

# Second Supplemental Deed

360 Capital FM Limited  
ABN 15 090 664 396  
Responsible Entity

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Our reference 15387/80207016

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## Supplemental Deed

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Date                      12                      September 2019

Party                      360 Capital FM Limited ABN 15 090 664 396 of Level 8, 56 Pitt Street, Sydney  
NSW 2000 (Responsible Entity)

### Background

- A. By a deed poll dated 2 July 2019, the fund now known as the 360 Capital Digital Infrastructure Fund was established (Scheme).
- B. The constitution for the Scheme referred to in Background A, as amended from time to time, is referred to in this Deed as the **Constitution**.
- C. The Constitution was amended by supplemental deed on 28 August 2019.
- D. While the Scheme is registered with ASIC, pursuant to clause 30.1 of the Constitution, the Constitution may be amended in accordance with the *Corporations Act 2001 (Cth)* (**Act**).
- E. In accordance with Section 601 GC of the Act the sole member has agreed to the amendments in this deed and confirmed that the amendments do not adversely affect its rights.

### Operative provisions

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## 1. Operative provisions

### 1.1 Specific modifications

Subject to clause 4, the Constitution is modified such that:

- (a) clause 24.1 is modified to delete the words struck through and include the words underlined as follows:
  - "The Scheme terminates on the earliest of:
    - (a) *the date specified by the Responsible Entity acting on a recommendation from the Investment Manager (or where no Investment Manager is appointed, the date determined by the Responsible Entity in its discretion) as the date that the Scheme is to terminate in a notice given to Members;*  
and
    - (b) ~~the Members fix a date of termination, or resolve to terminate the Scheme, by a resolution that has been passed at a meeting on a poll by a Special Resolution; and~~
    - (c) *the occurrence of an event requiring the winding up of the Scheme under a provision of the Corporations Act or of any other applicable law."*

### 1.2 Provisions not affected

The provisions of the Constitution are not otherwise effected.

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**2. No resettlement**

The Responsible Entity confirms that it is not by this Deed intending to:

- (a) settle or redeclare the trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the trust in any person.

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**3. Governing law**

This Deed is governed by and will be construed according to the laws of the State of New South Wales.

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**4. Effective time**

In accordance with section 601GC(2) of the Act, the modifications to the Constitution pursuant to clause 1.1 of this Deed take effect immediately upon this Deed being lodged with ASIC.

Executed as a deed.

Executed by 360 Capital FM Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of Director

**Tony Pitt**

Name of Director in full



Signature of Secretary/other-Director

**Jennifer Vercoe**

Name of Secretary/other-Director in full



# Supplemental Deed

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Our reference 15387/20395/80207016

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## Supplemental Deed

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Date 28 August 2019

Party 360 Capital FM Limited ABN 15 090 664 396 of Level 8, 56 Pitt Street, Sydney NSW 2000 (Responsible Entity)

### Background

- A. By a deed poll dated 2 July 2019, the fund now known as the 360 Capital Digital Infrastructure Fund was established (the **Scheme**).
- B. The constitution for the Scheme referred to in Background A, as amended from time to time, is referred to in this Deed as the **Constitution**.
- C. The Responsible Entity intends to establish the Scheme as a registered managed investment scheme but the Scheme is not yet registered by the Australian Securities and Investments Commission (**ASIC**).
- D. While the Scheme is not registered with ASIC, pursuant to clause 30.1 of the Constitution, the Constitution may be amended by the Responsible Entity by supplemental deed.
- E. Accordingly, the Constitution is amended as set out in this Deed.

### Operative provisions

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## 1. Operative provisions

### 1.1 Specific modifications

Subject to clause 4, the Constitution is modified such that:

- (a) the definition of limb (a) of Withdrawal Price in clause 1.1 is amended to include the letters and words underlined as follows:
 

"(a) *in respect of any Underwrite Units..."*
- (b) clause 11.3 is amended so that the existing paragraph becomes clause 11.3(a) and a new paragraph 11.3(b) is inserted as follows:
 

"*(b) Despite any other provision of this Constitution, the Responsible Entity must be reasonably satisfied that any valuation in respect of a Scheme Asset is reasonably current where the valuation is required for the purposes of determining the Issue Price or Withdrawal Price of any Units.*"
- (c) clause 15.1 is modified to delete the words struck through and include the words underlined as follows:
 

*"all Expenses incurred in relation to the proper performance of its duties or and exercise of its powers."*
- (d) clause 16.1 is modified to include the words underlined as follows:

*"the Responsible Entity is indemnified and is entitled to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets, all liabilities and losses incurred by it in relation to the proper performance of its duties and exercise of its powers in relation to the operation, administration and management of the Scheme or otherwise in connection with the Scheme."*

## 1.2 Provisions not affected

The provisions of the Constitution are not otherwise effected.

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## 2. No resettlement

The Responsible Entity confirms that it is not by this Deed intending to:

- (a) settle or redeclare the trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the trust in any person.

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## 3. Governing law

This Deed is governed by and will be construed according to the laws of the State of New South Wales.

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## 4. Effective time

The modifications to the Constitution pursuant to clause 1.1 of this Deed take effect immediately upon this Deed being executed.

Executed as a deed.

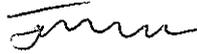
Executed by 360 Capital FM Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



\_\_\_\_\_  
Signature of Director

**Tony Pitt**

\_\_\_\_\_  
Name of Director in full



\_\_\_\_\_  
Signature of Secretary/other Director

**Jennifer Vercoe**

\_\_\_\_\_  
Name of Secretary/other Director in full



# 360 Capital Digital Infrastructure Fund Constitution

**360 Capital FM Limited**

ABN 15 090 664 396  
Responsible Entity

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## Deed Poll

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**Date** 2 July 2019

**Party** 360 Capital FM Limited ABN 15 090 664 396 of Level 8, 56 Pitt Street, Sydney, NSW 2000 (Responsible Entity)

### Background

- A. The Responsible Entity intends to establish a managed investment scheme to be called 360 Capital Digital Infrastructure Fund.
- B. 360 Capital FM Limited is to be the Scheme's first Responsible Entity.
- C. The Responsible Entity will appoint the Investment Manager to provide investment management services to the Scheme pursuant to the Investment Management Agreement.
- D. The Responsible Entity proposes that this Constitution is to be the Scheme's constitution.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Constitution:

**Acquisition Expenses** means at any time, an amount (if any) that the Responsible Entity determines is the total of all Expenses that would be incurred by the Responsible Entity if all Scheme Assets held at that time were to be acquired at that time. If the Responsible Entity considers it appropriate, it may determine Acquisition Expenses to be a lesser sum or zero.

**AMIT** means, for an income year, a trust that is an attribution managed investment trust within the meaning of sections 995-1(1) and 276-10 of the Tax Act.

**AMIT Election** has the meaning given to that term in clause 17.14.

**AMIT Income Year** means a year of income for the purposes of the Tax Act that the Scheme is an AMIT.

**AMIT Legislation** means all or any of the:

- (a) the Tax Act;
- (b) *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth);
- (c) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth);
- (d) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth); and
- (e) *Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016* (Cth);

as appropriate and as the context requires.

**AMIT Regime** means the regime for the taxation of AMITs, as set out in the AMIT Legislation.

**AMMA Statement** has the meaning given to that phrase in section 276-240 of the Tax Act.

**Anti-Money Laundering Laws** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and related legislation, regulations and rules as in force in Australia and other relevant jurisdictions from time to time.

**ASIC** means the Australian Securities and Investments Commission or if it ceases to exist, any regulatory body or authority as then serves substantially the same objects.

**ASIC Instrument** means an exemption, modification, declaration, determination or any other instrument granted or issued by ASIC in respect of or applicable to the Scheme (whether or not it may also have application to other registered managed investment schemes).

**Asset** means any asset, or any contractual interest or right (legal or beneficial) in any asset (including for the avoidance of doubt, a right to develop or manage an asset), acquired directly or indirectly by or on account of the Scheme or in which the Scheme has a direct or indirect legal, beneficial or economic interest.

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

**ASX** means ASX Limited ABN 98 008 624 691.

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532.

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement and, to the extent that they are applicable, the operating rules of each of ASX and ASX Clear Pty Limited ABN 48 001 314 503.

**Business Day** means a business day as defined in the Listing Rules but if Units are not Officially Quoted, it means any day excluding a Saturday, Sunday or a public holiday on which banks are open for business generally in Sydney, Australia.

**Call** means a call made on a Partly Paid Unit pursuant to clause 5.2 and "Called" shall have a corresponding meaning.

**Capital Committed** means the aggregate of all amounts paid or payable by Members in respect of the issue of Units by the Responsible Entity (for the avoidance of doubt, this includes all amounts paid up on those Units and all unpaid amounts (whether or not Called and whether or not still able to be Called)).

**Capital Gains** means so much of the Distributable Income of the Scheme as the Responsible Entity determines represents:

- (a) the amount which the Responsible Entity determines to be the net capital gain of the Scheme under section 102-5 of the Tax Act, disregarding steps 3 and 4 in that section, including any amounts which are of the same character, to which the Responsible Entity is entitled by virtue of holding units in a trust; less
- (b) any deductions which the Responsible Entity determines would arise in the determination of the Distributable Income of the Scheme and should be applied by the Responsible Entity to reduce the amount arising under paragraph (a).

**CC Member** means a member of the Compliance Committee.

**Class** means a class of Units.

**Class Expense** in relation to a Class, means an Expense or that proportion of an Expense determined by the Responsible Entity to be referable to the Class in accordance with clause 15.2.

**Commencement Date** means the date of issue first offer to the public of Units in the Scheme or such other date as the Responsible Entity and the Investment Manager determine.

**Complaint** means an expression of dissatisfaction made to the Responsible Entity related to the Scheme or the complaints handling process itself where a response or resolution is explicitly or implicitly expected.

**Compliance Committee** means the committee (if any) established by the Responsible Entity pursuant to section 601JA(1) of the Corporations Act.

**Compliance Listing** means a Listing that does not involve an Initial Public Offer.

**Consolidation or Division Proposal** means a proposal to consolidate, divide or convert Units in a ratio determined by the Responsible Entity, including rounding of the number of Units as the Responsible Entity determines.

**Constitution** means this document together with any schedules or other attachments annexed to it, as amended from time to time.

**Control** means:

- (a) in relation to a corporation means:
  - (i) the ability to control, directly or indirectly, the composition of the board of the corporation; or
  - (ii) having a relevant interest (as that term is defined in the Corporations Act) in, or having the ability to exercise or control the exercise of the rights to vote in relation to, or having the ability to dispose or exercise control over the disposal of, more than 50% of the voting shares of the corporation;
- (b) in relation to a trust means:
  - (i) the ability to control (within the meaning of paragraph (a) above), the trustee of the trust (where the trustee is a corporation) or
  - (ii) the ability to appoint, remove or replace the trustee,

and a reference to '**Controlled**' shall have a corresponding meaning.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Current Market Price** means the amount determined by the Responsible Entity from time to time by dividing the Net Asset Value of the Scheme Assets by the total number of Units on issue at that time.

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

**Derivative** means an arrangement in relation to which the following conditions are satisfied:

- (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and

- (b) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies, by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:
- (i) an asset;
  - (ii) a rate (including an interest rate or exchange rate);
  - (iii) an index;
  - (iv) a commodity.

Without limitation and for the removal of doubt, "Derivative" includes any contract commonly known as a derivative, futures contract or synthetic.

**Designated Time** means, in respect of an application for Units or a Withdrawal Request (as the case may be), 5pm or any other time during each Business Day designated from time to time by the Responsible Entity pursuant to clause 10.14 (as the case may be). The Designated Time applicable to applications for Units and to Withdrawal Requests may be the same or different.

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

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

**Discovery Year** has the meaning given to that phrase in section 276-345 of the Tax Act.

**Disposal Expenses** means, at any time, an amount (if any) which the Responsible Entity determines is the total Expenses which may be incurred or are expected to be incurred by the Responsible Entity if all Scheme Assets held at that time were to be disposed of at that time. If the Responsible Entity considers it appropriate, it may determine Disposal Expenses to be a lesser sum or zero.

**Distributable Income** means the amount determined by the Responsible Entity in accordance with clause 17.

**Distribution Calculation Date** means the last day of each Financial Year and any other days as the Responsible Entity may designate from time to time.

**Distribution Period** means:

- (a) for the first distribution period, the period from the Commencement Date to the first Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Scheme; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**Exchange Proposal** means a proposal whereby a written offer to transfer or redeem some or all of their Units is made to Members or to specific Members in consideration of any or all of:

- (a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;

- (b) a cash payment; and
- (c) a transfer of Scheme Assets.

**Expenses** includes any expenses, costs, charges, fees, commissions, brokerage, Taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

**Financial Product** has the same meaning as in the Corporations Act (which for the removal of doubt includes debentures, convertible notes or other instruments of a debt, equity or hybrid nature) but excluding Units.

**Financial Year** means the 12 month period beginning on 1 July and ending on 30 June in each year, except that:

- (a) the first Financial Year begins on the Commencement Date and ends on the first 30 June to occur thereafter; and
- (b) the last Financial Year begins on the last 1 July before the date of final distribution on winding up of the Scheme and ends on the date of that final distribution.

**Former Member** means in respect of a Distribution Period, a person who was registered as the holder of a Unit at any time during the Distribution Period, but who is not registered as the holder of the Unit at the end of the last day of the Distribution Period.

**Fully Paid Unit** means a Unit on which the Issue Price has been fully paid.

**Gross Asset Value** means the gross asset value of the Scheme Assets calculated on a consolidated basis.

**Income Entitlement** means a Residual Income Entitlement, Residual Gains Entitlement or a Redemption Gains Entitlement.

**Initial Public Offer** means:

- (a) an initial public offer of Units (whether or not part of Stapled Securities) for the purpose of raising substantial capital; or
- (b) a sell down of a substantial portion of the Units by the Members; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of becoming Listed and for the Units to be Officially Quoted.

**Initial Units** means Units issued by the Responsible Entity following execution of this Constitution until such date as the Responsible Entity determines, such date not being later than the date on which the Scheme is Listed.

**Investment Manager** means 360 Capital Digital Management Pty Limited.

**Investment Management Agreement** means the investment management agreement entered into between the Responsible Entity and the Investment Manager in respect of the Scheme as amended from time to time.

**Investment Representative Committee** means any investment representative committee established by the Investment Manager (or where no Investment Manager is appointed, by the Responsible Entity) from time to time.

**Issue Price** means the issue price calculated in accordance with clause 9.7. The Responsible Entity may calculate the Issue Price to the number of decimal places that the Responsible Entity determines.

**IRC Member** means a member of the Investment Representative Committee.

**Liabilities** at any time, means the aggregate of the following at that time as determined by the Responsible Entity:

- (a) all liabilities of every nature of or in respect of the Scheme including contingent liabilities and any anticipated liabilities or provisions for liabilities that the Responsible Entity considers should be included; and
- (b) all amounts payable out of or reimbursable from Scheme Assets or in relation to the Scheme, including (without limitation) any unpaid amounts due and payable to any Members or to the Responsible Entity (as its remuneration), or where determined by the Responsible Entity, provisions with respect to such amounts,

but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Members. Where more than one Class is on issue and the Net Asset Value of the Scheme Assets referable to a particular Class is being calculated, reference to "Liabilities" means that proportion of the Liabilities that the Responsible Entity considers are properly referable to each Class.

**Liquid** has the meaning given for the purposes of sections 601KA(4) to (6) inclusive of the Corporations Act.

**Listed** means admitted to the Official List.

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable while the Scheme is admitted to the Official List, each as amended replaced or waived (either generally or in favour of the Scheme) from time to time.

**Market Price** has the meaning given in clause 1.8.

**Marketable Parcel** has the meaning given to it in the Listing Rules.

**Maximum Redemption Gains Amount** has the meaning given to it in clause 17.6(b).

**Member** means a person Registered as the holder of a Unit that has not been redeemed (including persons jointly Registered).

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

**Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.

**Minimum Application Amount** means \$2,000 or such other sum as the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

**Minimum Balance** means:

- (a) while Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; or
- (b) while Units are not admitted to the Official List, such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different Classes.

**Minimum Withdrawal Amount** means such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

**Net Asset Value of the Scheme Assets** means, at any time, an amount equal to the total value of the Scheme Assets less the Liabilities of the Scheme and adjusted for such provisions and incremental or decremental adjustments as the auditor of the Scheme considers appropriate, each determined at that time in accordance with clause 11 and Australian accounting principles.

**Net Investment** means, in respect of an application for Units, an amount equal to the cash payment accompanying that application (or otherwise paid in accordance with clause 9.1) or (as the case may be) the market value of the property (as determined by the Responsible Entity) transferred pursuant to clause 9.2, in each case minus the aggregate of the following sums (to the extent any of those sums have not been paid by the applicant before the Responsible Entity accepts the application):

- (a) any Expenses incurred or payable by the Scheme or the Responsible Entity in respect of the payment of any application money or otherwise in respect of the issue and allotment of the Units; and
- (b) such of the Expenses in respect of the valuation of the property or transfer to (or at the direction of) or acceptance by (or on behalf of) the Responsible Entity of the property as the Responsible Entity determines not to be payable or reimbursable out of Scheme Assets.

