

Dated

Constitution for the Pickles Capital Income Fund 1

Melbourne Securities Corporation Limited
ACN 160 326 545

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Deed Poll dated 8 February 2022

By

Melbourne Securities Corporation Limited

ACN 160 326 545
of Level 2, 395 Collins Street, Melbourne VIC 3000

(Trustee)

Terms

1 Interpretation

1.1 Definitions

The following words have the following meanings in this Constitution, unless the context requires otherwise.

- (1) **Accounting Standards** means:
 - (a) all accounting standards and principles required by Australian law to be complied with in respect of the Fund; and
 - (b) except to the extent that it is inconsistent with paragraph (a) above, generally accepted accounting principles applying in Australia, subject to any variation approved by the Auditor.
- (2) **Applicant** means an applicant for a Unit.
- (3) **Application** means an application for a Unit made pursuant to an application form approved by the Trustee.
- (4) **Application Money** means any form of valuable consideration received by the Trustee for Units and any application fee and other money paid upon Application for any Units.
- (5) **ASIC** means the Australian Securities and Investments Commission and its successors.
- (6) **ASIC Relief** has the meaning given in clause 1.5.
- (7) **Assets** means, from time to time, all the Property of the Fund including subscriptions paid in respect of each issued Unit but, for the avoidance of doubt, excluding any Application Money paid in connection with an Application for a Unit which has not been issued.
- (8) **Associate** has the meaning given to it in sections 11-15 of the Corporations Act.
- (9) **Auditor** means the auditor for the Fund, from time to time.
- (10) **Business Day** means a day other than a Saturday, Sunday or public holiday on which banks are generally open for business in Sydney, New South Wales.

- (11) **Cash** includes a cheque, bank cheque, payment order or electronic transfer of funds (but not currency unless the Trustee otherwise determines).
- (12) **Closing Time** means a day and time, from time to time, prescribed by the Trustee by which an Application must be received in order to be accepted by the Trustee as at that day or any other day prescribed by the Trustee.
- (13) **Compliance Committee Member** means a member of the compliance committee, if any, established by the Trustee in connection with the Fund.
- (14) **Constitution** means this deed, as amended from time to time.
- (15) **Consultant** means any adviser including any custodian, counsel, lawyer, accountant, auditor, valuer, banker, broker, underwriter, contractor and other professional adviser.
- (16) **Corporations Act** means the *Corporations Act 2001* (Cth) subject to any applicable ASIC Relief.
- (17) **Costs** means all direct and indirect costs, charges, disbursements, expenses, outgoings, fees (including all legal, professional, accounting, expert, investment manager, custodian, Consultant fees, valuation fees and registration fees), commissions, brokerage, Taxes and all financing costs (including bank charges and fees, interest charges, discount fees and guarantee fees).
- (18) **Custodian** means the custodian, if any, appointed by the Trustee to hold the Assets.
- (19) **Disclosure Document** means a product disclosure statement, information memorandum or any other form of disclosure document used to offer Units for subscription or invite subscriptions for Units.
- (20) **Distributable Amount** means:
- (a) such amount as the Trustee determines before the end of a Financial Year; and
 - (b) otherwise, the Net Taxable Income of the Fund for the Financial Year.
- If the Distributable Amount is to be calculated under clause 12 for a Period that is part of a Financial Year, it must be calculated as if the Period was a Financial Year.
- (21) **Employee** means an employee of Pickles Auctions Pty Ltd ACN 003 417 650 or any Related Party.
- (22) **Financial Year** means, unless the Trustee determines otherwise, a financial year in respect of the Fund being:
- (a) for the first financial year, the period commencing on the date on which the Fund commences to the next 30 June;
 - (b) for the last financial year, the period commencing on the 1 July immediately before the date the Fund terminates to the date the Fund terminates; and
 - (c) for all other periods, the 12 months period ending 30 June in each year.

