
Supplemental deed relating to Viva Energy REIT Trust

VER Limited (ACN 609 868 000)

 July 2016

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Party

- 1 **VER Limited (ACN 609 868 000)** as trustee of Viva Energy REIT Trust (ARSN 613 146 464) of Level 16, 720 Bourke Street, Docklands Victoria 3008 (**RE**)
-

Background

- A The RE wishes to vary the deed governing the Viva Energy REIT Trust dated 14 June 2016 as varied by deeds dated 21 June 2016 and 5 July 2016 (**Principal Deed**) as set out in this deed poll.
- B Clause 20.2 of the Principal Deed, together with section 601GC(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) permits the RE to modify the Principal Deed by a supplemental deed if the RE reasonably considers the change will not adversely affect members' rights.
- C The RE reasonably considers that the modification to the Principal Deed proposed to be made by this supplemental deed will not adversely affect members' rights.
- D The Principal Deed is modified in accordance with this deed poll.

The party agrees

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in the Principal Deed, but is not defined in this deed poll, has the meaning given to it in the Principal Deed.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) of the Principal Deed sets out rules of interpretation for this deed poll.

2 Modification of Principal Deed

2.1 Modification

Subject to clause 2.2, the Principal Deed shall be modified as set out in Schedule 1.

2.2 Effective time

In accordance with section 601GC(2) of the Corporations Act, the modifications to the Principal Deed pursuant to clause 2.1 of this deed take effect immediately upon a copy of this deed being lodged with ASIC.

2.3 No resettlement or redeclaration

The RE confirms that it is not, by clause 2.1 of this deed poll, resettling or redeclaring the Trust and that the Principal Deed continues in effect as modified by clause 2.1.

2.4 Modifications not to affect rights or obligations

Nothing in this deed poll affects any right or obligation arising under the Principal Deed before the date of this deed poll.

3 General

3.1 Governing law

This deed is governed by the laws of Victoria.

3.2 Jurisdiction

The RE submits to the non-exclusive jurisdiction of the courts of Victoria.

3.3 Variation

No variation of this deed is effective unless made in writing and signed by the RE.

1 Modifications

1.1 Clause 8.1

Clause 8.1 is modified as follows (modifications in italics):

Subject to any rights, obligations and restrictions attaching to any particular Unit in accordance with clause 5.2(b), a Unit must only be issued:

- (a) in the case of the issue of the first Units, at \$1.00 per Unit;
- (b) as determined by the Responsible Entity in accordance with ASIC Class Order 13/655 or any other ASIC Instrument;
- (c) *in relation to the Viva Energy Offer Units, at the VEOS Price;*
- (d) in relation to the Viva Energy REIT IPO, at the IPO Offer Price;
- (e) where the Scheme is Listed, and Units do not form part of Stapled Security, subject to paragraphs (a) and (b), at the Market Price;
- (f) where the Scheme is Listed, and Units form part of Stapled Security, subject to clauses (a) and (b), at a price determined by the Responsible Entity provided that the aggregate of the Issue Price of that Unit and the issue price of each Attached Security is equal to the Market Price for Stapled Securities; or
- (g) where the Scheme is not Listed, subject to clauses (a) and (b), in accordance with the following formula:

$$\frac{\text{Net Scheme Value} + \text{Application Transaction Costs}}{\text{Units on issue}}$$

1.2 Definitions

The following definitions are inserted in Schedule 1 (Dictionary):

VEOS Balancing Amount means \$2,104,820,000 less the VEOS Promissory Note (Company shares) Amount less the VEOS Promissory Note (Cash payment) Amount.

VEOS Price means an amount equal to the VEOS Balancing Amount divided by the number of Viva Energy Offer Units.

VEOS Promissory Note (Cash payment) Amount means \$1,569,040,362, being an amount equal to the Viva Energy REIT IPO Equity Proceeds Amount plus the Viva Energy REIT IPO Finco Loan Amount less the Viva Energy REIT IPO Transaction Costs Amount less the Viva Energy REIT IPO Retained Cash Amount.

VEOS Promissory Note (Company shares) Amount means \$2,290,009.

Viva Energy Offer Units means the 276,060,624 Units to be issued to Viva Energy Australia Group Pty Ltd in connection with the Viva Energy REIT IPO.

Viva Energy REIT IPO Equity Proceeds Amount means \$911,000,605, being an amount equal to the IPO Issue Price multiplied by the number of Viva Energy REIT IPO Units.

Viva Energy REIT IPO Finco Loan Amount means \$730,880,100.

Viva Energy REIT IPO Retained Cash Amount means \$7,000,000.

Viva Energy REIT IPO Transaction Costs Amount means \$65,839,798.

Viva Energy REIT IPO Units means the 414,090,937 Units that are to be issued under the Viva Energy REIT IPO.

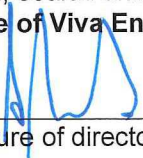
2 Consolidated Principal Deed

Attached is a copy of the consolidated Principal Deed reflecting all amendments up to and including those effected by this deed poll.

Execution page

Executed as a deed poll.

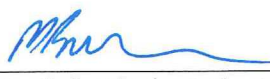
Signed, sealed and delivered by **VER Limited as trustee of Viva Energy REIT Trust:**



Signature of director

Scott Andrew Wyatt

Name of director (print)



Signature of director/secretary

MICHAEL BRADBURN

Name of director/secretary (print)

Scheme Deed
Viva Energy REIT Trust

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Parties

VER Limited ACN 609 868 000 of Level 16, 720 Bourke Street, Docklands Victoria 3008 (RE).

Background

- A The RE wishes to establish a managed investment scheme to be called Viva Energy REIT Trust.
- B The RE intends that the Scheme be admitted to the Official List.
- C The RE is to be the Scheme's first Responsible Entity.
- D This deed is the constitution of the Scheme.

The parties agree

1 Definitions and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this deed, that expression has the same meaning as in that provision.

1.2 Interpretation

The interpretation clauses in Schedule 1 (**Dictionary**) set out rules of interpretation for this deed.

1.3 Conflicts

For the purposes of this deed, if the provisions of the Corporations Act and the Listing Rules, ASX Settlement Operating Rules or this deed, conflict on the same matter, the provisions of the Corporations Act prevail to the extent applicable.

1.4 Listing Rules and ASX Settlement Operating Rules

At all times while the Scheme is not Listed, a provision of this deed subject to or in any way restricted by the Listing Rules or the ASX Settlement Operating Rules is to be construed as if the provision were not expressed to be subject to or restricted by the Listing Rules or the ASX Settlement Operating Rules.

1.5 Stapling provisions

- (a) If there is an inconsistency between any Stapling Provision and any other provision of this deed, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the ASX Settlement Operating Rules, the Corporations Act or any other law. The Stapling Provision prevails in this way, even if such other provision is expressed to apply notwithstanding any other provision of this deed.
- (b) Where the Stapling Provisions do not apply or cease to apply, a provision of this deed that relates to, or is connected with, Stapling will continue to apply to the extent that the provision does not relate to Stapling.
- (c) Stapled Units are intended to be Stapled to Attached Securities in a ratio of one to one. It is the intention of the Responsible Entity (and as more specifically set out in this deed) that for as long as the Stapling Provisions apply:
 - (i) Viva Energy REIT Ltd ordinary shares will be Attached Securities;
 - (ii) the Members holding Units shall be the holders of Attached Securities;
 - (iii) as far as the law permits, a Unit and its Attached Securities shall be treated as one security; and
 - (iv) no issue or transfer of a Unit is to occur without the corresponding Attached Securities also being issued or transferred (as applicable) at the same time and to the same person.

2 Scheme Deed

The Responsible Entity acknowledges and declares that it accepts the trust created by this deed and agrees to be bound by the same and the other terms and conditions contained in this deed for the benefit (to the extent provided) of the Members and that it shall hold the Scheme Property upon trust absolutely for the Members subject to the provisions of this deed.

3 The Scheme

3.1 Name of Scheme

The Scheme is called Viva Energy REIT Trust or such other name the Responsible Entity may from time to time determine.

3.2 Change of name on the Responsible Entity's retirement or removal

- (a) If the Responsible Entity retires or is removed and the name of the Scheme implies an association with the Responsible Entity or its business, the incoming Responsible Entity must, unless otherwise approved by the outgoing Responsible Entity, change the Scheme's name to a name that does not imply the association.
- (b) The incoming Responsible Entity must change the Scheme's name within 7 days (or any longer period approved by the outgoing Responsible Entity) after the outgoing Responsible Entity retires or is removed.

- (c) Subject to the Corporations Act, this clause 3.2 can only be amended or deleted upon the Responsible Entity giving its consent in writing to the proposed amendment or deletion before the amendment is made.

3.3 Responsible Entity as trustee and responsible entity

The Responsible Entity is and agrees to act as the trustee of the Scheme and, if the Scheme is Registered, the responsible entity of the Scheme for the purposes of the Corporations Act.

3.4 Deed binding

This deed is the constitution of the Scheme for the purposes of the Corporations Act and it binds the Members and the Responsible Entity.

3.5 Scheme Property held for Members

The Responsible Entity holds, and declares that it holds, the Scheme Property on trust for the Members.

3.6 Separate fund

The Responsible Entity must hold the Scheme as a separate fund which is not available to meet liabilities of any other trust. The Responsible Entity may mingle Scheme Property with other property to the extent legally permitted.

3.7 Holding of Scheme Property

Scheme Property must be held:

- (a) by the Responsible Entity; or
- (b) if required by law or the Responsible Entity thinks it necessary or desirable, by a custodian appointed by the Responsible Entity or a sub-custodian appointed by the Responsible Entity's custodian.

3.8 Custodian holding Scheme Property

The custodian of any Scheme Property must hold it either:

- (a) directly in its name or that of its sub-custodian; or
- (b) indirectly by any asset title, transfer or holding system (including a Securities System) approved by the Responsible Entity.

3.9 Vesting

The Scheme Property vests in the Responsible Entity on trust for the Members.

4 Duration of Scheme

4.1 Establishing the Scheme

The Scheme is established when Units are first issued.

4.2 Duration

The Scheme will end on the earlier of the time provided by this deed or as required by law.

4.3 Termination by the Responsible Entity or Members

If, subject to the Corporations Act and the Listing Rules:

- (a) while the Scheme is not Registered, at a meeting of Members duly convened by notice given by the Responsible Entity to all Members, a resolution is carried by a majority of not less than 75 per cent of the total votes of those entitled to vote on the resolution to the effect that the Scheme shall be terminated;
- (b) while the Scheme is Registered, the Scheme is terminated by Members in accordance with the Corporations Act; or
- (c) the Responsible Entity gives written notice to the Members that the Scheme shall be terminated,

then the Scheme shall be terminated.

4.4 No dissolution

Notwithstanding any other provision of this deed, the death, insanity, bankruptcy, retirement, resignation or expulsion of a Member or of the Responsible Entity will not of itself cause or result in the dissolution or termination of the Scheme.

4.5 Action on termination

Upon the termination of the Scheme, the Responsible Entity shall wind up the Scheme in accordance with clause 37.

5 Units

5.1 Beneficial interest

The beneficial interest in the Scheme Property is divided into Units.

5.2 Rights of Members

- (a) A Unit confers on its holder an undivided absolute, vested and indefeasible beneficial interest in the Scheme Property as a whole, subject to Scheme Liabilities. It does not confer on a Member an interest in any particular Scheme Property.
- (b) All Units confer identical interests and rights except as otherwise provided in this deed. In the case of conflict, the interests of Members holding Units will prevail over the interests of holders of Options.

5.3 Consolidation, division and issue of Units

- (a) The Responsible Entity may at any time consolidate, divide, issue or create Units.
- (b) The Responsible Entity may at any time issue different classes of Units having attached to them such preferred, deferred or other rights, restrictions and

obligations as the Responsible Entity thinks fit provided that in doing so, where Stapling applies, clause 21 is complied with. To the extent that those rights, restrictions and obligations relate to matters other than those matters prescribed by section 601GA of the Corporations Act, those rights, restrictions and obligations will prevail to the extent of any inconsistency with the terms of this deed and this deed will be read subject to them.

5.4 Members not to interfere

A Member may not interfere with, or exercise powers of, the Responsible Entity in respect of any Scheme Property, Scheme Liability or obligation and has no right to lodge a caveat affecting any Scheme Property.

5.5 Joint holders

If the Register names two or more joint holders of a Unit, they are taken to hold the Unit as joint tenants with the benefits of survivorship and the person listed first in the Register is the only joint holder entitled to receive notices from the Responsible Entity, subject to the following provisions:

- (a) the Responsible Entity is not bound to register more than three of those persons as joint holders of the Unit, except where otherwise required under the ASX Settlement Operating Rules;
- (b) each of those persons and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which ought to be made in respect of the Unit;
- (c) subject to paragraph (b), on the death of any one of them the Responsible Entity is entitled to recognise the survivor or survivors as the only person or persons who have any title to the Unit;
- (d) any one of those persons may give effective receipts for any distribution or payment in respect of the Unit;
- (e) any one of them may appoint a proxy in respect of the Unit;
- (f) when the Corporations Act requires the number of Members to be counted, they are to be counted as one Member; and
- (g) if the Unit is held as a Certificated Holding, the Responsible Entity is not bound to issue more than one Certificate for the Unit and delivery of a Certificate to any one of those persons is sufficient delivery to all of them.

5.6 Rounding

Where any calculation done in relation to a Unit and in accordance with this deed or the Corporations Act would otherwise result in the issue or withdrawal of a fraction of a Unit:

- (a) the number of Units to be issued or withdrawn must be rounded down or up respectively to the nearest whole number, or to such number of decimal places as the Responsible Entity determines; and
- (b) the excess Application Money or other property which results from rounding becomes Scheme Property.

5.7 Listing

Unless Members determine otherwise by Special Resolution, the Responsible Entity must use its best endeavours to ensure that the Units are Listed on the Official List (including, where applicable, as part of Stapled Securities) and that, subject to the rights, obligations and restrictions attaching to any Units, such Listing is maintained and that Units are quoted as Stapled Securities. Notwithstanding any other provision of this deed, the Scheme will at all times remain as a separate entity and be separately admitted to the Official List, and Units and Attached Securities will at all times retain their legal status as separate securities.

5.8 Treatment of applicants

An applicant for Units in the Scheme acquires an interest in the Scheme on the earlier of the date on which the applicant becomes a Member and the date on which that applicant is entered on the Register as the holder of Units.

6 Distributions

6.1 Determining Distributable Income

- (a) The Responsible Entity must determine the Distributable Income of the Scheme for each Distribution Period.
- (b) Subject to clause 6.2, unless the Responsible Entity decides otherwise before the end of the Distribution Period, the **Distributable Income** for the Distribution Period is the Net Taxable Income for the Distribution Period, unless Net Income exceeds the Net Taxable Income, in which case, the Distributable Income shall be the Net Income for that Distribution Period, or such other amount as the Responsible Entity determines.

6.2 Determining Member's Distribution Amount

Subject to the rights attached to any particular Unit and clause 11, a Member's **Distribution Amount** for a Distribution Period is the amount determined by the Responsible Entity using the formula:

$$\frac{\text{Distributable Income of the Scheme for the Distribution Period} \times \text{Unit Equivalent}}{\text{Units on Issue}}$$

where the Unit Equivalent and the Units on Issue, are determined as at 5:00 pm (local time in the place where the Register is kept) on the Distribution Date or such other hour on that date as the Responsible Entity determines.

6.3 Member's present entitlement to Distribution Amount

Subject to the rights attached to any particular Unit and to this deed, immediately before the end of the Distribution Period each Member on the Register at 5:00 pm (local time in the place where the Register is kept) on the Distribution Date or such other hour on that date as the Responsible Entity determines is presently and irrevocably entitled to its Distribution Amount for that Distribution Period and has a vested and indefeasible interest in its Distribution Amount for that Distribution Period.

6.4 Transfer of Distribution Amounts to distribution account

As soon as practicable after the Distribution Date, the Responsible Entity must transfer Members' Distribution Amounts for the relevant Distribution Period to a separate distribution account to be held for the Members entitled to the Distribution Amounts. Once transferred, these amounts cease to be part of the Scheme Property.

6.5 Deductions that may be made from Distribution Amount

The Responsible Entity may deduct from a Member's Distribution Amount:

- (a) any fees or other amounts owing by the Member to the Responsible Entity; and
- (b) any amounts referred to in clause 34.6,

before paying the Member's Distribution Amount in accordance with clause 6.6 or reinvesting it to acquire Units in accordance with clause 6.7.

6.6 When Distribution Amount is paid

The Responsible Entity must pay the Member its Distribution Amount within 90 days after the relevant Distribution Date or any longer period allowed by law.

