



## **Constitution of Australian Dairy Farms Trust**

ARSN 600 601 689

(Previously named Dairy Farm Investments Trust)

### **Constitution of a Stapled Entity**

Australian Dairy Farms Limited (ACN 057 046 607) and Australian Dairy Farms Trust (ARSN 600 601 689) comprise the stapled group referred to as Australian Dairy Farms Group

Effective Date 8 October 2014

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# Constitution of Australian Dairy Farms Trust

## TABLE OF CONTENTS

<b>OPERATIVE PROVISIONS.....</b>	<b>5</b>
<b>1 DEFINITIONS AND INTERPRETATION.....</b>	<b>5</b>
1.1 <i>Definitions .....</i>	<i>5</i>
1.2 <i>Interpretation .....</i>	<i>13</i>
1.3 <i>Governing law .....</i>	<i>14</i>
1.4 <i>Corporations Act.....</i>	<i>14</i>
1.5 <i>Listing Rules.....</i>	<i>14</i>
1.6 <i>References to Corporations Act and Listing Rules .....</i>	<i>15</i>
1.7 <i>Rounding of Payments.....</i>	<i>15</i>
1.8 <i>Market Price .....</i>	<i>15</i>
<b>2 THE SCHEME .....</b>	<b>17</b>
2.1 <i>Scheme's Constitution .....</i>	<i>17</i>
2.2 <i>Constitution is legally binding .....</i>	<i>17</i>
<b>3 SCHEME ASSETS HELD ON TRUST.....</b>	<b>17</b>
3.1 <i>Holding and Mingling of Fund Property .....</i>	<i>17</i>
3.2 <i>Exclusion of other obligations .....</i>	<i>17</i>
<b>4 SCHEME ASSETS DIVIDED INTO UNITS.....</b>	<b>17</b>
4.1 <i>Nature of a Unit.....</i>	<i>17</i>
4.2 <i>Consolidation of Units .....</i>	<i>18</i>
4.3 <i>Fractions of Units and rounding .....</i>	<i>18</i>
4.4 <i>Issue of Units and Classes.....</i>	<i>18</i>
4.5 <i>Issue of Financial Products .....</i>	<i>18</i>
<b>5 PARTLY PAID UNITS.....</b>	<b>18</b>
5.1 <i>Terms of issue .....</i>	<i>18</i>
5.2 <i>Calls .....</i>	<i>18</i>
5.3 <i>Interest on late payment of calls.....</i>	<i>18</i>
5.4 <i>Non-receipt of notice of call .....</i>	<i>19</i>
5.5 <i>Deductions for unpaid calls .....</i>	<i>19</i>
5.6 <i>Forfeiting Units.....</i>	<i>19</i>
5.7 <i>Entry on Register .....</i>	<i>19</i>
5.8 <i>Disposal of forfeited Units .....</i>	<i>19</i>
5.9 <i>Annulment of forfeiture.....</i>	<i>20</i>
5.10 <i>Transfer of forfeited Units .....</i>	<i>20</i>
5.11 <i>Liability despite forfeiture .....</i>	<i>20</i>
5.12 <i>Proceeds of sale.....</i>	<i>20</i>
<b>6 LIMITATION ON A MEMBER'S RIGHTS .....</b>	<b>21</b>
6.1 <i>Limitation on a Member's rights .....</i>	<i>21</i>
6.2 <i>Joint holders .....</i>	<i>21</i>
6.3 <i>Rights attaching to Units.....</i>	<i>22</i>
6.4 <i>Encumbrances over Units .....</i>	<i>22</i>

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6.5	<i>Responsible Entity not taken to have notice</i> .....	22
<b>7</b>	<b>LIABILITY OF MEMBERS</b> .....	<b>22</b>
7.1	<i>Liability of a Member is limited</i> .....	22
7.2	<i>Relationship of agency or partnership excluded</i> .....	23
<b>8</b>	<b>APPLICATION FOR, CREATION AND ISSUE OF UNITS</b> .....	<b>23</b>
8.1	<i>Applications for Units</i> .....	23
8.2	<i>Payment of Issue Price other than by money</i> .....	23
8.3	<i>Responsible Entity may accept or reject applications</i> .....	23
8.4	<i>Application must be for Minimum Application Amount</i> .....	23
8.5	<i>Time when Units are issued</i> .....	24
8.6	<i>Number of Units issued</i> .....	24
8.7	<i>Issue Price while Units not Officially Quoted</i> .....	24
8.8	<i>Issue Price while Units Officially Quoted</i> .....	24
8.9	<i>Responsible Entity's discretion over Issue Price</i> .....	25
8.10	<i>Cancellation of issue of Units</i> .....	25
8.11	<i>No Unit certificates</i> .....	26
8.12	<i>Designated Time</i> .....	26
8.13	<i>Application money part of Scheme Assets</i> .....	26
<b>9</b>	<b>WITHDRAWAL FROM SCHEME</b> .....	<b>26</b>
9.1	<i>No right to withdraw</i> .....	26
9.2	<i>Withdrawal Offer</i> .....	27
9.3	<i>No obligation to make Withdrawal Offer</i> .....	27
9.4	<i>Cancellation of Withdrawal Offer</i> .....	27
9.5	<i>Obligation to satisfy Withdrawals</i> .....	27
9.6	<i>No obligation to satisfy out of own funds</i> .....	28
9.7	<i>Suspension of obligation to satisfy Withdrawal Request</i> .....	28
9.8	<i>Minimum Withdrawal Amount</i> .....	29
9.9	<i>Minimum Balance</i> .....	29
9.10	<i>Withdrawal Request cannot be withdrawn</i> .....	30
9.11	<i>Withdrawal Price</i> .....	30
9.12	<i>Designated Time</i> .....	30
9.13	<i>Withdrawal Price may represent Distributable Income</i> .....	30
9.14	<i>Calculation</i> .....	30
9.15	<i>Costs</i> .....	31
9.16	<i>Transfer of Scheme Assets</i> .....	31
9.17	<i>Time of Redemption and Cancellation of Units upon redemption</i> .....	31
9.18	<i>Discretionary redemption</i> .....	31
9.19	<i>Buy back of Units and cancellation</i> .....	31
9.20	<i>Small Holdings</i> .....	32
9.21	<i>Purchase of Units on market</i> .....	32
<b>10</b>	<b>VALUATION OF SCHEME ASSETS</b> .....	<b>32</b>
10.1	<i>Valuation and calculation of Net Asset Value of Scheme Assets</i> .....	32
10.2	<i>Responsible Entity is not an expert</i> .....	33
10.3	<i>Method of valuation</i> .....	33
10.4	<i>Currency conversion</i> .....	33
<b>11</b>	<b>REGISTER OF MEMBERS</b> .....	<b>33</b>

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# Australian Dairy Farms Trust