**Official List** means the official list of ASX as defined in the Listing Rules.

**Officially Quoted** means quoted on the Official List including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

**Over** has the meaning given to that phrase in section 276-345 of the Tax Act.

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

**Percentage Interest** shall mean in respect of a Member at any time, the percentage derived by:

- (a) dividing the number of Units held by such Member by the aggregate of the Units then in issue; and
- (b) multiplying such quotient by 100.

**Proceedings** means, in relation to a person, any proceedings (whether civil or criminal) in which it is alleged that the person has done or omitted to do some act, matter or thing:

- (a) in the person's capacity as a CC Member or IRC Member; or
- (b) in the course of acting in connection with the affairs of the Compliance Committee or the Investment Representative Committee; or
- (c) otherwise arising out of the person holding office as a CC Member or IRC Member,

including proceedings alleging that the person was guilty of negligence, default, breach of trust or breach of duty in relation to the Scheme.

**Realisation Transaction** means a transaction which enables all Members to realise all or a substantial portion of their investment in the Scheme, including:

- (a) an Initial Public Offer;
- (b) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (c) a sale of substantial Scheme Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (d) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraphs (a), (b) or (c).

**Redemption Gains Entitlement** means, in respect of a Member who redeems Units under a Significant Redemption, the entitlement of the Member to the Capital Gains of the Scheme in respect of the redemption of those Units, as determined in accordance with clause 17.6(c).

**Register** means the register of Members maintained by the Responsible Entity pursuant to Chapter 2C of the Corporations Act.

**Registered** means registered as a managed investment scheme by ASIC under Chapter 5C of the Corporations Act.

**Related Body Corporate** of a person (**First Person**) means:

- (a) another person who is related to the First Person within the meaning of section 50 of the Corporations Act;
- (b) another person who is, or whose investments are, substantially managed either by the First Person or by a person who substantially manages the First Person or the First Person's investments; or
- (c) another person which Controls, is Controlled by, or is under common Control with, the First Person or a person referred to in paragraph (a) or (b) of this definition.

**Reorganisation Proposal** means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal;
- (f) a Compliance Listing; or
- (g) any other proposal to reorganise or restructure the capital of the Scheme and, if relevant, any Stapled Entity, in any way.

**Residual Gains Entitlement** means, in respect of a Member and a Distribution Period, the entitlement of the Member to the Capital Gains of the Scheme for the Distribution Period, as determined in accordance with clause 17.4.

**Residual Income** means so much of the Distributable Income of the Scheme as the Responsible Entity has not determined represents Capital Gains.

**Residual Income Entitlement** means, in respect of a Member and a Distribution Period, the entitlement of the Member to the Residual Income of the Scheme for the Distribution Period, as determined in accordance with clause 17.4.

**Responsible Entity or Trustee** means the trustee of the Scheme.

**Restricted Securities** has the meaning given to it in the Listing Rules.

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

**Scheme** means the trust initially called 360 Capital Digital Infrastructure Fund established by this Constitution.

**Scheme Assets** means all Assets, cash, property, rights and income of the Scheme from time to time (including without limitation all the cash or property transferred to (or at the direction of) the Responsible Entity by an applicant but only on and from the time when Units are taken to be created and issued to the applicant) and where the context permits, includes any part of it. Where more than one Class is on issue and the Net Asset Value of the Scheme Assets referable to a particular Class is being calculated, reference to "Scheme Assets" means that proportion of the Scheme Assets that the Responsible Entity considers are properly referable to each Class.

**Security Interest Rules** means such rules (if any) made by the Responsible Entity from time to time in respect of the recognition of the interests of holders of encumbrances over Units.

**Significant Redemption** means a redemption of Units that qualifies as a Significant Redemption under clause 17.5.

**Special Resolution** means a resolution which has been passed by at least 75% of the total votes that may be cast by Members present and entitled to vote on the resolution.

**Staple or Stapling** means:

- (a) for Stapled Entities, to link together each Stapled Entity; and
- (b) for Units, to link together the rights and obligations which attach to one Unit with the rights and obligations which attach to one unit, share or security in each other Stapled Entity.

**Stapled Entity** means any company or other entity to whose units, shares or securities any Units or other securities in the Scheme are from time to time Stapled pursuant to clause 22.

**Stapled Security** means a security formed by Stapling together one Unit and a unit, share or security in each other Stapled Entity.

**Stapling Proposal** means a proposal for Stapling or a proposal for cessation of Stapling.

**Stapling Provisions** means the provisions relating to Stapling in clause 22.

**Subsidiary** in relation to an entity, another entity which is wholly-owned or otherwise Controlled by the first entity, but so that:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Tax** means any kind of tax, levy, charge, impost, rate, fee, deduction, duty, excise, or withholding or instalment amount, whether direct or indirect, by whatever method imposed, collected or recovered, together with any interest, fine, penalty or statutory charge payable, imposed or claimed in respect of any such amount.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Taxation Administration Act 1953* (Cth) or any of them as the context requires, and includes any regulations or other subordinate legislation in relation to those Acts.

**Top Hat Proposal** means a proposal that each Member should exchange their Units for an equivalent value of units in the Top Trust.

**Top Trust** means a trust of which the Responsible Entity is also the trustee and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.

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

**Under** has the meaning given to that phrase in section 276-345 of the Tax Act.

**Underwrite Units** means Units designated as such by the Responsible Entity.

**Unit** means, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Scheme Assets as provided in this Constitution.

**Valuation Time** means a time at which the Responsible Entity calculates the Net Asset Value of the Scheme Assets.

**Withdrawal Offer** means a withdrawal offer made by the Responsible Entity from time to time.

**Withdrawal Price** means:

- (a) in respect of Underwrite Units, at the Issue Price at which Units were last issued prior to the redemption or withdrawal; and
- (b) otherwise, the amount determined by the Responsible Entity from time to time by subtracting the Disposal Expenses at that time from the Net Asset Value of the Scheme Assets at that time, dividing the resultant amount by the total number of Units on issue at that time. The Responsible Entity may calculate the Withdrawal Price to the number of decimal places that the Responsible Entity determines and may round the Withdrawal Price up or down as the Responsible Entity thinks fit. In determining the Withdrawal Price, the Responsible Entity may to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:
  - (i) any matter affecting the value of any factor included in the calculation of the Withdrawal Price; and
  - (ii) any matter which is an aspect of the method of calculating the Withdrawal Price.

**Withdrawal Request** means a request to withdraw from the Scheme in response to a Withdrawal Offer.

## 1.2 Interpretation

In this Constitution:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the recitals form part of this Constitution;
- (c) in calculating the number of Units in issue for the purposes of any clause in this Constitution, 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;

- (d) a reference to a unit in another Stapled Entity includes a share or security in a company or entity that is a Stapled Entity;
- (e) a reference to the Responsible Entity of another Stapled Entity includes the board of a company or other entity that is a Stapled Entity; and
- (f) a reference to Stapling a Unit to a unit in another Stapled Entity includes Stapling one Unit to a fixed number of units in another Stapled Entity; and

unless the context indicates a contrary intention;

- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns, including any person taking by way of novation;
- (h) the expression "person" includes an individual, a corporation and an unincorporated association, an authority, a partnership and a trust;
- (i) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any statute or to any statutory provision includes any statutory modification, re-enactment or replacement of it or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
- (k) a reference to the Listing Rules or the ASX Settlement Operating Rules includes any modification or replacement of those rules or any other rules (however described) issued under those rules;
- (l) words importing the singular include the plural (and vice versa) and words indicating a given gender include all other genders;
- (m) the word "includes" in any form, is not a word of limitation;
- (n) a reference to "amend" includes vary, delete or replace;
- (o) where a word or phrase has a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (p) if the day by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next succeeding Business Day, unless the next succeeding Business Day falls in a different Financial Year, in which case, the sum must be paid, or that act, matter or thing must be done on or before the day specified;
- (q) a reference to cash includes cheque and bank cheque;
- (r) a reference to a month or a quarter means a calendar month or calendar quarter respectively;
- (s) a reference to any document or agreement (including this Constitution) is to that document or agreement as amended, novated (including pursuant to section 601FT of the Corporations Act), varied or replaced from time to time; and

- (t) terms defined in the Corporations Act are used in this Constitution with their same defined meaning.

### 1.3 Governing law

This Constitution is governed by and will be construed according to the laws of the State of New South Wales.

### 1.4 Corporations Act

If and for so long as the Scheme is Registered, then notwithstanding any other provision in this Constitution (whether expressed or implied):

- (a) Subject to clause 1.4(b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, then to that extent that provision does not have any force or effect.
- (b) Clause 1.4(a) is subject to any ASIC Instrument from time to time and, subject to clause 1.4(c), if before any such ASIC Instrument (or part thereof) can apply to this Constitution this Constitution is required to contain certain provisions, then to the extent that those provisions (or provisions to their effect) have not been expressly included in this Constitution, those provisions are deemed to be incorporated into this Constitution at all times that they are required to be included and prevail over the other provisions of this Constitution to the extent of any inconsistency. For the removal of doubt ASIC Class Order 13/655 is an ASIC Instrument for the purposes of this clause 1.4(b), subject to clause 1.4(c).
- (c) If the Responsible Entity determines that a particular ASIC Instrument (or any part of it) does not or should not apply to this Constitution, then clause 1.4(b) does not apply to that particular ASIC Instrument or part of it (as the case may be). The Responsible Entity may make and revoke that determination at any time.

### 1.5 Listing Rules

If and for so long as the Scheme is admitted to the Official List the following applies:

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

### 1.6 References to Corporations Act and Listing Rules

Notwithstanding any other provisions in this Constitution (whether express or implied), a clause of this Constitution which is expressed to apply subject to:

- (a) the Listing Rules, is only so subject while the Scheme is admitted to the Official List (and the clause is to be read accordingly); and
- (b) the Corporations Act, is only so subject while the Scheme is Registered (and the clause is to be read accordingly).

## 1.7 Rounding of payments

Where any calculations under this Constitution would result in a total amount payable to a person including a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Responsible Entity. Any excess money which results from rounding becomes part of Scheme Assets.

## 1.8 Market Price

- (a) In this clause 1.8, 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 A or B below determines that a measure of Market Price determined in accordance with paragraphs A or B below is a more appropriate measure of Market Price, that other measure will be adopted:
      - A. 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 the bookbuild is conducted in accordance with normal market practice for bookbuilds; or
      - B. an amount determined by an adviser who:
        - 1) is independent of the Responsible Entity; and
        - 2) 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,
- as being the fair issue price of the Interest, having regard to:
- 3) the nature and size of the proposed offer of Interests for which purpose the Issue Price of an Interest is being calculated;

- 4) the circumstances in which the proposed offer of Interests will be made; and
- 5) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

If any of paragraphs (i) or (ii) 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 thereby deemed to be severed.

- (c) In respect of clause 1.8(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.

## **2. The Scheme**

### **2.1 Registration**

Each Member acknowledges and agrees that the Responsible Entity may at any time (without the consent of any Member) apply to ASIC for the Scheme to become Registered as a managed investment scheme.

### **2.2 Scheme's Constitution**

360 Capital FM Limited is the Scheme's initial Responsible Entity and this Constitution is the constitution for the Scheme.

### **2.3 Constitution is legally binding**

The Responsible Entity and each Member and Former Member from time to time (and each person claiming through the Member and Former Member) is entitled to the benefit of and is bound by this Constitution in accordance with and to the extent provided for in this Constitution as if each of them is a party to this Constitution.

## **3. Scheme Assets held on trust**

### **3.1 Commencement of trust**

The Scheme commences when the Responsible Entity issues Units in accordance with clause 9 and shall continue until the Scheme is terminated in accordance with clause 22.

### **3.2 Declaration of trust**

- (a) The Responsible Entity declares that it holds all of the Scheme Assets on trust for Members subject to the provisions of this Constitution. The Scheme Assets vest in the Responsible Entity.
- (b) If and to the extent the Corporations Act requires, the Responsible Entity must ensure the Scheme Assets are clearly identified as property of the Scheme and held separately from all other property of the Responsible Entity and property of any other managed investment scheme.

### 3.3 Exclusion of other obligations

To the maximum extent permitted by law, all duties, obligations, liabilities or restrictions on powers which might otherwise be implied or imposed by law or equity upon the Responsible Entity in any capacity are hereby excluded.

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## 4. Scheme Assets divided into Units

### 4.1 Nature of a Unit

- (a) The beneficial interest in the Scheme Assets is divided into a changeable number of Units.
- (b) Subject to any rights, obligations and restrictions attaching to any particular Unit or Class:
  - (i) all Units in a Class rank equally with each other; and
  - (ii) a Unit confers an undivided interest in the Scheme Assets as a whole, subject to the Liabilities; and
  - (iii) a Unit does not confer any interest in any particular part of the Scheme Assets nor in any particular part of the Scheme.

### 4.2 Consolidation of Units

Subject to the law, the Responsible Entity may at any time consolidate or divide the number of Units on issue on any basis it determines.

### 4.3 Fractions of Units and rounding

Fractions of a Unit may be issued or redeemed or created by consolidation or division, as determined by the Responsible Entity, rounded up or down to any number of decimal places which the Responsible Entity determines. The value of, and all rights and obligations attaching to, a fractional Unit will be in the proportion which the fraction bears to a whole Unit. Any excess money or property which results from rounding becomes part of Scheme Assets.

### 4.4 Issue of Units and Classes

Subject to the law and the Listing Rules, the Responsible Entity may allot and issue unissued Units (including in different Classes) to any person, on any terms (including as to fees) at any time and in any numbers and having attached thereto such preferred, deferred or other rights, restrictions and obligations as the Responsible Entity thinks fit in its absolute discretion and further with power to classify or reclassify or designate or redesignate the same in any manner which the Responsible Entity thinks fit (including into Classes or into a different Class). 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 Constitution and this Constitution will be read subject to them.

### 4.5 Issue of Financial Products

Subject to the law, this Constitution, and the Listing Rules, the Responsible Entity may, in addition to Units, allot and issue any Financial Product to any person, on any terms at any time and in any number, in each case as the Responsible Entity thinks fit in its absolute discretion provided that all Members are offered the same opportunity. The issue price for an option to acquire Units is nil.

## 4.6 Income entitlement of Units

The Responsible Entity may issue Units or Classes of Units on terms that the Units:

- (a) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
- (b) do not entitle the holder of the Units to receive a distribution of Distributable Income in respect of the Distribution Period in which the Units are issued; or
- (c) entitle the holders to receive Distributable Income in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Fully Paid Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

## 5. Partly Paid Units

### 5.1 Terms of issue

The Responsible Entity may issue Partly Paid Units on terms and conditions it determines.

### 5.2 Calls

- (a) 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 this clause 5.2.
- (b) The Responsible Entity must only make a Call on one Member if at the same time it also makes Calls on all other Members on a pro rata basis in accordance with the respective Members' Percentage Interests.
- (c) The Responsible Entity must provide Members with a written notice of any Call made on Partly Paid Units containing the following information:
  - (i) the amount of the Call; and
  - (ii) the date on which payment is required to be made, such date to be at least 15 Business Days after the date of the notice.

### 5.3 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, 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.

### 5.4 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.

## 5.5 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:

- (a) 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; and
- (b) determine to suspend the Member's voting rights in respect of the Member's Units, in which case in respect of any resolution of Members, this Constitution will operate as if that Unit was not on issue.

## 5.6 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 5.6 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) The Responsible Entity is appointed as each Member's agent and attorney and is otherwise authorised to do all things necessary to dispose of forfeited Units in accordance with clause 5.8.

## 5.7 Entry on Register

If a Unit is forfeited under clause 5.6, the Responsible Entity must enter in the Register the fact of the forfeiture and its date.

## 5.8 Disposal of forfeited Units

A forfeited Unit may be sold (including to an Associate of the Responsible Entity) by the Responsible Entity as follows:

- (a) by offering the forfeited Units to all Members (other than the defaulting Member) on a pro rata basis in accordance with their respective Percentage Interests and subject to such timing and other conditions as the Responsible Entity may impose;
- (b) if some, but not all, of the Members accept the offer in clause 5.8(a), the Responsible Entity may offer the remaining forfeited Units to those Members who accepted the offer in clause 5.8(a) and, if there is more than one such Member, such offer shall be made to those Members on a pro rata basis in accordance with their respective Percentage Interests; and
- (c) if there are forfeited Units remaining after the offers in clauses 5.8(a) and 5.8(b) have completed, the Responsible Entity may offer to a third party, subject to such timing and other conditions as the Responsible Entity may impose, the opportunity to acquire the remaining Units for an amount which in all circumstances is considered reasonable by the Responsible Entity.

The Responsible Entity is not liable to a Member for any loss suffered by the Member as a result of a sale of forfeited Units.

## 5.9 Annulment of forfeiture

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

## 5.10 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.

## 5.11 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 5.

## 5.12 Responsible Entity's lien

If a call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, the Responsible Entity has, from the day fixed for such payment, a first and paramount lien on each Partly Paid Unit for amounts not paid and other money payable to the Responsible Entity by the Member in respect of the Unit. The lien extends to all distributions and other money from time to time payable in respect of the Unit.

## 5.13 Sale of Units to enforce lien

The Responsible Entity may sell Units subject to a lien, in the same way (making necessary changes) as if they had been forfeited.

## 5.14 Proceeds of sale

The net proceeds of a sale of forfeited Units under this clause 5 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.