6.7 Reinvestment of distributions

Subject to clause 6.8, the Responsible Entity may decide whether to allow Members to reinvest all or some of any distribution (after deduction of any amounts referred to in clause 6.5) to acquire Units. If the Responsible Entity decides to allow reinvestment:

- (a) the Responsible Entity must notify Members of the procedure for reinvestment and any changes to the procedure within 10 Business Days of such decision or change;
- (b) if reinvestment applies, the Responsible Entity is taken to have received and accepted an application to reinvest distributions, and the relevant Application Money, immediately before the Cut-Off Time on the relevant Distribution Date; and
- (c) the Issue Price payable for each additional Unit upon reinvestment is the Issue Price on the first Business Day after the end of the Distribution Period to which the distribution relates.

6.8 Reinvestment while Stapling applies

While Stapling applies:

- (a) no reinvestment of distributions may occur unless, contemporaneously with the reinvestment in additional Units, the Member subscribes for or purchases an additional number of Attached Securities which, when issued or acquired, are Stapled to the additional Units;
- (b) the Responsible Entity may make provision for, and make payment of, the subscription and purchase price for such Attached Securities out of the distribution, income or other available monies (as applicable) which is otherwise available for reinvestment;
- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction may be paid to the

Member or held for future reinvestment in the Scheme and the Stapled Entity in such proportions as the Responsible Entity and the Stapled Entity may determine;

- (d) whenever under this deed or by law money is held on behalf of a Member for future reinvestment, the money so held may be aggregated and on each occasion which the aggregated amount equals the Issue Price of a Unit, the amount will be applied to purchase a new Unit for Issue to the Member; and
- (e) a new Unit may not be so purchased until the reinvested money is sufficient for, and is applied to, a subscription for or purchase of the Attached Securities which are then Stapled to the Unit.

6.9 Income held over to next Distribution Period

The Responsible Entity may treat an item of income received or accrued during a Distribution Period as having accrued in the next Distribution Period, but only if it is not practicable to deal with it in the first Distribution Period.

6.10 Income not received

If an amount included in the Distributable Income of the Scheme for a Distribution Period is not actually received during that Distribution Period, the Responsible Entity may set it off against the income for a later Distribution Period and make appropriate adjustments to payments and entitlements.

6.11 Transfer of capital to enable minimum distribution of net income

In respect of a Distribution Period, the Responsible Entity may transfer capital to the distribution account to enable distribution to Members of an amount at least equal to the Net Taxable Income of the Scheme for that Distribution Period.

6.12 Interim distributions of income

The Responsible Entity may at any time make an interim distribution of income of the Scheme to the Members. If it does:

- (a) the Responsible Entity must specify a date as the Distribution Date; and
- (b) this clause 6 applies to the interim distribution as if it were a distribution of Distributable Income.

6.13 Capital distributions

The Responsible Entity may at any time distribute capital of the Scheme to the Members. Subject to the rights attached to any particular Unit, a person is entitled to the same portion of the capital as if it were Distributable Income. Subject to the terms of this deed, the capital may be distributed in Cash, in non-Cash assets or by way of additional Units.

6.14 Determination whether capital or income

The question of whether an amount is capital or income is to be determined by the Responsible Entity in its sole and absolute discretion.

6.15 Distribution statements to be sent out

The Responsible Entity must cause a distribution statement for each Distribution Period to be sent to the Members.

6.16 Scheme taxed as a company

If and so long as the Scheme is, for any reason (including if it is a public trading trust for the purposes of Division 6C of Part III of the Income Tax Assessment Act 1936 (Cth)) to be taxed in a similar manner to a company, the Responsible Entity may take any steps it reasonably considers necessary to comply with the law and the following applies:

- (a) Members do not have a vested and indefeasible interest in a share of the Distributable Income at the end of a Distribution Period;
- (b) a distribution from the Responsible Entity to a Member will be paid from the after tax income of the Scheme;
- (c) distributions paid under paragraph (b) will be determined in accordance with clause 6.2; and
- (d) the Responsible Entity may choose when to make distributions of profits, income, capital or any taxation or franking credits that have become available in relation to the Scheme.

6.17 Reserves

The Responsible Entity may make any provisions or reserves of amounts that the Responsible Entity determines proper for the purposes of the Scheme and, if the Responsible Entity so determines, an item of income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an expense paid or payable in an Distribution Period may be treated as having been paid in a different Distribution Period.

7 Application for Units

7.1 Application for Units

- (a) Unless the Responsible Entity determines otherwise, to be valid, an application for Units must be:
 - (i) in writing, in a form approved by the Responsible Entity;
 - (ii) while Stapling applies in respect of Units, at the same time, include an application for an identical number of Attached Securities;
 - (iii) if required by the Responsible Entity or law, signed by or for the applicant;
 - (iv) accompanied by the Application Money or a transfer in respect of an asset other than Cash; and
 - (v) lodged with the Responsible Entity or its custodian or agent at a place fixed by it for that purpose.
- (b) If approved by the Responsible Entity, the application may be lodged with the Responsible Entity electronically.

7.2 Payment in kind

A person intending to subscribe for Units may only transfer an asset (other than money) to pay for those Units, if the:

- (a) Responsible Entity permits;
- (b) asset is in a form permitted by the Responsible Entity; and
- (c) asset is accompanied by a valuation that is acceptable to the Manager (if any), unless otherwise determined by the Responsible Entity.

7.3 Uncleared Funds

- (a) An issue of Units is void if:
 - (i) the Application Money is not in cleared funds or subsequently cleared within 5 Business Days of receipt (or such longer period determined by the Responsible Entity); or
 - (ii) the transfer of the asset (as required by clause 7.2) is not effective or the asset is not transferred free of encumbrances.
- (b) Where an issue of Units is void by the operation of clause 7.3(a)
 - (i) the Units are deemed for all purposes not to have been created or issued; and
 - (ii) the Responsible Entity may cause the Register to be rectified.

7.4 Responsible Entity may adjust

The Responsible Entity or custodian may make adjustments for Taxes and Application Transaction Costs incurred in receiving, and in calculating the value of, consideration for Units.

7.5 Separate bank account

The Responsible Entity or custodian may hold application money for Units in a single account containing application money for one or more trusts or bodies corporate.

7.6 Responsible Entity may set investment minimums

Subject to the Corporations Act, and, if applicable, the Listing Rules, the Responsible Entity may determine a minimum application amount and a minimum holding for the Scheme, expressed in either or both dollar terms and number of Units, and alter or waive those amounts at any time or determine that a different minimum application amount or Minimum Holding will apply for one or more applicants or Members.

7.7 Amount or value of consideration for Units

The amount or value of the consideration for Units on application must equal or exceed any minimums set under clause 7.6 except if the:

- (a) consideration is paid by the Responsible Entity on behalf of a Member; or
- (b) Responsible Entity elects to accept lower consideration subject to any requirements under ASIC Class Order 03/217 or any other applicable ASIC Instrument.

7.8 Responsible Entity may reject applications

- (a) The Responsible Entity may reject an application for Units without giving a reason.
- (b) While Stapling applies, the Responsible Entity must reject an application for Units in a class which are Stapled if the applicant does not apply for an identical number of Attached Securities and if an identical number of Attached Securities will not be issued to the applicant at the same time as the Units.

7.9 What happens to rejected applications

- (a) If the Responsible Entity rejects an application for Units, it must:
 - (i) give the applicant written notice of the rejection; and
 - (ii) cause an amount equal to the Application Money (less any Taxes and bank fees in connection with the application and any other amounts arising out of prior disclosure to the applicant) to be paid back to the applicant.
- (b) Where Stapling applies, the Responsible Entity may take any action contemplated by paragraph (a) where a Stapled Entity rejects an application for an Attached Security.

7.10 Issue of Units

Units are created and issued when the Responsible Entity has agreed to accept the Application (if relevant) and has received either the consideration or a commitment in a form acceptable to the Responsible Entity to provide the consideration. Units issued against consideration paid other than in cleared funds are void if the funds are not subsequently cleared in accordance with clause 7.3 or the consideration is not provided or transferred at or within the time specified by the Responsible Entity.

7.11 When Units are issued

A Unit is taken to be issued on the earlier of the date on which the applicant becomes a Member and the date on which the name of the person to whom it is issued is entered in the Register as the holder of the Unit.

7.12 Overseas Unit Members

Subject to the Listing Rules and any applicable ASIC Instrument, the Responsible Entity may, in relation to an offer of Units to Members, elect to offer Units only to Members 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 relevant Members.

8 Issue

8.1 Issue Price

Subject to any rights, obligations and restrictions attaching to any particular Unit in accordance with clause 5.2(b), a Unit must only be issued:

- (a) in the case of the issue of the first Units, at \$1.00 per Unit;

- (b) as determined by the Responsible Entity in accordance with ASIC Class Order 13/655 or any other ASIC Instrument;
- (c) in relation to the Viva Energy Offer Units, at the VEOS Price;
- (d) in relation to the Viva Energy REIT IPO, at the IPO Offer Price;
- (e) where the Scheme is Listed, and Units do not form part of Stapled Security, subject to paragraphs (a) and (b), at the Market Price;
- (f) where the Scheme is Listed, and Units form part of Stapled Security, subject to clauses (a) and (b), at a price determined by the Responsible Entity provided that the aggregate of the Issue Price of that Unit and the issue price of each Attached Security is equal to the Market Price for Stapled Securities; or
- (g) where the Scheme is not Listed, subject to clauses (a) and (b), in accordance with the following formula:

$$\frac{\text{Net Scheme Value} + \text{Application Transaction Costs}}{\text{Units on issue}}$$

8.2 Market Price

- (a) In this clause 8.2, **Interest** means:
 - (i) where a Unit does not form part of a Stapled Security, a Unit; and
 - (ii) where a Unit forms part of a Stapled Security, a Stapled Security.
- (b) The Market Price for an Interest on a particular Business Day means:
 - (i) the weighted average traded price for an Interest for all sales on ASX for the period of 10 Business Days ending on the relevant Business Day (whether or not a sale was recorded on any particular day) provided however that if the Interest to be offered or issued will be offered or issued ex distribution and the weighted average traded price is for an Interest cum distribution, the Market Price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the weighted average traded price were for Interests cum distribution); or
 - (ii) if a reputable investment bank or independent adviser as referred to in paragraphs (c) or (d) below determines that a measure of Market Price determined in accordance with paragraphs (c) or (d) below is a more appropriate measure of Market Price, that other measure will be adopted.
- (c) **Bookbuild:** The price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that:
 - (i) the bookbuild is conducted in accordance with normal market practice for bookbuilds;
 - (ii) the bookbuild is conducted by a bookrunner who holds appropriate qualifications and experience and is independent (and not an Associate) of the Responsible Entity;

- (iii) the Responsible Entity provides written notice to the bookrunner of the amount to be raised and why the Responsible Entity considers that amount to be in the best interests of Members;
- (iv) the bookrunner certifies to the Responsible Entity that the price is fair for Members; and
- (v) the bookrunner certifies to the Responsible Entity that they have the requisite qualifications and expertise to conduct the bookbuild, that the bookbuild has been conducted in accordance with normal market practice, that the price is a fair issue price for the Interest and the following matters were in fact taken into account in determining the price:
 - (A) the nature and size of the proposed offer of Interests for which purpose the Issue Price of an Interest is being calculated;
 - (B) the circumstances in which the proposed offer of Interests will be made; and
 - (C) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.
- (d) **Independent adviser:** An amount determined by an adviser who:
 - (i) is independent (and not an Associate) of the Responsible Entity; and
 - (ii) is qualified to determine and has relevant market experience in determining the issue price of interests in circumstances similar to those in which the determination of the price of the Interest is being made; and
 - (iii) certifies to the Responsible Entity that they have the requisite qualifications and expertise to determine the price, that the price is a fair issue price for the Interest and that the following matters were in fact taken into account in determining the price:
 - (A) the nature and size of the proposed offer of Interests for which purpose the Issue Price of an Interest is being calculated;
 - (B) the circumstances in which the proposed offer of Interests will be made; and
 - (C) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.
- (e) If either of paragraphs (c) or (d) in this definition is held to be void, invalid or otherwise unenforceable, it is deemed to be severed from the remainder of this definition, which will remain in full force and effect, and Market Price must be calculated in accordance with the clause which is not deemed to be severed.
- (f) In respect of clause 8.2(b)(i), if the Responsible Entity considers the period of 10 Business Days to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.

8.3 Time for calculation

Except for the purposes of determining the Application Price for Units to be issued on the reinvestment of income for a Distribution Period (as set out in clause 6.7(c)), each of the variables in clause 8.1(g) must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; or
- (b) one of the following occurs:
 - (i) the Responsible Entity receives the application money; or
 - (ii) the application money is paid at the direction of the Responsible Entity; or
 - (iii) the Property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.

8.4 Terms of pro rata issues

- (a) Any pro-rata offer for the issue of Units must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity being a date not being more than 30 days immediately prior to the offer. However, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under a pro rata offer which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person.
- (c) If any underwriter has underwritten a pro rata offer for subscription of Units, the underwriter may take up any Units not subscribed for by Members.

8.5 Apportionment of Issue Price while Stapling applies

- (a) If a Unit is to be issued as part of a Stapled Security and this deed contains a provision for the calculation or determination of the issue price for a Stapled Security but not for the Unit, the Responsible Entity must determine what part of the Issue Price of a Stapled Security is to represent the Issue Price of a Unit for the purposes of this deed.
- (b) Unless otherwise agreed between the Responsible Entity and the other Stapled Entities, the allocation is to be in the ratio that the net assets (adjusted for the net market value of its investments) of the Scheme and each Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of the Scheme and each Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security.

8.6 Corresponding offer and issue of Units and Attached Securities

While Stapling applies, the Responsible Entity may not offer, allot or issue a Unit or any other unit in the Scheme of another class designated by the Responsible Entity as comprising part of a Stapled Security unless, at the same time, one of each of the

Attached Securities is also offered, allotted or issued (as applicable) to the same person, to form a Stapled Security. This applies regardless of whether the Units are allotted or issued upon the exercise of an option, under a rights issue, plan for the reinvestment of dividends or distributions or otherwise.

8.7 Restriction on issue and redemption of Units

No Units may be issued after the 80th anniversary of the day the Scheme commenced if to do so would cause a contravention of an applicable rule against perpetuities or any other applicable rule of law or equity.

9 Partly Paid Units

9.1 Terms of issue

The Responsible Entity may issue Partly Paid Units subject to any rights, obligations and restrictions in accordance with clause 5.2(b).

9.2 Calls

Members holding Partly Paid Units must pay the amount of a Call made by the Responsible Entity in accordance with the terms and conditions of issue of the Unit.

9.3 Interest on late payment of Calls

- (a) Subject to paragraph (b), if a Call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, (which date must not be less than 14 days after the date on which the Call is made) the holder of the Partly Paid Unit is liable to pay interest at the Default Interest Rate on the amount due but unpaid (the interest to accrue for the benefit of the Scheme) from the day fixed for the payment to the time the Responsible Entity actually receives payment.
- (b) In circumstances where a Call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, and such non-payment is as a result of the relevant Member's non-receipt of a notice given in respect of a Call, the Member is not liable to pay interest as contemplated in paragraph (a) for such number of days that relate to the non-receipt of the notice.

9.4 Non-receipt of notice of Call

Non-receipt by a Member of a notice given in respect of a Call, or the accidental omission to give such a notice to a Member, does not invalidate the Call.

9.5 Deductions for unpaid Calls

If a Call in respect of a Partly Paid Unit is not fully paid on or before the date fixed for payment, then, until the Call is fully paid, the Responsible Entity may deduct or set off the unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity because of the non-payment) from any amount payable to the Member in respect of the Unit.

9.6 Proceedings for recovery of Calls

In an action or other proceedings for the recovery of a Call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a Call, proof that:

- (a) the name of the defendant is entered in the Register as the holder or one of the holders of the Unit in respect of which the Call is claimed;
 - (b) the resolution making the Call is recorded in the minute book; and
 - (c) notice of the Call was given to the defendant in accordance with this deed,
- is conclusive evidence of the debt.

In this clause 9.6 "defendant" includes a person against whom a set-off or counter-claim is alleged by the Responsible Entity and "proceedings for the recovery of a Call" is to be construed accordingly.

9.7 Payments in advance of Calls

- (a) The Responsible Entity may accept from a Member the whole or a part of the amount unpaid on a Unit even though no part of that amount has been Called.
- (b) The Responsible Entity may pay interest upon the whole or any part of an amount accepted under clause 9.7(a), until the amount becomes payable, at a rate agreed between the Responsible Entity and the Member paying the amount.
- (c) The Responsible Entity may repay to a Member all or any of the amount accepted under clause 9.7(a).