## Constitution

11.1	<i>Member is absolute owner</i> .....	33
11.2	<i>Inspection of Register</i> .....	33
11.3	<i>Notify change of name or address of Member</i> .....	34
11.4	<i>Closure of Register</i> .....	34
12	<b>TRANSFERS OF UNITS</b> .....	<b>34</b>
12.1	<i>Transferability</i> .....	34
12.2	<i>Registration of a Transfer</i> .....	34
12.3	<i>Refusal of Registration</i> .....	34
12.4	<i>Transferor remains Holder</i> .....	35
13	<b>POWERS OF RESPONSIBLE ENTITY AS TRUSTEE OF SCHEME ASSETS</b> .....	<b>35</b>
13.1	<i>General Powers of the Responsible Entity</i> .....	35
13.2	<i>Discretion to exercise powers</i> .....	36
13.3	<i>Power to change name of the Scheme</i> .....	36
13.4	<i>Power to seek information</i> .....	36
13.5	<i>Power to take measures to comply with Anti-Money Laundering Laws</i> .....	36
13.6	<i>Power to appoint agents and delegates</i> .....	36
13.7	<i>Waiver of breach</i> .....	37
14	<b>REMUNERATION OF RESPONSIBLE ENTITY AND SCHEME EXPENSES</b> .....	<b>37</b>
14.1	<i>Expenses</i> .....	37
14.2	<i>Class Expenses</i> .....	39
14.3	<i>Fees</i> .....	39
14.4	<i>Waiver of fees and expenses and differential fees</i> .....	39
14.5	<i>Issue of Units to Responsible Entity</i> .....	39
14.6	<i>GST</i> .....	40
15	<b>RESPONSIBLE ENTITY'S INDEMNITY OUT OF SCHEME ASSETS</b> .....	<b>40</b>
15.1	<i>Responsible Entity's indemnity</i> .....	40
15.2	<i>Indemnity extends to cover acts of agents or delegates</i> .....	41
15.3	<i>No obligation to commence litigation</i> .....	41
15.4	<i>Right of indemnity applies even if liabilities exceed Scheme Assets</i> .....	41
15.5	<i>Right of indemnity applies even if unrelated breach of trust</i> .....	41
15.6	<i>Indemnity for CC Member</i> .....	41
16	<b>DISTRIBUTIONS</b> .....	<b>42</b>
16.1	<i>Collection of income and nature of receipts</i> .....	42
16.2	<i>Determination of Distributable Income</i> .....	42
16.3	<i>Default Distributable Income</i> .....	42
16.4	<i>Reserves</i> .....	42
16.5	<i>Present entitlement</i> .....	42
16.6	<i>Income Entitlement</i> .....	43
16.7	<i>Classification of Distributable Income</i> .....	44
16.8	<i>Satisfaction of present entitlements to Distributable Income</i> .....	45
16.9	<i>Payment of distributions</i> .....	45
16.10	<i>Other distributions</i> .....	45
16.11	<i>Tax</i> .....	45
16.12	<i>Excess distribution</i> .....	45
16.13	<i>Distribution reinvestment arrangements</i> .....	46
16.14	<i>Classes</i> .....	46

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16.15	<i>Restricted Securities</i> .....	46
<b>17</b>	<b>MEETINGS OF MEMBERS</b> .....	<b>46</b>
17.1	<i>Corporations Act and Listing Rules to apply</i> .....	46
17.2	<i>Convening of meetings</i> .....	46
17.3	<i>Omission to give notice</i> .....	47
17.4	<i>Chair</i> .....	47
17.5	<i>Form of proxy</i> .....	47
17.6	<i>Acceptance of proxy appointment</i> .....	47
17.7	<i>Joint holders</i> .....	47
17.8	<i>Quorum requirements</i> .....	48
17.9	<i>Proxies and representatives</i> .....	48
17.10	<i>Quorum presence</i> .....	48
17.11	<i>Absence of quorum - Dissolution or adjournment of meeting</i> .....	48
17.12	<i>Power of chair to cancel or postpone meetings</i> .....	49
17.13	<i>Resolution binding</i> .....	49
17.14	<i>Poll</i> .....	49
17.15	<i>Notice of meeting</i> .....	49
17.16	<i>Resolution by Postal Ballot</i> .....	49
17.17	<i>Meeting of Class Members</i> .....	50
17.18	<i>Restrictions on voting rights</i> .....	50
17.19	<i>Restricted Securities</i> .....	50
<b>18</b>	<b>COMPLAINTS</b> .....	<b>50</b>
<b>19</b>	<b>DEALINGS WITH SCHEME AND SCHEME MEMBERS</b> .....	<b>51</b>
19.1	<i>Dealings by Responsible Entity and Associates</i> .....	51
19.2	<i>Responsible Entity and Associates not liable to account</i> .....	51
19.3	<i>Responsible Entity as a Member</i> .....	51
<b>20</b>	<b>PROTECTION AND LIMITATION OF LIABILITY OF RESPONSIBLE ENTITY</b> .....	<b>52</b>
20.1	<i>No limitation or other statutory protection for the Responsible Entity</i> .....	52
20.2	<i>Responsible Entity may obtain and rely on advice etc.</i> .....	52
20.3	<i>No liability for Responsible Entity</i> .....	52
20.4	<i>Fraud, gross negligence or wilful default of the Responsible Entity</i> .....	53
20.5	<i>Liability limited to third parties</i> .....	53
<b>21</b>	<b>STAPLING</b> .....	<b>53</b>
21.1	<i>When Stapling applies</i> .....	53
21.2	<i>Stapling continues despite changes in Stapled Entities</i> .....	54
21.3	<i>Units and Securities of each other Stapled Entity are Stapled</i> .....	54
21.4	<i>Issue Price of a Unit in a Stapled Security</i> .....	57
21.5	<i>Conduct of Stapled Entities</i> .....	57
21.6	<i>Un-Stapling</i> .....	58
21.7	<i>Stapling mechanics and implementation</i> .....	59
21.8	<i>Limitation of liability of and indemnity for Responsible Entity</i> .....	59
21.9	<i>Expenses of Proposal</i> .....	59
21.10	<i>Stapling provisions paramount</i> .....	60
<b>22</b>	<b>WINDING UP OF THE SCHEME</b> .....	<b>60</b>
22.1	<i>Circumstances where the Trust terminates</i> .....	60
22.2	<i>Procedure on termination</i> .....	60

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# Australian Dairy Farms Trust

## Constitution

22.3	<i>Retention of proceeds of realisation</i>	61
22.4	<i>Distribution to Members</i>	61
22.5	<i>In specie distributions</i>	61
22.6	<i>Audit of accounts</i>	61
22.7	<i>Amounts to which a Member is presently entitled</i>	61
22.8	<i>Continuation of Constitution</i>	61
22.9	<i>Cancellation of Units</i>	61
23	<b>REMOVAL AND RETIREMENT OF RESPONSIBLE ENTITY</b>	<b>62</b>
23.1	<i>Retirement of Responsible Entity</i>	62
23.2	<i>Consequences of change of Responsible Entity</i>	62
23.3	<i>Covenant of proposed new Responsible Entity</i>	62
23.4	<i>Retirement benefit</i>	63
24	<b>PAYMENTS AND RECOVERIES</b>	<b>63</b>
24.1	<i>Payments to a Member</i>	63
24.2	<i>Member direction for payment to third parties</i>	63
24.3	<i>Payments by cheque</i>	63
24.4	<i>Payments to joint Members</i>	64
24.5	<i>Member indemnification of the Responsible Entity</i>	64
24.6	<i>Withholding</i>	64
24.7	<i>Responsible Entity's lien</i>	65
25	<b>INDEMNIFICATION AND INSURANCE OF COMPLIANCE COMMITTEE MEMBERS</b>	<b>65</b>
26	<b>DEATH AND INSOLVENCY OF A MEMBER</b>	<b>66</b>
26.1	<i>Death of a Member</i>	66
26.2	<i>Legal disability, bankruptcy etc. of a Member</i>	66
26.3	<i>Discharge to Responsible Entity</i>	66
27	<b>NOTICES</b>	<b>66</b>
27.1	<i>Form of notice by Member</i>	66
27.2	<i>Form of Notice by the Responsible Entity</i>	67
27.3	<i>Joint Holders of Units</i>	67
28	<b>SEVERABILITY</b>	<b>67</b>
29	<b>AMENDMENT</b>	<b>67</b>
30	<b>APPLICATION OF ACCOUNTING PRINCIPLES</b>	<b>67</b>
31	<b>PERPETUITY PERIOD</b>	<b>68</b>
31.1	<i>Actions by Responsible Entity after 80 years</i>	68
31.2	<i>Perpetuity period</i>	68
32	<b>OTHER SCHEMES</b>	<b>68</b>
33	<b>FOREIGN MEMBERS</b>	<b>68</b>