- (23) **Financial Year End Distribution** means, in respect of a Period which ends on the last day of a Financial Year, an amount calculated by the Trustee as the positive amount, if any, by subtracting from the Distributable Amount for the Financial Year, the sum of the Interim Distributions paid in respect of previous Periods forming part of the same Financial Year (if any).
- (24) **Fund** means the trust constituted under this Constitution.
- (25) **Gross Asset Value** means the total value of the Assets determined in accordance with this Constitution.
- (26) **GST** means any goods and services tax including the tax imposed under the GST Law.
- (27) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (28) **in issue** means in respect of a Unit, that the Unit has been issued and not redeemed.
- (29) **Interim Distribution** means, in respect of a Period ending on a day other than the last day of a Financial Year, an amount determined by the Trustee equal to what would have been the Distributable Amount for the Period if the Period were a Financial Year.
- (30) **Issue Price** means the issue price per Unit being:
- (a) for Units issued to commence the Fund, \$1.00 per Unit;
 - (b) subject to paragraph (c) of this definition, for any subsequent issue of Units, a price per Unit equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Number of units in issue}}$$

using the value of each of the variables determined by the Trustee as properly referable to the class to which the Unit for which the Issue Price is being calculated belongs, at the next Valuation Time after the Trustee accepts the Application for issue of the Unit; and
 - (c) for Units issued pursuant to clause 5.4, an issue price per Unit determined by the Trustee in accordance with that clause.
- (31) **Liabilities** means all liabilities of the Fund including all liabilities accrued but not yet paid, borrowings, Costs, contingent liabilities, unpaid amounts due to a Unitholder including Redemption Amounts and Distributable Amounts to which a Unitholder has become presently and absolutely entitled, unpaid remuneration due to the Trustee and any provision which the Trustee determines should be taken into account in determining the liabilities of the Fund, but excluding Unitholder Liabilities.
- (32) **Liquid** has the meaning given in section 601KA(4) of the Corporations Act.
- (33) **Loss** includes, in each case whether of a direct, indirect or consequential nature:
- (a) any liability, damage, cost (including reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, any thing; and

- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss under, or in relation to, any other contract.
- (34) **Manager** means PC Management 1 Pty Ltd ACN 655 945 323 or any successor appointed by the Trustee to act as investment manager of the Trust;
- (35) **Material Contract** includes any investment management agreement, administration agreement, finance and security document or other material agreement entered into in respect of the Fund or any of its Subsidiaries.
- (36) **Minimum Holding** means the number of Units (or Cash value equivalent) specified in the Disclosure Document as being the minimum subscription or holding of Units or such other amount prescribed by the Trustee from time to time.
- (37) **Minimum Redemption** has the meaning given in clause 7.4(1).
- (38) **Net Asset Value** means the Gross Asset Value less the total value of the Liabilities.
- (39) **Net Taxable Income** means, for a Financial Year the net income of the Fund for the Financial Year as determined in accordance with the principles applicable under Division 6 of Part III of the Tax Act, reduced to the extent of Non-Cash Income, and increased to the extent of any Non-Taxed Income.
- (40) **New Trustee** means a person appointed as Trustee under this Constitution.
- (41) **Non-Cash Income** means any amount that is included in the net income of the Fund that will not be received by the Trustee including franking credits.
- (42) **Non-Taxed Income** means any amount that is received by the Fund as income or capital gain that is not otherwise included in net income, including the discount on capital gains.
- (43) **Old Trustee** means a Trustee of the Fund, who is removed or retires.
- (44) **Ordinary Resolution** means a resolution passed at a meeting of Unitholders:
- (a) on a show of hands, by greater than 50% of Unitholders present in person or by proxy and entitled to vote on the resolution; or
- (b) on a poll, by persons who together hold greater than 50% of the number of Units held by Unitholders present in person or by proxy and entitled to vote on the resolution.
- (45) **Pay** includes apply, transfer, assign, convey or credit a monetary amount.
- (46) **Period** means any period prescribed by the Trustee so long as the period is all or a part of one Financial Year and commences and ends during, or at the same time as the Financial Year.
- (47) **Permitted Transferee** means in respect of a Unitholder, an Associate of the Unitholder or another Unitholder.