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## 6. Limitation on a Member's rights

### 6.1 Limitation on a Member's rights

A Member is not entitled to and waives any right it may otherwise have to:

- (a) require any Scheme Assets to be transferred to the Member (other than in accordance with clause 10.18);
- (b) interfere with any rights, trusts, powers, authorities or discretions of the Responsible Entity conferred upon it by this Constitution or by law (including in respect of the

Scheme Assets (or any part thereof) or the Scheme) or the exercise or non-exercise of any such rights, trusts, powers, authorities or discretions by or on behalf of the Responsible Entity; or

- (c) claim or exercise any right, trust, power, authority or discretion in respect of the Scheme Assets (or any part thereof). Without limitation a Member must not lodge any caveat or other notice to protect or maintain in litigation or otherwise any proprietary, or other interest or claim in, or in relation to, the Scheme Assets (or any part thereof).

## 6.2 Joint holders

Where more than one person is registered as the holder of any Unit then, for the purposes of the administration of the Scheme:

- (a) they shall be deemed to hold the Unit as joint tenants unless the Responsible Entity determines otherwise;
- (b) they shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit;
- (c) they shall, subject to the Corporations Act, be counted as a single Member for the purposes of calculating the number of Members as referred in clause 18.7 relating to meetings of Members;
- (d) clause 18.7(b) applies to determine which joint holder may exercise the voting rights of jointly held Units;
- (e) any payment to joint Members shall be subject to clause 26.4;
- (f) on the death, legal disability, or bankruptcy of a joint Member, the provisions of clause 27 shall apply; and
- (g) delivery of notices and all other communications by the Responsible Entity will be made pursuant to clause 28.

## 6.3 Rights attaching to Units

A Member holds a Unit subject to the rights, obligations and restrictions attaching to that Unit.

## 6.4 Encumbrances over Units

The Responsible Entity may make Security Interest Rules for the recognition of the interests of holders of encumbrances over Units. From and including the date that the Responsible Entity receives notice from a Member in a manner acceptable to the Responsible Entity to the effect that the Security Interest Rules are to apply in respect of the Member and the Member's Units, then the rights, restrictions and obligations in respect of:

- (a) the Member;
- (b) a person claiming through the Member; and
- (c) the Responsible Entity in respect of the Member and Units held by the Member,

under this Constitution are subject to the Security Interest Rules. The Security Interest Rules may from time to time be repealed, amended or added to at the discretion of the Responsible Entity.

## 6.5 Responsible Entity not taken to have notice

The Responsible Entity is in no circumstances taken to have notice of, or to be under any obligation to enquire into, the provisions of any mortgage, charge or other encumbrance over Units. The Security Interest Rules represent a separate arrangement between the Responsible Entity and the Member and do not form part of this Constitution.

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## 7. Investment Representative Committee

### 7.1 Establishment

- (a) The Investment Manager (or where no Investment Manager is appointed, the Responsible Entity) may establish an Investment Representative Committee.
- (b) The Investment Manager (or where no Investment Manager is appointed, the Responsible Entity) will establish protocols in relation to the process of appointment, removal and replacement of members of the Investment Representative Committee in accordance with this clause.

### 7.2 Members right to appoint

- (a) Where an Investment Representative Committee is established, each Member with a Capital Committed across the Scheme of \$25 million or more will be offered the right to appoint a member to the Investment Representative Committee.
- (b) Where a Member has a right to appoint a member to the Investment Representative Committee in accordance with this clause upon the establishment of the Investment Representative Committee, that Member will not lose that right unless the Member transfers its Units or otherwise reduces its Capital Committed.

### 7.3 Role of Investment Representative Committee

Unless the Investment Manager (or where no Investment Manager is appointed, the Responsible Entity) otherwise determines, the role of the Investment Representative Committee will be consultative only and will not prevent or restrict the Responsible Entity from otherwise exercising its powers and discretions in relation to the Scheme as set out in this Constitution and at law.

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## 8. Liability of Members

### 8.1 Liability of a Member is limited

Except as expressly provided for in this Constitution (such as clause 26.5) and subject to any contrary agreement with a Member:

- (a) the liability of each Member is limited to the liability to pay any unpaid part of the Issue Price of Units held by the Member; and
- (b) no Member in their capacity as a Member is liable to, or is required to, indemnify the Responsible Entity or any creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Scheme in any case whatsoever including if at any time the Liabilities of the Scheme exceed the value of the Scheme Assets,

in each case even in relation to things done by the Responsible Entity at the direction or request of a Member which give rise to liabilities of the Responsible Entity in connection with the Scheme.

## 8.2 Relationship of agency or partnership excluded

Any relationship of agency, or of partnership, between the Responsible Entity in that capacity and any Member is expressly excluded.

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## 9. Application for, creation and issue of Units

### 9.1 Applications for Units

A person intending to apply for Units must give the Responsible Entity a completed application which is in such form and which is delivered, sent or given in such a manner and to such place as the Responsible Entity may require from time to time. Payment in respect of an application in an amount which is not less than the Minimum Application Amount must be paid in favour of or to the Responsible Entity (or its nominee). The amount must be in such form as the Responsible Entity requires (which may include periodic debits to a bank account and cheques). Such payment must accompany the application or be received by the Responsible Entity within a time specified by the Responsible Entity or as the terms of issue of the Unit contemplate or comprise a reinvestment of a distribution in accordance with clause 17.22.

### 9.2 Payment of Issue Price other than by money

The Responsible Entity may accept payment in respect of an application for Units in the form of a transfer of property (of a kind acceptable to the Responsible Entity) rather than cash, at market value. In that case, the applicant must transfer the title to the property to (or at the direction of) the Responsible Entity.

### 9.3 Responsible Entity may accept or reject applications

The Responsible Entity may, in its absolute discretion, accept or reject all or part of an application for Units (including an application to reinvest a distribution under clause 17.22) without giving any reason.

### 9.4 Application must be for Minimum Application Amount

The amount of application money or value of any property to be transferred in accordance with clause 9.2 must be no less than the Minimum Application Amount.

### 9.5 Time when Units are issued

- (a) Subject to clause 9.5(b), Units in any Class are taken to be created and issued at the Valuation Time as at which the Issue Price is determined or such other time specified by the Responsible Entity.
- (b) Units which are to be issued on a reinvestment of distributions under clause 17.22 are taken to be issued at the time specified in that clause.

### 9.6 Number of Units issued

When Units are taken to be created and issued under clause 9.5, the number of Units created and issued is that number calculated by the Responsible Entity by dividing the Net Investment (or, in the case of Units acquired on reinvestment of distributions under clause 17.22, the amount of the distribution that is reinvested) by the Issue Price of a Unit. The Responsible Entity may not issue a fraction of a Unit.

### 9.7 Issue Price while Units not Officially Quoted

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class and to clauses 9.8, a Unit or Class must only be issued at its Issue Price determined in accordance with the following provisions of this clause 9.7:

- (a) the Issue Price for the Initial Units is \$2.00. For every 100 Initial Units issued, the applicant will receive 3 bonus Units for no consideration;
- (b) the Issue Price for each other Unit issued until such date as the Responsible Entity determines is \$2.00;
- (c) in any other case, the Issue Price for a Unit is equal to:

$$\frac{\text{Net Asset Value of the Scheme Assets + Acquisition Expenses}}{\text{total number of Units on issue}}$$

last calculated prior to the relevant Units being created and issued by the Responsible Entity.

For the purposes of the formula in clause 9.7(c), "Net Asset Value of the Scheme Assets", "Acquisition Expenses" and "total number of Units on issue" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit (for which the application price is being calculated) belongs.

In determining the Issue Price of a Unit, the Responsible Entity may, to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:

- (a) any matter affecting the value of any factor included in the calculation of the Issue Price; and
- (b) any matter which is an aspect of the method of calculating the Issue Price.

## 9.8 Issue Price while Units Officially Quoted

- (a) While Units are Officially Quoted and Units do not form part of a Stapled Security, subject to any rights, obligations and restrictions attaching to any particular Unit or Class and subject to clauses 9.9 and 9.10, a Unit must only be issued at its Market Price.
- (b) While Units form part of a Stapled Security and Stapled Securities are Officially Quoted, subject to any rights, obligations and restrictions attaching to any particular Unit or Class and subject to clauses 9.9, 9.10 and 22.4, a Unit may be issued at a price determined by the Responsible Entity provided that the aggregate of the Issue Price of that Unit and the issue price of a unit, share or other security in each Stapled Entity to which that Unit is Stapled is equal to the Market Price for Stapled Securities.

## 9.9 Issue of Units at a discount to the Issue Price

The Responsible Entity may issue Units at a price that is up to 50% less than the Issue Price in the following circumstances:

- (a) on a proportionate offer of Units to Members; and
- (b) upon reinvestment of distributions,

and for all purposes, the price determined under this clause 9.8 will be taken to be the Issue Price for those Units.

## 9.10 Responsible Entity's discretion over Issue Price

- (a) Despite clause 9.7 and clause 9.8, but subject to the Corporations Act, the Listing Rules and any applicable ASIC Instrument, the Responsible Entity may issue Units at a price determined by the Responsible Entity (being a price other than the Issue

Price calculated under clause 9.7 and other than in accordance with an applicable ASIC Instrument) including determining the Issue Price by reference to a specified formula set out in a document other than this Constitution.

- (b) For the purposes of this clause:
  - (i) the Responsible Entity may amend this constitution by supplemental deed to provide for a specific Issue Price for those Units; and
  - (ii) it may issue those Units at the specified price.

### **9.11 Cancellation of issue of Units**

If, following receipt of an application for Units:

- (a) the application is rejected by the Responsible Entity;
- (b) any payment for the Units is not cleared;
- (c) any direct debit order in relation to the Units is not accepted by a bank; or
- (d) any transfer of property by way of payment for Units is not effective or the property is not transferred free of encumbrances within such period from receipt of such application as the Responsible Entity determines,

then any Units which have been created and issued in consideration therefor are void ab initio and are deemed for all purposes not to have been created or issued. The Responsible Entity may cause the Register to be rectified.

### **9.12 No Unit certificates**

No certificates for Units will be issued unless and until the Responsible Entity otherwise determines.

### **9.13 Designated Time**

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when an application for Units is received by the Responsible Entity for the purposes of clauses 9.7 and 9.8. The Designated Time may be different for given methods of communication or payment. Accordingly, subject to the Listing Rules and ASX Settlement Operating Rules, for the purposes of clauses 9.7 and 9.8, if an application for Units is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it will be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the applicable Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

### **9.14 Application money part of Scheme Assets**

All income in respect of the payment received or property transferred on an application for Units (which has been accepted by the Responsible Entity) prior to the issue of those Units forms part of the Scheme Assets. If an application is not accepted by the Responsible Entity, then the payment received or the property transferred on an application for Units shall be repaid or transferred to the applicant, and unless the Responsible Entity otherwise determines, no interest or other income in respect of that payment or property shall be payable to the applicant. Any income in respect of the payment received on an unsuccessful application for Units which is not repayable to applicants forms part of the Scheme Assets.

## 9.15 Issue Price of Units in conjunction with a Reorganisation Proposal

Notwithstanding any other provisions of this Constitution, the Issue Price for the Units issued in conjunction with a Reorganisation Proposal is \$0.0001, or where the Scheme is not Registered, such other amount as determined by the Responsible Entity.

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## 10. Withdrawal from Scheme

### 10.1 No right to withdraw

- (a) In circumstances where the Scheme is not Registered or is Registered and Liquid, except as provided in this clause 10 and subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Member has no right to withdraw from the Scheme.
- (b) Unless the Responsible Entity determines otherwise, while Units are Officially Quoted, none of the provisions of clauses 10.2 to 10.20 (inclusive) apply.
- (c) In circumstances where the Scheme is Registered and not Liquid, a Member has no right to withdraw from the Scheme other than pursuant to a Withdrawal Offer which is made and administered in accordance with sections 601KB to 601KE (inclusive) of the Corporations Act.

### 10.2 Withdrawal Request

- (a) Subject to paragraph (b) below, a Member can only submit a Withdrawal Request to redeem Units and otherwise withdraw (wholly or partly) from the Scheme in response to a Withdrawal Offer in respect of the Units that are the subject of the Withdrawal Request.
- (b) A Withdrawal Request must be made in writing to the Responsible Entity using the withdrawal request form available from the Investment Manager (or where no Investment Manager has been appointed, from the Responsible Entity) from time to time and in accordance with the withdrawal procedures which are available upon request from the Investment Manager.

### 10.3 Withdrawal Offer

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the Member's only right to redeem any of its Units or otherwise withdraw (wholly or partly) from the Scheme is to do so in accordance with the terms of any current Withdrawal Offer.

### 10.4 No obligation to make Withdrawal Offers

Nothing in this Constitution imposes any obligation on the Responsible Entity to make a Withdrawal Offer at any time to all Members or to all Members who hold Units in a Class. However, if it decides to make a Withdrawal Offer it may do so by any means including by publishing it in a newspaper or on the internet.

### 10.5 Cancellation of Withdrawal Offer

Subject to the Corporations Act, the Responsible Entity may at any time before a Withdrawal Offer closes, decide to cancel the offer, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Responsible Entity will give notice of the cancellation to the Members to whom the Withdrawal Offer was made by any means including by publishing it in a newspaper or on the internet. Any Withdrawal Request made in response to that Withdrawal Offer which has not been satisfied at the time of the Responsible Entity's decision to cancel the Withdrawal Offer will be taken to be withdrawn at that time.

## 10.6 Obligation to satisfy Withdrawals

- (a) Subject to clauses 10.6(b), 10.7, 10.9, 10.10, 10.17, 10.19, 10.20 and 24.2(b), to the Corporations Act and to any rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity must, within 21 days of receipt of a Withdrawal Request made in response to a Withdrawal Offer (or any longer time as is permitted by virtue of the operation of clause 10.9), redeem the number or value of Units specified in the Withdrawal Request by payment from the Scheme Assets of the Withdrawal Price determined in accordance with clause 10.13.
- (b) The Responsible Entity may purchase or arrange for another person to purchase all or some of the Units the subject of the Withdrawal Request at the price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 10.6(a) in respect of that Withdrawal Request. In that scenario, the Withdrawal Request is deemed satisfied upon:
  - (i) the transfer of Units the subject of the Withdrawal Request being recorded in the Register; and
  - (ii) if the transfer is for less than all of the Units the subject of the Withdrawal Request then upon payment of the Withdrawal Price in respect of the remaining Units.

## 10.7 Limit on Withdrawals

- (a) The Responsible Entity will, subject to the retention of such amounts as the Responsible Entity thinks are fit to meet all the liabilities and Expenses of the Scheme, endeavour to make provisions or reserves of an amount that may be determined by the Responsible Entity in its discretion of the Net Asset Value of the Scheme Assets available to meet Withdrawal Requests.
- (b) Subject to the Corporations Act, Withdrawal Requests will be processed by the Responsible Entity in such order and priority as the Responsible Entity may determine using its absolute discretion.

## 10.8 No obligation to satisfy out of own funds

Nothing in this Constitution imposes any obligation whatsoever on the Responsible Entity to satisfy a Withdrawal Request in whole or in part out of its own funds.

## 10.9 Suspension of obligation to satisfy Withdrawal Request

If in the opinion of the Responsible Entity:

- (a) it would prejudice the Scheme's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Scheme's or the Responsible Entity's compliance with any applicable law, the interests of any Member or the taxation or stamp duty status of the Scheme;
- (b) it would prejudice the Scheme's or the Responsible Entity's compliance with Anti-Money Laundering Laws;
- (c) it is, for any reason, impracticable for it to calculate the Net Asset Value of the Scheme Assets including because of the closure of a securities or other exchange or trading restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state of affairs or because of an event outside the reasonable control of the Responsible Entity, or because of the requirements of any law;

- (d) there would be insufficient cash retained in the Scheme Assets after complying with a Withdrawal Request to meet other Liabilities and in the Responsible Entity's opinion it is not in the interests of Members for any Scheme Assets to be sold in order to satisfy a Withdrawal Request;
- (e) sufficient Scheme Assets cannot be realised at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside the control of the Responsible Entity;
- (f) the Responsible Entity reasonably estimates that it must sell 5% or more (by value) of all Scheme Assets to meet current unsatisfied Withdrawal Requests;
- (g) there have been, or the Responsible Entity anticipates that there will be, Withdrawal Requests which will involve realising a significant amount of the Scheme Assets and the Responsible Entity considers that if those Withdrawal Requests are all satisfied immediately, Members who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those Withdrawal Requests would otherwise be to the existing Members' disadvantage including (but not limited to) a material diminution in the value of the Scheme Assets;
- (h) it is in the interests of the Members to invoke this clause 10.9 and extend the period referred to in clause 10.6; or
- (i) the law otherwise permits,

then, in each case, the period referred to in clause 10.6 by which a Withdrawal Request must be satisfied may, (in respect of all or any part of the Units the subject of the Withdrawal Request), be extended by the Responsible Entity by the number of days during which it considers these circumstances still prevail.

An unsatisfied Withdrawal Request received by the Responsible Entity before or during any period of suspension is taken to be received by the Responsible Entity on the first Business Day after the end of that period of suspension.

## 10.10 Minimum Withdrawal Amount

Without limiting the circumstances in which the Responsible Entity may refuse to satisfy a Withdrawal Request (in whole or in part):

- (a) If the application money for the Units to be redeemed has been paid by cheque or direct debit order or by transfer of property, the Responsible Entity may refuse to act on a Withdrawal Request relating to those Units until that cheque or direct debit order is honoured by the bank on which it is drawn and the proceeds received, or until unencumbered title to that property has been transferred to or at the direction of the Responsible Entity; and
- (b) The Responsible Entity may refuse a Withdrawal Request if it relates to Units which would have an aggregate Withdrawal Price which is less than the Minimum Withdrawal Amount unless the Withdrawal Request relates to all Units held by that Member.