9.8 Forfeiting Units

- (a) If a Call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, the Responsible Entity may, in its discretion, at any time thereafter before the payment of the amount of the Call, all interest accrued thereon and the costs and expenses incurred by the Responsible Entity because of non-payment, cause the Unit to be forfeited with effect from a date determined by the Responsible Entity.
- (b) A forfeiture under this clause 9.8 includes forfeiture of all distributions and other moneys payable to the Member in respect of the forfeited Unit and not actually paid before the forfeiture.
- (c) Where a Unit has been forfeited and the Stapling Provisions apply, the Member must simultaneously forfeit any Attached Security.

9.9 Entry on Register

If a Unit is forfeited under clause 9.8, the Responsible Entity must enter in the Register the fact of the forfeiture and its date.

9.10 Disposal of forfeited Units

A forfeited Unit may be sold (including to an Associate of the Responsible Entity) by the Responsible Entity in such circumstances as it considers appropriate provided that:

- (a) while the Scheme is Registered and Listed, such sale occurs in accordance with section 254(Q) (other than 254Q(1), (9) and (13)) of the Corporations Act; and
- (b) while the Scheme is Registered but not Listed, and subject to clause 7.4, such Unit is sold at an amount calculated in accordance with the following formula:

$$\frac{\text{Net Scheme Value}}{\text{Units on issue}}$$

9.11 Annulment of forfeiture

The Responsible Entity may, before a forfeited Unit is sold, annul the forfeiture on conditions it determines.

9.12 Transfer of forfeited Units

- (a) The Responsible Entity may, on a sale of a forfeited Unit, receive the selling price and effect, in the name of the Member whose Unit has been forfeited, a transfer of the Unit to the transferee.
- (b) When the transfer is effected, the transferee must be registered as the holder of the Unit and the transferee's title to the Unit is not affected by any irregularity or invalidity in connection with its forfeiture or sale.

9.13 Liability despite forfeiture

A Member whose Units have been forfeited is, despite the forfeiture, liable to pay the Responsible Entity, and must pay the Responsible Entity on demand, the amount unpaid and all other money payable under this clause 9.

9.14 Proceeds of sale

The net proceeds of a sale of forfeited Units under this clause 9 must be applied:

- (a) first, in payment of all the Responsible Entity's costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale (which may include a reasonable amount to recompense the Responsible Entity for the time spent by its employees and officers in connection with the matter);
- (b) secondly, in satisfaction of the amount of the unpaid Call and interest thereon; and
- (c) the residue (if any) must be paid to the person registered as the Member in respect of the Unit immediately before the sale.

10 Options

10.1 Issue of Options

Subject to the Corporations Act, the Listing Rules or this deed, the Responsible Entity may issue Options on whatever terms and conditions it determines from time to time.

10.2 Entitlement of Option

Subject to clause 10.4 and the terms of issue of the Option, each Option entitles the holder to apply for and be issued or transferred a Unit on payment of the relevant Issue Price payable on exercise of the Option to the Responsible Entity or as it directs.

10.3 Issue Price of Options

- (a) Subject to the Corporations Act and the Listing Rules, the **Issue Price** of an Option is whatever price the Responsible Entity determines, but if the Responsible Entity is unable or unwilling to make a determination, the Issue Price is zero.

- (b) The Issue Price of an Option must:
 - (i) be disclosed in the offer for subscription or sale;
 - (ii) be the same for each Option offered under an offer under clause 10.4;
 - (iii) on payment, form part of the Scheme Property; and
 - (iv) not form part of the exercise price if an Option Holder exercises an Option.

10.4 Offer of Options to all Members

- (a) The Responsible Entity may (subject to the terms of any applicable ASIC Instrument) offer Options to those persons who were Members on a date determined by the Responsible Entity not being more than 20 Business Days immediately prior to the date of the offer, provided that:
 - (i) all Members are offered Options on a pro rata basis (whether or not the right of entitlement is renounceable) and the Options are of the same class; and
 - (ii) all Members are offered Options where the exercise price is the same and the means of working out the exercise price is set out in the terms of issue of the Option.
- (b) However, subject to compliance with Listing Rules and any applicable ASIC Instrument, the Responsible Entity is not required to offer Options under this clause 10 to persons whose address on the Register is in a place other than Australia and such other jurisdiction (if any) as the Responsible Entity may in its absolute discretion determine.

10.5 No repurchase of Options

The Responsible Entity need not repurchase any Option.

10.6 When an Option is issued

An Option is taken to be issued as at the time the person to whom it is issued is entered in the Register as the holder of the Option.

10.7 Transfer of Options

The provisions of clause 16 apply to the transfer of Options in such manner as the Responsible Entity reasonably determines.

10.8 Transmission of Options

The provisions of clause 18 apply to the transmission of Options in such manner as the Responsible Entity reasonably determines.

10.9 Exercise of Options

- (a) An Option may be exercised by the Option Holder completing and lodging with the Responsible Entity a notice of exercise of the Option in whatever form the Responsible Entity determines together with:
 - (i) the Option certificate (if any); and

- (ii) payment of the exercise price.
- (b) Subject to the terms of their issue, the payment and issue or transfer of Options under this clause 10 will be dealt with by Responsible Entity as nearly as practicably in the same way as if the payment and issue or transfer were an application for Units under clause 7.

10.10 Option Holder's Interest

- (a) An Option does not confer on the Option Holder:
 - (i) any right to participate in any distribution of income or capital of the Scheme; or
 - (ii) any interest in the Scheme Property.
- (b) Option Holders are entitled to receive notices of Meetings, and to attend Meetings but, subject to the Corporations Act, are not entitled to speak or vote at any Meeting.

10.11 Lapse of Options

An Option lapses on the earliest of:

- (a) the date stipulated in the terms of issue of the Option;
- (b) the termination of the Scheme; or
- (c) the winding up of the Scheme.

10.12 Redemption of Options

The provisions of clause 12 apply to the redemption of Options, with any necessary adaptations. The Withdrawal Price of an Option is to be determined under clause 11.

10.13 Corresponding Option over Attached Securities

While Stapling applies, the Responsible Entity may not offer or issue an Option unless, at the same time and on the same terms, an option over each of the Attached Securities is also offered or issued (as applicable) to the same person.

11 Withdrawal Price

11.1 Withdrawal Price

Subject to any rights, obligations and restrictions attaching to any particular Unit in accordance with clause 5.2(b), a Unit must only be redeemed at a price calculated in accordance with the following (**Withdrawal Price**):

- (a) as determined by the Responsible Entity in accordance with ASIC Class Order 13/655 or any other ASIC Instrument; or
- (b) subject to paragraph (a), in accordance with the following formula:

$$\frac{\text{Net Scheme Value} - \text{Withdrawal Provision}}{\text{Units on issue}}$$

11.2 Variables

Each of the variables in clause 11.1 must be calculated:

- (a) while the Scheme:
 - (i) is a registered scheme and is Liquid and is not admitted to the Official List;
or
 - (ii) is not a registered scheme,

as at the close of business on the day before payment of the Withdrawal Price; or
- (b) while the Scheme is a registered scheme and is not Liquid, at the time the withdrawal offer closes.

11.3 Deducting other amounts from Withdrawal Amount

The Responsible Entity may deduct from the Withdrawal Amount payable to a Member any other amounts owing by the Member to the Responsible Entity and any amounts referred to in clause 34.6.

11.4 Responsible Entity's own funds

The Responsible Entity is not obliged to pay any part of the Withdrawal Amount payable to a Member out of its own funds.

11.5 Payment of Withdrawal Amount

The Responsible Entity may pay the Withdrawal Amount payable to a Member:

- (a) in Cash;
- (b) by transferring Scheme Property to the Member; or
- (c) a combination of both,

but in the case of clauses (b) or (c):
 - (d) the value of the Scheme Property and the Cash paid (if any) must be equal to the Withdrawal Amount;
 - (e) the value of the Scheme Property must be based on a valuation carried out within three months before the date of withdrawal of the relevant Units; and
 - (f) any costs associated with the valuation and transfer of the Scheme Property are payable or can be reimbursed to the Responsible Entity out of the Scheme Property.

11.6 Income and capital

- (a) The Responsible Entity may determine at its absolute discretion that the Withdrawal Price paid to a Member on the withdrawal of Units comprises income as well as capital. If the Responsible Entity makes such a determination the Responsible Entity must notify the Member or the former Member of the composition of the Withdrawal Price. In the absence of such a determination, the Withdrawal Price will comprise capital only.

- (b) If the Withdrawal Price paid to a Member on the withdrawal of Units comprises any income, the Member shall be presently entitled to such income and shall continue to be presently entitled to such income notwithstanding the withdrawal of such Member's Units and the payment of the Withdrawal Price to the Member.
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12 Withdrawal

12.1 Withdrawal Request

- (a) Subject to paragraph (b), a Member may make a Withdrawal Request in any manner approved by the Responsible Entity. While the Scheme:
 - (i) is a registered Scheme and is Liquid and is not admitted to the Official List;
or
 - (ii) is not a registered Scheme,the Responsible Entity is entitled, but not obliged, to give effect to that request in accordance with this clause 12.
- (b) A Member may not make a Withdrawal Request:
 - (i) while the Scheme is admitted to the Official List;
 - (ii) after a Meeting has been called to vote on a resolution to terminate the Scheme and before the vote has been taken;
 - (iii) after the Scheme is terminated; or
 - (iv) while the Scheme is being wound up.
- (c) A Member cannot withdraw a Withdrawal Request unless the Responsible Entity agrees.
- (d) A Member cannot deal with a Unit it has requested the Responsible Entity to withdraw unless and until the Responsible Entity determines not to redeem it.

12.2 Time of receipt

The Responsible Entity may determine that a Withdrawal Request received by the Responsible Entity after the Cut-Off Time on a Business Day or not on a Business Day will be taken to be received immediately before the Cut-Off Time on the next Business Day.

12.3 Order

Unless the Responsible Entity decides otherwise, the first Units issued to a Member are the first to be redeemed or (at the option of the Responsible Entity) repurchased.

12.4 When Units are redeemed

Units are taken to be redeemed at the time at which the Withdrawal Price is known and the redemption is recorded in the Register, and from that time until payment of the Withdrawal Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Scheme in respect of the redemption proceeds.

12.5 Withdrawal while the Scheme is registered and Liquid or not a registered scheme

Clauses 12.6 to 12.9 only apply while the Scheme:

- (a) is a registered Scheme and is Liquid and is not admitted to the Official List; or
- (b) is not a registered Scheme.

12.6 Withdrawal period and discretion

- (a) The Responsible Entity is entitled, but not obliged, to satisfy a Withdrawal Request in whole or in part. If the Responsible Entity decides to satisfy a Withdrawal Request in whole or in part, it must do so within 21 days after it decides to do so, or a longer period allowed by clause 12.7, by paying the Member the Withdrawal Amount from the Scheme Property and cancelling the Units by making an appropriate entry in the Register.
- (b) Without limitation to paragraph (a), the Responsible Entity may deny a Withdrawal Request:
 - (i) if the Withdrawal Amount or the number of Units to be withdrawn is less than the Minimum Withdrawal Amount, unless the Withdrawal Request is for all the Member's Units;
 - (ii) if, in the Responsible Entity's reasonable opinion, the Scheme will not be Liquid at the end of the withdrawal period for the request; or
 - (iii) if accepting the Withdrawal Request would cause the Scheme to cease to be Liquid.
- (c) If the Responsible Entity is not required to satisfy a Withdrawal Request, the Responsible Entity may redeem all or some of the Units the subject of the request.

12.7 Extension or delay of withdrawal period

- (a) If:
 - (i) the Responsible Entity has taken all reasonable steps to realise enough Scheme Property to satisfy a Withdrawal Request, but it has been unable to do so because of something outside its control (for example, restricted or suspended trading in a market for Scheme Property); or
 - (ii) due to circumstances beyond the reasonable control of the Responsible Entity, the Responsible Entity is unable to calculate or pay the Withdrawal Price or to fairly determine the Net Scheme Value,then the Responsible Entity may deny a Withdrawal Request or extend the 21 day period allowed for satisfaction of a Withdrawal Request by the number of days during which such circumstances apply.
- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Manager must pay the withdrawal proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer closes.

12.8 Withdrawal where Member's holding less than Minimum Holding

- (a) If a Withdrawal Request is for some of the Member's Units to be withdrawn, but the Responsible Entity determines that, after withdrawal, the Member would have less than the Minimum Holding, the Responsible Entity may treat the Withdrawal Request as a request to withdraw all the Member's Units.
- (b) If at any time all Units held by a Member are less than the Minimum Holding, the Responsible Entity may redeem all the Member's Units without a Withdrawal Request.
- (c) If the Responsible Entity increases the Minimum Holding, the Responsible Entity may, after giving 30 days' notice to a Member who holds Units which in total are less than the Minimum Holding, redeem that Member's holding without the need for a Withdrawal Request.

12.9 Compulsory redemption

The Responsible Entity may redeem all or some of the Units held by a Member, without the need for a Withdrawal Request, in any of the following circumstances:

- (a) where this deed allows it (for example, under clauses 12.8(b), 12.8(c) or 12.12);
- (b) where the Responsible Entity considers it to be in the best interests of Members as a whole to do so;
- (c) where the Member has breached its obligations to the Responsible Entity;
- (d) to satisfy any amount of money due by the Member to the Responsible Entity (in its capacity as trustee of the Scheme);
- (e) to satisfy any amount of money the Responsible Entity (in its capacity as trustee of the Scheme) owes someone else in relation to the Member;
- (f) where the Responsible Entity suspects that the law prohibits the person from legally being a Member;
- (g) where the Responsible Entity has reasonable grounds to suspect that the Member does not meet, or is likely not to meet, any criteria for being a Member as determined from time to time by the Responsible Entity; or
- (h) the terms of issue contemplate the redemption.

For the purpose of calculating the Withdrawal Price of Units redeemed in accordance with this clause 12.9, the Responsible Entity is taken to have received a Withdrawal Request in relation to the relevant Units at the time the Responsible Entity determines to redeem the Units.

12.10 Withdrawal while the Scheme is a registered scheme and is not Liquid

- (a) This clause 12.10 only applies while the Scheme is a registered scheme and is not Liquid.
- (b) A Member's Units may be withdrawn in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act, and, if applicable, the Listing Rules, regulating offers of that kind. Otherwise, a Member has no right to have any of their Units redeemed.

- (c) The Responsible Entity may make a withdrawal offer to all Members or to all Members of a particular class.
- (d) The Responsible Entity may make a withdrawal offer by:
 - (i) publishing it (for example in a national newspaper or on the internet); or
 - (ii) giving a copy of it to all Members or all Members of a particular class (as applicable).
- (e) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (f) If the Responsible Entity receives a Withdrawal Request before it makes a withdrawal offer, it may treat the Withdrawal Request as an acceptance of the offer effective as at the time the offer is made.
- (g) A Member cannot withdraw its acceptance of a withdrawal offer, unless the Responsible Entity agrees.

12.11 Buy-back while Scheme is Listed

- (a) While the Scheme is admitted to the Official List, the Responsible Entity may, subject to and in accordance with the Corporations Act, any applicable ASIC Instrument and any requirements under the Listing Rules, purchase Units at a price determined in its discretion (such purchase being funded by the Scheme Property) and cause the Units to be cancelled.
- (b) If the Responsible Entity purchases Units pursuant to paragraph (a), the Responsible Entity may determine in its discretion that the buy-back price paid to a Member comprises income as well as capital. If the Responsible Entity makes such a determination the Responsible Entity must notify the Member or the former Member of the composition of the buy-back price. In the absence of such a determination, the buy-back will comprise capital only.
- (c) If the buy-back price paid to a Member on the purchase of Units pursuant to paragraph (a) by the Responsible Entity comprises any income, the Member shall be presently entitled to such income and shall continue to be presently entitled to such income notwithstanding the purchase of such Member's Units and the payment of the buy-back price to the Member.