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## Operative provisions

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### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Constitution:

**Australian Dairy Farms Group** means the proposed stapled entity comprising Australian Dairy Farms Limited ABN 36 057 046 607 and Australian Dairy Farms Trust ABN 92 472 779 170 after registration of the Scheme by ASIC and subject to approval of shareholders of APA at a meeting of its shareholders to be held on or about August 2014 ("**APA Meeting**").

**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.

**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.

**APA** means APA Financial Services Limited ACN 057 046 607.

**APA New Share** means the shares on issue in APA on a 1 for 5 post-consolidation basis and detailed in the notice for the APA Meeting.

**APA Eligible Shareholder** means an eligible shareholder as detailed in the notice for the APA Meeting.

**APA Meeting** means a meeting of shareholders of APA to be held on or around August 2014.

**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).

**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 ACN 008 624 691.

**ASX Settlement** means ASX Settlement Pty Ltd 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.

**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 14.2.

**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.

**Constitution** means this document together with any schedules or other attachments annexed to it.

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

**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.
- (c) 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



## Australian Dairy Farms Trust Constitution

Responsible Entity pursuant to clause 8.12 or clause 9.12 (as the case may be). The Designated Time applicable to applications for Units and to Withdrawal Requests may be the same or different.

**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 in accordance with clauses 16.2 and 16.3.

**Distribution Account** means the account referred to in clause 16.5.

**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 date of commencement of the Scheme 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.

**Foreign Member** means such Members whose address on the Register is in a location other than the Commonwealth of Australia or such other place as the Responsible Entity determines from time to time or a Member who the Responsible Entity determines is a Foreign Member from time to time.

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

**Fund Property** means Scheme Assets or other property that is scheme property of the Scheme for the purposes of the Corporations Act, being property held by or for the Responsible Entity in connection with the Scheme.

**Gross Asset Value of the Scheme Assets** means, at any time, the amount determined in accordance with Australian accounting principles to be equal to the total value of the Scheme Assets in accordance with clause 10 at that time adjusted for such provisions and incremental or decremental adjustments as the auditor of the Scheme considers appropriate.

**Australian Dairy Farms Trust  
Constitution**

**Gross Income** means the aggregate of all moneys (including base rent, turnover rent, licence fees, outgoings and other moneys payable in respect of the use or occupation of any property forming a Scheme Asset) received from the tenants and other occupants and users of the relevant property and all other revenue generated by or in respect of the use of the relevant property.

**Income Distribution Date** means the last day of each Financial Year and such other date or dates in a Financial Year as may be specified by the Responsible Entity from time to time.

**Income Distribution Period** means the period beginning on the date of commencement of the Scheme and ending on the first Income Distribution Date and thereafter, the period which begins on the day after the preceding Income Distribution Date to the next occurring Income Distribution Date except that the last Income Distribution Period is the period commencing on the day after the preceding Income Distribution Date and ending on the date of final distribution on winding up of the Scheme.

**Income Entitlement** means:

- (a) in relation to a Member, an amount calculated in accordance with clause 16.6; or
- (b) the amount calculated in accordance with clause 9.13.

**Issue Price** means the issue price calculated in accordance with clause 8.7 or 8.8. The Responsible Entity may calculate the Issue Price to the number of decimal places that the Responsible Entity determines.

**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 it in the Listing Rules.

**Member** means a person whose name is, for the time being, entered in the Register as the holder of a Unit (including persons jointly so registered).

**Minimum Application Amount** means such 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 10 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 8.1) or (as the case may be) the market value of the property (as determined by the Responsible Entity) transferred pursuant to clause 8.2, 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.

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

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

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

**Register** means the register 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.

**Responsible Entity** means the company named in clause 2.1 or otherwise named in ASIC's record of registration for the Scheme as the responsible entity or temporary responsible entity 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 managed investment scheme called Australian Dairy Farms Trust governed by this Constitution.

**Scheme Assets** means all cash, property, rights and income of the Trust 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** means any share or unit in a Stapled Entity or any entity which becomes a Stapled Entity.

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above.

**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.

**Staple** 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 other security in a Stapled Security.

**Stapling Agreement** means the stapling agreement entered into between the Responsible Entity and APA.

**Stapling Deed Poll** means the stapling deed poll, a copy of which is annexed to the notice of meeting which convenes the APA Meeting.

**Stapled Entity** means the Scheme and each other fund, company or other entity to whose units, shares or securities are from time to time Stapled pursuant to clause 21.

**Stapled Security** means a security formed, or which will be formed, by Stapling together one Unit and one APA New Share or with Securities in a Stapled Entity and, for the avoidance of doubt, includes securities to be Stapled despite them not being Stapled as at the time of issue of a Unit.

**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) and/or the Income Tax Assessment Act 1997 (Cth), as applicable, and where appropriate, includes the Taxation Administration Act 1953 (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

**Tax Loss** means a "tax loss" as defined in section 272-140 of Schedule 2F to the Tax Act and/or a "capital loss", or "net capital loss" as defined in the Tax Act.

**Trust** means the trust constituted by this Constitution.

## Australian Dairy Farms Trust Constitution

**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 Fund Property 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, in respect of a Unit or Units in a Class, 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:

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

Despite the above, subject to the Corporations Act as modified by any relevant ASIC Instrument, the Responsible Entity may in its discretion determine that the Withdrawal Price is some other amount.

**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 other security in a company or other entity that is a Stapled Entity;
- (e) a reference to the responsible entity of another Stapled Entity includes the company or other entity that is a Stapled Entity or its board, as the case may be; 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
- (g) unless the context indicates a contrary intention;
  - (i) 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;
  - (ii) the expression "person" includes an individual, a corporation and an unincorporated association, an authority, a partnership and a trust;
  - (iii) 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;
  - (iv) 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;
  - (v) words importing the singular include the plural (and vice versa) and words indicating a given gender include all other genders;
  - (vi) the word "includes," in any form, is not a word of limitation;
  - (vii) 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;
  - (viii) 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;

- (ix) a reference to cash includes cheque and bank cheque;
- (x) a reference to a month or a quarter means a calendar month or calendar quarter respectively;
- (xi) 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;
- (xii) terms defined in the Corporations Act and Listing Rules are used in this Constitution with their same defined meaning; and
- (xiii) clause 21 of this Constitution relating to Stapling will have full force and effect.