## 10.11 Minimum Balance

- (a) If complying with a Withdrawal Request would leave a Member holding Units worth, at the Withdrawal Price, less than the Minimum Balance, then the Responsible Entity may treat the request as relating to all Units held by that Member.
- (b) If at any time a Member ceases for any reason to hold Units with an aggregate worth, at the Withdrawal Price at that time, at least equal to an amount equal to the

Minimum Balance, then the Responsible Entity may after giving 30 days' notice to the Member of its intention to do so, redeem that Member's holding without the need for a Withdrawal Request at the Withdrawal Price prevailing on the day the redemption takes place.

#### **10.12 Withdrawal Request cannot be withdrawn**

A Member may only withdraw a Withdrawal Request if the Responsible Entity agrees.

#### **10.13 Withdrawal Price**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Unit must only be redeemed at its Withdrawal Price determined when a Withdrawal Request is received or such other time specified by the Responsible Entity in a Withdrawal Offer.

#### **10.14 Designated Time**

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when a Withdrawal Request is received by the Responsible Entity for the purposes of clause 10.6. The Designated Time may be different for different methods of communication or payment. Accordingly, for the purposes of clause 10.6, if a Withdrawal Request is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it shall be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

#### **10.15 Withdrawal Price may represent Distributable Income**

The extent to which the whole or any part of an amount paid as Withdrawal Price represents a distribution of Distributable Income for a Distribution Period to which a Member is presently entitled will be calculated by the Responsible Entity. That amount will be that Member's Income Entitlement as a Former Member in relation to the Distribution Period in which the redemption occurs.

#### **10.16 Calculation**

In calculating the extent to which an amount paid as Withdrawal Price represents a distribution of Distributable Income for a Distribution Period for the purposes of clause 10.15, the Responsible Entity may have regard to:

- (a) the amount and category of any Distributable Income attributable to that part of the Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 10.13;
- (b) the amount and category of any Distributable Income attributable to the realisation of Scheme Assets to satisfy the redemption request or the source of funds used to satisfy the redemption request; and
- (c) the amount of any Tax Loss or category of Distributable Income that is attributable to that part of the Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 10.13.

## 10.17 Costs

On any redemption of Units, the Responsible Entity will deduct from any amount to be paid to the Member any unpaid amounts due by the Member to the Responsible Entity.

## 10.18 Transfer of Scheme Assets

If agreed to by a Member and the Responsible Entity, the Responsible Entity may transfer Scheme Assets to the Member in satisfaction in whole or in part of a Withdrawal Request. The value of the Scheme Assets must be equal to the amount which would have been the Withdrawal Price (or part thereof) if paid in cash to that Member, less such part (if any) of the Expenses associated with that transfer as the Responsible Entity considers should be payable by the Member.

## 10.19 Time of Redemption and Cancellation of Units upon redemption

- (a) Units redeemed under clauses 10.6(a) and 10.20 are taken to be redeemed at the time the Member's name is removed from 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.
- (b) Units are automatically cancelled upon their redemption.

## 10.20 Compliance with other laws

Subject to the law, the Responsible Entity may in its absolute discretion at any time redeem some or all of the Units or Units in a Class of any Member regardless of whether or not the Responsible Entity has received a Withdrawal Request in respect of those Units including to the extent it considers necessary for the Scheme and the Responsible Entity to comply with Anti-Money Laundering Laws and other applicable laws.

## 10.21 Buy back of Units and cancellation

Subject to the Corporations Act, the Listing Rules and any applicable ASIC Instrument, the Responsible Entity may effect a buy back of Units by purchasing Units (whether on market or not) on any terms and at any time it determines.

## 10.22 Small holdings

- (a) Subject to the provisions of this clause the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a Marketable Parcel as notified by the Responsible Entity to Members from time to time without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units pursuant to this clause on one occasion in any 12 month period. The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this clause.
- (c) The Responsible Entity will not sell or redeem the relevant Units:
  - (i) before the expiry of 6 weeks from the date of the notice given under this clause; or
  - (ii) if, within the 6 weeks allowed under paragraph (i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (d) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides. The proceeds of the sale or redemption will not

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

- (e) The Responsible Entity's power to sell or redeem the Units under this clause lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity is appointed as the attorney of and is authorised to execute on behalf of any Member a transfer of their Units under this clause and do any other things the Responsible Entity considers necessary or desirable to effect such transfer.

## **11. Valuation of Scheme Assets**

### **11.1 Valuation and calculation of Net Asset Value of Scheme property**

The Responsible Entity may cause any of the Scheme Assets to be valued at any time (not limited to once a day) and the Responsible Entity may calculate the Net Asset Value of the Scheme Assets as at any time (not limited to once a day), in each case, in its absolute discretion.

### **11.2 Responsible Entity is not an expert**

The Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

### **11.3 Method of valuation**

The valuation method or policy for any type of Scheme Asset for which a value is to be determined by the Responsible Entity must be consistent with the range of ordinary commercial practice for valuing that type of Scheme Asset. Where the Responsible Entity values any Scheme Asset at other than its market value then a description of the valuation method or policy applied by the Responsible Entity must be given to the auditor for the time being of the Scheme prior to its implementation.

### **11.4 Currency conversion**

If the Responsible Entity considers it should convert one currency to another it may do so at any time and at any conversion rate as is quoted to the Responsible Entity by any financial institution the Responsible Entity determines.

## **12. Register of Members**

### **12.1 Member is absolute owner**

The Responsible Entity may treat a person who is named on the Register as the absolute owner of the Unit or Units which are registered in their name.

### **12.2 Inspection of Register**

If a Member inspects or is given a copy of the Register (or part of the Register) pursuant to section 173(3) of the Corporations Act then they will be taken to have agreed not to use any information obtained from the Register (or part) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars relating to the holding of Units by that Member. A Member's obligation under this clause survives the transfer of all or any part of their Units.

### 12.3 Notify change of name or address of Member

A Member must promptly notify the Responsible Entity of a change of name or address and the Responsible Entity must update the Register accordingly.

### 12.4 Closure of Register

The Responsible Entity may close the Register at any time.

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## 13. Transfers of Units

### 13.1 Transferability

- (a) Subject to paragraph (b) and the rules applicable while the Scheme is admitted to an uncertificated trading system and to their terms of issue, a Member may only sell, assign, transfer or otherwise dispose of all or any part of their Units, in accordance with the provisions of this clause 13.
- (b) Except as permitted by the Listing Rules, a Member must not dispose of Restricted Securities during the applicable escrow period.
- (c) Subject to clause 13.2, a Member may transfer all or any of their Units by whatever transfer form the Responsible Entity may reasonably require based on the legal requirements applicable at that time. The documentation evidencing the transfer must be delivered to the Responsible Entity (or as it directs), duly executed by the transferor and transferee and duly stamped (if required).
- (d) The Responsible Entity may assume, as against a Member, that a power of attorney granted by that Member that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may rely on it, until the Responsible Entity receives express notice in writing at its registered office of:
  - (i) the revocation of the power of attorney; or
  - (ii) the death, dissolution or insolvency of the Member.

### 13.2 Disclosure of Scheme information to potential transferees

In circumstances where a Member wishes to transfer all or any of their Units pursuant to this clause 13, that Member may disclose information regarding the Scheme to the proposed transferee provided that the Member first obtains such transferee's commitment in writing to maintain the confidentiality of such information.

### 13.3 Registration of a Transfer

- (a) Subject to paragraph (b), a transfer must be delivered to the Responsible Entity (or as it directs), duly stamped and executed by the transferor and transferee and be accompanied by any evidence of title required by the Responsible Entity.
- (b) If Units are to be transferred in a manner permitted by an uncertificated trading system to which the Scheme is admitted, then the Responsible Entity may require before registration of any such transfer that it be provided with any documents which the rules of that system require or permit the Responsible Entity to require be provided to it to authorise registration.

### 13.4 Refusal of Registration

Subject to the Listing Rules, and the rules of any applicable uncertificated trading system and to their terms of issue, the Responsible Entity may, in its absolute discretion:

- (a) refuse to register any transfer of Units and must refuse to acknowledge a disposal (including registering a transfer) in breach of clause 13.1(b) or if the Listing Rules require it to do so. The Responsible Entity may give the Member who lodged the transfer notice of the decision to decline the registration but it is not obliged to provide reasons for the decision; and
- (b) apply a holding lock (or ask that a holding lock be applied) including to prevent a transfer.

### **13.5 Transferor remains Member**

Subject to the rules applicable while the Scheme is admitted to an uncertificated trading system and to their terms of issue, a transferor of a Unit remains the Member until the relevant transfer has been entered in the Register.

### **13.6 General**

- (a) The Responsible Entity need not concern itself with the consideration for a transfer of a Unit.
- (b) Any transfer is not effective until it has been entered in the Register.

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## **14. Powers of Responsible Entity as trustee of Scheme Assets**

### **14.1 General Powers of the Responsible Entity**

In addition to its powers arising under other provisions of this Constitution and by law, the Responsible Entity has all the powers in respect of the Scheme and the Scheme Assets that it is possible to confer on a natural person or corporation by law and as though it were the absolute and beneficial owner of the entirety of the Scheme Assets acting in its personal capacity. Without limitation, the Responsible Entity in its capacity as trustee of the Scheme has full and complete power to:

- (a) operate the Scheme including the management of Scheme Assets and Liabilities;
- (b) issue, acquire, underwrite any issue of, dispose of, redeem, and/or cancel Units (including Classes);
- (c) borrow or raise money or procure or grant any financial accommodation including the giving of guarantees for the purposes of the Scheme in any manner whatsoever including whether or not on a secured basis and including the giving of security over Scheme Assets;
- (d) issue debentures (including a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
- (e) grant a floating charge over the Scheme Assets;
- (f) incur obligations and liabilities of any kind, including to guarantee the obligations and liabilities of any person or provide indemnities in respect of such obligations and liabilities;
- (g) apply and invest all money at any time forming part of the Scheme Assets in property and rights of any kind;
- (h) exercise, enforce, dispose or otherwise deal with any property or right;

- (i) enter into any agreement with any person (including an Associate of the Responsible Entity) to underwrite the subscription or purchase of Units;
- (j) enter into Derivatives for any purpose; and
- (k) fetter its own powers or discretions,

in each case on any terms and conditions as the Responsible Entity thinks fit in its absolute discretion.

## **14.2 Discretion to exercise powers**

Subject to the law, the Responsible Entity may determine whether to exercise and, if so, the manner, mode and time of exercise of its duties, powers and discretions in its absolute discretion.

## **14.3 Power to change name of the Scheme**

The Responsible Entity may change the name of the Scheme at any time.

## **14.4 Power to seek information**

At any time, the Responsible Entity may request from Members, and Members must promptly provide to the Responsible Entity, any information (including personal information and details) reasonably required by the Responsible Entity for the purposes of administering the Scheme or complying with any relevant laws.

## **14.5 Power to take measures to comply with Anti-Money Laundering Laws**

Subject to the law, the Responsible Entity may in its discretion take such measures and exercise such powers as it considers necessary to enable the Scheme and the Responsible Entity to comply with Anti-Money Laundering Laws, including but not limited to those measures and powers set out in clause 9.3, 10.9(b) and 10.20.

## **14.6 Power to appoint agents and delegates**

Subject to the Corporations Act, the Responsible Entity may appoint, engage or replace any person (including an Associate of the Responsible Entity) as its agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage any person (alone, jointly or jointly and severally with other persons), to hold title to any Scheme Asset, or to exercise or perform any of its duties, powers, discretions and obligations in connection with the Scheme (and may include the power to appoint their own agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage another person for that purpose). Any such appointment or engagement may be on any terms that the Responsible Entity determines in its absolute discretion. An agent, delegate or other person appointed by the Responsible Entity pursuant to this clause 14.6 may be an Associate or Related Body Corporate of the Responsible Entity.

## **14.7 Power to establish committees**

Notwithstanding clause 7, the Investment Manager (or where no Investment Manager is appointed, the Responsible Entity) may establish any committee comprising such members (including Members of the Scheme), and having such functions, as the Investment Manager (or where no Investment Manager is appointed, the Responsible Entity) determines from time to time.

## **14.8 Power to enter into Investment Management Agreement**

The Responsible Entity is authorised to enter into the Investment Management Agreement with the Investment Manager. To the maximum extent permitted by law, the Responsible

Entity will not be liable to Members for any loss, costs, damage or Expense incurred due to any act or omission of the Investment Manager, including where the Investment Manager fails to comply with its obligations under the Investment Management Agreement.

## 14.9 Waiver of breach

Subject to its obligations at law, the Responsible Entity may waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Responsible Entity in connection with the Scheme.

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## 15. Remuneration of Responsible Entity and Scheme Expenses

### 15.1 Expenses

Subject to the Corporations Act where the Scheme is Registered, and in addition to any other rights to indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets, all Expenses incurred in relation to the performance of its duties or exercise of its powers. Without limitation this includes all Expenses of or in connection with:

- (a) the establishment, registration, operation, administration and management of the Scheme, the Scheme Assets and Scheme Liabilities including without limitation complying with any law, the Listing Rules and any of the requirements of ASIC;
- (b) the issue, withdrawal or transfer of Units;
- (c) preparation, approval, execution and enforcement of this Constitution (and any amendment of this Constitution);
- (d) the admission of the Scheme to the Official List of the ASX and compliance with the Listing Rules
- (e) the retirement or removal of the Responsible Entity and the appointment of a successor in its place;
- (f) the initiation, prosecution, defence and compromise of any court, arbitration or other dispute resolution action, claim or Proceedings relating to the Scheme (including any action, claim or proceeding brought by or against the Responsible Entity). However, if the Responsible Entity is found by a Court to be personally liable for any loss or damage to the Scheme Assets then the Responsible Entity must repay any Expenses which have been reimbursed out of or paid from Scheme Assets under this clause 15.1(f);
- (g) convening and holding meetings of Members and giving effect to resolutions of any meeting and sending other communications to Members;
- (h) the establishment and maintenance of the Register and all other registers in respect of any aspect of the Scheme;
- (i) the identification, acquisition, realisation, insurance, valuation, custody, management, supervision, repair, maintenance, receipt, collection, or distribution of or other dealing with any Scheme Assets (or any proposal to do any of those things). Without limitation, this includes the due diligence costs associated with an acquisition of assets which may or may not become Scheme Assets (including time spent by executives);
- (j) obtaining and servicing of financial accommodation (including bank fees, interest, expenses, charges and borrowing costs);

- (k) appointing or otherwise engaging any agent delegate, advisor, developer, development manager, development advisor, real estate agent, marketing agent, administrator or other person (including an Associate) for any purpose in connection with the Scheme. Without limitation, this includes persons who supply services to or on behalf of or at the request of the Responsible Entity and persons whose professional advice has been sought in respect of any matter concerning the operation, administration or management of the Scheme (including any brokerage or commission payable to those persons);
- (l) any fees and expenses payable to any service provider, manager, contractor, developer including the Investment Manager pursuant to the Investment Management Agreement or any other person (including an Associate or Related Body Corporate of the Responsible Entity);
- (m) the appointment or removal of a custodian to hold any Scheme Assets;
- (n) underwriting of any subscriptions for or purchase of Units including fees and indemnity amounts and amounts which may become payable because of a breach (except for negligence, fraud or breach of trust) of the underwriting contract by the Responsible Entity;
- (o) the preparation, review, printing and distribution of any product disclosure statement, supplementary product disclosure statement, information memorandum or other disclosure document in respect of the Scheme or other promotion of the Scheme;
- (p) keeping the financial records relating to the Scheme, and keeping, preparing, distributing and/or lodging the accounts relating to the Scheme and complying with any obligations with respect to the accounts relating to the Scheme and any audit of those accounts;
- (q) the termination of the Scheme and winding up of the Scheme;
- (r) the establishment and operation of the Compliance Committee (including any costs incurred in the selection and appointment of CC Members). Without limitation this includes indemnities, fees, costs and insurance premiums given, paid or otherwise made available in respect of CC Members and any fees of professional advisors in respect of advice or assistance obtained by the Compliance Committee;
- (s) (while there is no Compliance Committee in respect of the Scheme) the board of directors of the Responsible Entity carrying out the functions which a compliance committee (within the meaning of the Corporations Act) in respect of the Scheme would be required by law to perform. Without limitation, this includes the fees and insurance premiums paid or otherwise made available to directors of the board who are external directors for the purposes of Chapter 5C of the Corporations Act;
- (t) the operation of the Investment Representative Committee. Without limitation this includes indemnities, fees, costs and insurance premiums given, paid or otherwise made available in respect of IRC Members and any fees of professional advisors in respect of advice or assistance obtained by the Investment Representative Committee;
- (u) the preparation, operation, amendment and audit of the compliance plan (within the meaning of the Corporations Act);
- (v) compliance with all obligations and requirements under Tax laws, including the keeping of Tax records, the preparation of Tax returns, Tax statements, invoices and documents relating to the Scheme, any Tax audit, and the management of the Tax affairs of the Scheme;

- (w) the establishment and administration of the complaints handling procedures referred to in clause 19 and obtaining and maintaining membership of an external dispute resolution scheme;
- (x) Taxes and bank fees and charges incurred by the Responsible Entity in connection with the Scheme;
- (y) complying with any law and any request or requirement of ASIC or other regulatory authority;
- (z) travel expenses incurred in connection with the Scheme;
- (aa) entering the Scheme in any survey;
- (bb) any fees payable to any ratings organisation;
- (cc) computer hardware, software and other equipment (including development and maintenance of internet facilities); and
- (dd) the implementation of any Reorganisation Proposal or any restructuring or listing of the Scheme.

