance with the relevant provisions of this Clause 22, with necessary modifications).

22.15 Adjournment of meeting

The chairman of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

22.16 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

23. AMENDMENT TO DEED

Subject to the Corporations Act, the Responsible Entity may amend this Deed, including this **Clause 23**. Any such amendment may have prospective or retrospective effect. Where this Deed is amended by a resolution of Unit Holders the Responsible Entity may execute a supplementary deed incorporating those amendments.

24. NOTICES

Subject to the Corporations Act, the Responsible Entity may determine methods, including electronic methods, of giving notices to Unit Holders and may also determine corresponding rules relating to deemed service and proof of service.

25. MODE OF PAYMENT OF MONEYS TO UNIT HOLDERS

Moneys payable by the Responsible Entity to a Unit Holder may be paid in any manner determined by the Responsible Entity. Payment of moneys in such manner will be a good discharge to the Responsible Entity. Any joint Unit Holder may give an effective discharge to the Responsible Entity in respect of the payment.

26. CHANGE OF NAME OF TRUST

- 26.1 The Responsible Entity may in its absolute discretion change the name of the Trust without requiring any Unit Holder consent and take whatever action is necessary to effect the change in the name of the Trust.
- 26.2 Should the Responsible Entity cease to be, or to be a related body corporate of, Abacus Funds Management Limited, the title of the Trust must be changed to a

name which does not contain the word Abacus and the new Responsible Entity must, without requiring any Unit Holder consent, take whatever action is necessary to ensure that that word is not used in connection with the Trust. Any current Disclosure Document must be withdrawn. This clause may not be amended without the prior written consent of Abacus Funds Management Limited.

27. COMPLAINTS RESOLUTION

- 27.1 The Responsible Entity must take all reasonable steps to ensure that there are at all times in force appropriate arrangements for the making and resolution of complaints by Unit Holders in connection with the Trust.
- 27.2 Complaints made must be properly considered and dealt with by the Responsible Entity as soon as reasonably practicable and in any event within 60 days after they are made, or such longer period as is reasonably necessary in the circumstances.
- 27.3 Upon receiving a complaint from a Unit Holder (in whatever form), the Responsible Entity must acknowledge receipt of the complaint to the Unit Holder within 15 Business Days, at the same time outlining the remedies available to the Unit Holder.
- 27.4 Within 15 Business Days of dealing with a complaint from a Unit Holder, the Responsible Entity will notify the Unit Holder of, and the reasons for, its proposed resolution of the dispute. At the same time, the Responsible Entity will inform the Unit Holder as to what further avenues of complaint are available to the Unit Holder, including notification of an independent external dispute resolution body of which the Responsible Entity is a member.
- 27.5 In considering a complaint, the Responsible Entity will take into account such of the following factors as are relevant to the complaint:
- (a) any alleged breach of the Corporations Act, this Deed or breach of trust;
 - (b) legal advice (if any) it has received in relation to that alleged breach;
 - (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
 - (d) any material held by the Responsible Entity in relation to the alleged breach; and
 - (e) any other relevant information.
- 27.6 If the Unit Holder reasonably requests, the Responsible Entity must provide the Unit Holder with an opportunity to inspect any relevant material relating to the complaint unless to do so would prejudice the Responsible Entity or the Trust.

28. GOVERNING LAW

This Deed will be governed by the laws of the State of New South Wales.

29. SEVERABILITY

If any provision of this Deed is illegal or invalid because it offends any applicable law:

- (a) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

30. LISTING RULES

Notwithstanding anything contained in this Deed, for so long as the Trust is Listed:

- (a) If the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Deed 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 Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision.
- (e) If the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision.
- (f) If any provision of the Deed is or becomes inconsistent with the Listing Rules, the Deed is deemed not to contain that provision to the extent of the inconsistency.

31. RESTRICTED SECURITIES

If the Trust is Listed and has on issue any Units which are classified under the Listing Rules or by the ASX as restricted securities, then despite any other provisions of this Deed:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or ASX;
- (b) the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or ASX;
- (c) 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 dividend or distribution, or voting rights, in respect of the restricted securities.

32. SMALL HOLDINGS

If the Trust is Listed and a Unit Holder holds an Unmarketable Parcel, the provisions of schedule 1 apply to that Unmarketable Parcel..

33. ACCOUNTS

Subject to the provisions of the Corporations Act and any Relief, financial accounts will be prepared in respect of the Trust and forwarded to Unit Holders in the Trust.

34. ELECTRONIC DEALINGS

Notwithstanding any other provision of this Deed (except **Clause 1**), the Responsible Entity may facilitate dealings and transactions (including, without limitation applications and redemptions) by Unit Holders or prospective Unit Holders, on terms and conditions stipulated by the Responsible Entity, by Unit Holders or prospective Unit Holders by electronic or other means including telephone, computer, cheque book, credit card and other electronic, telecommunication or banking facilities.