12.12 Discretionary redemption by Responsible Entity

- (a) Subject to the Corporations Act, and, if applicable, the Listing Rules and any applicable ASIC Instrument, this clause 12.12 applies:
 - (i) while the Scheme is a registered scheme and while it is not a registered scheme;
 - (ii) while the Scheme is Liquid or not Liquid; and
 - (iii) while the Scheme is admitted to the Official List and while it is not admitted to the Official List.
- (b) Subject to the Corporations Act, any applicable ASIC Instrument and, if applicable, the Listing Rules, the Responsible Entity may, in its absolute discretion, redeem some or all Units held by a Member or held by all Members (and may also redeem all or any Units in a class):

- (i) provided that the Responsible Entity gives at least 30 Business Days' notice of its intention to redeem Units under this clause 12.12;
 - (ii) except that the Responsible Entity need not give notice under subparagraph (i), or may give shorter notice, if the Responsible Entity considers that the redemption is necessary:
 - (A) to comply with a law;
 - (B) to comply with the terms of any agreement with a Government Agency; or
 - (C) to lessen the risk of the Scheme or Members (or a class of Members) suffering a material detriment.
 - (c) Units redeemed under this clause 12.12 will be redeemed at the Withdrawal Price determined under clause 11 as at the next Valuation Time after notice is given of the proposed redemption (or, if no notice is given, at the next Valuation Time after the Responsible Entity decides to effect the redemption).
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13 Register of Members

13.1 Register

- (a) The Responsible Entity shall keep a register electronically or in one or more books or binders or such other appropriate means as determined by the Responsible Entity of all the names addresses and descriptions of the Members and the number of Units in respect of which they are registered and the date on which the name of the Member was entered in respect of such Units.
- (b) The Responsible Entity may establish branch unit registers anywhere in Australia.

13.2 Notice of trust

The Responsible Entity need not enter notice of any trust on the Register.

13.3 Registered Member is owner

The Responsible Entity may treat a registered Member as the holder and absolute owner of Units registered in the Member's name on the Register and is not bound to take notice of any trust or equity affecting a Unit. Entry on the Register is conclusive evidence of a Member's title to Units.

14 Specified Time

14.1 General

The Responsible Entity may determine (and whenever it elects, vary) one or more times during each Business Day for the purposes of any or all of:

- (a) applications for Units; and
- (b) the issue of Units,

different times being applicable to different locations or methods of communication or payment. The times relevant to applications and issues may differ.

14.2 Entitlements

Unless this deed otherwise provides, the Responsible Entity will determine the record or similar date for determining Members' entitlements including their entitlements to participate in new issues and distributions of income and capital.

15 Valuation

15.1 Valuation policy

- (a) While the Scheme is Registered, the Responsible Entity's policy for the valuation of the Scheme Property, and any valuation undertaken by the Responsible Entity pursuant to that policy for the purposes of this deed, must be consistent with the range of ordinary commercial practice for valuing that type of scheme property and produce a value that is reasonably current at the time of issue or withdrawal.
- (b) While the Scheme is Registered, the Responsible Entity's policy for determining the Market Price of interests that are quoted on a financial market, and any determination undertaken by the Responsible Entity pursuant to that policy for the purposes of this deed, must be consistent with the ordinary commercial practice for determining the market price of interests of the same kind and produce a market price that is reasonably current as at the time of issue or withdrawal.
- (c) Notwithstanding any other provision of this deed, if there is any conflict or inconsistency between this clause 15.1 and any other clause in this deed, this clause 15.1 prevails to the extent of such conflict or inconsistency.

15.2 Responsible Entity's expertise

The Responsible Entity does not have any special expertise in valuing property.

15.3 Time of calculation

The Responsible Entity may calculate the Net Scheme Value at any time determined by the Responsible Entity (**Valuation Time**), but must do so, other than when in the opinion of the Responsible Entity it is not practicable to calculate the Net Scheme Value, at least twice each calendar year on the basis of the most recent valuation of each item of Scheme Property and determination of Scheme Liabilities. The Responsible Entity may calculate Net Scheme Value more than once a day.

15.4 Calculation of Net Scheme Value

The Responsible Entity must calculate the Net Scheme Value by deducting the value of the Scheme Liabilities from the value of the Scheme Property (determined on the basis of the most recent valuation of each item), each as at the Valuation Time.

15.5 Value

Subject to clauses 15.3 and 15.7, the value of any property is the market value, the net fair value, any other value appropriate to the nature of the property and the nature of the Scheme (from time to time) or any other value permitted under any applicable ASIC Instrument. Property acquired must be valued at cost as determined by the Responsible Entity until revalued.

15.6 Determining value

Subject to clauses 15.3 and 15.7, the value of any Scheme Property must be determined by:

- (a) a Valuer;
- (b) a person using a method determined by a person who is independent of the Responsible Entity; or
- (c) the Responsible Entity using any other appropriate method the Responsible Entity decides to adopt (including estimates of value based on objective criteria where actual figures are not available) which is capable of being verified independently by a Valuer.

15.7 Revaluation

The Responsible Entity may cause some or all Scheme Property to be revalued whenever it sees fit and shall do so from time to time having regard to the nature of the property.

16 Transfer while the Scheme is Registered or Listed

16.1 Application of this clause

This clause 16 applies while the Scheme is Registered or Listed.

16.2 Transfer

Subject to this deed and the ASX Settlement Operating Rules in respect of a transfer, a Member may only transfer Units in the manner the Responsible Entity from time to time prescribes.

16.3 Acceptance of transfers

- (a) The Responsible Entity may refuse to register any transfer of Units if permitted to do so under this deed or the Listing Rules, or if there is a lien over the Units.
- (b) The Responsible Entity is not obliged to register a transfer of Units that are not Listed where:
 - (i) the transferee does not meet the Responsible Entity's criteria for a Member;
 - (ii) the transfer is not duly stamped (where required) or otherwise is inconsistent with the form of transfer prescribed by the Responsible Entity; or
 - (iii) any amount payable by the transferee to the Responsible Entity in respect any of the transferor's Units remains unpaid.
- (c) While Stapling applies, a transfer of a Unit will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this clause 16, the transfer relates to or is accompanied by a transfer or a copy of a transfer for each Attached Security in favour of the same transferee.
- (d) Subject to the ASX Settlement Operating Rules and the Listing Rules, while Stapling applies, the Responsible Entity must not register a transfer of a Unit

unless the corresponding Attached Securities are also to be transferred, or are capable of transfer, simultaneously.

- (e) A person who attempts to transfer a Unit which is not accompanied by the transfers referred to in paragraph (c), or a copy of such a transfer for the relevant Attached Securities to which a Unit is Stapled, will:
 - (i) be taken to authorise the Responsible Entity, as agent for the transferor, to effect a transfer of the relevant Attached Securities in accordance with the constitutions of each other Stapled Entity to the same transferee; and
 - (ii) cause all rights to distributions attached to that Unit to be suspended until the transfers referred to in paragraph (c) relating to the other Attached Securities are also provided.

16.4 Refusal to register

- (a) The Responsible Entity must;
 - (i) except as permitted by ASX, refuse to register any transfer of Units or other Securities which are Restricted Securities if that transfer is or might be in breach of the Listing Rules or any restriction agreement entered into by the Responsible Entity under the Listing Rules in relation to the Units; and
 - (ii) refuse to register any transfer where the Responsible Entity is required to do so by the Listing Rules.
- (b) Despite clauses 16.2 and 16.4(a), the Responsible Entity must not refuse or fail to register or give effect to, or delay or in any way interfere with, a Proper ASTC Transfer of Units or other Securities quoted by ASX.
- (c) If a person has lodged a transfer which the Responsible Entity has refused to register, the Responsible Entity must, within five Business Days after the date of lodgement, give to the lodging person written notice of the refusal and the reasons for it.
- (d) Subject to clause 16.4(b), Restricted Securities cannot be disposed of during any escrow period except as permitted by the Listing Rules or ASX. The Responsible Entity will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

16.5 Certificates and Holding Statements for Units

- (a) Subject to clause 16.5(b), the Responsible Entity is under no obligation to and may decline to issue Certificates for Units. The Responsible Entity may, at any time, send a Member details of Units held by, Unit transactions of, or distributions to, that Member. The Responsible Entity may, with the consent of the relevant Member, cause Units that are in a certificated form to become uncertificated. Any such change will not in any way affect the rights or obligations of the Member with respect to such Units.
- (b) Where required in relation to Stapled Units, the Responsible Entity must issue Certificates and holding statements as follows:
 - (i) while the Units or Scheme is not Listed, it must comply with its obligations under the Corporations Act regarding the issue to Members of Certificates for Stapled Units; and

- (ii) while the Units or Scheme are Listed:
 - (A) in relation to Uncertificated Holdings, the Responsible Entity must comply with its obligations under the Listing Rules and the ASX Settlement Operating Rules regarding the provision to Members of holding statements;
 - (B) in relation to Certificated Holdings, the Responsible Entity must comply with its obligations under the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules regarding the issue to Members of Certificates for Stapled Securities; and
 - (C) subject to the Listing Rules, the Responsible Entity may elect not to maintain a certificated subregister and that all Stapled Units or any class of Stapled Units may only be held as Uncertificated Holdings.
- (c) The Responsible Entity may order lost, damaged or defaced Unit Certificates be cancelled and, if necessary, replaced by new Unit Certificates.

16.6 Electronic settlement

- (a) The Responsible Entity may in relation to the Scheme participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules, or corresponding laws or securities exchange rules in any other country.
- (b) If the Responsible Entity in relation to the Scheme participates in a system of the kind described in clause 16.6(a), then despite any other provision of this deed:
 - (i) Units may be transferred, and transfers may be registered, in any manner required or permitted by any one or more of the Listing Rules, or the ASX Settlement Operating Rules, as applicable (or corresponding laws or securities exchange rules in any other country) applying in relation to the system;
 - (ii) the Responsible Entity must, in relation to the Scheme, comply with and give effect to those rules; and
 - (iii) the Responsible Entity may, in accordance with those rules, decline to issue certificates for holdings of Units that are Listed (whether as part of a Stapled Security or otherwise).

16.7 Transfer instruments

- (a) A written transfer instrument must be:
 - (i) executed by the transferor or (where the Corporations Act permits) stamped by the transferor's broker; and
 - (ii) unless the Responsible Entity decides otherwise, executed by the transferee or (where the Corporations Act permits) stamped by the transferee's broker.
- (b) Subject to the Corporations Act, the written transfer instrument may comprise more than one document.

16.8 Timing of transfer

Except as required by the ASX Settlement Operating Rules a:

- (a) transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units; and
- (b) transfer of Units does not pass the right to any distributions on the Units until such registration.

17 Proportional Takeover Bid

17.1 Application of this clause

This clause 17 applies while the Scheme is Registered or Listed.

17.2 Transfers

Registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid is prohibited unless and until an Approving Resolution approving the Proportional Takeover Bid is passed.

17.3 Voting entitlements

A person (other than the Bidder or an associate of the Bidder) who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held Bid Class Units:

- (a) is entitled to vote on an Approving Resolution; and
- (b) has one vote for each Bid Class Unit held.

17.4 Meeting

Where offers have been made under a Proportional Takeover Bid, the Responsible Entity must ensure that an Approving Resolution is voted on at a meeting of the persons described in clause 17.3 before the Approving Resolution Deadline.

17.5 Voting threshold

An Approving Resolution is passed if more than 50% of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.

17.6 Meeting rules

The provisions of this deed that apply to a meeting of the Scheme apply, with such modifications as the circumstances require, to a meeting that is called under this clause as if the meeting was a meeting of the Scheme.

17.7 Notice of vote outcome

If an Approving Resolution to approve the Proportional Takeover Bid is voted on in accordance with this clause before the Approving Resolution Deadline, the Responsible Entity must, on or before the Approving Resolution Deadline, give:

- (a) the Bidder; and
- (b) each relevant financial market,

a written notice stating that an Approving Resolution to approve the Proportional Takeover Bid has been voted on and whether it was passed or rejected.

17.8 No vote

If no resolution has been voted on in accordance with this clause as at the end of the day before the Approving Resolution Deadline, a resolution to approve the Proportional Takeover Bid is taken, for the purposes of this clause, to have been passed in accordance with this clause.

17.9 Cessation of clause

This clause 17 will automatically cease to have effect upon 3 three years after the date the Scheme is Registered unless renewed in accordance with the Corporations Act prior to that date.

18 Transmission of Units

18.1 Death of joint holder

Unless law requires otherwise, the Responsible Entity must recognise only the surviving joint holders as being entitled to Units registered jointly in the names of a deceased Member and others. The estate of the deceased joint holder is not released from any liability in respect of the Units.

18.2 Death of single holder

The Responsible Entity must not recognise anyone except the legal personal representative of the deceased Member as having any title to the Units registered in the sole name of a deceased Member. If the legal personal representative gives the Responsible Entity the documents described in the Corporations Act or other information that satisfies the Responsible Entity of the representative's entitlement to be registered as holder of the Units:

- (a) subject to clauses 16 and 18.4 the Responsible Entity must register the legal personal representative as the holder of the Units on the Register as soon as practicable after receipt of a written and signed notice to the Responsible Entity from the legal personal representative requiring it to do so; and
- (b) whether or not registered as the holder of the Units, the legal personal representative:
 - (i) may, subject to clause 16, transfer the Units to another person; and
 - (ii) has the same rights as the deceased Member.

18.3 Transmission of Units on insolvency or mental incapacity

Subject to the *Bankruptcy Act 1966* (Cth), if a person entitled to Units because of the insolvency or mental incapacity of a Member gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as holder of the Units:

- (a) subject to clauses 16 and 18.4 the Responsible Entity must register that person as the holder of the Units as soon as practicable after receipt of a written and signed notice to the Responsible Entity from that person requiring it to do so; and
- (b) whether or not registered as the holder of the Units, that person:
 - (i) may, subject to clause 16, transfer the Units to another person; and
 - (ii) has the same rights as the insolvent or incapable Member.

18.4 Refusal to register holder

The Responsible Entity has the same right to refuse to register a legal personal representative or person entitled to Units on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.

19 Notices

19.1 Notices sent by mail

Subject to clause 19.2, any consent, notice, report, statement given, or required to be given, in writing, or cheque may be sent to a Member or joint Members by prepaid post to the address of the Member, or of the first named of joint Members, shown in the Register. Notices of Meeting sent by prepaid post are taken to be received on the next Business Day after posting. All other types of correspondence sent by prepaid post are taken to be received at the time which they would ordinarily be delivered.

19.2 Notices sent by email or facsimile

If a Member, or the first named of joint Members shown on the Register, has given its electronic address or facsimile number to the Responsible Entity, any consent, notice, report or statement given or required to be given in writing may be sent to the Member or joint Members electronically at the address or number given to the Responsible Entity from time to time, and is taken to be received on the next Business Day after it was sent.

20 Alterations to the Terms of this deed

20.1 While Scheme is not Registered

While the Scheme is not Registered, should it become desirable in the opinion of the Responsible Entity that the terms of this deed be altered or added to (including any alterations to the date of determination of the Scheme), then the Responsible Entity shall circulate to all Members full particulars of and reasons for the proposed alterations and additions. The Responsible Entity shall convene a meeting of Members with no less than 21 days' notice given to all Members subsequent to the circulation of the aforementioned particulars and reasons. Such additions and alterations to this deed must be approved by a majority of the votes of those present at that Meeting. Upon the execution of a suitable deed, those additions and amendments shall be deemed to form part of this deed.

20.2 While Scheme is Registered

While the Scheme is Registered, the Responsible Entity may, in accordance with the Corporations Act, by supplemental deed modify, add to or otherwise delete from, this deed.

20.3 Alterations to comply with AMIT Law

The Responsible Entity may make such amendments to this deed as it considers appropriate in order for the Scheme to qualify as an Attribution Managed Investment Trust or which it considers necessary or expedient in order for it to be able to make distributions and allocate Scheme related income tax liabilities in a manner which is compliant with the AMIT Law.

21 Stapling

21.1 Stapling commencement

On, or prior to, the date the Units and Attached Securities are Listed, each:

- (a) ordinary Unit must be Stapled to one of each ordinary Attached Security to form a Stapled Security;
- (b) other class of Unit issued from time to time must be Stapled to one of each Attached Security of the corresponding non-ordinary class to that Unit, to form a Stapled Security; and
- (c) Unit issued prior to that date may be transferred otherwise than as part of a Stapled Security for the purposes of that Unit becoming Stapled to an Attached Security.

21.2 Issues

While Stapling applies, the number of issued Units must equal the number of Attached Securities in each of the Stapled Entities on issue at that time.

21.3 Responsible Entity's obligations

- (a) The Responsible Entity must not do, nor refrain from doing, anything that would directly or indirectly result in a Unit no longer being Stapled to an Attached Security to form a Stapled Security, except in accordance with clause 21.4. In particular the Responsible Entity must not reorganise (within the meaning given in Listing Rules 7.18 to 7.24 (inclusive) including any consolidation, division, subdivision, cancellation, buy back of any capital) any Units unless at the same time the Attached Securities that are Stapled to those Units are also reorganised so that the person holding Units holds an equal number of each Attached Security.
- (b) While Stapling applies, the Responsible Entity must use reasonable endeavours to ensure that Units are dealt with in a manner consistent with the constitutions of the Stapled Entities.
- (c) Subject to the Corporations Act, Listing Rules and any agreement with the issuer of the Attached Securities, the Responsible Entity may:

- (i) from time to time cause any securities, units or interests in another entity to become Stapled so that securities, units or interests (as applicable) in that entity become Attached Securities; and
- (ii) without limiting any other provision of this deed, effect such Stapling by distributing in specie to Members the securities, units or interests (as applicable) of such an entity. To the extent permitted under the Corporations Act, Members are deemed to have agreed to becoming members of the entity.