## 15.2 Class Expenses

The Responsible Entity may determine that an Expense, or a proportion of an Expense, is to be a Class Expense in relation to a particular Class. Unless and until the Responsible Entity makes that determination, any Expense under clause 15.1 is to be referable to all Units on an equal basis.

## 15.3 Fees

To the extent permitted by the Corporations Act, the Responsible Entity is entitled to be paid (but for any Member or Members within a particular Class may elect to receive less than or waive part or all of) until the Scheme is finally wound up the following fees for the proper performance of its duties in connection with the Scheme:

- (a) a management fee equal to 0.10% p.a. of the Gross Asset Value or such other fee as the Members and the Responsible Entity agree from time to time. Any such fees will be (unless otherwise agreed):
  - (i) calculated and accrued on a daily basis; and
  - (ii) payable within 5 Business Days of the end of each month out of the Scheme Assets (to the extent of income) and if that is not sufficient, out of capital which forms part of the Scheme Assets.

## 15.4 Waiver of fees and expenses and differential fees

Subject to the law, the Responsible Entity has an absolute discretion to (in respect of a particular Class, in respect of a particular Member or generally):

- (a) accept lower fees than it is entitled to under this Constitution; or
- (b) otherwise waive or defer (in the case of a deferral, the fee accrues on a daily basis until paid) for any period it considers appropriate:
  - (i) the amount of any fees (or any part of a fee) payable to it under this Constitution in respect of all or any Units; and
  - (ii) reimbursement of any or all Expenses under clause 15.1; or

- (c) agree with any Member, or Class of Member fee arrangements in respect of that Member or Class which are different to those that would otherwise apply under this Constitution.

## 15.5 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 Constitution.

## 15.6 GST

- (a) Unless otherwise defined in this Constitution, terms used in this clause 15.6 have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth). A reference to Responsible Entity in this clause includes the representative member of any GST group to which the Responsible Entity belongs.
- (b) Unless expressly stated otherwise, the fees and any other amounts which are payable to the Responsible Entity under this Constitution are exclusive of GST.
- (c) Any payment or reimbursement required to be made under this Constitution for an Expense or other amount paid or incurred by the Responsible Entity will be limited to the total Expense or amount less the amount of any input tax credit to which the Responsible Entity is entitled for the acquisition or transaction to which the Expense or amount relates.
- (d) If the Responsible Entity is liable to pay GST in respect of any supplies it makes under or in connection with this Constitution then:
  - (i) in addition to any fees or other amount to which the Responsible Entity is entitled, the Responsible Entity is entitled to recover or be paid from the Scheme Assets (by way of increased fee or otherwise), at the same time as the fees or other amount, an additional amount equal to the amount of that GST liability; and
  - (ii) the Responsible Entity will issue a tax invoice for such supplies no later than the time at which the Responsible Entity recovers or is paid the additional amount referred to in clause 15.6(d)(i) from the Scheme Assets, or otherwise receives the consideration for the supply.
- (e) If the GST payable in relation to a supply made under or in connection with this Constitution varies from the additional amount recovered or paid from the Scheme Assets under clause 15.6(d)(i) in respect of that supply, then the Responsible Entity will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Scheme Assets (as appropriate).

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## 16. Responsible Entity's indemnity out of Scheme Assets

### 16.1 Responsible Entity's indemnity

In addition to any other rights of indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets, all liabilities and losses incurred by it in relation to the proper performance of its duties in relation to the operation, administration and management of the Scheme or otherwise in connection with the Scheme. The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it in incurring a liability (actual or contingent) for which it does not (or for which it considers it does not) have full rights of indemnity and reimbursement out of the Scheme Assets, or which it cannot fully pay from the Scheme Assets and unless its own

liability is limited in a manner satisfactory to it in its absolute discretion. The rights of indemnity and reimbursement provided by this clause 16.1 shall continue in favour of the Responsible Entity after it has ceased to be Responsible Entity to the Scheme.

## **16.2 Indemnity extends to cover acts of agents or delegates**

To the extent permitted by the Corporations Act, if for any reason (including because of the operation of section 601FB(2) of the Corporations Act), the Responsible Entity is liable for the direct or indirect acts or omissions of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity), then the indemnity in clause 16.1 extends to also include that liability.

## **16.3 No obligation to commence litigation**

The Responsible Entity is not under any obligation to commence, prosecute, defend or compromise any court, arbitration or other dispute resolution action, claim or proceeding unless it is satisfied the Scheme Assets has and will at all times have sufficient net assets to adequately indemnify it against all Expenses, liabilities or losses it may incur in connection with that action, claim or proceeding.

## **16.4 Right of indemnity applies even if liabilities exceed Scheme Assets**

The Responsible Entity's rights to indemnity and reimbursement under this Constitution and at law apply even if at any time the Liabilities exceed the value of the Scheme Assets.

## **16.5 Right of indemnity applies even if unrelated breach of trust**

The Responsible Entity's right of indemnity and reimbursement in respect of a matter (an "Indemnified Matter") will not be lost or impaired by reason of a separate unrelated breach of trust (whether it arises before or after the Indemnified Matter) in respect of which those rights of indemnity do not apply.

## **16.6 Indemnity for CC Member and IRC Members**

If any CC Member or IRC Member (acting in that capacity) incurs a liability in good faith, the Responsible Entity may indemnify the relevant CC Member or IRC Member out of Scheme Assets in respect of that liability to the extent permitted by the Corporations Act.

## **16.7 Separate limitations**

- (a) Each clause of this Constitution that provides, or relates to, a right of the Responsible Entity to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets or a limitation of the Responsible Entity's liability:
  - (i) is separate and independent of any other right, indemnity or limitation of liability;
  - (ii) does not limit any other provision of this Constitution; and
  - (iii) applies to the maximum extent permitted by law.
- (b) The Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

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## **17. Income and distributions to Members**

### **17.1 Application of income and distribution provisions**

- (a) The Responsible Entity must receive and collect all income of the Scheme.

- (b) If the Responsible Entity makes an AMIT Election under clause 17.14 that is effective in respect of a particular Financial Year, then the provisions of this clause 17 will operate subject to, and be qualified by, the provisions of Schedule 1 for that Financial Year.
- (c) The provisions contained in clause 17.5 and clause 17.6 will not apply in respect of a particular Financial Year unless or until the Responsible Entity makes an AMIT Election under clause 17.14.

## 17.2 Determination of Distributable Income

- (a) The Responsible Entity must determine the:
  - (i) Distributable Income;
  - (ii) Capital Gains; and
  - (iii) Residual Income,
 of the Scheme for each Distribution Period and Financial Year.
- (b) Unless the Responsible Entity determines otherwise prior to the end of the relevant Distribution Period or Financial Year, the Distributable Income is the aggregate of:
  - (i) the amount which the Responsible Entity determines to be the "net income of the trust estate" for the Scheme for the purposes of section 95 of the Tax Act for the relevant period, determined as if the relevant period were a year of income for the purposes of the Tax Act, but disregarding:
    - A. any amounts the Responsible Entity determines are included in the "net income of the trust estate" for the Scheme for the relevant period that represent either or both of franking credits or foreign tax offsets; and
    - B. any reduction in the net capital gain for the Scheme for the relevant period which the Responsible Entity determines arises as a result of the discount capital gains concession; and
  - (ii) any additional amount that the Responsible Entity considers appropriate for distribution for the relevant period.

## 17.3 Accounting standards

The preparation of the accounts of the Scheme in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 17.2.

## 17.4 Residual Income Entitlements and Residual Gains Entitlements

Subject to clause 17.12, the Residual Income Entitlement and Residual Gains Entitlement of a Member for a Distribution Period is so much of, respectively, the Residual Income and Capital Gains of the Scheme calculated by the Responsible Entity as follows:

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

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period;
- C is either:
- (i) for a Residual Income Entitlement, the Residual Income of the Scheme for the Distribution Period; and
  - (ii) for a Residual Gains Entitlement, the excess, if any, of the Capital Gains of the Scheme for the Distribution Period over the Maximum Redemption Gains Amount for any Units redeemed during the Distribution Period under a Significant Redemption

or such lesser amount as the Responsible Entity may determine; and

- (b) in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and
- C is:
- (i) for a Residual Income Entitlement, any amount by which the Residual Income of the Scheme for the Financial Year exceeds the aggregate of the amount of Residual Income calculated for the purposes of variable C(i) in paragraph 17.4(a) in respect of the previous Distribution Periods in the Financial Year; and
  - (ii) for a Residual Gains Entitlement, any amount by which the Capital Gains of the Scheme for the Financial Year exceeds the aggregate of:
    - A. the Redemption Gains Entitlements for all Units redeemed under a Significant Redemption during the Financial Year; and
    - B. the aggregate of all Residual Gains Entitlements calculated for the purposes of variable C(ii) in paragraph 17.4(a) in respect of previous Distribution Periods in the Financial Year.

## 17.5 Significant Redemption

The Responsible Entity may determine that a redemption of Units in the Scheme is a Significant Redemption.

## 17.6 Redemption Gains Entitlement

- (a) If there is a Significant Redemption of Units in the Scheme, then the Responsible Entity may determine that a Redemption Gains Entitlement arises for the Member whose Units are redeemed under the Significant Redemption. If the Responsible Entity makes a determination that a Redemption Gains Entitlement arises, the Responsible Entity must determine the Maximum Redemption Gains Amount for the Units redeemed under the Significant Redemption.
- (b) The Maximum Redemption Gains Amount for a Unit redeemed under a Significant Redemption is:
- (i) so much of the Capital Gains which arise for the Scheme that the Responsible Entity reasonably determines are connected to a disposal of the Assets of the Scheme undertaken by the Responsible Entity to fund a payment, in whole or in part, of the Redemption Amount for the Units redeemed; divided by
  - (ii) the number of Units redeemed under the Significant Redemption.
- (c) The Redemption Gains Entitlement for a Unit redeemed under a Significant Redemption is the lesser of:
- (i) the Maximum Redemption Gains Amount for the Unit; and
  - (ii) the amount determined in accordance with the following formula:

$$\frac{M}{AM} \times CG$$

where:

M is the Maximum Redemption Gains Amount for the Unit;

AM is the aggregate of the Maximum Redemption Gains Amount for all Units redeemed under a Significant Redemption during the Financial Year; and

CG is the Capital Gains of the Scheme for the Financial Year.

For the avoidance of doubt, the Redemption Gains Entitlement for a Unit that is redeemed under a redemption that is not a Significant Redemption is nil.

## 17.7 Present entitlement

- (a) Subject to clause 17.9, a person who at any time during the Financial Year is or has been a Member is presently entitled, at the end of that Financial Year, to:
- (i) the Capital Gains of the Scheme for the Financial Year in the proportion that the sum of the Residual Gains Entitlements and Redemption Gains Entitlements of the Member or former Member in respect of the Financial Year bear to the sum of all Residual Gains Entitlements and Redemption Gains Entitlements of all persons who are or have been Members at any time during the Financial Year; and

- (ii) the Residual Income of the Scheme for the Financial Year in the proportion that the Residual Income Entitlements of the Member or former Member in respect of the Financial Year bear to the sum of all Residual Income Entitlements of all persons who are or have been Members at any time during the Financial Year,

and these amounts are to be set aside for distribution.

- (b) For the avoidance of doubt, where the trust is an AMIT for any income year, the Trust and the Members (as relevant) will be taxed in accordance with the AMIT Regime for that income year.

## 17.8 Satisfaction of present entitlement and distribution of income

- (a) The present entitlement of a person who at any time during the Financial Year is a Member to:
  - (i) the Distributable Income of the Scheme for a Financial Year is satisfied by the distribution to the Member of the Income Entitlements of the person in respect of the Financial Year;
  - (ii) the Capital Gains of the Scheme for a Financial Year is satisfied by the distribution to the Member of:
    - A. so much of the Redemption Amount for the relevant Units redeemed by the Member as represents a Redemption Gains Entitlement; and
    - B. the Member's Residual Gains Entitlements; and
  - (iii) the Residual Income of the Scheme for a Financial Year is satisfied by the distribution to the Member of the Residual Income Entitlements of the Member.
- (b) Subject to any deductions made under clause 17.11, the Responsible Entity must pay to each person the person's Residual Income Entitlements and Residual Gains Entitlements for a Distribution Period. That payment must occur within 2 months after the Distribution Calculation Date for the Distribution Period.

## 17.9 Separate accounts

- (a) Subject to paragraph 17.9(b), the Responsible Entity may:
  - (i) keep separate accounts of different categories or sources (or both) of Distributable Income or gains, or deductions, losses or credits for Tax purposes, including Capital Gains and franked dividends. If such accounts are kept, they must be kept in accordance with the requirements of the Tax Act; and
  - (ii) allocate Distributable Income or gains, or deductions, losses or credits from a particular category or source (or both) for tax purposes to particular Members, including as part of the Income Entitlements of Members.

Where the Responsible Entity allocates items of Distributable Income or gains, or deductions, losses or credits from a particular category or source (or both) for tax purposes to a Member other than pro rata with all other Members, the Responsible Entity must:

- (iii) notify the Member; and

- (iv) record, in the accounts and records of the Scheme, the allocation of items of Distributable Income or gains, or deductions, losses or credits from the particular category or source (or both) to the Member.
- (b) The Responsible Entity must:
- (i) keep separate accounts of the Capital Gains and Residual Income of the Scheme; and
  - (ii) allocate the Capital Gains and Residual Income of the Scheme kept in those separate accounts in accordance with the terms of this Constitution, including through:
    - A. in the case of Capital Gains, Residual Gains Entitlements and Redemption Gains Entitlements; and
    - B. in the case of Residual Income, Residual Income Entitlements.

### 17.10 Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their Residual Income Entitlements and Residual Gains Entitlements under clauses 17.4 and 17.7 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

### 17.11 Deductions from Distributable Income

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under clause 26.6. All amounts deducted must be applied in reimbursing the Scheme for any corresponding amount paid, distributed or reimbursed out of the Scheme or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

### 17.12 Fractions

If the share of Distributable Income for a Member determined under clause 17.4 includes a fraction of a cent, the share is to be adjusted:

- (a) if the fraction of a cent is greater than or equal to half a cent, to the nearest cent above the amount calculated; and
- (b) otherwise, to the nearest cent below the amount calculated.

### 17.13 Classification of items

Without limiting clause 17.2, the Responsible Entity has the power to determine:

- (a) the classification of any item as being Distributable Income, on income account, on capital account, or otherwise;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item should be recognised as it is received or as it accrues (but not yet received).

## 17.14 Responsible Entity elections

- (a) The Responsible Entity may make an election under the AMIT Regime to determine the Scheme to be an AMIT with effect from the commencement of any Financial Year of the Scheme (AMIT Election). An AMIT Election must be in writing.
- (b) The Responsible Entity has, without limiting its other rights and powers provided for under this Constitution, all of the powers and rights which are necessary or desirable to enable the Scheme to make an AMIT Election and to be eligible to apply the AMIT Regime.
- (c) Where the Responsible Entity makes an AMIT Election:
  - (i) the provisions contained in Schedule 1 are to apply on and from the date specified in the election and will continue apply while the Scheme is an AMIT; and
  - (ii) the provisions in clause 17.5 and clause 17.6 are to apply on or from the date specified in the election and will continue to apply while the Scheme is an AMIT.
- (d) The Responsible Entity may notify the Members of the making of an AMIT Election.
- (e) Nothing in this clause 17.14 imposes an obligation on the Responsible Entity to:
  - (i) make an AMIT Election; or
  - (ii) make any amendments to the Constitution or otherwise facilitate the Scheme being able to elect to apply the AMIT Regime to the Scheme.

## 17.15 Implications if the Scheme is not an AMIT

If the Scheme is not an AMIT for a Financial Year but the Responsible Entity purports to exercise a power under this clause 17 or Schedule 1 on the basis that the Responsible Entity reasonably believes that the Scheme is or will be an AMIT for the Financial Year, then to the maximum extent possible:

- (a) the exercise of the relevant powers by the Responsible Entity will be treated as a proper exercise of the Responsible Entity's powers under this Constitution or at law;
- (b) actions of the Responsible Entity undertaken pursuant to the exercise of the relevant power will be treated as valid actions.

## 17.16 Default Distributable Income

If no determination is made in accordance with clause 17.2 prior to the end of a Financial Year, the Distributable Income of the Scheme for that Financial Year is the aggregate of:

- (a) the net income and gains of the Scheme determined in accordance with applicable accounting principles and standards, as adjusted in accordance with any determination made prior to the end of the Financial Year by the Responsible Entity in accordance with the Constitution, including (without limitation) any determination made under clauses 17.2(b) and 17.5; and
- (b) an additional amount, which, if available for distribution to Members (whether in cash or as an in specie distribution), would prevent the Responsible Entity being liable to Tax on any part of the net income of the Scheme under section 99 or section 99A of the Tax Act for the Financial Year.