### **1.3 Governing law**

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

### **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 CO 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 (notwithstanding clause 30):



- (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 average of the daily weighted traded price for an Interest for the period of 10 Business Days, upon which trades took place, ending on the Business Day immediately prior to 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 an independent adviser determines that a measure of Market Price determined by the independent adviser is a more appropriate measure of Market Price for the purposes of ensuring a successful capital raising, then the independent adviser may determine the price of the Interest on the following conditions:
- (A) the adviser must be:
1. independent of the Responsible Entity; and
  2. qualified to determine and have 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:
    - a. the nature and size of the proposed offer of Interests for which purpose the Issue Price of an Interest is being calculated;
    - b. the circumstances in which the proposed offer of Interests will be made; and
    - c. the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.
- (B) the independent adviser must issue a certification to the Responsible Entity that:
1. he or she has the requisite qualifications and expertise to determine the Market Price; and
  2. the matters required under clause 1.8(b)(ii)(A)(2)(a) to (c) were taken into account in determining the Market Price.
- (c) If any of paragraphs 1.8(b)(i) or 1.8(b)(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.
- (d) 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.

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## **2 THE SCHEME**

### **2.1 Scheme's Constitution**

Trustees Australia Limited is the Scheme's Responsible Entity and this Constitution is the constitution for the Scheme.

### **2.2 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.

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## **3 SCHEME ASSETS HELD ON TRUST**

### **3.1 Holding and Mingling of Fund Property**

Subject to the terms of the Stapling Agreement, this Constitution, the Listing Rules and to the extent permitted by law, the Responsible Entity may hold and mingle Fund Property at its discretion.

### **3.2 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 to the Listing Rules, the Responsible Entity may allot and issue unissued Units (including in different Classes) to any person, on any terms 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 the same in any manner which the Responsible Entity thinks fit (including into Classes or into a different Class). 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.

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### **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**

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

#### **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, (which date must not be less than 14 days after the

date on which the call is made) the holder of the Partly Paid Unit is liable to pay interest at the Default Interest Rate on the amount due but unpaid (the interest to accrue for the benefit of the Scheme) from the day fixed for the payment to the time the Responsible Entity actually receives payment.

- (b) In circumstances where a call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, and such non-payment is as a result of the relevant Member's non-receipt of a notice given in respect of a call, the Member is not liable to pay interest as contemplated in paragraph (a) for such number of days that relate to the non-receipt of the notice.

#### **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 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.

#### **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.

#### **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 Unitholder) via a dutch auction process whereby each Member ("Bidder") will be able to lodge an

irrevocable offer ("bid") with the Responsible Entity on such terms and conditions as the Responsible Entity determines for all or some of the forfeited Units. If more than one bid is lodged, the forfeited Units will be allocated first to the Bidder who lodges the highest bid and, if there are forfeited Units remaining, to the Bidder who lodged the next highest bid and so on. If Bidders lodge a bid for the same amount, to the extent there are insufficient forfeited Units to satisfy such bids, then the forfeited Units will be allocated to such Bidders on a pro rata basis (according to the number of Units held on the last day bids may be lodged); and

- (b) if one or more forfeited Units is not sold pursuant to the process set out in paragraph (a), the Responsible Entity may in its discretion, but is not obliged to, offer those remaining forfeited Units to third parties and allocate them to the party or parties who make the highest bid for the forfeited Units within 30 days of the date of the Responsible Entity's offer (or such longer period determined by the Responsible Entity in its discretion); and
- (c) once a bid has been lodged, the Responsible Entity may do all things on behalf of the Bidder to affect the transfer to it of the forfeited Units allocated by the Responsible Entity.

#### **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 affected, 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 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 9.16);
- (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 17.7 relating to meetings of Members;
- (d) clause 17.7(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 24.4;
- (f) on the death, legal disability, or bankruptcy of a joint Member, the provisions of clause 26 shall apply; and

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- (g) delivery of notices and all other communications by the Responsible Entity will be made pursuant to clause 27.

### **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 LIABILITY OF MEMBERS**

### **7.1 Liability of a Member is limited**

Except as expressly provided for in this Constitution (such as clause 24.5) 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.



## **7.2 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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## **8 APPLICATION FOR, CREATION AND ISSUE OF UNITS**

### **8.1 Applications for Units**

A person intending to apply for Units must apply to the Responsible Entity in such a manner as the Responsible Entity may require or approve 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 16.13.

### **8.2 Payment of Issue Price other than by money**

- (a) The Responsible Entity may accept payment in respect of an application for Units in cash or any other form of valuable consideration:
  - (i) at a price that a willing buyer and seller is willing to accept; or
  - (ii) based on valuations consistent with ordinary commercial practice for valuing that asset type which are reasonably current.
- (b) The Responsible Entity may determine that some or all of the Expenses in respect of any application or issue, are payable or reimbursable out of Scheme Assets or payable by the applicant concerned.

### **8.3 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 16.13) without giving any reason.

### **8.4 Application must be for Minimum Application Amount**

The amount of application money or value of any property to be transferred in accordance with clause 8.2 must be no less than the Minimum Application Amount.

**8.5 Time when Units are issued**

- (a) Subject to clause 8.5(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 16.13 are taken to be issued at the time specified in that clause.

**8.6 Number of Units issued**

When Units are taken to be created and issued under clause 8.5, 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 16.13, 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.

**8.7 Issue Price while Units not Officially Quoted**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class and to clause 8.9, a Unit or Class must only be issued at its Issue Price determined in accordance with the following provisions. The Issue Price for a Unit is equal to:

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

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

For the purposes of the formulae in this clause 8.7, "Net Asset Value of 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.

**8.8 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 paragraph (c) and clause 8.9, a Unit must only be issued at its Market Price.

- (b) Subject to paragraphs (c) and (d), 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 8.9 and 21.4, 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 Security in each Stapled Entity to which that Unit is Stapled is equal to the Market Price for Stapled Securities.
- (c) A Unit which is issued in accordance with resolutions to be passed at the APA Meeting to, amongst other things, approve:
- (i) the stapling of the Units with APA New Shares, must be issued to the APA Eligible Shareholders of APA on the basis of one Unit for each APA New Share held by APA Eligible Shareholders, and in accordance with the Stapling Deed Poll (including at a price per Unit equal to \$100.00 divided by the total number of APA New Shares held by APA Eligible Shareholders immediately prior to such issue); and
  - (ii) the proposed public offer and other Unit issues to be undertaken as a result of the approval of the relevant resolutions at the APA Meeting,
- must be issued as part of a Stapled Security and at a price of \$0.20 per Stapled Security.
- (d) The Responsible Entity may issue Stapled Securities at an issue price of \$0.25 each upon the exercise of Loyalty Options (as defined in the prospectus and product disclosure statement issued by APA and the Responsible Entity dated 20 August 2014).

#### **8.9 Responsible Entity's discretion over Issue Price**

Subject to the Corporations Act as modified by 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 any of clauses 8.7 and 8.8). Clauses 8.7 and 8.8 do not limit the operation of this clause. For the purposes of this clause and despite anything to the contrary:

- (a) the Responsible Entity may (although is not required to) amend this Constitution by supplemental deed to provide for a specific Issue Price for those Units; and
- (b) it may issue those Units at the specified price.