- (48) **Prescribed Time** means a Business Day and time prescribed by the Trustee by which the Redemption Form must be received in order to be accepted and processed by the Trustee on the next Redemption Date.
- (49) **Property** means property, assets and rights of any kind including real, personal, moveable and immovable property of any nature, wherever situated, including income, financial products, insurance policies, currency, Cash, bank accounts and choses in action.
- (50) **Redemption Amount** means, in respect of a redemption of Units of a Unitholder, the Redemption Price of the Units multiplied by the number of Units redeemed.
- (51) **Redemption Date** has the meaning given in clause 7.3(2).
- (52) **Redemption Form** means the form approved by the Trustee.
- (53) **Redemption Price** means the redemption price of a Unit to be calculated in relation to the particular class of Units as follows:

$$\frac{\text{Net Asset Value - Transaction Costs}}{\text{Number of units in issue}}$$

using the value of each of the variables determined by the Trustee as properly referable to the class to which the Unit for which the Redemption Price is being calculated belongs at the Redemption Date, except while the Fund is a registered scheme but is not Liquid, in which case it will be as at the time the relevant Withdrawal Offer closes.

- (54) **Register** means the register of Unitholders maintained by, or on behalf of, the Trustee.
- (55) **Reinvestment Arrangement** has the meaning given in clause 12.12(1).
- (56) **Related Party** has the meaning set out in section 228 of the Corporations Act, as if the relevant person was a public company.
- (57) **Representative** has the meaning given in clause 6.4.
- (58) **Required Part** has the meaning given in clause 23.2.
- (59) **Respective Proportion** means in respect of a Unitholder at any time, the proportion (in percentage terms) that the number of Units held by that Unitholder bears to the total number of Units on issue at that time.
- (60) **Significant Investor** means any Unitholder who holds 50% or more of the ordinary Units in the Fund.
- (61) **Subsidiary** has the meaning set out in section 46 of the Corporations Act, as if for the purposes of that section the reference to “another body corporate” is deemed to refer to the Fund.
- (62) **Tax or Taxes** means every kind of tax, duty, rate, levy, withholding, deduction and charge imposed at any time by any fiscal, national, state or local authority or entity, together with interest and penalties including, for the avoidance of doubt, any GST.
- (63) **Tax Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Taxation Administration Act 1953* (Cth).

- (64) **Termination Event** has the meaning given in clause 26.1.
- (65) **Transaction Costs** means the transaction costs determined by the Trustee to be associated with the acquisition or disposal of Assets, being:
- (a) when calculating the Issue Price of a class of Units, the Trustee's estimate of the total costs of acquiring the Assets; and
 - (b) when calculating the Redemption Price of a class of Units, the Trustee's estimate of the total costs of selling the Assets,
- necessary to avoid an adverse impact on other Unitholders because of an issue or a redemption of Units of a class, provided that, subject to the Corporations Act, the Trustee may in its absolute discretion deem the Transaction Costs to be a lesser sum or zero.
- (66) **Trustee** means, from time to time:
- (a) if the Fund is registered, the responsible entity of the Fund; and
 - (b) otherwise the trustee of the Fund who is called the "Trustee" in this Constitution.
- (67) **Trust Fund** means, at any time, all of the Assets but subject to the Liabilities at that time.
- (68) **Unit** means an undivided beneficial interest in the Trust Fund as provided for in this Constitution.
- (69) **Unitholder** means:
- (a) a person whose initial Application has been accepted by the Trustee and whose name for the time being is entered in the Register as the holder of a Unit in accordance with clause 5.3; or
 - (b) a person who holds an interest in the Fund as determined under the Corporations Act.
- (70) **Unitholder Liabilities** means the amount representing Unitholders' capital, undistributed profits, interest attributable to Unitholders accruing on Unitholder capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable regardless of whether characterised as equity or debt in the accounts of the Fund (but excluding Redemption Amounts and Distributable Amounts to which a Unitholder has become presently entitled).
- (71) **Valuation Time** means a time as at which the Trustee calculates the Net Asset Value for the purposes of determining any amount or item in accordance with this Constitution.
- (72) **Withdrawal Offer** has the meaning given in clause 7.5(1)(a).