**17.17 Tax**

The Responsible Entity may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of Members) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the net income of the Scheme is borne by the Members in proportions that correspond with the shares of Distributable Income to which they are presently entitled, and that the Responsible Entity incurs no liability to pay Tax under section 99 or section 99A of the Tax Act as trustee of the Scheme.

**17.18 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 a Distribution Period may be treated as having been paid in a different Distribution Period .

**17.19 Payment of distributions**

The Responsible Entity shall pay to (or apply for the benefit of, or at the direction of) each Member who is on the Register at the close of business on the last day of a Distribution Period the amount of their respective Income Entitlements pursuant to clause 17.4 or clause 17.7 (excluding any amounts previously distributed to that Member in respect of the Distribution Period) within 2 months after the Distribution Calculation Date for the Distribution Period and in any case within the period required under Tax Law.

**17.20 Other distributions**

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity may at any time distribute from the Scheme Assets any amount of capital to Members pro rata according to the numbers of Units held as at a time decided by the Responsible Entity or distribute income to Members in accordance with the proportions in clause 17.4 or clause 17.7. Distributions by the Responsible Entity to Members may be made by means of cash, cheque, direct deposit or property, including without limitation, the application of the distribution towards the issue of additional Units (with the issue of the Units being in accordance with clause 17.22, as though under a distribution reinvestment scheme). The provisions of this clause 17 apply to such distributions so far as they are capable of doing so.

**17.21 Excess distribution**

If the Responsible Entity determines that the total amount of the distributions actually made to Members (in one of the forms mentioned in clause 17.19) during or with respect to a Financial Year exceeds the Distributable Income for the Financial Year, the Responsible Entity may treat the excess as a distribution of capital.

**17.22 Distribution reinvestment arrangements**

Subject to the approval of the Responsible Entity, a Member may elect to reinvest some or all of any distribution payable to a Member by acquiring additional Units in accordance with this Constitution. In this event, the Responsible Entity will be treated as having received and accepted an application to reinvest distributions immediately before the first Valuation Time after the end of the relevant Distribution Period. Units issued in respect of such application are to be issued at an Issue Price determined as at the first Valuation Time after the end of the relevant Distribution Period but calculated as if the Acquisition Expenses are nil. The procedure for reinvestment of distributions (and any changes in the procedure) shall be determined by the Responsible Entity and notified to Members from time to time.

**17.23 Classes**

The rights of a Member under this clause 17 are subject to the rights, restrictions and obligations attaching to any particular Unit or Class on issue from time to time.

**17.24 If the Scheme becomes Taxable**

If for any Financial Year the Scheme is to be assessed for income Tax as a company, the Responsible Entity may:

- (a) determine that the preceding provisions in clause 17 do not apply for that Financial Year;
- (b) make any distribution or interim distribution it sees fit;
- (c) fix a record date for any distribution or interim distribution; and
- (d) determine in its absolute discretion how Income for that Financial Year is to be worked out,

subject to any rights attaching to a particular Unit or class of Units each Member is entitled to a portion of a distribution or interim distribution equal to the proportion that the number of Units held by that Member on the record date for the distribution or interim distribution bears to the total number of Units held by all Members on that record date.

**17.25 Liability**

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 17, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of any discretion or power despite any error or miscalculation in any provision made for Tax.

**17.26 Restricted Securities**

A Member who holds Restricted Securities is not entitled to any distributions in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing Rules or ASX.

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**18. Meetings of Members****18.1 Corporations Act and Listing Rules to apply**

- (a) While the Scheme is not Registered, meetings of Members or of Members of a Class will be called and conducted as if Part 2G.4 of the Corporations Act applied (as modified by clauses 18.2 inclusive) with any necessary modifications except that at least 7 days' notice of a meeting must be given to Members or Members of a Class, or such shorter notice as they agree.
- (b) While the Scheme is Registered, except as provided for in clauses 18.2 to 18.14 inclusive, the provisions of Part 2G.4 of the Corporations Act and the Listing Rules (while they apply) apply to meetings of Members or Members of a Class.

## 18.2 Convening of meetings

The Responsible Entity may convene a meeting of Members or Members of a Class at any time and may determine the time and place and the manner in which the meeting will be conducted.

## 18.3 Omission to give notice

Accidental omission to give notice to, or the non-receipt of notice of meeting by, a Member will not invalidate the meeting.

## 18.4 Chair

Subject to the Corporations Act:

- (a) the Responsible Entity may appoint a person to chair a meeting of Members or a Class of Members;
- (b) the chair of a meeting of Members or a Class of Members need not be a Member or a Member of a Class and, if there is an equality of votes either on a show of hands:
  - (i) if the chair of the meeting is not (or if the chair were a Member would not be) entitled to vote, the matter is decided in the negative; and
  - (ii) otherwise, the chair will have a casting vote in addition to the votes to which they may be entitled as a Member or a Member of a Class; and
- (c) the decision of the Chair on any matter relating to the conduct of a meeting is final.

## 18.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Corporations Act and the Listing Rules.

## 18.6 Acceptance of proxy appointment

The Responsible Entity may in its absolute discretion accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act. An appointment of proxy may be a standing one.

## 18.7 Joint holders

Where more than one person is registered as the holder of any Unit, then:

- (a) all such registered holders shall be counted as a single registered holder for the purposes of calculating the number of Members who have:
  - (i) requested a meeting under section 252B(1) of the Corporations Act;
  - (ii) given the Responsible Entity notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
  - (iii) requested that a statement be distributed to Members under section 252N of the Corporations Act; or
  - (iv) demanded a poll under section 253L of the Corporations Act; or

- (b) the joint holder first named in the Register (or if that person does not vote, the next named joint holder, and so forth) may exercise the voting rights of jointly held Units.

### **18.8 Quorum requirements**

The quorum for a meeting of Members or Members of a Class is 2 Members present in person or represented by proxy or represented by body corporate representative holding, between them, not less than 5% of all issued Units or Units of a Class (as the case may be). If, however, there are less than 2 Members who are entitled to vote at the meeting, the quorum for that meeting is the number of Members or Members of a Class who are entitled to vote at the meeting.

### **18.9 Proxies and representations**

- (a) If an individual is attending a meeting both as a Member or a Member of a Class and as a proxy or body corporate representative, then the Responsible Entity may, for the purposes of determining whether a quorum is present, count the individual in respect of each such capacity.
- (b) Notwithstanding section 252W(2) of the Corporations Act, a proxy is entitled to vote on a show of hands.
- (c) For the purposes of section 252Z of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, to reduce the period of 48 hours referred to in sections 252Z(2) and (3) of the Corporations Act for receipt of proxy documents before the time appointed for the meeting.
- (d) Section 253A(1) of the Corporations Act applies to determine the validity of proxy votes. That section also applies to determine the validity of a vote of a body corporate representative as if the reference to 'proxy' in that section was a reference to body corporate representative.

### **18.10 Quorum presence**

The quorum must be present at all times during the meeting.

### **18.11 Absence of quorum - Dissolution or adjournment of meeting**

If the quorum is not present within 30 minutes after the scheduled time for the start of the meeting set out in the notice of meeting, the meeting is:

- (a) if called under sections 252B, 252C, 252D or 252E of the Corporations Act - dissolved. This is not so if the meeting is called under section 252E and the court has directed otherwise; or
- (b) if called under section 252A of the Corporations Act - adjourned to a place and time that the Responsible Entity decides.

The quorum for any adjourned meeting is the number of Members or Members of a Class who are present in person or by proxy or by body corporate representative. If the quorum is not present within 30 minutes after the scheduled time for the start of the adjourned meeting, the meeting is dissolved.

### **18.12 Power of chair to cancel or postpone meetings**

The chair may cancel or postpone a meeting for any reason to any place and time as it thinks fit unless the meeting has been called under section 252E of the Corporations Act and the court has directed otherwise.

**18.13 Resolution binding**

A resolution duly passed at a meeting of Members or Members of a Class duly convened and held in accordance with the Corporations Act and this Constitution or by postal ballot under clause 18.16 binds all Members or all Members of the Class (in that capacity) and the Responsible Entity and each Member is bound to give effect to the resolution. This is so whether or not a Member was present at the meeting.

**18.14 Poll**

A poll may be demanded and if demanded will be conducted as directed by the chair. The result of the poll is the resolution of the meeting at which the poll was demanded. The demand for a poll does not affect the continuation of the meeting for the transaction of other business.

**18.15 Notice of meeting**

- (a) Notwithstanding section 252G(4) of the Corporations Act, a notice of meeting sent by post or by email or other electronic means is taken to be received by the Member or Member of a Class at the time specified in clause 28.2(c)(ii).
- (b) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members or Members of a Class is not invalid if either or both a person does not receive notice of the meeting or the Responsible Entity accidentally does not give notice of the meeting to the person.

**18.16 Resolution by Postal Ballot**

- (a) Subject to the Corporations Act, a resolution of Members may be passed by the relevant majority of Members completing, signing and returning to the Responsible Entity, within such period as specified by the Responsible Entity, copies of a written resolution.
- (b) The resolution may consist of several documents in the same form, each signed by one or more Members and is effective at the time specified by the Responsible Entity.
- (c) A Member has, in relation to the 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.

**18.17 Meeting of Class Members**

This clause 18 applies to meetings of Members of a Class with any necessary modifications.

**18.18 Restrictions on voting rights**

A Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by law or an order of a court of competent jurisdiction.

**18.19 Restricted Securities**

A Member who holds Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing rules or ASX.

## 19. Complaints

While the Scheme is Registered, if a Member makes or submits a Complaint to the Responsible Entity in relation to the Scheme, then the Responsible Entity must deal with the Complaint in accordance with all applicable laws and ASIC Instruments, including by:

- (a) acknowledging the Complaint in writing immediately and, in circumstances where this is not possible, as soon as reasonably practicable;
- (b) using reasonable endeavours to deal with the Complaint appropriately and within a reasonable timeframe having regard to the nature of the Complaint and the degree of urgency of the Complaint;
- (c) as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint, communicating to the Member in writing:
  - (i) the remedies which the Responsible Entity may make available to the Member which may include compensation, an apology or information;
  - (ii) the decision of the Responsible Entity; and
  - (iii) the Member's right to take their Complaint to an external dispute resolution scheme of which the Responsible Entity is a member, together with the name and contact details of the relevant external dispute resolution scheme; and
- (d) providing a Member with all reasonable assistance and information that the Member may require for the purpose of making a Complaint and understanding the complaints handling procedures adopted by the Responsible Entity.

## 20. Dealings with Scheme and Scheme Members

### 20.1 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 Assets 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 Assets.

### 20.2 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 20.1.

## 20.3 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 Constitution and the law.

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## 21. Protection and limitation of liability of Responsible Entity

### 21.1 No limitation on other statutory protection for the Responsible Entity

Nothing in this Constitution limits, prejudices or otherwise affects the operation of the provisions of any statute under which the Responsible Entity may obtain relief from a breach of trust or other duty in respect of the Scheme.

### 21.2 Responsible Entity may obtain and rely on advice etc.

In respect of the operation and administration of the Scheme or otherwise in connection with the Scheme, the Responsible Entity may obtain and rely on:

- (a) the Register;
- (b) the opinion, advice, statements or information obtained from solicitors or barristers (whether or not they are instructed by the Responsible Entity), bankers, accountants, auditors, valuers, brokers, underwriters, advisers or consultants and any other person who is an expert appointed or otherwise engaged by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to have the relevant expertise in relation to the matters upon which they are consulted;
- (c) any document believed by the Responsible Entity in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for the purposes of or in connection with the Scheme; and
- (d) any other document or information from any Member or other person (whether or not the person is appointed or otherwise engaged by the Responsible Entity) believed by the Responsible Entity in good faith to be the original or a copy thereof.

### 21.3 No liability for Responsible Entity

Subject to clause 21.4 and except to the extent the Corporations Act or other relevant law provides otherwise, the Responsible Entity is not liable in contract, tort, under statute or otherwise to any Member for any loss or damage (including loss or damage to the Scheme Assets (or any part thereof)) regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts or omissions:

- (a) the Responsible Entity obtaining or relying on (in accordance with clause 21.2) any of the opinions, advice, statements, documents or information referred to in clause 21.2;

- (b) the Responsible Entity performing or not performing its duties or exercising or not exercising any of its powers;
- (c) the Responsible Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Responsible Entity;
- (d) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity). This includes fraudulent or unauthorised acts or omissions;
- (e) the Responsible Entity making any payment to any fiscal authority on any basis even if the payment need not have been made;
- (f) the Responsible Entity doing or omitting to do any act which by reason of:
  - (i) any present or future law; or
  - (ii) any decree, order or judgment of any Court,
 the Responsible Entity is hindered, prevented or forbidden from doing or required to do; or
- (g) the Responsible Entity doing or omitting to do any act at the request of a Member, including making a payment to a person other than the Member.

#### **21.4 Fraud, gross negligence or wilful default of the Responsible Entity**

- (a) Clause 21.3 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Responsible Entity.
- (b) The Responsible Entity is not liable to Members or any other person for any loss, Expense or damage caused or contributed by the Responsible Entity to the extent that it is caused by any action, or omission, carried out in accordance with a direction from the Investment Manager or the Investment Representative Committee.

#### **21.5 Liability limited to third parties**

The Responsible Entity is not liable to any person who is not a Member and nor will that person be entitled to enforce any rights against the Responsible Entity to any greater extent than the Responsible Entity is entitled to recover through its right of indemnity from, and is in fact indemnified from, the Scheme Assets.

#### **21.6 Directors and officers**

Except as the Corporations Act expressly provides otherwise, no director or officer of the Responsible Entity is personally liable to a Member or any other person in connection with acting as a director or officer of the Responsible Entity.

#### **21.7 Exclusion of other obligations**

This clause survives termination of this Constitution.

## 22. Stapling Provisions

### 22.1 When Stapling applies

The Responsible Entity may by written notice declare that some or all Units or other securities, in the Scheme are Stapled to units or equivalent securities, in one or more Stapled Entities. From the date of that declaration (or from a date specified by that declaration) Stapling pursuant to this clause 22 applies despite any other provision of this Constitution. The date specified by the Responsible Entity may be earlier than the date of that declaration, and if so:

- (a) all Units or other securities covered by that declaration are to be treated as if Stapling had occurred on the specified date; and
- (b) all Units or other securities covered by that declaration are to rank equally in all respects from the specified date (even if the specified date precedes their date of issue).

The provisions of this clause 22 apply to securities other than Units to the extent they are applicable if necessary changes are made.

### 22.2 Stapling continues despite changes in Stapled Entities

Stapling pursuant to this clause 22 continues to apply while any Unit remains Stapled to a unit, share or security in at least one Stapled Entity, even if:

- (a) Units have ceased to be Stapled to units, shares or securities in one or more Stapled Entities; or
- (b) Units have begun to be Stapled to units in a further Stapled Entity.