#### **8.10 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 therefore 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.

#### **8.11 No Unit certificates**

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

#### **8.12 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 determination of the Issue Price. 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 any such determination, 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.

#### **8.13 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 repayable or transferred to the applicant, and 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 forms part of the Scheme Assets.

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## **9 WITHDRAWAL FROM SCHEME**

### **9.1 No right to withdraw**

- (a) In circumstances where the Scheme is not Registered or is Registered and Liquid, except as provided in this clause 9 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) In circumstances where the Scheme is Registered but 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.

## **9.2 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. Any Withdrawal Offer and any right to withdraw must be fair to all Members.

## **9.3 No obligation to make Withdrawal Offer**

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.

## **9.4 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.

## **9.5 Obligation to satisfy Withdrawals**

- (a) Subject to clauses 9.5(b), 9.6, 9.7, 9.8, 9.9, 9.15, 9.17, 9.18 and 22.2(b), to the Corporations Act and to any rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity must, within 12 months 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 9.7), 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 9.11.
- (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 9.5(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.

**9.6 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.

**9.7 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 9.7 and extend the period referred to in clause 9.5; or
- (i) the law otherwise permits,

then, in each case, the period referred to in clause 9.5 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.

#### **9.8 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.

#### **9.9 Minimum Balance**

- (a) If to comply with a Withdrawal Request would leave the 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.

#### **9.10 Withdrawal Request cannot be withdrawn**

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

#### **9.11 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.

#### **9.12 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 9.5. The Designated Time may be different for different methods of communication or payment. Accordingly, for the purposes of clause 9.5, 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.

#### **9.13 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 an Income 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 Income Distribution Period in which the redemption occurs.

#### **9.14 Calculation**

In calculating the extent to which an amount paid as Withdrawal Price represents a distribution of Distributable Income for an Income Distribution Period for the purposes of clause 9.13, the Responsible Entity may have regard to:

- (a) the amount and category of any Distributable Income attributable to that part of the Income Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 9.11;
- (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 Income Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 9.11.

#### **9.15 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.

#### **9.16 Transfer of Scheme Assets**

- (a) 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.
- (b) 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.

#### **9.17 Time of Redemption and Cancellation of Units upon redemption**

- (a) Units redeemed under clauses 9.5(a) and 9.18 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 Trust in respect of the redemption proceeds.
- (b) Units are automatically cancelled upon their redemption.

#### **9.18 Discretionary redemption**

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.

#### **9.19 Buy back of Units and cancellation**

Despite any other provision of this Constitution and subject to the Listing Rules, the Corporations Act 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, at any price and at any time it determines. The Responsible Entity may cancel any Units bought back or purchased.

## 9.20 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.

## 9.21 Purchase of Units on market

Despite any other provision of this Constitution, where the Scheme is Listed, the Responsible Entity may purchase Units on market in the ordinary course of trading. The Responsible Entity may cancel any Units purchased.

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## 10 VALUATION OF SCHEME ASSETS

### 10.1 Valuation and calculation of Net Asset Value of Scheme Assets

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.

## **10.2 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.

## **10.3 Method of valuation**

- (a) Subject to paragraph (b), the valuation method or policy for any type of Scheme Asset is to be determined by the Responsible Entity and the Responsible Entity may vary it whenever it so decides.
- (b) The Responsible Entity's method for calculating the value of the Scheme Assets must be consistent with the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Withdrawal Price or Issue Price, it must produce a value that is reasonably current.
- (c) 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 the valuation.

## **10.4 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.

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## **11 REGISTER OF MEMBERS**

### **11.1 Member is absolute owner**

The Responsible Entity may treat a Member as the absolute owner of the Unit or Units which are registered in their name. Except as required by law, the Responsible Entity need not recognise any claim or interest in a Unit by another person, but if it decides to do so, the terms and conditions on which it is prepared to do so will be determined by the Responsible Entity from time to time in its absolute discretion.

### **11.2 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.

### **11.3 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.

### **11.4 Closure of Register**

The Responsible Entity may close the Register at any time.

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## **12 TRANSFERS OF UNITS**

### **12.1 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 transfer all or any of their Units by whatever written transfer form the Responsible Entity may require from time to time.
- (b) Except as permitted by the Listing Rules, a Member must not dispose of Restricted Securities during the applicable escrow period.
- (c) 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.

### **12.2 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.

### **12.3 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 12.1(b) or if the Listing Rules

require it to do so. The Responsible Entity may give the Holder 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.

#### **12.4 Transferor remains Holder**

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 Holder until it has been entered in the Register.

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### **13 POWERS OF RESPONSIBLE ENTITY AS TRUSTEE OF SCHEME ASSETS**

#### **13.1 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 responsible entity and trustee of the Trust 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 Security Interest 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,
- (l) in each case on any terms and conditions as the Responsible Entity thinks fit in its absolute discretion.

### **13.2 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.

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

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

### **13.4 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.

### **13.5 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 8.3, 9.7(b) and 9.18.

### **13.6 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 13.6 may be an Associate or related body corporate of the Responsible Entity.

### 13.7 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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## 14 REMUNERATION OF RESPONSIBLE ENTITY AND SCHEME EXPENSES

### 14.1 Expenses

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 proper performance of its duties or exercise of its powers in the course of its proper performance of its duties. 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 the ASIC;
- (b) preparation, approval, execution and enforcement of this Constitution (and any amendment of this Constitution);
- (c) the admission of the Scheme to the Official List of the ASX and compliance with the Listing Rules;
- (d) the retirement or removal of the Responsible Entity and the appointment of a successor in its place;
- (e) 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 14.1(e);
- (f) convening and holding meetings of Members and giving effect to resolutions of any meeting and sending other communications to Members;
- (g) the Register and all other registers in respect of any aspect of the Scheme;
- (h) 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);

- (i) obtaining and servicing of financial accommodation (including bank fees, interest, expenses, charges and borrowing costs);
- (j) 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);
- (k) 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;
- (l) 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;
- (m) 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;
- (n) the termination of the Trust and winding up of the Scheme;
- (o) 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;
- (p) (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;
- (q) the preparation, operation, amendment and audit of the compliance plan;
- (r) 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;
- (s) the establishment and administration of the complaints handling procedures referred to in clause 18 and obtaining and maintaining membership of an external dispute resolution scheme;



- (t) Taxes and bank fees and charges incurred by the Responsible Entity in connection with the Scheme;
- (u) complying with any law and any request or requirement of ASIC or other regulatory authority;
- (v) travel expenses incurred in connection with the Scheme;
- (w) entering the Scheme in any survey;
- (x) any fees payable to any ratings organisation;
- (y) computer hardware, software and other equipment (including development and maintenance of internet facilities); and
- (z) the implementation of any Proposal or any restructuring or listing of the Scheme.

#### **14.2 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 14.1 is to be referable to all Units on an equal basis.

#### **14.3 Fees**

To the extent permitted by the Corporations Act, the Responsible Entity is entitled to be paid (but for any client or clients within a particular Class may elect to receive less than or waive part or all of) the fees set out in Schedule 1 to this Constitution.

#### **14.4 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 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 14.1; or
- (c) agree with any particular 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.