21.4 Cessation of Stapling Provisions

- (a) Each Unit comprising part of a Stapled Security will remain Stapled for so long as the Stapling Provisions apply.
- (b) The Stapling Provisions will cease to apply or be suspended, regardless of any other provision of this deed, if:
 - (i) the Responsible Entity makes a determination; and
 - (ii) Members of Units that are Stapled approve by Special Resolution,or
 - (iii) an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity or its property (as the case may be) and the Responsible Entity resolves,that the Stapling Provisions will cease to apply or be suspended (as the case may be).
- (c) The Stapling Provisions will cease to apply or be suspended under clause 21.4(b) above from such time as determined under the Special Resolution (in the case of clause 21.4(b)(i)) or by the Responsible Entity in its absolute discretion (in the case of clause 21.4(b)(iii)).

21.5 Stapled Security Register

- (a) The Stapled Securities must be entered into a register of Stapled Securities.
- (b) The Responsible Entity must maintain or cause to be maintained the register of Stapled Securities which records the names and addresses of the Members holding Units, the number of Units held, the number of Attached Securities held by the Members and any additional information required by the Corporations Act, the Listing Rules or by the Responsible Entity from time to time.
- (c) The register of Stapled Securities will, for so long as Stapling applies, be deemed to constitute part of the Register, and in this case all other provisions of this deed applicable to the Register will apply only to any part of the Register kept in addition to the register of Stapled Securities.

22 Management of Scheme

22.1 Responsible Entity to manage Scheme

The Responsible Entity must manage the Scheme and its Scheme Property and Scheme Liabilities while any remain.

22.2 Responsible Entity may engage advisers

The Responsible Entity may as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Responsible Entity or any Manager or Stapled Entity) investment managers, property managers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.

22.3 Reliance by Responsible Entity

The Responsible Entity may, in relation to the Scheme, rely and act on any:

- (a) advice, opinion or other information provided to the Responsible Entity or any Manager or Stapled Entity by a person of a category listed in clause 22.2; and
- (b) document which it is reasonable for the Responsible Entity to rely upon,

if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise (as the case may be).

22.4 Equality of treatment

The Responsible Entity, to the extent permitted by any ASIC Instrument, does not have to treat all Members equally, including by:

- (a) not making a pro rata offer to Members to certain Members; or
- (b) treating wholesale clients differently from other persons.

23 Powers of Responsible Entity

23.1 General and specific powers

The Responsible Entity shall have the exclusive right to manage and control the Scheme Property as it may deem for the best interests of the Members, free from all control by the Members, as fully and to the same extent as though the Responsible Entity was the sole legal and equitable owner thereof and shall not be subject to any obligations to the Members other than such as are expressly assumed hereunder and as required under the law, and shall have and may, without limitation, exercise the following powers in addition to those given to the Responsible Entity by law:

- (a) to invest the Scheme Property in any investment not hereby specifically authorised and whether or not involving waste or subject to liability which the Responsible Entity may consider suitable for investment of the Scheme Property or any part thereof as though the Responsible Entity was absolute owner of the Scheme Property;

- (b) to sell the Scheme Property or any part thereof including to itself on such terms as the Responsible Entity thinks fit;
- (c) to erect on any lands forming the whole or part of the Scheme Property any buildings or improvements of whatever nature or kind;
- (d) to alter repair add to demolish or remove any such buildings;
- (e) to commence, purchase, acquire or carry on one or more businesses or enterprises either alone or in conjunction with any other person persons or bodies corporate or unincorporated (including itself in its own right and in its capacity as Responsible Entity) and upon such terms and conditions as it considers satisfactory and for that purpose to employ the whole or any part of the Scheme;
- (f) to employ and or engage any agents servants or employees in connection with all or any of such businesses or enterprises or any other purpose connected with the management of the Scheme;
- (g) to lease, let, demise, dispose of all or any of such businesses or enterprises or any part or parts thereof at such time or times and upon such terms and conditions as it shall think fit;
- (h) to sell any Scheme Property by public auction or private treaty and either in whole or in part upon such terms and conditions as it thinks fit and in addition to buy any properties so offered for sale by auction and to resell the same if it so desires;
- (i) to sign execute and deliver all transfers and documents and to give all undertakings and assurances and to sign and deliver all receipts and do all acts necessary to authenticate and perfect any such sale or to perform or give effect to any of the powers granted to it under this deed;
- (j) to lease, let or demise all or any of the lands or premises forming part of the Scheme Property for such purposes at such rentals and on such terms and conditions as it thinks fit;
- (k) to exercise all rights, powers, discretions and obligations in relation to any investment forming part of the Scheme Property, including but not limited to:
 - (i) attending meetings;
 - (ii) voting or taking part in or consenting to any corporate or shareholder action;
 - (iii) appointing proxies for meetings; and
 - (iv) paying calls under any contract;
- (l) to apply the Scheme Property to the benefit of one or more Stapled Entities;
- (m) to accept surrenders of any leases or tenancies;
- (n) from time to time raise and borrow monies (from any source whatever including from itself) without security or upon the security of the Scheme Property or any part thereof at such rate of interest and upon such terms and conditions as it thinks fit and for this purpose to grant and execute all such mortgages, charges, liens and/or other securities as it considers requisite or necessary for that purpose;
- (o) to lend or give any form of financial accommodation;

- (p) to lend money to any person including a Member:
 - (i) with or without interest;
 - (ii) with or without security; and
 - (iii) repayable on any terms the Responsible Entity decides;
- (q) to refer or cause to be submitted to arbitration any matter, difference or demand relating to the Scheme at any time;
- (r) to settle, compound or compromise any claim, demand, action, proceedings or dispute relating in any way to the Scheme upon such terms and conditions as it thinks fit and for any such purpose to execute and deliver all discharges, releases, receipts and written instruments which it considers necessary or expedient and just and for the purpose of the power hereby granted the Responsible Entity may act in relation to the Scheme Property as fully and completely as it could do if it was the absolute owner thereof;
- (s) to apportion blended funds and to determine whether moneys relating to the Scheme in any way are capital or income. All such apportionments or determinations made by the Responsible Entity shall be final and binding on all persons concerned;
- (t) to sell, transfer, mortgage, charge, let, hire, lease or exchange any real and/or personal property forming part of the Scheme Property and for that purpose do all acts and execute all instruments, deeds, documents and writings which it may consider expedient;
- (u) to invest any monies available for investment:
 - (i) in any securities authorised by law;
 - (ii) upon fixed deposit in any trading bank;
 - (iii) in the purchase, replacement, substitution and/or improvements of real and/or personal estate;
 - (iv) in the purchase of shares or stock in any public or private company and whether listed on a stock exchange or not;
 - (v) in accepting bonus shares or acquiring the proportion of shares to which the Scheme Property may be entitled in the increase of capital of any company in which the Responsible Entity may hold shares or stock and to determine whether the same shall constitute capital or income;
 - (vi) in accepting any offer by a company to purchase any real and/or personal property forming part of the Scheme Property, to accept as satisfaction of the purchase price, shares or stock in the company purchasing the property or the cash value thereof or otherwise, as to the Responsible Entity may appear proper, or partly one and partly the other as the Responsible Entity may determine; or
 - (vii) in any investments real or personal which the Responsible Entity may think fit;

- (v) to purchase or acquire sell and develop transfer or mortgage any real property or crown leasehold property in the Commonwealth of Australia;
- (w) to erect new buildings on freehold or Crown leasehold land owned by the Responsible Entity and to employ architects and building contractors for this purpose;
- (x) to carry on any business either solely or in partnership with any person or persons as the Responsible Entity shall think fit and for that purpose to retain and employ in the said business the whole or any part of the Scheme Property and also to advance for the purpose of any such business such further moneys forming part of the Scheme Property as the Responsible Entity shall think proper and to expend any moneys forming part of the Scheme Property in managing and carrying on the said business including the purchase or acquisition of any real or personal property and if the Responsible Entity considers it necessary in the course of such management or carrying on the said business to borrow on mortgage and give security over any property forming part of the assets of such business with priority (if the Responsible Entity thinks fit) over any charge hereby created and generally to set in all matters relating to the said business as if the Responsible Entity were beneficially entitled thereto;
- (y) to borrow or raise money and secure the repayment thereof in such manner as the Responsible Entity shall think fit and to accept and/or execute guarantees or undertakings for any purpose in connection with the administration of the Scheme Property;
- (z) to open a bank account or bank accounts and to operate on the same;
- (aa) to employ and remunerate any person for services rendered to the Responsible Entity in the execution and administration of the Scheme;
- (bb) to accept from any party the gift or testamentary disposition of any real and/or personal property subject to this deed;
- (cc) to vary any of the investments for the time being representing the capital;
- (dd) to expend moneys in repairs, painting, furnishing, decoration, alterations or additions;
- (ee) to purchase life assurance policies on the life of Members and to pay all premiums thereon from the income of the Scheme;
- (ff) to insure and keep insured to the full insurable value or to such value as the Responsible Entity in the circumstances shall think proper such of the assets for the time being forming part of the Scheme Property as are capable of being insured;
- (gg) to distribute any part of the Scheme Property in kind;
- (hh) to appropriate any real or personal property for part of the Scheme Property in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of the vested share of any Member and for such purposes to ascertain and fix the value of the property so to be appropriated;
- (ii) to prosecute, defend, compromise or compound any action suit proceedings difference or demand relating to the Scheme Property or any part thereof or any matter incidental thereto upon any terms which the Responsible Entity shall think

proper and to refer any such difference or demand to arbitration and to execute all instruments and do all things expedient for such purposes or any of them and in all cases in which any question of law or equity shall arise relating to the Scheme Property or any part thereof to settle and arrange the same in such manner as the Responsible Entity shall think fit and to abandon or relinquish any claim and to adjust settle or approve all accounts relating to the Scheme Property or any part thereof and to determine whether any monies shall for the purpose of these presents be considered income or otherwise and to execute all releases and do all things relating to the said Scheme Property as fully and absolutely as the Responsible Entity could if it were the absolute owner thereof and without being answerable for any loss which may be occasioned thereby;

- (jj) to purchase, take on lease or in exchange, hire, and otherwise acquire any real and personal property and any rights and privileges which the Responsible Entity may think necessary or convenient for the businesses or purposes of the Scheme, and in particular any land, buildings, easements, machinery, plant and stock in trade;
- (kk) to effect life assurance policies on the life of any employee of the Scheme, or if a Member is a trustee under another trust deed, on the life of any beneficiary under that trust deed and to pay all premiums thereon from the income of the Scheme;
- (ll) to make superannuation payments upon any employee of the Scheme and for that purpose to execute such deeds, documents and writings as the Responsible Entity may think fit;
- (mm) to raise funds by way of acceptance, endorsement and discounting bills of exchange;
- (nn) to give any guarantee, indemnity, guarantee and indemnity or incur a liability of any kind or covenant or assume any debt or obligation for the payment of any money or the performance of any contract, agreement, obligation or undertaking by any person, firm, company, corporation or association (including the trustee of a trust);
- (oo) to cease to hold any part of the Scheme Property on the terms of this deed and to commence to hold such part of the Scheme Property on the terms of any other trust in the absolute discretion of the Responsible Entity including for the avoidance of doubt, a trust which is not a potential Member of the Scheme;
- (pp) appoint a manager to manage the Scheme Property and to pay fees to such manager;
- (qq) to fetter its own discretion;
- (rr) to cause the Scheme or Securities to be Listed;
- (ss) without limiting this clause 23.1 and subject to the Corporations Act, to mix and mingle Scheme Property with the property of other co-investors (in which case it must keep appropriate records of the Scheme's interests in the co-investments); and
- (tt) to remove, give effect to or vary the Stapling Provisions only in accordance with clauses 21.4.

23.2 Power to deal derivatives

The Responsible Entity has the power, in its absolute discretion, and is authorised by the Members of the Scheme to enter:

- (a) Derivative Transactions; and
- (b) Master Agreements,

in its capacity as Responsible Entity of the Scheme.

23.3 Responsible Entity may delegate powers

The Responsible Entity, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it or any Manager or Stapled Entity, to do anything that it may lawfully delegate, including, but not limited to, holding any Scheme Property and executing documents on its behalf.

23.4 Buy Back of Units

The Responsible Entity may, but is under no obligation to, offer to acquire Units as Scheme Property. The Responsible Entity may elect that Units so acquired may be retained as Scheme Property, sold or redeemed.

23.5 Discretion

The Responsible Entity may determine whether to exercise, and the manner, mode and time of exercise of its powers, in its absolute discretion.

23.6 Independent rights

Subject to the Corporations Act, the Responsible Entity, and any Related Body Corporate or other Associate of the Responsible Entity, may (whether in its personal capacity or as trustee of any trust), subject always to acting in good faith to Members:

- (a) hold Units or Stapled Securities;
- (b) represent or act for, or contract with, individual Members;
- (c) deal in any capacity with the Responsible Entity, any Manager, a Stapled Entity or with any Related Body Corporate or Associate of the Responsible Entity, any Manager or a Stapled Entity or with any trust;
- (d) act in any capacity in relation to any other trusts of a Stapled Entity; or
- (e) receive and retain profits or benefits of any nature, in connection with the Scheme or otherwise, including buying or selling Scheme Property from or to itself in another capacity,

without being liable to account to the Scheme, to the Responsible Entity, or to a Member.

23.7 Stapled Entity benefits

Without limiting any other provision of this deed, the Responsible Entity may, while Stapling applies:

- (a) provide or obtain financial accommodation;

- (b) provide a negative pledge, guarantee, indemnity or security or otherwise assume any debt or obligation; or
 - (c) otherwise enter into an arrangement,
- on behalf of or for the benefit of (whether solely or otherwise), a Stapled Entity.
-

24 Investment policy

The Responsible Entity will determine the investment policy for the Scheme and may vary its investment policy from time to time in its absolute discretion.

25 Outgoings

25.1 Expenses

All costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in the proper performance of its duties, including in connection with the following matters or of the following nature in relation to the Scheme, are payable or reimbursable out of Scheme Property:

- (a) preparation, approval, stamping, execution and printing of this deed and any deed amending this deed;
- (b) retirement and appointment of the Responsible Entity and any custodian;
- (c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this deed or the Scheme (but the Responsible Entity must repay to the Scheme any amount it has been advanced in respect of outgoings in connection to with proceedings in which it is found by a court to be liable for its own negligence, fraud, breach of trust or breach of duty);
- (d) convening and holding a meeting of Members and implementing a resolution of the meeting;
- (e) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (f) Taxes;
- (g) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Scheme Property;
- (h) fees payable to a person authorised by the Responsible Entity to hold Scheme Property;
- (i) expenses in connection with the establishment and conduct of any compliance committee including:
 - (i) remuneration of committee members;
 - (ii) the expenses of independent legal, accounting or other professional advice or assistance properly commissioned by the compliance committee;

- (iii) to the extent permitted by the Corporations Act, directly or indirectly, indemnifying or insuring a person who has been a compliance committee member for or against any liability, including costs, expenses and liabilities incurred by the person in defending civil or criminal proceedings;
- (j) fees payable to ASIC or another regulatory authority or Government Agency;
- (k) establishing and maintaining the Register, the Scheme accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (l) preparing and printing accounts, cheques and documents, posting them to Members, or paying Members;
- (m) any offer or invitation in respect of Units or other interests, including preparation, lodgement, registration, distribution and promotion of a Disclosure Document;
- (n) amounts payable to the Manager, administrators, advisers, agents, brokers, contractors, custodians, asset holders, asset managers, property managers, investment managers, underwriters or other persons engaged by the Responsible Entity (including legal costs on a full indemnity basis), which may include a Related Body Corporate or Associate of the Responsible Entity;
- (o) fees incurred by an auditor of the Scheme;
- (p) preparation and lodgement of taxation and other returns for the Scheme or the Scheme compliance plan;
- (q) commissions, holding fees and other amounts payable to an Australian financial services licensee or its representatives in relation to the Scheme including in relation to a Disclosure Document and any offer made thereunder;
- (r) terminating and winding up of the Scheme;
- (s) entering the Scheme in a survey;
- (t) fees payable to a ratings organisation;
- (u) fees payable to a Securities System authorised by the Responsible Entity to hold Scheme Property;
- (v) performance of the Responsible Entity's duties, exercise of the Responsible Entity's rights or powers, compliance with the law or administration of the Scheme;
- (w) establishment, development, maintenance and operation of computer facilities, both software and hardware for the administration of the Scheme;
- (x) dealing with applications for and redemption of Units or other interests, and determining the Issue Price;
- (y) any restructuring or Listing of the Scheme;
- (z) fees payable to a Related Body Corporate or other Associate of the Responsible Entity for services provided to the Responsible Entity in connection with the Scheme, where if these expenses had been properly incurred by the Responsible Entity, the expenses would be reimbursable out of the Scheme Property under this clause 25; and

- (aa) all expenses in connection with matters referred to in this clause 25, including but not limited to costs of appointing and maintaining staff, costs of computers and other systems to support these staff and costs of premises where staff and systems are located in connection with these matters.