SCHEDULE 1

UNMARKETABLE PARCELS

1. First notice

If at any time a Unit Holder holds an Unmarketable Parcel (including Units or Stapled Securities held jointly with other Unit Holders) (***the Relevant Units***), the Responsible Entity may give a notice (***the First Notice***) to that Unit Holder stating that unless the Unit Holder gives notice to the Responsible Entity by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Units, then the Relevant Units are liable to be sold or disposed of under this Schedule but no First Notice may be given by the Responsible Entity in relation to the Relevant Units less than 12 calendar months after a previous First Notice given in relation to the Relevant Units.

2. Subsequent changes

Until the Unit Holder gives a notice under **Clause 6** of this Schedule, the provisions of this Schedule continue to apply to the Relevant Units despite the fact that they have, after the giving of the First Notice, ceased to comprise an Unmarketable Parcel.

3. Power of Responsible Entity to sell

Subject to the following provisions of this Schedule, where a Unit Holder has been given a First Notice the Responsible Entity may sell or otherwise dispose of (***Divest***) the Relevant Units (together with all rights attaching to them including any dividends declared but unpaid).

4. Advertisement and second notice

Where the Responsible Entity propose to Divest any Relevant Units under this Schedule:

- (a) the Responsible Entity must publish in a newspaper circulating generally in the area in which the Unit Holder holding the Relevant Units has its address for the purposes of being given notices by the Responsible Entity, a notice specifying:
 - (i) the intention to Divest the Relevant Units;
 - (ii) the name of the relevant Unit Holder; and
 - (iii) the number of the Relevant Units; and
- (b) the Responsible Entity must give a notice of intention to Divest the Relevant Units (***the Second Notice***) to the Unit Holder advising the Unit Holder that the Relevant Units are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

5. Notice to all joint holders

Where a First Notice or a Second Notice is given in respect of Relevant Units which are held by Unit Holders jointly, that notice must be given to each of those joint holders.

6. Unit Holder may require sale not to proceed

Each Unit Holder to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Responsible Entity prior to the Relevant Units being Divested, require the Responsible Entity not to Divest the Relevant Units, in which case the Relevant Units may not be Divested unless a new First Notice is given to that Unit Holder.

7. Jointly held Units

If a Unit Holder who gives notice under **Clause 6** of this Schedule is a joint holder of a parcel of Relevant Units, that notice only prevents those Relevant Units being Divested but does not prevent other Relevant Units held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Units applies only to those other Relevant Units.

8. Terms of sale

Any Relevant Units to be Divested may be Divested on the terms and in the manner and at the time the Responsible Entity determines (including by means of the Relevant Units being bought back by the Responsible Entity) provided that the Responsible Entity should use best endeavours to Divest the Relevant Units for market price. For the purpose of the Relevant Units being Divested:

- (a) the Unit Holder appoints the Responsible Entity as its agent; and
- (b) the Unit Holder appoints the Responsible Entity and each of its directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Relevant Units.

9. Costs of Sale

The Responsible Entity must pay all costs and expenses in connection with the Divestiture of any Relevant Units under this Schedule to the extent permitted under the Corporations Act.

10. Validity of sale

The transferee of any Relevant Units Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Units, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Responsible Entity exclusively, subject to this Deed.

11. Receipt of proceeds

Where the Responsible Entity receives any consideration as a result of the Divestiture of any Relevant Units, the Responsible Entity's receipt is a good

discharge to the transferee of those Relevant Units and any person claiming through that transferee.

12. Title of transferee

The title of the transferee to any Relevant Units Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Units to the transferee.

13. Application of proceeds

The proceeds of Divestiture of Relevant Units under this Schedule (following deduction of any unpaid calls and interest and expenses) (***the Sale Consideration***) must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Responsible Entity for that purpose only;
- (b) the Sale Consideration must be held in trust for the Unit Holder whose Relevant Units were Divested;
- (c) the Responsible Entity must, immediately following the receipt of the Sale Consideration, notify the Unit Holder in writing that the Sale Consideration in respect of the Relevant Units has been received by the Responsible Entity and is being held by the Responsible Entity pending instructions from the Unit Holder as to how it is to be dealt with;
- (d) the Responsible Entity must deal with the Sale Consideration as instructed by the Unit Holder on whose behalf it is held, provided that the Unit Holder accompanies that instruction with the certificate for the Relevant Units (unless the Relevant Units are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Responsible Entity; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Responsible Entity may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Responsible Entity was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the Responsible Entity required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Relevant Units affected by that certificate and of the right and title of the Responsible Entity to Divest the same.

15. Cancellation of certificates

Except where the Relevant Units are uncertificated securities, the Responsible Entity must cancel the Unit certificates for all Relevant Units Divested.

16. Takeovers

The Responsible Entity may not proceed with the Divestiture of any Relevant Units where a takeover bid has been announced but the Divestiture of those Relevant Units may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.