#### **14.5 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.

#### **14.6 GST**

- (a) Unless otherwise defined in this Constitution, terms used in this clause 14.6 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 any other provision of 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 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 14.6(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 14.6(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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### **15 RESPONSIBLE ENTITY'S INDEMNITY OUT OF SCHEME ASSETS**

#### **15.1 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:

- (a) the proper performance of its duties; and
- (b) the exercise of its powers in the course of its 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, or for which it is not otherwise entitled to payment by a Member, 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 15.1 shall continue in favour of the Responsible Entity after it has ceased to be Responsible Entity to the Scheme.

#### **15.2 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 15.1 extends to also include that liability.

#### **15.3 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.

#### **15.4 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.

#### **15.5 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 matter (whether it arises before or after the Indemnified Matter) in respect of which those rights of indemnity do not apply.

#### **15.6 Indemnity for CC Member**

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

## **16 DISTRIBUTIONS**

### **16.1 Collection of income and nature of receipts**

- (a) The Responsible Entity must receive and collect all income of the Trust.
- (b) The Responsible Entity may determine, in its absolute discretion, whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Financial Year is or is not to be treated as being on income or capital account.

### **16.2 Determination of Distributable Income**

The Responsible Entity may, prior to the end of a Financial Year, determine the Distributable Income of the Trust for that Financial Year in its absolute discretion.

### **16.3 Default Distributable Income**

If no determination is made in accordance with clause 16.2 prior to the end of a Financial Year, the Distributable Income of the Trust for that Financial Year is the aggregate of:

- (a) the net taxable income of the Trust less non cash amounts, 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 16.1(b) and 16.4; 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 Trust under section 99 or section 99A of the Tax Act for the Financial Year.

### **16.4 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 an Income Distribution Period may be treated as having been received in a different Income Distribution Period and an Expense paid or payable in an Income Distribution Period may be treated as having been paid in a different Income Distribution Period.

### **16.5 Present entitlement**

Each of the Members on the Register at the close of business on the last day of a Financial Year, and each person who became a Former Member during the Financial Year, is presently entitled as at the end of the Financial Year to the Distributable Income in respect of that Financial Year in the proportion that the sum of the Income Entitlements of the Member or Former Member arising during the Financial Year bear to the sum of the Income Entitlements of all Members and Former Members

during that Financial Year. The Responsible Entity may record, for accounting purposes, in a Distribution Account, the amount of Distributable Income to which each Member is presently entitled with respect to each Financial Year, including any amounts previously distributed during the Financial Year, as well as the balance available for distribution at the close of business on the last day of the Financial Year.

### **16.6 Income Entitlement**

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the Income Entitlement of a Member for an Income Distribution Period is an amount calculated by the Responsible Entity as follows:

- (a) in respect of an Income Distribution Period ending on any Income Distribution Date other than the last day of a Financial Year, an amount calculated as follows:

$$A = \frac{(B \times D)}{C}$$

where:

- (A) is the Income Entitlement;
  - (B) is the number of Units held by the Member at the end of the Income Distribution Period;
  - (C) is the number of Units held by all Members at the end of the Income Distribution Period;
  - (D) is the amount (if any) by which an estimate of the Distributable Income for the Income Distribution Period (calculated as though the Income Distribution Period were a Financial Year) exceeds the aggregate of any Income Entitlements of Former Members for the Income Distribution Period; and
- (b) in respect of an Income Distribution Period ending on the last day of a Financial Year, an amount calculated as follows:

$$A = \frac{(B \times D)}{C}$$

where:

- (A) is the Income Entitlement;
- (B) is the number of Units held by the Member at the end of the Income Distribution Period;
- (C) is the number of Units held by all Members at the end of the Income Distribution Period;

(D) is the amount (if any) by which the Distributable Income for the Financial Year, exceeds the sum of:

- (ii) the aggregate of any Income Entitlements of Former Members for the Income Distribution Period ; and
- (iii) the aggregate of the estimates of Distributable Income calculated for the purposes of variable D in clause 16.6(a) above in respect of the previous Income Distribution Periods occurring during that Financial Year.

#### **16.7 Classification of Distributable Income**

- (a) The Responsible Entity may identify and classify into categories all or any part of the Distributable Income and any items constituting or relating to the Scheme Assets, and may account separately for each category. Such categories can be based on any characteristics that the Responsible Entity decides are capable of permitting differentiation from any other category, and may include the following without limitation:
  - (i) amounts of income or ordinary income or statutory income (whether or not assessable), and amounts deductible on income account, or amounts deductible as capital allowances or otherwise as capital expenditure;
  - (ii) any capital gains, and capital losses or items otherwise deductible or dealt with on capital account;
  - (iii) any distribution (whether franked or unfranked for the purposes of the Tax Act);
  - (iv) interest, including any amount treated as interest under the Tax Act;
  - (v) rent; and
  - (vi) income, including a capital gain, which has either an Australian source or a source outside Australia or to which a foreign tax offset or other credit attaches.

The Responsible Entity may also, in its absolute discretion, allocate losses, costs, expenses and outgoings, including capital losses and allowable deductions, of the Trust among all or any such categories.

- (b) The Responsible Entity may determine that all or part of an Income Entitlement of a Member or Former Member will be comprised of amounts from one or more particular categories or sources under clause 16.7(a) (taking into account any Expenses and losses allocated to that particular category or source). The Responsible Entity must advise the Member or Former Member of the extent to which the Income Entitlement comprises amounts from a particular category or source.
- (c) For the avoidance of doubt, the determination in accordance with paragraph 16.7(b) by the Responsible Entity is effective to give the Member or Former Member a vested and indefeasible interest in the relevant amounts. The Responsible Entity will record

this vested and indefeasible interest in the accounting records of the Trust by such time as is necessary to ensure that the Member is entitled to any relevant treatment or concession in respect of the interest under the Tax Act.

#### **16.8 Satisfaction of present entitlements to Distributable Income**

The present entitlement of a Member or Former Member during the Financial Year to Distributable Income of the Trust for the Financial Year is satisfied by the distribution to the Member or Former Member of the Income Entitlements of the Member or Former Member in respect of each of the Income Distribution Periods in the Financial Year.

#### **16.9 Payment of distributions**

The Responsible Entity shall pay or apply to or for the Members who are on the Register at the close of business on the last day of an Income Distribution Period the amount of their respective Income Entitlements pursuant to clause 16.6 (excluding any amounts previously distributed in respect of the Income Distribution Period) within 2 months after the Income Distribution Date for the Income Distribution Period.

#### **16.10 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 16.6. 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 16.13, as though under a distribution reinvestment scheme). The provisions of this clause 16 apply to such distributions so far as they are capable of doing so.

#### **16.11 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 Trust 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 Trust.

#### **16.12 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 16.9) 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.

#### **16.13 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 Income 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 Income 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.

#### **16.14 Classes**

The rights of a Member under this clause 16 are subject to the rights, restrictions and obligations attaching to any particular Unit or Class on issue from time to time.

#### **16.15 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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### **17 MEETINGS OF MEMBERS**

#### **17.1 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 applied (as modified by clauses 17.2 to 17.19 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 17.2 to 17.14 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.

#### **17.2 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.



### **17.3 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.

### **17.4 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 or on a poll:
  - (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.

### **17.5 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.

### **17.6 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.

### **17.7 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;
- (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.

#### **17.8 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 body corporate representative. 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.

#### **17.9 Proxies and representatives**

- (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.