25.2 Deferral and waiver

The Responsible Entity may in its discretion defer or waive reimbursement for an agreed period or any or all expenses or any part thereof under clause 25.1. Where reimbursement is deferred, the expense accrues daily until paid.

26 Responsible Entity's fees

26.1 Application of this clause

This clause 26 only applies while the Scheme is either Registered or Listed (or both Registered and Listed). If the Scheme is neither Registered nor Listed, the Responsible Entity is not entitled to any fee in consideration for acting as trustee of the Scheme.

26.2 General

- (a) Subject to proper performance by the Responsible Entity of its duties, the Responsible Entity is entitled to receive a fee out of the Scheme Property for managing the Scheme (**Management Fee**) of \$200,000 per annum.
- (b) The Management Fee, or any part of the Management Fee, is calculated and accrues daily and payable in arrears on the last Business Day of each calendar month.
- (c) The Management Fee is to be pro-rated for partial periods.
- (d) All fees as stated are exclusive of GST.

26.3 Waiver, deferral and reduction of fees

The Responsible Entity may waive or defer the receipt of any fee (or any part of a fee) or charge a lesser fee than it is entitled to receive under this deed.

26.4 Proper Performance

Despite any other provision of this deed, the right of the Responsible Entity to be paid fees out of Scheme Property, or to be indemnified out of Scheme Property for any liabilities or expenses incurred in relation to the performance of its duties is available only in relation to the proper performance of those duties.

26.5 Issue of Units to Responsible Entity

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may elect that for any period it considers appropriate it is to be issued Units in such class determined by the Responsible Entity instead of cash in payment of any of its fees or payment or reimbursement of its expenses under this deed.

27 Meetings

27.1 Convening Meetings

- (a) While the Scheme is Registered, the provisions of Part 2G.4 of the Corporations Act and the Listing Rules (when they apply) apply to meetings of Members.
- (b) The Responsible Entity may at any time convene and conduct a Meeting and must do so in accordance with this deed and the Corporations Act (if applicable).
- (c) A Meeting may be held at two or more venues simultaneously using technology that gives the Members as a whole a reasonable opportunity to participate.
- (d) While Stapling applies, a Meeting may be convened and conducted in conjunction with a meeting of any members of another Stapled Entity.

27.2 Chair

Subject to the Corporations Act:

- (a) the Responsible Entity may appoint a person to chair a Meeting of Members
- (b) If the Responsible Entity does not elect a chair, those Members present at a Meeting of Members may elect one; and
- (c) the chair of a Meeting need not be a Member.

27.3 Notices

- (a) Notice of a Meeting must be given in accordance with and contain the information required by, the Corporations Act.
- (b) A notice of Meeting given to a Member in relation to its Stapled Securities:
 - (i) must be given consistently with (but need not be the same as) the requirements under the constitution of each Stapled Entity; and
 - (ii) may be the same notice for a meeting of members of another Stapled Entity.
- (c) For persons registered jointly as holders of a Unit, notices and other communications given to or by the holder named first in the Register will be taken to be validly given by all the joint Members.
- (d) Each of the following is entitled to receive notice of a Meeting:
 - (i) every Member;
 - (ii) every Director;
 - (iii) ASX, whilst Units or Stapled Securities are Listed;
 - (iv) the auditor of the Scheme;
 - (v) the Manager (if any); and
 - (vi) each Stapled Entity and each Stapled Entity's members.

27.4 Admission to general meetings

- (a) The chairperson of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard or banner;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) is not:
 - (A) a Member or a proxy, attorney or Representative of a Member;
 - (B) a director;
 - (C) an auditor of the Responsible Entity;
 - (D) a Manager; or
 - (E) a representative of any Stapled Entity.
- (b) A person requested by the Responsible Entity or the chairperson to attend a general meeting is entitled to be present, whether the person is a Member or not.
- (c) Nothing in this clause 27 or in clause 28 is taken to limit the powers conferred on the chairperson by law.

27.5 Proxies

- (a) Subject to this deed and the proxy's term of appointment, a proxy has the same rights as the appointing Member to attend, speak and vote for a Member even if the Member is present at the Meeting.
- (b) An appointment of a proxy is valid even if it does not include the Member's address or the Scheme's name.
- (c) An appointment of a proxy for a Meeting is only effective in relation to a Meeting if the Responsible Entity receives the appointment at least 48 hours before the time for holding the Meeting (unless the notice of meeting specifies a shorter time period).
- (d) Subject to the Corporations Act, the form of proxy used by a Member may be the same form as the Member uses to appoint a proxy in respect of its Attached Securities (if any).

27.6 Attorneys and representatives

A Member may:

- (a) appoint an attorney; or
- (b) if the Member is a body corporate, appoint a representative,

to act for the Member at Meetings or to appoint a proxy to act for the Member at Meetings.

27.7 Rights of attorneys and representatives

Unless restricted by the terms of appointment or the Corporations Act, an attorney or representative may exercise the same powers on the Member's behalf that the Member could exercise at a Meeting or in voting on a resolution.

27.8 Standing appointments

A Member may appoint a proxy, attorney or representative to act at a particular Meeting or make a standing appointment. A Member may revoke any appointment.

27.9 Responsible Entity must receive appointments

The appointment of a proxy, attorney or representative is only effective in relation to a Meeting if the Responsible Entity receives the appointment:

- (a) in the case of a proxy or attorney, at least 48 hours before the time for holding the Meeting (unless the notice of meeting specifies a shorter time period); and
- (b) in the case of a representative, before the commencement of the Meeting.

27.10 Other types of Units

Clause 27 applies also, to the extent appropriate, to meetings of Members of any type or class of Unit.

28 Conduct of meetings

28.1 Chairperson's powers

- (a) The chairperson of a Meeting is responsible for the general conduct of the Meeting and for the procedures to be adopted at the Meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
 - (i) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the Meeting; and
 - (ii) the proper and orderly casting or recording of votes at the Meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) Subject to the Corporations Act, the chairperson of a Meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the Meeting:

- (i) terminate debate or discussion on any business, question, motion or resolution being considered by the Meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the Meeting to continue.
- (c) Subject to the Corporations Act, the chairperson of a Meeting may:
 - (i) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of Meeting; and
 - (ii) refuse to allow any amendment to be moved to a resolution of which notice has been given in the notice of Meeting.
- (d) A decision by a chairperson under clause 28.1 is final.
- (e) No business may be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.

28.2 Chairperson may adjourn Meeting

The chairperson may adjourn a Meeting to a time and place as the chairperson sees fit and must do so if the meeting directs him or her to do so. The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

28.3 Closing of Register

When a Meeting is to be held, the Responsible Entity must, subject to the Listing Rules and ASX Settlement Operating Rules, close the Register at an appropriate date and time to determine those Members entitled to vote at the Meeting, and entitled to notification of the meeting.

28.4 Joint Members

- (a) The first named of joint Members shown in the Register (or if that person does not vote, the next named joint Member, or if that person does not vote, the next named, and so forth) may exercise the voting rights of jointly-held Units.
- (b) In the case of joint Members, the vote of the Member whose name appears first in the Register will be accepted to the exclusion of the votes of the other joint holders.

28.5 Resolutions

- (a) The chairperson's declaration of the validity of any vote and the result of voting is conclusive.
- (b) A resolution duly passed binds all Members, whether or not present at the Meeting.
- (c) A resolution in writing signed by all Members will be deemed to have been duly passed at a meeting.

28.6 Minutes

Minutes of a Meeting signed by the chairperson constitute conclusive evidence of the proceedings of the Meeting.

28.7 Show of hands

Unless a poll is demanded under the Corporations Act or clause 28.9 or a poll is required under the Corporations Act or clause 28.8:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

28.8 Resolutions requiring a poll

A Special Resolution or an Extraordinary Resolution put to a vote at a general meeting must be decided by poll.

28.9 Demanding a poll

- (a) Either before or on declaration of the result of a show of hands, a poll may be demanded by:
 - (i) the chairperson;
 - (ii) at least five Members entitled to vote on the resolution; or
 - (iii) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.
- (c) A poll cannot be demanded at a meeting on the election of the chairperson of the Meeting.

28.10 When and how polls must be taken

A poll will be taken when and in the manner the chairperson directs, except for a poll demanded on the adjournment of a meeting, which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

28.11 Equal number of votes

If an equal number of votes is cast for and against a resolution:

- (a) the chairperson does not have a casting vote in addition to the chairperson's vote as a Member, proxy, attorney or representative; and
- (b) the resolution is not passed.

28.12 Postal ballot

Subject to the Corporations Act and the Listing Rules, a Meeting may be conducted by postal ballot in accordance with arrangements the Responsible Entity may determine reflecting, as closely as may be practicable, the provisions of this deed.

28.13 Destruction of proxy forms and ballot papers

In the absence of any resolution to the contrary, all proxy forms and ballot papers may be destroyed 14 days after the closure of a Meeting.

28.14 Right to attend and be heard

The Scheme auditor, Manager (if any) and while Stapling applies, representatives of any Stapled Entity are entitled to:

- (a) attend any general Meeting;
- (b) be heard at any general Meeting on any part of the business of the Meeting that concerns them in their respective capacity, even if:
 - (i) the Scheme auditor or Manager retires at the general Meeting; or
 - (ii) Members pass a resolution to remove the Scheme auditor (from office) or vary or remove effect to the Stapling Provisions; and
- (c) authorise a person in writing to attend and speak at any general Meeting as their representative.

28.15 Voting entitlements

- (a) On a show of hands every Member who is an individual and is present in person or by proxy or attorney or, being a corporation, is present by proxy, attorney or representative, has one vote.
- (b) On a poll, a Member has, in relation to a resolution, the number of votes determined in accordance with section 253C(2) of the Corporations Act and the value of the Member's total interests must be determined at such time as the Responsible Entity specifies.
- (c) A proxy is entitled to vote on a poll and a show of hands.

28.16 Other types of Units

This clause applies also, to the extent appropriate and with the necessary amendments, to meetings of Members of any type or class of Unit.

28.17 Quorum

No business may be transacted at a Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum consists of two Members entitled to vote at the meeting, unless there is only one Member entitled to vote at the Meeting, in which case the quorum is one.

28.18 Determining quorum

Each individual present at a Meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards a quorum.

28.19 Quorum not present

If a quorum is not present within 30 minutes after the time appointed for a Meeting:

- (a) where the Meeting was convened by, or at the request of, a Member or Members, the Meeting must be dissolved; or
- (b) in any other case:
 - (i) the Meeting stands adjourned to such day, and at such time and place, as the Responsible Entity determines or, if no determination is made by the Responsible Entity, to the same day in the next week at the same time and place; and
 - (ii) if, at the adjourned Meeting, a quorum is not present within 30 minutes after the time appointed for the Meeting, the Meeting must be dissolved.

29 Auditor

While the Scheme is Registered, the Responsible Entity must appoint and may at any time replace as auditor of the Scheme either a registered company auditor, or a firm of chartered accountants of which at least one partner is a registered company auditor.

30 GST

30.1 Definitions

Expressions used in this clause 30 have the same meaning as those expressions in the GST Law.

30.2 GST indemnity

If the Responsible Entity must pay GST on any supply by it under or in connection with this document made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Responsible Entity may recover the amount of that GST out of the Scheme Property. However, the Responsible Entity must not recover out of the Scheme Property any amount for GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.

30.3 Refund to Scheme for GST overpaid

The Responsible Entity must refund to the Scheme any over recovery of GST by it on any supply referred to in clause 30.2 out of the Scheme Property. The Responsible Entity need not refund to the Scheme any amount for GST paid to the Commissioner of Taxation unless the Responsible Entity is entitled to a refund or credit for that amount.

30.4 GST on claims

If the Responsible Entity pays money or distributes property to a Member to satisfy a claim or a right to a claim for a breach of duty by the Responsible Entity under or in connection with this deed (for example, in relation to a breach of trust) and that payment gives rise to a liability to pay GST by the Member, the Responsible Entity must pay the amount of that GST to and indemnify the Member against that amount. The Responsible Entity must not recover out of the Assets any amount for GST paid by it under this clause 30.4.

30.5 GST on expenses

If the Responsible Entity has a claim under or in connection with this document for any cost, fee or expense on which it must pay an amount for GST, the claim is for the cost, fee or expense plus the amount for GST (except to the extent that the Responsible Entity is entitled to an input tax credit for any amount for GST in respect of that cost, fee or expense).

31 Complaints

The Responsible Entity will issue interests in the Scheme to Wholesale Clients and Retail Clients.

31.1 Retail Clients

The Responsible Entity will, in relation to Members that are Retail Clients, comply with the dispute resolution requirements set out under section 912A(2) of the Corporations Act.

31.2 Wholesale Clients

The Responsible Entity must apply the following procedure in relation to a complaint of a Member that is a Wholesale Client:

- (a) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
- (b) the Responsible Entity will ensure that a complaint is acknowledged in writing as soon as practicable and a Member making the complaint is treated courteously; and
- (c) the Responsible Entity will ensure that a final written response will be provided to the Member within 45 days of receipt of the complaint and in a manner that is fair to the Member and Responsible Entity or its officers or employees against whom it is made. The final written response will inform the Member of the final outcome of their complaint within the internal dispute resolution scheme (including the remedies available to the Member).

32 Directors

Subject to the Corporations Act and subject always to acting in good faith to Members, no Director shall be prevented by his office or disqualified for any other reason from becoming and remaining a Member and no Director who is a Member shall be disqualified by his office from contracting with the Responsible Entity or the Scheme as a Member or as a vendor, purchaser, broker, solicitor, accountant, servant or other agent or otherwise, nor shall any contract or arrangement entered into by or on behalf of the

Responsible Entity or the Scheme or the Members in which any Director who is a Member is interested be avoided, nor shall that Director be liable to account to the Responsible Entity or the Scheme or the Members for any profit made or realised by any such contract or arrangement, and any Director may vote as a Director and/or Member of the Responsible Entity or as a Member at all meetings notwithstanding their interest as aforesaid.

33 Dealings with Scheme and Scheme Members

33.1 Dealings by Responsible Entity and Associates

Subject to the law and the Listing Rules, the Responsible Entity and any one or more of its Associates may at any time:

- (a) in any capacity subscribe for, purchase, hold or otherwise deal with Units;
- (b) be a responsible entity, trustee or manager in relation to any other managed investment schemes or trusts;
- (c) act in any representative, fiduciary or professional capacity on its own behalf or on behalf of itself or with any other of them in any capacity or with any Member;
- (d) invest in and maintain as Scheme Property interests in other managed investment schemes managed or promoted by the Responsible Entity or any of its Associates; and
- (e) be interested in or enter into any contract or transaction with itself in any capacity or with any other of them in any capacity or with any Member or with any company or other entity any part of whose units, or shares or other issued capital forms part of the Scheme Property.

33.2 Responsible Entity and Associates not liable to account

The Responsible Entity and its Associates may retain for their own benefit and are not liable to account to the Scheme, the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 33.1.

33.3 Responsible Entity as a Member

Subject to the Corporations Act, where the Responsible Entity acquires Units (on its own account or in some other capacity):

- (a) the Responsible Entity may be registered as a Member in respect of the Units;
- (b) the Units acquired by the Responsible Entity are not cancelled or redeemed by reason of their acquisition by the Responsible Entity or the registration of the Responsible Entity as a Member in respect of them and the Responsible Entity may dispose of the Units to other Members or to third parties; and
- (c) Units held by the Responsible Entity confer on the Responsible Entity all of the benefits and rights of any other Member under this deed and the law.

34 Dealings with Responsible Entity

34.1 Discharge of payment obligations

The receipt by the Responsible Entity for any moneys or property paid or delivered to it as Responsible Entity in accordance with this deed shall effectually discharge the person paying the same therefrom and from seeing to the application thereof.