### 22.3 Units and units of each other Stapled Entity are Stapled

While Stapling pursuant to this clause 22 applies:

- (a) **(Stapling)** each Unit is Stapled to a unit, share or other security in each Stapled Entity;
- (b) **(dealings)** there must be no dealing or disposition of any kind in relation to a Unit unless there is also an identical dealing or disposition by the same parties with each unit, share or other security in a Stapled Entity to which that Unit is Stapled;
- (c) **(offers of Units)** the Responsible Entity must not offer Units for subscription or sale unless:
  - (i) it also offers, or procures that offers are made of, at the same time and to the same person, the same number of units, shares or other securities in each Stapled Entity for subscription or sale; and
  - (ii) the offer is on condition that the offeree may not accept the offer unless the offeree also accepts the offer for units, shares or other securities in each Stapled Entity.
- (d) **(Unit issues, sales)** the Responsible Entity must not issue or sell any Units to a person unless it at the same time issues or sells to that person, or procures that there is issued or sold, the same number of units, shares or securities in each Stapled Entity;
- (e) **(issue of Partly Paid Units)** the Responsible Entity must not issue a Partly Paid Unit on terms as to the time for payment of the balance of the Issue Price unless it

at the same time issues or procures the issue of a partly paid unit, share or other security in each Stapled Entity on similar terms as to time for payment of the balance of the issue price;

- (f) **(Calls on Partly Paid Units)** the Responsible Entity must not make a Call on a Member for money unpaid on a Partly Paid Unit unless it at the same time makes a call or procures that a call is made on that Member for the same proportion of money unpaid on a partly paid unit, share or other security in each Stapled Entity (and the same notice may be used for the calls for the Stapled Entity);
- (g) **(payment on Partly Paid Unit)** the Responsible Entity must not credit payment of a Called amount or of an instalment on a Partly Paid Unit unless the Stapled Entity has received any call amount or instalment due upon a partly paid unit, share or other security of the Member concerned in each other Stapled Entity;
- (h) **(treating as fully paid)** the Responsible Entity must not treat a Partly Paid Unit as being a Fully Paid Unit unless it at the same time treats a partly paid unit, share or other security in each Stapled Entity as being a fully paid unit, share or other security;
- (i) **(forfeiture)** a Partly Paid Unit cannot be forfeited unless a partly paid unit, share or other security in each Stapled Entity is also forfeited at the same time;
- (j) **(reorganisations)** the Responsible Entity must not consolidate, subdivide, cancel, reorganise Units or implement a Reorganisation Proposal unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the units, shares or other securities in each other Stapled Entity;
- (k) **(holding lock)** the Responsible Entity must not apply a holding lock or ask ASX Settlement to apply a holding lock to prevent transfer of a Unit of a Member unless it also applies or asks for a holding lock to apply to an equivalent number of units, shares or other securities of that Member in each Stapled Entity;
- (l) **(transfers)** a Member must not transfer a Unit to a person (and the Responsible Entity must not Register a transfer) unless at the same time the Member transfers to that person the same number of units, shares or other securities in each Stapled Entity;
- (m) **(Unit redemption)** the Responsible Entity must not redeem or buy back Units of a Member unless at the same time the same number of units, shares or other securities of the Member in each Stapled Entity are redeemed or bought back;
- (n) **(Unit transmission)** Units registered in the name of a Member are not capable of being transmitted to any person unless at the same time the same number of units, shares or other securities registered in the name of the Member in each Stapled Entity are transmitted to that person;
- (o) **(price for issue or redemption of a Stapled Security)** a Stapled Security may be issued or redeemed for a price calculated by aggregating the price for the issue or redemption of a Unit in the particular circumstances fixed by this Constitution with the price for issue or redemption or buy back of a unit, share or other security in each Stapled Entity in those circumstances fixed by their constitutions;
- (p) **(allocation of proceeds of issue among Stapled Entities)** the Responsible Entity may apply money received for the issue of Stapled Securities to the Stapled Entities or pay money for the redemption or buy back of Stapled Securities from the Stapled Entities in proportion to the Net Asset Value of the Scheme Assets and the net asset value of, or the value of the units, shares or other securities in the Stapled Entities worked out under their constitutions, or may apportion the receipts or payments between the Stapled Entities as the Responsible Entity thinks fit;

- (q) **(alternative calculation of prices)** subject to the Corporations Act, the Responsible Entity may keep valuation records and financial records for the Stapled Entities as an economic entity and may use the net asset value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of aggregating the values of the units, shares or other securities comprising a Stapled Security;
- (r) **(regard to interests of holders in Stapled Entities)** in exercising its powers or discretions or performing its functions under this Constitution or in relation to the Scheme, the Responsible Entity may as it sees fit:
  - (i) take into account the interests of holders of units, shares or other securities in Stapled Entities other than in the Scheme; and
  - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Members;
- (s) **(discretion may be fettered)** the Responsible Entity may in connection with the Stapling fetter its discretions under this Constitution or in relation to the Scheme, as it thinks fit, including by agreeing to consult with, or obtain the consent of, a person administering another Stapled Entity;
- (t) **(indemnity and remuneration)** if the Responsible Entity of a Stapled Entity is entitled to indemnity, to reimbursement or to payment of remuneration under the constitution of that Stapled Entity, the Responsible Entity may provide indemnity, reimbursement or payment to the Responsible Entity of that Stapled Entity out of the Scheme Assets;
- (u) **(compromises)** the Responsible Entity may with any Stapled Entity or with the Responsible Entity of any Stapled Entity compromise:
  - (i) any allocation of assets, property, liabilities, expenses or remuneration between the Scheme and any Stapled Entity;
  - (ii) any allocation of application money for Units and units, shares or other securities in any other Stapled Entity; or
  - (iii) any other matter between the Scheme and a Stapled Entity that the Responsible Entity considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling;
- (v) **(guarantees)** the Responsible Entity may in connection with the Stapling or the relationship created by the Stapling give any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including any Stapled Entity or the Responsible Entity of any Stapled Entity;
- (w) **(security for guarantees)** the Responsible Entity may if it thinks fit give security for any such guarantee or indemnity or other liability over all or any part of the Scheme Assets;
- (x) **(consideration)** the Responsible Entity may if it thinks fit in connection with the Stapling or the relationship created by the Stapling exercise all or any of its powers whether or not there is consideration or benefit for the Scheme and either alone or jointly with any person including any Stapled Entity or the Responsible Entity of any Stapled Entity or as Responsible Entity of any other Stapled Entity, and may assume joint and several or several liability in respect of any joint exercise of these powers;

- (y) **(cooperative operation)** the Responsible Entity may cooperate with a Stapled Entity or with the Responsible Entity of any Stapled Entity to facilitate the operation of the Stapled Entities as an economic entity for the benefit of Members and of holders of units, shares or other securities in each Stapled Entity;
- (z) **(Register)** a Member must provide to the Responsible Entity the same personal information for the Register and for the register of each Stapled Entity and the Responsible Entity may conduct the Register and issue holding statements jointly with the Stapled Entity or the Responsible Entity of each Stapled Entity;
- (aa) **(proxy forms)** a Member must, if the Responsible Entity so determines, use a form of proxy to appoint the same proxy to vote on their behalf in respect of both a Unit and a unit, share or security in each other Stapled Entity;
- (bb) **(resolutions at meetings)** the Responsible Entity may arrange for meetings of Members and meetings of members of each Stapled Entity to be held concurrently and may determine that a vote cast on a resolution by or on behalf of a Member is to be treated also as a vote cast for an equivalent number of that Member's units, shares or securities in each Stapled Entity; and
- (cc) **(amendment)** an amendment of this Constitution that directly affects the terms on which a Unit is held is of no effect unless the units, shares or other securities of each Stapled Entity are affected in the same way, if they can be so affected.

## 22.4 Issue Price of a Unit in a Stapled Security

- (a) The allocation of the Issue Price of a Stapled Security between the Unit and the unit, share or other security in each Stapled Entity must be determined as follows:
- (b) the Responsible Entity and the Stapled Entity or the Responsible Entity of each other Stapled Entity may determine what part of the Issue Price of the Stapled Security is to be allocated to the Unit and to the unit, share or other security in each Stapled Entity; and
- (c) unless otherwise determined by the Responsible Entity and the Stapled Entity or the Responsible Entity of the Stapled Entities, the Issue Price must be allocated in proportion to the net assets (adjusted for the net market value of its investments) of the Scheme and each other Stapled Entity at the relevant date.

## 22.5 Conduct of Stapled Entities

To the extent permitted by law, the Responsible Entity must cooperate with each Stapled Entity or the Responsible Entity of each Stapled Entity in everything relating to the Stapled Securities. Without limitation, the Responsible Entity must do everything needed on its part to ensure that the Scheme and the Stapled Entities:

- (a) **(compliance with Listing Rules)** comply with their obligations under the Listing Rules;
- (b) **(disclosures)** co-ordinate their disclosures to the ASX and to holders of Stapled Securities;
- (c) **(accounting policies)** adopt consistent accounting policies;
- (d) **(valuation policies)** adopt consistent valuation policies;
- (e) **(proposed investments)** take a consistent approach on proposed investments;
- (f) **(meetings)** hold Members' meetings concurrently or, where necessary, consecutively;

- (g) **(new issues, redemptions)** agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs;
- (h) **(value)** consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (i) **(distribution)** co-ordinate the announcement and payment of distributions;
- (j) **(reinvestments)** co-ordinate any distribution or dividend re-investment plan;
- (k) **(partly paid)** co-ordinate all actions connected with partly paid Stapled Securities; and
- (l) **(reports)** report to Members consistently and at the same times.

## 22.6 Unstapling

The following provisions apply for cessation of Stapling:

- (a) The Responsible Entity may by written notice declare that Stapling ceases to apply to some or all Units immediately, or upon a stated day.
- (b) Stapling will automatically cease to apply to all Units if:
  - (i) the Scheme terminates in accordance with clause 24.1;
  - (ii) the units, shares or other securities in any Stapled Entity to which the Units are Stapled cease for any reason to be transferable only with Units; or
  - (iii) the law prohibits the Stapling.
- (c) The Members may, by Special Resolution, determine that Stapling ceases to apply to some or all Units.
- (d) If Stapling ceases to apply to a Unit, the preceding provisions of this clause 22 then cease to apply to that Unit.
- (e) If Stapling ceases to apply to all Units, the Responsible Entity must do everything reasonably necessary to give effect to the cessation of Stapling, including:
  - (i) amending any records of the Scheme;
  - (ii) transferring any property or paying any Tax; and
  - (iii) giving directions or consents to any Stapled Entities to which Stapling will cease to apply, or to the custodian or Responsible Entity that holds the assets or property of such a Stapled Entities.

## 22.7 Stapling mechanics and implementation

The Responsible Entity may do everything it reasonably considers to be needed or desirable to Staple a Unit or un-Staple a Unit.

## 22.8 Stapling provisions paramount

Other than where specifically stated otherwise, this clause 22 has effect despite any other provision of this Constitution (except clause 1.4, 23 and the AMIT Provisions in Schedule 1, when Schedule 1 applies in accordance with clause 17.4) and a provision of this Constitution that is inconsistent with this clause 22 does not have effect to the extent of the inconsistency.

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## 23. Reorganisation Proposals

### 23.1 Mechanics and implementation of Reorganisation Proposals

The following provisions apply for implementing a Reorganisation Proposal:

- (a) Without limiting clause 14, the Responsible Entity may at any time, without further reference to or further approval from Members, do everything it reasonably considers to be needed or desirable to implement a Reorganisation Proposal.

It is a term of issue of each Unit, that the Unit may be subject to a Reorganisation Proposal as provided in this clause. Each Member by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

- (b) In order to effect an initial or subsequent Stapling of securities to the Units as contemplated by clause 22, the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions under this Constitution.
- (c) If the Responsible Entity determines to enter into any other Reorganisation Proposal in accordance with clause 23.1(a), then the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (d) To give effect to any Reorganisation Proposal, the Responsible Entity has power to:
- (i) make distributions and other payments out of the Scheme Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
  - (ii) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body;
  - (iii) issue Units;
  - (iv) transfer Scheme Assets; and
  - (v) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal, including on behalf of Members.
- (e) The Responsible Entity:
- (i) is appointed irrevocably as agent and attorney of each Member to sign any document or do anything the Responsible Entity reasonably

considers to be needed or desirable to implement a Reorganisation Proposal; and

- (ii) may (as agent or attorney of the Member) on behalf of the Member, without needing further authority or approval from the Member:
  - A. sell, redeem or otherwise dispose of, apply for redemption of all or some of the Member's Units or other securities in the Scheme;
  - B. receive and apply returned capital or redemption proceeds (including in kind and including to apply for a Unit or other security of the Scheme);
  - C. execute any Withdrawal Request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
  - D. execute a transfer of Scheme Assets to a Member; and
  - E. apply for a unit, share or other security in another entity (including copying or deriving an application form from a product disclosure statement, prospectus, information memorandum or other offer document given to the Member);
  - F. consent to become a member of, and be bound by the constitution of, another entity; and
  - G. execute all documents and do all things (including giving all consents) which the Responsible Entity reasonably considers are necessary or desirable to give effect to the Reorganisation Proposal.
- (f) The Responsible Entity may enter into a deed or agreement (including with the Responsible Entity of another scheme or with a company or other entity) for implementing a Reorganisation Proposal.

## **23.2 Limitation of liability of and indemnity for Responsible Entity**

Subject to the Corporations Act, each provision of this Constitution limiting the liability of the Responsible Entity and each provision of this Constitution indemnifying the Responsible Entity, apply in connection with any Reorganisation Proposal or giving effect to any Reorganisation Proposal.

## **23.3 Expenses of Reorganisation Proposal**

The indemnity for expenses and liabilities in clause 15.1 includes all expenses and liabilities in connection with a Reorganisation Proposal or giving effect to a Reorganisation Proposal, such as due diligence, retaining experts or advisers, and preparing information for Members.

## 23.4 Reorganisation Proposal provisions paramount

This clause 23 has effect despite any other provision of this Constitution (except clause 1.4 and the AMIT Provisions in Schedule 1, when Schedule 1 applies in accordance with clause 17.14) and a provision of this Constitution that is inconsistent with this clause 23 does not have effect to the extent of the inconsistency.

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## 24. Winding up of the Scheme

### 24.1 Circumstances where the Scheme terminates

The Scheme terminates on the earliest of:

- (a) the date specified by the Responsible Entity acting on a recommendation from the Investment Manager (or where no Investment Manager is appointed, the date determined by the Responsible Entity in its discretion) as the date that the Scheme is to terminate in a notice given to Members;
- (b) the Members fix a date of termination, or resolve to terminate the Scheme, by a resolution that has been passed at a meeting on a poll by a Special Resolution; and
- (c) the occurrence of an event requiring the winding up of the Scheme under a provision of the Corporations Act or of any other applicable law.

### 24.2 Procedure on termination

If under clause 24.1 the Scheme has terminated then, subject to any court orders or directions to the Responsible Entity, the following provisions will apply:

- (a) the Responsible Entity must give to each Member notice of the termination and of its intention to wind up the Scheme;
- (b) no Units may be issued or redeemed;
- (c) subject to clause 24.2(e), the Responsible Entity will as soon as reasonably practicable after giving the notice under clause 24.2(a) realise all of the Scheme Assets in such manner as the Responsible Entity considers appropriate and pay, discharge or provide for (which provision may be made for such period of time as the Responsible Entity thinks fit) all liabilities (whether actual, contingent or prospective) and all Expenses of or in connection with the Scheme including those anticipated in connection with the winding up of the Scheme;
- (d) the net proceeds of realisation and all other cash forming part of the Scheme Assets will be distributed to the Members in proportion to the number of Units held by them at the date of the distribution;
- (e) the Responsible Entity is entitled to postpone the realisation of any of the Scheme Assets for the time that it thinks is desirable so to do in the interests of the Members, and will not be responsible for any loss or damage attributable to that postponement except if and to the extent expressly provided for in clause 21.4; and
- (f) the Responsible Entity may make partial distributions in accordance with this clause.

### 24.3 Retention of proceeds of realisation

If the Responsible Entity decides to make a provision under clause 24.2(c), then it may retain such part of the proceeds of realisation of the Scheme Assets as it thinks fit for as long as it thinks fit to meet all the liabilities and Expenses referred to in clause 24.2(c). Any proceeds so

retained which are ultimately found not to be required will be distributed in accordance with clause 24.2.

#### **24.4 Distribution to Members**

The Responsible Entity must make a distribution under this clause 22 only if the Member delivers to it any form of receipt and discharge required by the Responsible Entity.

#### **24.5 In specie distributions**

The Responsible Entity may distribute any Scheme Asset to a Member in specie. The value of the asset is to be determined by the Responsible Entity and clause 11 will apply for this purpose. Such valuation must be reasonably current. Expenses payable in respect of an in specie distribution are to be paid for by the Member unless the Responsible Entity determines any such Expenses are payable or reimbursable out of Scheme Assets.

#### **24.6 Audit of accounts**

Following the winding up of the Scheme, the Responsible Entity must cause the accounts of the Scheme to be independently audited by a registered company auditor or audit firm.

#### **24.7 Amounts to which a Member is presently entitled**

Prior to the winding up of the Scheme, the Responsible Entity must pay to Members any undistributed amounts to which they are presently entitled respectively by virtue of clause 22.

#### **24.8 Continuation of Constitution**

This Constitution (including all rights of indemnity), continues to apply until the Scheme is finally wound up but only to the extent the Constitution is not inconsistent with this clause 22.

#### **24.9 Cancellation of Units**

Unless the Responsible Entity determines otherwise, Units in respect of which a final distribution is made are cancelled from the date of that distribution.

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### **25. Removal and retirement of Responsible Entity**

#### **25.1 Retirement of Responsible Entity**

- (a) Subject to the Corporations Act, while the Scheme is Registered the Responsible Entity may retire at such time as it thinks fit.
- (b) While the Scheme is not Registered, the Responsible Entity must retire when required by law and otherwise may retire on not less than 14 days' notice to the sole Member or to the Members (or by such shorter period as they agree). The Responsible Entity may appoint in writing the replacement Responsible Entity from retirement.

#### **25.2 Removal of Responsible Entity**

- (a) Subject to the Corporations Act, while the Scheme is Registered the Responsible Entity may be removed, and a new trustee may be appointed, in accordance with the Corporations Act.
- (b) While the Scheme is not Registered the Responsible Entity may be removed as the trustee of the Scheme by a Special Resolution, where:

- (i) the Responsible Entity has engaged in negligence which has had a material adverse effect on the Scheme or wilful misconduct or fraud or bad faith in connection with its obligations under this Constitution;
- (ii) the Responsible Entity has committed a material breach of a provision of this Constitution which has had a material adverse effect on the Scheme; or
- (iii) the Responsible Entity is insolvent,

and provided that the Members have, by Special Resolution, agreed to appoint a replacement trustee.

### **25.3 Consequences of change of Responsible Entity**

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 in accordance with 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 Constitution 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 Constitution.

### **25.4 Covenant of proposed new Responsible Entity**

Whether or not the Scheme is Registered, any proposed new Responsible Entity of the Scheme must agree to be bound by this Constitution as if it had been an original party to it by executing a deed to that effect. While the Scheme is not Registered, the Responsible Entity must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of Responsible Entity.

### **25.5 Retirement benefit**

Subject to the Listing Rules, the Responsible Entity may at any time agree with any person (including the proposed replacement Responsible Entity) that the Responsible Entity will be paid or provided with such remuneration (including any form of benefit) from that person for:

- (a) agreeing to submit a proposal to Members for the retirement of the Responsible Entity and the nomination to the Members of the replacement Responsible Entity as its replacement; or
- (b) retiring as Responsible Entity,

and the Responsible Entity is not liable to account to Members or any other person for any such payment or benefit.