#### **17.10 Quorum presence**

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

#### **17.11 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.

#### **17.12 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 they think fit unless the meeting has been called under section 252E of the Corporations Act and the court has directed otherwise.

#### **17.13 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 17.16 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.

#### **17.14 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.

#### **17.15 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 27.2(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.

#### **17.16 Resolution by Postal Ballot**

- (a) Subject to the Corporations Act, a resolution of Members may be passed by the 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.

#### **17.17 Meeting of Class Members**

This clause 17 applies to meetings of Members of a Class with any necessary modifications.

#### **17.18 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.

#### **17.19 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.

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### **18 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; and
- (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 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.

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**19 DEALINGS WITH SCHEME AND SCHEME MEMBERS**

**19.1 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; and
- (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.

**19.2 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 19.1.

**19.3 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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**20 PROTECTION AND LIMITATION OF LIABILITY OF RESPONSIBLE ENTITY**

**20.1 No limitation or 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.

**20.2 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.

**20.3 No liability for Responsible Entity**

Subject to clause 20.4 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 20.2) any of the opinions, advice, statements, documents or information referred to in clause 20.2;
- (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.

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

Clause 20.3 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.

#### **20.5 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.

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## **21 STAPLING**

### **21.1 When Stapling applies**

The Responsible Entity may from time to time, and at any time, determine that some or all Units or other securities, in the Scheme are Stapled to units or equivalent securities, in one or more other managed investment schemes, companies or other entities. From the date of that determination (or from a date specified by that determination) Stapling pursuant to this clause 21 applies despite any other provision of this Constitution. The date specified by the Responsible Entity may be earlier than the date of that determination, and if so:

- (a) all Units or other securities covered by that determination are to be treated as if Stapling had occurred on the specified date; and
- (b) all Units or other securities covered by that determination 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 21 apply to securities other than Units to the extent they are applicable if necessary changes are made.

### **21.2 Stapling continues despite changes in Stapled Entities**

Stapling pursuant to this clause 21 continues to apply while any Unit remains Stapled to a Security in at least one other Stapled Entity, even if:

- (a) Units have ceased to be Stapled to Securities in one or more other Stapled Entities; or
- (b) Units have begun to be Stapled to Securities in a further Stapled Entity.

### **21.3 Units and Securities of each other Stapled Entity are Stapled**

While Stapling pursuant to this clause 21 applies:

- (a) **Stapling** - each Unit is Stapled to a Security in each other 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 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) an offer is made, at the same time and to the same person, of the same number of Securities in each other Stapled Entity for subscription or sale; and
  - (ii) the offer is on the condition that the offeree may not accept the offer unless the offeree also accepts the offer for Securities in each other Stapled Entity.
- (d) **Unit issues, sales** - the Responsible Entity must not issue or sell any Units to a person unless at the same time, that person is issued or sold the same number of Securities in each other 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 at the same time, an issue of a partly paid Security in each other Stapled Entity is made 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 at the same time, a call is made on that Member for the same proportion of money unpaid on a partly paid Security in each other Stapled Entity (and the same notice may be used for the calls for each 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 a call amount or instalment due is also received on a partly paid 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 at the same time a partly paid Security in each other Stapled Entity is treated as being a fully paid Security;
- (i) **forfeiture** - a partly paid Unit cannot be forfeited unless a partly paid Security in each other Stapled Entity is also forfeited at the same time;
- (j) **reorganisations** - the Responsible Entity must not consolidate, subdivide, cancel or reorganise Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the 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 an application or request for a holding lock to apply to an equivalent number of Securities of that Member is also made in each other 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 Securities in each other 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 Securities of the Member in each other 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 Securities registered in the name of the Member in each relevant 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 of a Security in each relevant 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 of Stapled Securities from the Stapled Entities in proportion to the net scheme value of the Scheme and the net scheme values of the other Stapled Entities worked out under their constitutions, or may apportion the receipts or payments between the Stapled Entities as the Responsible Entity and Stapled Entity think 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 scheme value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of aggregating the unit values of the 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 document or in relation to the Scheme, the Responsible Entity may as it sees fit:
- (i) take into account the interests of holders of Securities in Stapled Entities other than 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 Stapled Entity or a responsible entity administering another Stapled Entity;
- (t) **indemnity and remuneration** - if a Stapled Entity or the responsible entity of a Stapled Entity is entitled to indemnity, to reimbursement or to payment of remuneration under the constitution or other constituent document of that Stapled Entity, the Responsible Entity may provide an indemnity, reimbursement or payment to that Stapled Entity or the responsible entity of that Stapled Entity out of the Scheme Assets;
- (u) **compromises** - the Responsible Entity may with any other Stapled Entity or the responsible entity of any other 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 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 other Stapled Entity or the responsible entity of any other 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 other Stapled Entity or the responsible entity of any other 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 any other Stapled Entity or the responsible entity of any other Stapled Entity to facilitate the operation of the Stapled Entities as an economic entity for the benefit of Members and of holders of 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 other Stapled Entity and the Responsible Entity may conduct the Register and issue holding statements jointly with each other Stapled Entity or the responsible entity of each other 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 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 other 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 Securities in each relevant 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 Securities of each relevant Stapled Entity are affected in the same way.

#### **21.4 Issue Price of a Unit in a Stapled Security**

The allocation of the Issue Price of a Stapled Security between the Unit and the Security in each relevant Stapled Entity must be determined as follows:

- (a) the Responsible Entity and each other 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 Security in each relevant Stapled Entity; and
- (b) unless otherwise determined by the Responsible Entity and each other Stapled Entity or the responsible entity of each of the Stapled Entities, the Issue Price must be allocated in proportion to the net asset values of Units in the Trust and each other Stapled Security at the relevant date.

#### **21.5 Conduct of Stapled Entities**

To the extent permitted by law, the Responsible Entity must cooperate with each other Stapled Entity or the responsible entity of each other 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 other 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 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.

#### 21.6 Un-Stapling

The following provisions apply for cessation of Stapling:

- (a) The Responsible Entity may from time to time, and at any time, determine that Stapling ceases to apply to some or all Units in the Scheme immediately, or upon a stated day.
- (b) Stapling will automatically cease to apply to all Units in the Scheme if:
  - (i) the Scheme terminates in accordance with clause 22.1;
  - (ii) the 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) If Stapling ceases to apply to a Unit, the preceding provisions of this clause 21 then cease to apply to that Unit.
- (d) If Stapling ceases to apply to all Units in the Scheme, 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 responsible entity or Stapled Entity to which Stapling will cease to apply, or to the custodian or responsible entity that holds the assets or property of such a Stapled Entity.

### **21.7 Stapling mechanics and implementation**

The following provisions apply for implementing a Proposal:

- (a) The Responsible Entity may do everything it reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit or un-Staple a Unit.
- (b) 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 Proposal or to Staple a Unit or un-Staple a Unit; and
  - (ii) may (as agent or attorney of the Member) on behalf of the Member:
    - (A) receive and apply returned capital or redemption proceeds (including in kind and including to apply for a Unit or other security of the Scheme);
    - (B) apply for a unit or other security in another Stapled Entity (including copying or deriving an application form from a product disclosure statement or offer document given to the Member); and
    - (C) consent to be bound by the constitution or other constituent document of a Stapled Entity.
- (c) 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 Proposal for or for the conduct of Stapled Entities.