34.2 Third party dealings

So far as relates to the safety and protection of all persons contracting or dealing with the Responsible Entity and except in case of fraud by the person so contracting or dealing with the Responsible Entity:

- (a) no person contracting or dealing with the Responsible Entity shall be required or in any manner concerned or interested to require or ascertain whether any contract or dealing by the Responsible Entity is authorised in a manner required by this deed or is otherwise proper or to see to the application of any purchase or other moneys or any part thereof paid to the Responsible Entity; and
- (b) no such person shall be affected by actual knowledge or by direct or constructive or imputed notice that any such contract or dealing has not been authorised as aforesaid or is otherwise improper. All such transactions shall be deemed to be within the scope of this deed and to be valid and effectual accordingly.

34.3 Cancellation of cheques and transfers

- (a) The Responsible Entity may cancel a cheque it has issued, that is not presented within six months after the date the cheque is issued.
- (b) Subject to the Corporations Act, where the Responsible Entity cancels a cheque drawn in favour of a Member, the money may be:
 - (i) held by the Responsible Entity for the Member;
 - (ii) reinvested in Units (and where Stapling applies, in Stapled Securities, including Attached Securities) for the Member at the Issue Price, determined in accordance with clauses 6.7 and 6.8, prevailing at the next Valuation Time after the day the cheque is cancelled; or
 - (iii) dealt with by the Responsible Entity in accordance with applicable legislation relating to unclaimed money in the relevant state, territory or country on which unclaimed money laws apply to the money.
- (c) Subject to the Corporations Act, where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds which is unsuccessful on three occasions, the Responsible Entity may draw a cheque in favour of the Member or the money may be:
 - (i) held by the Responsible Entity for the Member;
 - (ii) reinvested in Units for the Member at the Issue Price, determined in accordance with clauses 6.7 and 6.8, prevailing at the next Valuation Time after the day the last attempt falls; or

- (iii) dealt with by the Responsible Entity in accordance with applicable legislation relating to unclaimed money in the relevant state, territory or country on which unclaimed money laws apply to the money.
- (d) If reinvestment in Units applies under this clause 34.3, the Responsible Entity is taken to have received and accepted an application for the relevant Units immediately before the applicable Valuation Time referred to in this clause 34.3.

34.4 Whole cents

The Responsible Entity will only pay whole cents, and any remaining fraction of a cent becomes Scheme Property.

34.5 Discharge of Responsible Entity

- (a) A payment to a Member or, in the case of joint holders of a Unit, to any of them in accordance with this clause 34 will discharge the Responsible Entity in respect of that payment.
- (b) A discharge or release by a Member or, in the case of joint holders of a Unit, by any of them to the Responsible Entity is a good discharge of the liability concerned.

34.6 Deductions for Tax

The Responsible Entity may deduct or withhold from any money to be paid (or other property to be distributed) to a Member or former Member, or received from a Member or former Member, any amount of Tax (or an estimate of it) or any amount owed by the Member or former Member to the Responsible Entity or any other person, that the Responsible Entity:

- (a) is required or authorised to deduct by law or under this deed; or
- (b) in its reasonable opinion, thinks should be deducted or withheld.

34.7 Responsible Entity's lien

- (a) The Responsible Entity has a first and paramount lien over all of a Member's Units in respect of any moneys payable to the Responsible Entity under this deed.
- (b) The Responsible Entity's lien on a Unit extends to all distributions payable in respect of the Unit and to the proceeds of sale of the Unit and to reasonable interest and expenses incurred because an amount is not paid.
- (c) The Responsible Entity may sell a Unit on which the Responsible Entity has a lien in any manner it thinks fit where:
 - (i) an amount in respect of which a lien exists under this clause 34.7 is presently payable; and
 - (ii) the Responsible Entity has, not less than 14 days before the date of the sale, given to the relevant Member a notice in writing demanding payment of that amount.
- (d) A notice under clause 34.7(c)(ii) must:
 - (i) set out the amount in respect of which the lien exists that is presently payable; and

- (ii) comply with the Listing Rules and the ASX Settlement Operating Rules.

34.8 Surrender of Units

- (a) The Responsible Entity may accept a surrender of a Unit by way of compromise of any claim as to whether or not that Unit has been validly issued or in any other case where the surrender is within the powers of the Responsible Entity.
- (b) Any Unit surrendered under this clause 34.8 may be sold, reissued or otherwise Disposed of in the same manner as a forfeited Unit.

35 Limitation of liability and indemnity

35.1 Responsible Entity's liability

To the extent legally permitted, where the Responsible Entity acts without fraud, negligence or a breach of trust involving a failure to show the degree of care and diligence required of it having regard to the powers, authorities or discretions conferred on it by this deed, the Responsible Entity is not liable to any future Responsible Entity, any Member or any other person:

- (a) for loss caused by:
 - (i) the Responsible Entity's acts or omissions in reliance on:
 - (A) the Register;
 - (B) the authenticity of any document;
 - (C) the opinion, advice or information of any service provider, barrister, lawyer, accountant, valuer or other expert instructed by the Responsible Entity or any Manager or Stapled Entity; or
 - (D) information from any banker or the auditor of the Scheme or any Manager or Stapled Entity,if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;
 - (ii) any act, omission, neglect or default of another person;
 - (iii) any act or omission required by law or by a court of competent jurisdiction;
 - (iv) any particular price or reserve not having been realised;
 - (v) any unnecessary payment having been made to a fiscal authority;
 - (vi) any act or omission of an operator of a securities title, transfer or holding system; or
 - (vii) another reason; or
- (b) in any event, to a greater extent than the investments, cash and other property to which the Responsible Entity is entitled and does recover through its right of

indemnity from Scheme Property actually vested in the Responsible Entity in accordance with this deed.

35.2 Indemnity

- (a) Subject to the Corporations Act, the Responsible Entity is indemnified out of the Scheme Property for any liability incurred by it in properly performing any of its duties in relation to the Scheme.
- (b) The Responsible Entity is not required to do anything for which it does not have a full right of indemnity out of Scheme Property available for that purpose.
- (c) Any indemnity to which the Responsible Entity is entitled under this deed is in addition to any indemnity legally permitted (including at law or in equity).
- (d) When calculating the amount of any liability incurred or to be incurred by the Responsible Entity for which it is entitled to be reimbursed or indemnified under this deed, the Responsible Entity must deduct an amount equal to any input tax credit (as defined in the GST Law) to which the Responsible Entity is entitled in connection with the liability.

35.3 Best interests

While Stapling applies, the Responsible Entity will not be in breach of trust or duty where the Responsible Entity acts in the best interests of Members, having regard to both their interests as holders of Units and their interests as members of other Stapled Entities.

36 Liability of Members

Subject to this deed, the liability of each Member is limited to the amount subscribed, or agreed to be subscribed by the Member, for Units. Recourse of the Responsible Entity and Scheme creditors is limited to Scheme Property. Any relationship of partnership or agency between the Responsible Entity and a Member in relation to the Scheme, this deed or anything done under this deed, is expressly excluded.

37 Winding up the Scheme

37.1 Winding up

On termination of the Scheme, the Responsible Entity must wind it up in accordance with:

- (a) this clause 37; and
- (b) any orders a court makes under the Corporations Act.

37.2 Procedure

To wind up the Scheme, the Responsible Entity must realise the Scheme Property and:

- (a) first, pay the expenses of the winding up;
- (b) next, pay all other fees, expenses and liabilities of the Scheme, including any unpaid fees payable to the Responsible Entity;

- (c) next, pay any preferential payments to Members in accordance with the rights attaching to the class of Units in accordance with clause 5.2(b) held by them; and
- (d) next, subject to the rights, restrictions and obligations attaching to a class of Units, distribute the balance to Members in proportion to the number of Units held by them.

37.3 Notice to Stapled Entities

Where Stapling applies, on or before commencement of the realisation of the Scheme Property, in accordance with this clause 37, the Responsible Entity must give the Stapled Entities notice that the Scheme is to be terminated and wound up. If any of the Stapled Entities are terminated or wound up under the provisions of their constitutions or by law, then the provisions of this deed relating to Stapling will cease to apply in respect of that Stapled Entity.

37.4 Distribution by instalments

The Responsible Entity may make a distribution under clause 37.2(d) in instalments.

37.5 Transfer of Scheme Property to Member

- (a) The Responsible Entity may transfer Scheme Property to a Member to satisfy, in whole or in part, a requirement to make a payment or distribution under clause 37.2 instead of making it in Cash.
- (b) The value of the Scheme Property to be transferred must be based on a valuation carried out by a Valuer within one month before the date of transfer of the Scheme Property. The Responsible Entity may determine that the costs associated with the valuation and transfer of the Scheme Property are payable by the Member.

37.6 Receipt and discharge

The Responsible Entity may require each Member to give it a receipt and discharge (in a form approved by the Responsible Entity) before it makes a payment or distribution under clause 37.2.

37.7 Timing for realisation of Scheme Property

As far as reasonably practicable having regard to the interests of Members, the Responsible Entity must realise the Scheme Property within 180 days after the termination of the Scheme, but the Responsible Entity may extend that period or otherwise postpone realising Scheme Property if it thinks it is in the interests of Members to do so. The Responsible Entity will not be liable for any loss attributable to the extension unless caused by its negligence or breach of trust.

37.8 Retention of Scheme Property

Despite any other provision of this clause 37, the Responsible Entity may retain for as long as it thinks fit sufficient Scheme Property as in its opinion may be required to meet any actual or contingent liability in respect of the Scheme. The Responsible Entity must distribute to the Members, in accordance with this clause 37, anything retained under this clause 37.8 which is subsequently not required.

37.9 Audit on winding up

After the Scheme is wound up, the Responsible Entity must (if required by law or ASIC policy) arrange for an independent audit of the Scheme's final accounts by a registered company auditor. Despite clause 37.10, this clause 37.9 continues to apply after the date of termination of the Scheme until the audit is finished.

37.10 Provisions continue after termination of Scheme

Subject to the Corporations Act, the provisions of this deed (including, for the avoidance of doubt, clause 6) continue to apply after the date of termination of the Scheme until the date of final distribution under clause 37.2(d), but during that period the Responsible Entity must not accept any applications for Units or Withdrawal Requests or make any withdrawal offers.

38 Recoveries

38.1 Members' liabilities

- (a) Each Member is liable for:
 - (i) fees, Taxes and costs in relation to the Member's entitlement to, or payment of, income or capital to the Member;
 - (ii) any act its requests;
 - (iii) for its unpaid amounts; and
 - (iv) fees determined and chargeable by the Responsible Entity from time to time for any act or work carried out at the Member's request which goes beyond the Responsible Entity's duties under the deed, charged at market rates for the services provided.
- (b) For the avoidance of doubt, a liability incurred by a Member under clause 38.1(a) is payable by the Member personally and not out of Scheme Property.

38.2 Responsible Entity may withhold or recover

The Responsible Entity may:

- (a) withhold payment of any money payable to a Member until the liability is discharged; or
- (b) meet the liability and recover the amount:
 - (i) from any money or property held for the Member;
 - (ii) from any distribution or other payment payable to the Member; or
 - (iii) by redeeming any or all of the Member's Units.

39 Responsible Entity's retirement or removal

39.1 Retirement and removal

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may retire as trustee of the Scheme by giving not less than 30 days' prior notice to the Members and the Manager, or such lesser period as the Members (where the Scheme is not Listed) or the Manager (where the Scheme is listed) may determine, effective on the appointment of a replacement Responsible Entity.
- (b) The Responsible Entity must retire as trustee of the Scheme if permitted and when required, under the Corporations Act. The Responsible Entity must retire when required by law.
- (c) The Responsible Entity will retire as trustee of the Scheme upon a request to retire being made by the Manager, provided that:
 - (i) the Responsible Entity considers that retirement is appropriate having regard to its duties under this deed or under the Corporations Act or any other Relevant Law;
 - (ii) the Responsible Entity is able to form the reasonable view that its retirement will not be detrimental to the interests of the members of the Scheme, taking into account all the relevant circumstances; and
 - (iii) such retirement must take place in accordance with the procedure set out in the Corporations Act.
- (d) Subject to the law and the Listing Rules, the Responsible Entity may agree with an incoming trustee of the Scheme to (and may) receive a benefit from that person, in relation to its retirement as trustee of the Scheme and is not required to account to Members for such.

39.2 Consequences of change of Responsible Entities

If and when the Responsible Entity retires or is removed as the Responsible Entity then, with effect from and including the time of that retirement or removal:

- (a) the former responsible entity is released from all obligations and liabilities in relation to the Scheme arising after that time; and
- (b) the new responsible entity will be taken to have agreed:
 - (i) to indemnify the former responsible entity for all its expenses incurred (after that time) in connection with discharging its obligations under section 601FR of the Corporations Act; and
 - (ii) if it is not an Associate of the former responsible entity or it has not obtained the written consent of the former responsible entity, to promptly take whatever action is necessary to change the name of the Scheme and remove any words, letters or expressions from this deed and any other documents which might express or imply an association with the former responsible entity or any of its Associates and agrees not to use any such words, letters or expressions in any connection with the Scheme and this deed.

40 Payments

- (a) Any money payable by the Responsible Entity to a Member may:
 - (i) be paid by cheque;
 - (ii) be deposited into an account with a bank or other financial institution approved by the Responsible Entity and nominated by the Member; or
 - (iii) applied in another manner as the Responsible Entity is directed in writing by the Member (if the Responsible Entity agrees).
- (b) The obligations of the Responsible Entity are fully discharged in respect of any money so paid.

41 Corporations Act

41.1 Compliance with ASIC Instruments and things required to be in this deed

The Responsible Entity and each Member must, subject to the Corporations Act and to any ASIC Instrument applicable to the Scheme, comply with:

- (a) any conditions of, and any covenants required to be contained in this deed as a condition of the ASIC Instrument, for so long as it applies, and
- (b) all provisions required from time to time to be contained in this deed as a condition of any ASIC Instrument applicable to the Scheme, for so long as it applies.

41.2 Matters required to be in this deed

For so long as the Scheme is Registered any provision required to be contained in this deed as a condition of any ASIC Instrument or the Corporations Act is taken to be contained in this deed to the extent that they are not specifically set out in this deed, for so long as the ASIC Instrument or Corporations Act provision (as applicable) applies, and to the extent of any inconsistency, prevail over those covenants otherwise included in this deed.

41.3 Inconsistency

Subject to this clause 41, to the extent that any provision of this deed is inconsistent with any provision of the Corporations Act (including as amended by ASIC class order 13/655) and any other applicable ASIC Instrument, that provision does not have any force or effect.

42 Calculations

Any calculation for the purposes of this deed must be to the fourth decimal place or, in any case, as otherwise determined by the Responsible Entity from time to time.

43 Listing Rules

Notwithstanding anything contained in this deed, for so long as the Scheme or Units are Listed:

- (a) if the Listing Rules prohibit an act being done, the act must 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; and
 - (f) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.
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44 Restricted Securities

- (a) Clauses 44(b) and 44(c) only operate:
 - (i) while Units are Listed; and
 - (ii) to the extent that it is not inconsistent with the Corporations Act.
 - (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Scheme, nor any voting rights, in respect of those Units.
 - (c) During the applicable escrow period:
 - (i) a Member may not transfer Restricted Securities; and
 - (ii) the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities,

except as permitted by the Listing Rules or ASX.
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45 Small holdings

45.1 Power to sell Units that are Listed

- (a) Subject to the remaining provisions of this clause 45, while the Scheme or Units are Listed, the Responsible Entity may on one occasion in any 12 month period sell any Listed Units held by Members which comprise less than a Marketable Parcel, without request from the Member provided that:
 - (i) the Responsible Entity notifies the Member in writing of any such intention to sell the Units;
 - (ii) within 6 weeks of providing the notice to the Member under clause 45.1(a)(i) neither:
 - (A) the Responsible Entity or the Member sell the Units; nor

- (B) the Member advises the Responsible Entity that the Member wishes to retain the Units;
 - (iii) the Scheme or the purchaser of such Units pays any costs of sale; and
 - (iv) while Stapling applies, there is a simultaneous sale of the same number of Attached Securities.
- (b) Subject to the remaining provisions of this clause 45, the Listing Rules and the ASX Settlement Operating Rules, the Responsible Entity may sell the Units under this clause 45 on the terms and in the manner it thinks appropriate.
- (c) Where any Units are sold under this clause 45, Responsible Entity may:
 - (i) receive the purchase money or consideration given for the Units on the sale;
 - (ii) effect a transfer of the Units and, if necessary, execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the Units or any other instrument for the purpose of giving effect to the sale; and
 - (iii) register as the holder of the Units the person to whom the Units have been sold.
- (d) In the case of Units held as an Uncertificated Holding, the Responsible Entity must do all things necessary or appropriate for it to do under the ASX Settlement Operating Rules to effect a sale of Units under this clause 45.
- (e) The title of a person to whom Units are sold under this clause 45 is not affected by an irregularity or invalidity in connection with that sale.
- (f) The remedy of any person aggrieved by a sale of Units under this clause 45 is limited to damages only and is against the Scheme exclusively.
- (g) The Responsible Entity may deduct from the proceeds of a sale of Units under this clause 45, all sums of money presently payable by the former holder to the Responsible Entity for calls due and payable and apply the amount deducted in or towards satisfaction of the money owing.
- (h) A statement in writing signed by a director or secretary of the Responsible Entity to the effect that a Unit in the Responsible Entity has been duly sold under this clause 45 on a date stated in the statement, is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the Unit and of the right of the Responsible Entity to sell the Unit.