1.2 Interpretation

The following apply in the interpretation of this Constitution, unless the context requires otherwise.

- (1) A reference to this Constitution, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.

- (2) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (3) A reference to the singular includes the plural number and vice versa.
- (4) A reference to a gender includes a reference to each gender.
- (5) A reference to a party means a person who is named as a party to this Constitution.
- (6) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (7) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Constitution, their substitutes and assigns.
- (8) **Includes** means includes but without limitation.
- (9) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (10) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (11) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Constitution.
- (12) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (13) A heading is for reference only. It does not affect the meaning or interpretation of this Constitution.
- (14) Where this Constitution includes an example of the operation of a provision, the example is not taken to be exhaustive and if the example is inconsistent with the provision, the provision prevails.
- (15) Words defined in the Corporations Act not otherwise defined in this Constitution, have the same meaning in this Constitution.

1.3 Schedules

Any schedule attached to this Constitution forms part of it. If there is any inconsistency between any clause of this Constitution and any provision in any schedule or attachment, the clause of this Constitution will prevail.

1.4 If the Fund is a registered scheme

- (1) A clause in this Constitution which is stated to be subject to the Corporations Act or apply except as the Corporations Act provides otherwise, is only subject to, or its application restricted by, the Corporations Act at any time whilst the Fund is registered.
- (2) The Trustee declares that this Constitution is the constitution of the Fund for the purposes of the Corporations Act at any time that the Fund is a registered scheme.

1.5 **Statutory requirements**

If the Corporations Act requires that this Constitution contain certain provisions or ASIC grants relief or an exemption from, or modification to, the provisions of the Corporations Act (**ASIC Relief**) on condition that this Constitution contain certain provisions, then those provisions are taken to be incorporated into this Constitution at all times at which, and to the extent to which, they are required to be included in order to comply with the Corporations Act or for the ASIC Relief to apply and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the ASIC Relief is granted by class order (rather than specifically in relation to the Fund or the Trustee) then the provisions required for the class order to apply will only be taken to be incorporated if they automatically apply to the Fund or the Trustee otherwise declares in writing that the ASIC Relief is to apply.

1.6 **Rounding**

The Trustee may round (either up or down) a Unit fraction, the Issue Price, Redemption Price, distributions to be made or any other amounts to be calculated or paid under this Constitution to such number of decimal places, to a whole cent or to a whole Unit as prescribed by the Trustee.

2 **Establishment of the Fund**

2.1 **Name of the Fund**

- (1) The Fund formed under this Constitution is called the Pickles Capital Income Fund 1 or any other name the Trustee determines.
- (2) If applicable, where a Trustee retires or is removed, the New Trustee must, unless otherwise approved by the Old Trustee, change the name of the Fund to a name that does not imply an association with the Old Trustee or its business, and must do so within 1 month (or a longer period approved by the Old Trustee) after the Old Trustee retires or is removed.

2.2 **Declaration of trust**

The Trustee declares that it will hold the Trust Fund on trust for the Unitholders on, and subject to, the terms and conditions of this Constitution.

2.3 **Commencement of the Fund**

The Fund commences on the date that a person specified by the Trustee Pays to the Trustee or Custodian \$100 to establish the Fund. On the payment of that amount, 100 Units will automatically be issued to that person.

2.4 **Duration of the Fund**

The Fund ends when the winding up of the Fund under this Constitution is completed, the final distribution is made to Unitholders and all Liabilities have been paid.

2.5 **Assets not available to another trust**

- (1) The Assets are not available to meet any liabilities of any trust other than the Fund.
- (2) The Trustee must, if required by the Corporations Act but not otherwise, ensure that the Assets are clearly identified as Assets and held separately from the Property of the Trustee and the Property of any other trust.