### **21.8 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 a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling.

### **21.9 Expenses of Proposal**

The indemnity for expenses and liabilities in clause 14.1 includes all expenses and liabilities in connection with a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling, such as due diligence, retaining experts or advisers, and preparing information for Members.

### 21.10 Stapling provisions paramount

This clause 21 has effect despite any other provision of this Constitution (except clauses 1.4 to 1.6) and a provision of this Constitution that is inconsistent with this clause 21 does not have effect to the extent of the inconsistency.

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## 22 WINDING UP OF THE SCHEME

### 22.1 Circumstances where the Trust terminates

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date that the Scheme is to terminate in a notice given to Members; and
- (b) the date on which the Scheme terminates in accordance with another provision of this Constitution or an order of court or by law.

### 22.2 Procedure on termination

If under clause 22.1 the Trust 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 22.2(e), the Responsible Entity will as soon as reasonably practicable after giving the notice under clause 22.2(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) subject to any special rights, obligations or restrictions attaching to any particular Unit or Class, 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. For this purpose, the Responsible Entity may rely exclusively on the evidence of the Register;
- (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 20.4; and
- (f) the Responsible Entity may make partial distributions in accordance with this clause.

### **22.3 Retention of proceeds of realisation**

If the Responsible Entity decides to make a provision under clause 22.2(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 22.2(c). Any proceeds so retained which are ultimately found not to be required will be distributed in accordance with clause 22.2.

### **22.4 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.

### **22.5 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 10 will apply for this purpose. 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.

### **22.6 Audit of accounts**

If required by law or ASIC policy, following the winding up of the Scheme, the Responsible Entity must cause the accounts of the Scheme to be audited by an independent registered company auditor in the manner required by that law or policy.

### **22.7 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 to respectively by virtue of clause 22.

### **22.8 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.

### **22.9 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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**23 REMOVAL AND RETIREMENT OF RESPONSIBLE ENTITY**

**23.1 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.
- (c) If the Responsible Entity wishes to retire so that another company, (**Replacement Responsible Entity**) which is a wholly owned subsidiary of APA can become the new responsible entity then provided that the Replacement Responsible Entity is authorised to be appointed as the Responsibility Entity in accordance with the Corporations Act, then for the purposes of and subject to section 601FL, the Members of the Scheme shall be taken, by this provision in the Constitution to have voted unanimously in favour of the appointment of the Replacement Responsible Entity.

**23.2 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 under section 601FR of the Corporations Act; and
  - (ii) if it is not an Associate of the former responsible entity or it has not obtained the written consent of the former responsible entity, to promptly take whatever action is necessary to change the name of the Scheme and remove any words, letters or expressions from this 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.

**23.3 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.

#### **23.4 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,
- (c) and the Responsible Entity is not liable to account to Members or any other person for any such payment or benefit.

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## **24 PAYMENTS AND RECOVERIES**

### **24.1 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.

### **24.2 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.

### **24.3 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.

#### **24.4 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.

#### **24.5 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.

#### **24.6 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 24.5; 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 24.6(a) represent:
  - (i) fees payable to the Responsible Entity, it may retain the amounts for its own purposes;
  - (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.

#### **24.7 Responsible Entity's lien**

The Responsible Entity has a first and paramount lien over all of a Member's Units in respect of any moneys 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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#### **25 INDEMNIFICATION AND INSURANCE OF COMPLIANCE COMMITTEE MEMBERS**

- (a) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Scheme Assets, a person who is, or has been, a CC Member against a liability incurred by that person, in his or her capacity as a CC Member, to another person (other than the Responsible Entity or a related body corporate of the Responsible Entity) provided that the liability does not arise out of conduct involving a lack of good faith.
- (b) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Scheme Assets, a person who is, or has been, a CC Member against a liability for costs and expenses incurred by that person:
  - (i) in defending any Proceedings in which judgment is given in that person's favour, or in which that person is acquitted; or
  - (ii) in connection with an application in relation to such Proceedings in which the Court grants relief to that person under the Corporations Act.
- (c) To the extent permitted by law, the Responsible Entity may pay, or agree to pay, from the Scheme Assets a premium in respect of a contract insuring a person who is, or has been, a CC Member against a liability:
  - (i) incurred by that person:
    - (A) in his or her capacity as a CC Member;
    - (B) in the course of acting in connection with the Compliance Committee; or
    - (C) otherwise arising out of the person holding office as a CC Member, provided that the liability does not arise out of conduct involving a wilful breach of a duty referred to in section 601JD of the Corporations Act;

- (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

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## **26 DEATH AND INSOLVENCY OF A MEMBER**

### **26.1 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.

### **26.2 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.

### **26.3 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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## **27 NOTICES**

### **27.1 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.

### **27.2 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;
- (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;
  - (iv) if sent by any other manner at the time the Responsible Entity determines.

### **27.3 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 27.1 and 27.2 respectively will be taken to be validly given to or by all the joint Members.

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## **28 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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## **29 AMENDMENT**

The Responsible Entity may, in accordance with the Corporations Act, modify this Constitution.

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## **30 APPLICATION OF ACCOUNTING PRINCIPLES**

The Responsible Entity must apply generally accepted accounting principles and accounting standards in force from time to time. .

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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.

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**32 OTHER SCHEMES**

- (a) Without limiting any other provision of this Constitution, the Responsible Entity has the power to implement any scheme, restructure or other arrangement in respect of the Scheme, including:
  - (i) transfer any Scheme Assets;
  - (ii) acquire any assets in the Scheme.
- (b) Other than in respect of clauses 1.4 to 1.6, this clause 32 applies and has effect notwithstanding any other provisions of this Constitution and any other provision of this Constitution which is inconsistent with this clause does not operate to the extent of any inconsistency.

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**33 FOREIGN MEMBERS**

In connection with the offer, issue or transfer of Units or other securities, including in connection with the Scheme or any scheme, restructure or other arrangement including pursuant to clause 32, the Responsible Entity may:

- (a) determine not to extend the offer or arrangement to Foreign Members to the extent the Responsible Entity considers that it would be unreasonable to do so: and
- (b) where in the circumstances it considers it would be reasonable to do so, cause any securities which would otherwise be issued to the Foreign Members as part of the consideration in respect of the scheme or other arrangement to be issued or transferred to a nominee (appointed by the Responsible Entity) of the Foreign Members and arrange for that nominee to dispose of those securities and account to the Foreign Members for the net proceeds of such disposal.

**Schedule 1**

**Responsible Entity's Fees (clause 14.3)**

The Responsible Entity's fees are:

Fee	Amount	Payable
Management Fee	The Responsible Entity is entitled to a management fee of 2% per annum (exclusive of GST) of the Gross Asset Value of the Scheme Assets.	Calculated and accrued daily. Payable monthly in arrears.
Leasing Fee	<p>Upon the granting of a new lease or an extension of an existing lease of the premises that form part of the Scheme Assets, the Responsible Entity will be entitled to a leasing fee of 15% of the Gross Income for the first year of any new or extended term of a lease.</p> <p>For the purposes of the above paragraph "lease" includes a licence (e.g.: out-paddock, water rights or other licence)</p>	On the earlier of the date in which the new lease or the extended term is entered into and the date on which the tenant commences paying rent under the new lease or extended term of the lease.

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