45.2 Proceeds

The proceeds of any sale proceeds under this clause 45 will not be sent until the Responsible Entity has received a certificate or other proof of title acceptable to the Responsible Entity relating to the Units (or is satisfied that the certificate has been lost or destroyed).

45.3 Takeovers

The Responsible Entity's powers to sell Units under this clause 45 lapses following the announcement of a full takeover bid of the Scheme. The powers will apply again once such takeover offer closes.

46 Change of manager

46.1 Change of name

If at any time the Manager is not a related body corporate of Viva Energy Australia Group Pty Limited (ACN 004 400 220), then:

- (a) the name of the Scheme must cease to include the words 'Viva' or any word deceptively similar or likely to be confused with that name; and
- (b) the Responsible Entity must immediately give effect to such a change including to procure the:
 - (i) amendment of this deed; and
 - (ii) change of name on any relevant ASIC registers, to reflect the change of name.

46.2 Amending this clause

Subject to the Corporations Act, this clause 46 can only be amended or deleted upon the Manager giving its consent in writing to the Responsible Entity to the proposed amendment(s) or deletion before the amendment(s) is made.

47 Governing law

This deed is governed by the law of Victoria.

48 Severability

Where any provision of this deed is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this deed which remain in full force and effect.

49 Application of accounting principles

Despite any other provision of this deed, the Responsible Entity must apply current generally accepted accounting principles and accounting standards currently in force (or as at or on such other date determined from time to time by the Responsible Entity in consultation with the Scheme auditor) to the financial affairs of the Scheme to the extent needed for any relevant calculation under this deed.

50 Regulatory requirement

A performance report of the Scheme ("*Unyo hokokusyo*"), as defined under the Act on Investment Trusts and Investment Corporations of Japan, will not be delivered to Members.

Schedule 1 Dictionary

1 Definitions

In this deed:

Accounting Standards means:

- (a) all accounting standards and principles required by an Australian law to be complied with; and
- (b) except to the extent inconsistent with paragraph (a), generally accepted accounting principles.

AMIT Law means the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth).

Application Money means:

- (a) the Cash lodged with an application for Units; or
- (b) the value of an asset (other than Cash) contributed to the Scheme to acquire Units.

Application Transaction Costs means:

- (a) an estimate by the Responsible Entity of the total transaction costs the Scheme would incur to acquire afresh the Scheme Property; or
- (b) if appropriate having regard to the actual cost which would be incurred because of the issue or sale of the Units, the Responsible Entity's estimate of a portion of the total transaction costs, which may be zero,

unless the Responsible Entity makes no estimate, in which case the Application Transaction Costs are zero.

Approving Resolution means a resolution passed in accordance with clause 17.

Approving Resolution Deadline means in relation to a Proportional Takeover Bid means the day that is the 14th day before the last day of the Bid Period.

ASIC means the Australian Securities and Investments Commission or any body that takes over its functions in relation to managed investment schemes.

ASIC Instrument means:

- (a) an exemption or declaration granted by ASIC under Part 5C.11 of the Corporations Act;
- (b) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Responsible Entity or the Scheme; or
- (c) any declaration made or exemption granted by ASIC that is applicable to the Scheme and that the Responsible Entity elects to rely upon (if relevant)..

Associate of a person means another person who is associated with the first person within the meaning of sections 10 to 17 of the Corporations Act.

ASTC has the same meaning as in the Corporations Act.

ASX means the:

- (a) ASX Limited ACN 008 624 691 or any body that replaces it or performs its functions; or
- (b) the financial market operated by ASX Limited ACN 008 624 691,

as the context requires.

ASX Settlement means the ASX Settlement Pty Limited (ABN 49 008 504 532) or any body that replaces it or performs its functions.

ASX Settlement Operating Rules means the settlement operating rules (however described) prepared or published by or on behalf of ASX Settlement which are applicable while the Scheme is admitted to the Official List, as amended or replaced from time to time, except to the extent of any express written waiver by ASX Settlement.

Attached Security means a security of, or interest in, a Stapled Entity which is from time to time Stapled, or to be Stapled, to a Unit.

Attribution Managed Investment Trust has the meaning given in section 276-10 of the Tax Act.

Bid Class has the same meaning as in the Corporations Act.

Bid Period has the same meaning as in the Corporations Act.

Bidder has the same meaning as in the Corporations Act.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Melbourne, Australia.

Call means a call made on a Partly Paid Unit and **Called** shall have a corresponding meaning.

Cash means cash, cash equivalents and amounts attributable to assets that can be readily converted to cash, and includes cheques.

Certificate means the certificates to be issued under the provisions of this deed.

Certificated Holding means a Unit or Units for which the Responsible Entity is required to issue a Certificate, and for which the Certificate has not been subsequently cancelled by the Responsible Entity.

Corporations Act means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any exemption or modification to that Act which applies to the Scheme or the Responsible Entity.

CPI means the Consumer Price Index published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

Cut-Off Time means 3.00pm, or such other time determined by the Responsible Entity from time to time.

Default Interest Rate means an interest rate of 10% per annum or such other rate determined by the Responsible Entity from time to time.

Derivative Transaction means any;

- (a) interest rate swap, currency swap, currency option, interest rate option, swaption, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity or energy) option or other transaction, credit derivative, equity derivative, capital market transaction, securities repurchase transaction, securities buyback transaction or sellback transaction;
- (b) other product traded, or transaction undertaken, on financial markets (whether on an exchange or not) from time to time and at any future time;
- (c) synthesis or derivative or any of them; and
- (d) option on any transaction or product referred to in paragraphs (a) to (c) above.

Directors means the Directors of the Responsible Entity from time to time.

Disclosure Document means information memorandum, product disclosure statement, prospectus or any other similar document issued by the Responsible Entity relating to the offer of Units in the Scheme and relating to a Stapled Entity.

Dispose has the meaning given in the Listing Rules and “**Disposal**” has a corresponding meaning.

Distributable Income has the meaning given by clause 6.1.

Distribution Amount means a Member's share of the Distributable Income calculated in accordance with clause 6.2.

Distribution Date means the last day of each Financial Year and any other date specified by the Responsible Entity under clause 6.12.

Distribution Period means a period starting on the day after a Distribution Date and ending on the next Distribution Date, but:

- (a) the first Distribution Period starts on the date the Scheme is established and ends on the first Distribution Date; and
- (b) the last Distribution Period starts on the day after the preceding Distribution Date and ends on the date of final distribution under clause 37.2(d).

Financial Year means:

- (a) for the first financial year, the period from the establishment of the Scheme to the next 30 June or such longer period as the Responsible Entity determines and the Corporations Act allows;

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

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the meaning given to it in the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IPO Offer Price means \$2.1917 per Unit.

Issue Price has the meaning given to it in clauses 8.1 and 10.3.

Liquid has the meaning given by section 601KA of the Corporations Act.

Listed means in respect of an entity, admitted to the Official List and in respect of Units, quoted on the Official List, including during a period where quotation has been suspended for not more than 60 days. "**Listing**" has the corresponding meaning.

Listing Rules means the listing rules of ASX and any other rules of ASX which are applicable while Securities are admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Management Agreement means the management agreement to be entered into between the Responsible Entity and the Manager, among other parties, on or about the date of this deed.

Manager means the manager (if any) from time to time of a Stapled Entity, or appointed by the Responsible Entity from time to time.

Market Price has the meaning given in clause 8.2.

Marketable Parcel has the meaning given in the Listing Rules.

Master Agreement means any agreement (however described) that sets out the terms of, or otherwise relates to, any Derivative Transaction, and which is published or prepared by any bank financial institution, domestic or international financial industry body or association, and any schedule, annexure, annex, supplement, addendum (however described) to, or of, that agreement.

Meeting means a meeting of Members.

Member has the meaning given in section 9 of the Corporations Act.

Minimum Holding means the minimum holding for the Scheme set by the Responsible Entity from time to time under clause 7.6.

Minimum Withdrawal Amount means the minimum withdrawal amount for the Scheme set by the Responsible Entity, expressed in either or both dollar terms and the Unit Equivalent.

Net Income means all amounts determined to be income in accordance with the applicable Accounting Standards less all costs and expenses deductible against income in accordance with the applicable Accounting Standards, including depreciation for the relevant Distribution Period.

Net Taxable Income means the net income of the Scheme for a Distribution Period determined in accordance with section 95(1) of the Tax Act.

Net Scheme Value means the Scheme Value less the Scheme Liabilities.

Official List means the official list of ASX.

Option means an option to subscribe for or to acquire a Unit or Stapled Security.

Option Holder means a person whose name is entered in the Register as the holder of an Option.

Partly Paid Unit means a Unit for which some or all of the Issue Price is unpaid (whether or not Called).

Proper ASTC Transfer has the meaning given in the Corporations Act.

Property means any legal or equitable estate or interest in real or personal property other than cheques or cash equivalents acceptable to the Responsible Entity.

Proportional Takeover Bid has the same meaning as in the Corporations Act.

Register means the register of Members or, as the case may require, the register of Option Holders, kept as required by the Corporations Act and the Listing Rules and includes a computerised or electronic sub-register established and administered under the ASX Settlement Operating Rules.

Registered means registered as a managed investment scheme with ASIC under Part 5C of the Corporations Act.

Related Body Corporate means in relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act or which is an economic entity (as defined in any approved Australian accounting standard) that is controlled by that party.

Relevant Law means any applicable statute, ordinance, code or other law of the Commonwealth of Australia or any State or Territory with which the Responsible Entity, the Manager or the Scheme must comply or if failure to do so would result in a penalty or similar.

Responsible Entity means:

- (a) the RE, where the RE is appointed either as trustee of the Scheme under clause (b) or as the responsible entity of the Scheme under clause (c),

otherwise,

- (b) while the Scheme is not a registered scheme, the body corporate that holds office as trustee of the Scheme; or
- (c) while the Scheme is a registered scheme, the body corporate registered with ASIC as the responsible entity of the Scheme under the Corporations Act, and, where the context permits, includes any agent or delegate of the body corporate.

Restricted Securities has the meaning given in the Listing Rules.

Retail Client has the same meaning as in the Corporations Act.

Scheme means the managed investment scheme established by this deed.

Scheme Liabilities, as at a particular time, means the total, as at that time, of:

- (a) all present liabilities relating to the Scheme (for example, the amount of losses, Taxes, fees, expenses and other liabilities of the Responsible Entity in relation to the Scheme); and
- (b) any amounts the Responsible Entity determines, consistently with the Accounting Standards, to be a reasonable provision for contingent or future liabilities of the Responsible Entity in relation to the Scheme,

and includes accrued but unpaid Member entitlements in connection with the Scheme, but, unless the Responsible Entity determines otherwise, does not include:

- (c) any amount representing Members' capital;
- (d) undistributed profits;
- (e) capital reserves; or
- (f) any other amount representing the value of rights attaching to Units, whether or not redeemable,

regardless of whether characterised as equity or debt in the accounts of the Scheme.

Scheme Property means property of the Scheme for the purposes of the Corporations Act, being property held by or for the Responsible Entity in connection with the Scheme but does not include Application Money in respect of which Units have not yet been issued, proceeds of withdrawal which have not yet been paid or any amount in any distribution account.

Scheme Value means the value of the Scheme Property calculated in accordance with clause 15.6.

Security means:

- (a) in the case of Unit that is Stapled, a Stapled Security; and
- (b) in all other cases, a Unit.

Securities System means a securities title settlement or custody system that operates by any physical means, by an electrical medium or by custom (whether in Australia or not), and includes a clearing agency that acts as a securities depository or a book entry system for the central handling of investments.

Special Resolution means a resolution passed as special business at a duly convened general meeting of Members by a majority of not less than 75% of Members being holders of voting Units then present and being entitled to vote at such meeting or otherwise passed as special business in any other manner permitted by this deed.

Stapled Entity means any trust, corporation, managed investment scheme or other entity, the securities in which are Stapled to Units (including as Attached Securities) and, where the context requires, includes the trustee or responsible entity of the relevant trust or managed investment scheme.

Stapled Security means a Unit and each Attached Security which 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 Responsible Entity in accordance with clause 21.5.

Stapling means the linking together of a Unit and an Attached Security or Attached Securities such that they may only be dealt with together, and “**Stapled**” has a corresponding meaning.

Stapling Provision means a provision of this deed relating to, referring to or connected with Stapling.

Tax Act means *the Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), as appropriate.

Taxes means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Uncertificated Holding means a Unit or Units for which a Certificate has not been issued by the Responsible Entity, or in respect of which any Certificate which was issued by the Responsible Entity has been cancelled without the issue of a replacement Certificate.

Unit means a fully paid ordinary unit or a Partly Paid Unit in the Scheme and where the context allows or requires, a unit in another class of units in the Scheme.

Unit Equivalent means the number of Units held by a Member at the time.

Units on Issue means the number of Units on issue at the time for each class of Units.

Valuation Time has the meaning given in clause 15.3.

Valuer means a valuer appointed or accepted by the Responsible Entity who is independent of the Responsible Entity and has experience in valuing the particular kind of asset or property.

VEOS Balancing Amount means \$2,104,820,000 less the VEOS Promissory Note (Company shares) Amount less the VEOS Promissory Note (Cash payment) Amount.

VEOS Price means an amount equal to the VEOS Balancing Amount *divided* by the number of Viva Energy Offer Units.

VEOS Promissory Note (Cash payment) Amount means \$1,569,040,362, being an amount equal to the Viva Energy REIT IPO Equity Proceeds Amount *plus* the Viva Energy REIT IPO Finco Loan Amount *less* the Viva Energy REIT IPO Transaction Costs Amount *less* the Viva Energy REIT IPO Retained Cash Amount.

VEOS Promissory Note (Company shares) Amount means \$2,290,009.

Viva Energy Offer Units means the 276,060,624 Units to be issued to Viva Energy Australia Group Pty Ltd in connection with the Viva Energy REIT IPO.

Viva Energy REIT IPO means the proposed initial public offering and Listing of Stapled Securities in or about August 2016.

Viva Energy REIT IPO Equity Proceeds Amount means \$911,000,605, being an amount equal to the IPO Issue Price multiplied by the number of Viva Energy REIT IPO Units.

Viva Energy REIT IPO Finco Loan Amount means \$730,880,100.

Viva Energy REIT IPO Retained Cash Amount means \$7,000,000.

Viva Energy REIT IPO Transaction Costs Amount means \$65,839,798.

Viva Energy REIT IPO Units means the 414,090,937 Units that are to be issued under the Viva Energy REIT IPO.

Wholesale Client has the same meaning as in the Corporations Act.

Withdrawal Amount means the amount calculated as follows:

Withdrawal Price x Unit Equivalent (being redeemed by a Member)

Withdrawal Price has the meaning given by clause 11.1.

Withdrawal Provision means the amount determined by the Responsible Entity in respect of, or as an allowance for, costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, Taxes and other costs that may be incurred or are expected to be incurred in connection with:

- (a) the realisation and conversion into cash of Scheme Property to satisfy a particular Withdrawal Request; and
- (b) where all or part of the Withdrawal Amount is paid by transferring Scheme Property, the valuation and transfer of the Scheme Property.

Withdrawal Request means a request in writing by a Member to the Responsible Entity to redeem all or some of the Member's Units.

2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;

- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable financial market and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (h) in determining the time of day, where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it; and
- (j) in calculating the number of Units in issue for the purposes of any clause in this deed, the Responsible Entity must aggregate the number of fully paid Units and the sum of the amounts calculated in respect of each partly paid Unit by dividing the amount paid up in respect of each partly paid Unit by the total Issue Price of that Unit.

3 While the Scheme is not Listed

While the Scheme is not admitted to the Official List, the references in this document to the Listing Rules and the ASX Settlement Operating Rules, and provisions included to reflect the Listing Rules and the ASX Settlement Operating Rules, are of no effect unless the Responsible Entity determines otherwise.