## **26. Payments and recoveries**

### **26.1 Payments to a Member**

Any money payable by the Responsible Entity to a Member may be paid or applied in any manner (including by cheque or directly into a designated account with a financial institution) that the Responsible Entity determines from time to time. Only whole cents are to be paid (after rounding up or down as determined by the Responsible Entity) and any remaining fraction of a cent becomes a Scheme Asset.

### **26.2 Member direction for payment to third parties**

If any Member (including any person registered jointly as a Member) directs the Responsible Entity to pay to any person any money which would otherwise be payable under this Constitution to the Member, then the Responsible Entity may accept or reject that direction in its absolute discretion.

### **26.3 Payments by cheque**

If the Responsible Entity decides to pay money by cheque then:

- (a) if such cheque is issued to the Member and is presented and paid or the payment is made to a person at the direction of the Member or to an account with a financial institution nominated by the Member then, in each such case, that payment is in full satisfaction of the Responsible Entity's obligation to pay and a good discharge to the Responsible Entity; and
- (b) the Responsible Entity may determine that:
  - (i) any cheque issued which is made payable to the Member or to a person at the Member's direction and which is not presented within 3 months; or
  - (ii) any payment unsuccessfully attempted to be made 3 times to a Member by electronic transfer of funds at the discretion of the Responsible Entity,

may be cancelled and the money reinvested in Units in the name of the Member at the Issue Price which applies as at the Valuation Time occurring after the cancellation of the cheque or after the third unsuccessful attempt at payment by electronic transfer, or dealt with by the Responsible Entity in accordance with the requirements of any applicable unclaimed moneys laws. Any Units issued under this clause will be issued at the applicable Valuation Time.

### **26.4 Payments to joint Members**

For persons registered jointly as Members, payment to any one of those joint holders will be a good discharge to the Responsible Entity in respect of that payment. Any one joint holder may give an effective discharge to the Responsible Entity in respect of any payment.

### **26.5 Member indemnification of the Responsible Entity**

Notwithstanding any other provision in this Constitution (whether express or implied) each Member and Former Member indemnifies the Responsible Entity (both on its own account and on account of the Scheme) for:

- (a) any unpaid amounts due by the Member or Former Member on any basis (including under this Constitution, pursuant to the Scheme's disclosure document, or pursuant to the Corporations Act) to the Responsible Entity (either on its own account or on account of the Scheme); and

- (b) any Tax or Expense in relation to or referable to a Member or Former Member (or the Responsible Entity's estimate of it) that is incurred by the Responsible Entity or that the Responsible Entity reasonably expects to incur, including without limitation where that Tax or Expense is incurred as a consequence of an action or omission of, or which is requested by, or otherwise arises as a result of an attribute of the Member or Former Member.

## 26.6 Withholding

- (a) The Responsible Entity may deduct or withhold from any money payable to a Member or Former Member (including any distributions to which the Member or Former Member is entitled) or any money received from a Member or Former Member, or may otherwise recover from a Member or Former Member (including by redeeming any Units of a Member):
  - (i) any amount payable by that Member or Former Member to the Responsible Entity by way of indemnity under clause 26.5; and
  - (ii) an amount on account of any Taxes, which the Responsible Entity believes it must or should deduct or withhold under law.
- (b) To the extent that any amounts deducted, withheld or otherwise recovered under clause 26.6(a) represent:
  - (i) fees payable to the Responsible Entity, it may retain the amounts for its own purposes; or
  - (ii) Taxes or Expenses, the Responsible Entity may apply the amounts in payment or reimbursement of the relevant Taxes or Expenses, and/or duly remit the amount to the relevant Tax authority.

## 26.7 Responsible Entity's lien

The Responsible Entity has a first and paramount lien over all of a Member's Units in respect of any monies payable to the Responsible Entity on any basis under this Constitution or the Corporations Act in respect of any of those Units. This lien extends to distributions from time to time declared in respect of any such Units. The registration by the Responsible Entity of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

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## 27. Death and insolvency of a Member

### 27.1 Death of a Member

If a Member dies, then only the legal personal representative or, if the Member is registered jointly as a holder of Units, only the survivor or survivors, will be recognised as having any claim to Units registered in the name of that Member. The Responsible Entity may require such information as it thinks fit to establish a person's entitlement to claim a Member's Units.

### 27.2 Legal disability, bankruptcy etc. of a Member

If a Member becomes subject to a legal disability, becomes bankrupt or is placed in liquidation, then the survivor (or survivors in the case of a joint holding of Units) or any person who gives the Responsible Entity all the information the Responsible Entity requires to establish their entitlement to be registered as the holder of the Units registered in the Member's name as a result of the legal disability, bankruptcy or liquidation, will be recognised as having any claim to the Units registered in the name of that Member.

### 27.3 Discharge to Responsible Entity

A person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Member may give a good discharge for any money payable or property transferable in respect of Units. Such person is not entitled to receive notices of or attend or vote at any meetings of Members until they are entered in the Register as the holder in respect of the Units.

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## 28. Notices

### 28.1 Form of notice by Member

Subject to the Corporations Act, any notice, consent or other communication by a Member to the Responsible Entity:

- (a) must be in writing (or in any other manner determined by the Responsible Entity) and in English unless the Responsible Entity determines otherwise;
- (b) must be signed personally or bear the facsimile or electronic signature or other electronic identification of the Member or, of a duly authorised officer or representative of the Member unless the Responsible Entity determines otherwise;
- (c) must be addressed to the registered office of the Responsible Entity or to the fax number or any other address (including electronic address) that the Responsible Entity notifies from time to time; and
- (d) is taken to be duly given by the sender and received by the Responsible Entity only at the time of actual receipt by the Responsible Entity.

### 28.2 Form of Notice by the Responsible Entity

Subject to the Corporations Act, any notice or other communication by the Responsible Entity to a Member:

- (a) must be given in writing (or in such other manner as the Responsible Entity determines);
- (b) sent to the Member at their physical or electronic address specified in the Register; and
- (c) is taken to be received by the Member;
  - (i) (in the case of delivery by hand), on delivery at the physical address of the Member or on delivery personally to them;
  - (ii) (in the case of pre-paid post) on the next Business Day after the date of posting;
  - (iii) (in the case of fax transmission) on receipt of a transmission report confirming successful transmission; or
  - (iv) (if sent by any other manner) at the time the Responsible Entity determines.

### 28.3 Joint holders of Units

For persons registered jointly as the holders of a Unit, notices or other communications given to or by the holder named first in the Register as provided in clauses 28.1 and 28.2 respectively will be taken to be validly given to or by all the joint Members.

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## **29. Severability**

Where any provision of this Constitution 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 Constitution which remain in full force and effect.

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## **30. Amendment**

### **30.1 Responsible Entity may amend**

While the Scheme is Registered, this Constitution may be modified, repealed or replaced in accordance with the Corporations Act. While the Scheme is not Registered, the Responsible Entity may amend this Constitution by supplemental deed.

### **30.2 Attribution Managed Investment Trust**

Without limiting the Responsible Entity's powers in clause 30.1, but subject to the Corporations Act, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Scheme;
- (b) enable the Responsible Entity to administer the Scheme and issue Units in accordance with the AMIT Regime;
- (c) facilitate compliance with the terms of the AMIT Regime in relation to the Scheme, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Members;
- (d) facilitate the proper administration and operation of the Scheme under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the AMIT Regime; or
- (e) comply with the conditions of any ASIC Instrument issued in relation to the AMIT Regime, or facilitate operation of the Scheme in reliance on such ASIC Instrument.

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## **31. Perpetuity period**

### **31.1 Actions by Responsible Entity after 80 years**

If to exercise a power under this Constitution after the expiry of the perpetuity period would, or to exercise a power in a particular way after the expiry of the perpetuity period, would offend against any rule of law or equity such as the rule against perpetuities, then the Responsible Entity ceases to have power to exercise that power (or to exercise that power in that way) at the expiry of the perpetuity period.

### **31.2 Perpetuity period**

The perpetuity period applicable to any disposition made by this Constitution is the period of 80 years from the date the Scheme is established.

Executed as a deed.

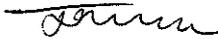
Executed by 360 Capital FM Limited ABN 15 090 664 396 in accordance with section 127 of the Corporations Act by:



Signature of Director

Tony Pitt

Name of Director in full



Signature of Director or Secretary

Jennifer Vercoe

Name of Director or Secretary in full

## Schedule 1 - AMIT Provisions

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### 1. Responsible Entity's powers

#### 1.1 General provisions

The Responsible Entity has, without limiting its other rights and powers provided for under the Constitution and this Schedule, all of the powers and rights which are necessary or desirable to enable:

- (a) the Scheme to be eligible to apply the AMIT Regime;
- (b) the Responsible Entity to comply with the requirements of the AMIT Regime;
- (c) the Scheme to be properly administered and operated under the AMIT Regime; and
- (d) the Responsible Entity to maintain equity among Members in the operation of the AMIT Regime.

#### 1.2 Specific powers

Where the Scheme is an AMIT, the Responsible Entity may in accordance with the AMIT Regime:

- (a) determine the taxable income of the Scheme for each Financial Year, including a determination of the taxable income of a particular, category, source or character for tax purposes. This includes determining all of the Scheme's Determined Trust Components and Trust Components under the AMIT Regime for any AMIT Income Year;
- (b) make an attribution of the taxable income of the Scheme to Members under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes. This includes determining all of each Member's Determined Member Components and Member Components under the AMIT Regime for any AMIT Income Year;
- (c) make an alteration to the Responsible Entity's determination of the taxable income of the Scheme for a Financial Year, or the Responsible Entity's attribution of the taxable income of the Scheme to Members under the AMIT Regime, including a determination or attribution of taxable income of a particular category, source or character for tax purposes. This includes making alterations to the Scheme's Determined Trust Components and Trust Components, and a Member's Determined Member Components and Member Components, under the AMIT Regime for any AMIT Income Year as a result of any Unders or Overs;
- (d) determine whether to issue an AMMA Statement to any Member;
- (e) determine what information should be contained in any such AMMA Statement;
- (f) issue an AMMA Statement that has been issued to a Member; and
- (g) determine the basis upon which the AMMA Statement is to be amended.

#### 1.3 Units and Classes of Units

- (a) Subject to paragraph 1.3(b) of this Schedule, the Responsible Entity may under the AMIT Regime issue Units of a single Class or different Classes. Each different Class of Units must have distinct rights, obligations and restrictions from the rights,

obligations and restrictions of all other Classes of Units issued, but the rights to income and capital of a particular Class must be the same for every membership interest in that Class. All Units in a Class rank equally. A separate Class does not constitute a separate trust.

- (b) Paragraph 1.3(a) of this Schedule does not permit the Responsible Entity to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Constitution.

## 1.4 Member's acknowledgement regarding choice for Unders/Overs

Each Member acknowledges or is taken to acknowledge:

- (a) the Responsible Entity has, under the AMIT Regime in respect of an AMIT Income Year, a choice with respect to how the Responsible Entity is to address any amounts which may give rise to an Under or Over of a particular character for the Scheme, including whether such amounts should be addressed by the Responsible Entity by:
- (i) issuing amended AMMA Statements to Members under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Scheme to which the Under or Over relates; or
  - (ii) treating the amount as an Under or Over of a particular character for the Scheme, and adjusting the Scheme's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act (as may be amended from time to time); and
- (b) choices made by the Responsible Entity pursuant to paragraph 1.4(a) of this Schedule 1 may result in:
- (i) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in the Discovery Year; or
  - (ii) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in an earlier income year,
- (c) than if the Responsible Entity did not make that choice or made the choice in a different way.

## 1.5 Responsible Entity's limitation of liability for AMIT Regime powers

Without limiting any other provision and to the maximum extent permitted by law but subject to the Corporations Act, the Responsible Entity does not incur any liability and it is not obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this paragraph 1 of this Schedule, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

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## 2. Attribution of taxable income to a member

### 2.1 Responsible Entity must take "fair and reasonable" allocation

- (a) Following the end of a Financial Year which is an AMIT Income Year, the Responsible Entity must attribute the taxable income of the Scheme for the Financial Year to Members under the AMIT Regime, including the attribution of the

taxable income of each particular category or source (or both) for tax purposes to Members.

- (b) The Responsible Entity must perform the attribution under paragraph (a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
  - (i) the amount of each Member's Member Components and Determined Member Components of a particular character is so much of the Scheme's Determined Trust Component of that particular character as is attributable to the Units held by the Member;
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the Scheme; and
  - (iii) the Responsible Entity must not attribute any part of a Determined Trust Component of the Scheme to a Member's Units because of the tax characteristics of the Member.

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### **3. Member's objections**

#### **3.1 Member must notify, provide information and indemnify Responsible Entity in relation to objections**

If a Member objects to the basis of the attribution of the taxable income of the Scheme for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Member agrees to:

- (a) provide the Responsible Entity with written notice of the Member's intention to make an objection at least 5 Business Days prior to notifying the Commissioner of Taxation of its objection;
- (b) include, in the notice provided to the Responsible Entity, a summary of the reasons why the Member considers the attribution to be inappropriate;
- (c) provide to the Responsible Entity any information the Responsible Entity reasonably requests in order to assess the Member's objection or proposed objection; and
- (d) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection or proposed objection.

#### **3.2 Members acknowledge consequences if objection made**

Each Member is taken to agree that if any Member makes an objection to the basis on which taxable income of the Scheme is attributed, including by making a Member Objection Choice it may be necessary or desirable for the Responsible Entity to amend its attribution of the relevant taxable income to the Members and may issue or reissue an amended AMMA Statement to Members.

#### **3.3 Limitation of liability**

The Responsible Entity has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an the Member making a Member Objection Choice or otherwise objecting to the basis of attribution of the taxable income of the Scheme under the AMIT Regime.

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## **4. Responsible Entity indemnity**

### **4.1 Responsible Entity has a right to be indemnified for Tax payable**

Each Member is required to indemnify the Responsible Entity for:

- (a) any Tax payable by the Responsible Entity as a result of the application of the AMIT Regime which the Responsible Entity reasonably determines relates to the Member, Units held by the Member, or an attribution of taxable income made to the Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under this Schedule or under the AMIT Regime.

### **4.2 Responsible Entity may prescribe terms and conditions**

The Responsible Entity may prescribe particular terms and conditions which apply in the event that the Responsible Entity is entitled to be indemnified by a Member under this Schedule, or under the AMIT Regime.

### **4.3 Methods through which indemnity may be satisfied**

The Members agree that the Responsible Entity may, if it is entitled to be indemnified by a Member under this Schedule, or under the AMIT Regime undertake the following actions in order to satisfy that indemnity:

- (a) deduct from any amounts owing to the particular Member the aggregate of any amounts which the Responsible Entity is entitled to be indemnified under this Schedule, or under the AMIT Regime; and
- (b) compulsorily redeem such number of Units held by the Member which the Responsible Entity reasonably determines is sufficient to cover the amounts for which the Responsible Entity is entitled to be indemnified under this Schedule, or under the AMIT Regime.

## Schedule 2 - Explanatory Note for Scheme Constitution

### Compliance table - matters required by section 601GA and section 601GB

The following table illustrates the manner in which the Constitution deals with the matters prescribed in sections 601GA and 601GB of the Corporations Act (as required in ASIC Regulatory Guide 134 and s601EB(1) of the Corporations Act).

Section of the Corporations Act and description of prescribed content of Constitution	Corresponding clause in the Constitution
Section 601GA(1)(a) - the consideration that is to be paid to acquire an interest in the Scheme	Clause 1.1 - definition of "Issue Price" Clause 9 - Application for, creation and issue of Units Clause 11 - Valuation of Scheme Assets Clause 17.22 - Distribution reinvestment arrangements
Section 601GA(1)(b) - the powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, Scheme Assets	Clause 14 - Powers of Responsible Entity as trustee of Scheme Assets
Section 601GA(1)(c) - the method by which complaints made by members in relation to the Scheme are to be dealt with	Clause 19 - Complaints
Section 601GA(1)(d) - winding up of the Scheme	Clause 22 - Winding up of the Scheme
Section 601GA(2) - any rights the Responsible Entity has to be paid fees out of Scheme Assets, or be indemnified out of Scheme Assets for liabilities and expenses incurred in performing its duties. These rights must be available only in relation to the proper performance of the Responsible Entity's duties	Clause 15 - Remuneration of Responsible Entity and Scheme Expenses Clause 16 - Responsible Entity's indemnity out of Scheme Assets Clauses 15.1 and 16.1 limit these rights to the proper performance by Responsible Entity of its duties and exercise of its powers

Section of the Corporations Act and description of prescribed content of Constitution	Corresponding clause in the Constitution
Section 601GA(3) - any powers the Responsible Entity has to borrow or raise money for the purposes of the Scheme	Clause 14.1(c) - Powers of the Responsible Entity to borrow or raise money or procure or grant any financial accommodation in any manner whatsoever including whether or not on a secured basis
Section 601GA(4) - rights of members to withdraw from the Scheme, and the procedures for making and dealing with withdrawal requests	<p>Clause 1.1 - definition of "Withdrawal Price"</p> <p>Clause 10 - Withdrawal from Scheme</p> <p>Clause 11 - Valuation of Scheme Assets</p>
Section 601GB - the Constitution of a registered scheme must be contained in a document that is legally enforceable as between the members and the Responsible Entity	<p>Clause 1.4 - Corporations Act</p> <p>Clause 2.3 - Constitution is legally binding</p>