- (3) If not required by clause 2.5(2) to hold Assets separately, the Trustee may hold the Assets of the Fund together with other Property.

2.6 **Vesting of Assets**

The Assets vest in the Trustee or Custodian on trust for the Unitholders throughout the continuance of the Fund.

3 **Unitholders and Trustee bound by deed**

3.1 **Constitution enforceable**

This Constitution is executed for the benefit of the Unitholders and is legally enforceable as between the Unitholders and the Trustee.

3.2 **Unitholders bound**

All Unitholders (and all persons claiming through them) from time to time will be entitled to the benefit of, and will be bound by, this Constitution as if each Unitholder were a party to this Constitution.

4 **Units**

4.1 **Beneficial interest divided into Units**

The beneficial interest in the Trust Fund is divided into Units.

4.2 **Interest conferred by Units**

- (1) Each Unit confers on its Unitholder an equal undivided interest in the Trust Fund as a whole.
- (2) A Unit does not confer any interest in any particular part of the Trust Fund or in any Asset.
- (3) The right of each Unitholder is limited to the right to require the due administration of the Fund in accordance with this Constitution.
- (4) If the Trustee breaches or threatens to breach any duties or obligations to a Unitholder, the Unitholder's recourse against the Trustee is limited to a right to recover damages or compensation from the Trustee in the courts, and the Unitholders acknowledge that damages or compensation from the Trustee is an adequate remedy for such breach or threatened breach.

4.3 **Rights**

A Unitholder holds a Unit subject to the rights, obligations and restrictions attaching to that Unit as set out in this Constitution.

4.4 **No interference by Unitholders**

No Unitholder, other than as provided by the Corporations Act or as expressly provided in this Constitution, is entitled to:

- (1) interfere with the rights or powers of the Trustee, the Custodian or their dealings with the Trust Fund, the Assets or any part of them;

- (2) purport to exercise any rights, powers or privileges in respect of any Asset;
- (3) interfere in any way with the Fund, the Assets or the Trust Fund;
- (4) require that any Asset be transferred to any Unitholder; or
- (5) lodge a caveat in respect of any Asset.

4.5 Classes of Units

- (1) The Trustee may in accordance with the Corporations Act and provided that such action does not have a material adverse effect on the rights or obligations of any existing Unitholders:
 - (a) issue different classes of Units and may determine the rights, obligations and restrictions which will attach to the Units within each class; and
 - (b) alter the class of a Unit by converting the entire class of Units into another class or by re-classifying or re-allocating particular Units to another class.
- (2) At any time, all the Units in a class are of equal value, regardless of when the Units were issued.

4.6 Issue and reconstruction of Units

The Trustee may at any time issue further Units, cancel, consolidate or divide Units or grant options to subscribe for Units provided that such action does not have an adverse effect on the rights or obligations of any existing Unitholders.

5 Applications for Units

5.1 Application for Units

- (1) To subscribe for a Unit, an Applicant must complete an Application and Pay the Application Money by way of subscription to the Trustee or Custodian.
- (2) Any Application Money received from an Applicant will be held in accordance with section 1017E of the Corporations Act until a Unit is issued.
- (3) An Applicant who is dissatisfied with the processing of their Application is entitled to make a complaint to the Trustee in accordance with the dispute resolution described in clause 25.

5.2 Trustee may determine a Closing Time for Applications and may reject Applications

The Trustee may:

- (1) from time to time, determine that Applications to subscribe for Units will only be accepted if received by a Closing Time; and
- (2) in its absolute discretion, reject an Application, in whole or in part, without reason and irrespective of whether the Application has been received by the Closing Time that applies to that Application. The Trustee must make that decision as soon as practicable after receiving the Application.

5.3 **Issue of Units**

A Unit is issued to a person when:

- (1) the Application is accepted by the Trustee; and
- (2) the Trustee records the person's name on the Register.

5.4 **Issue of Units in accordance with ASIC Relief**

Notwithstanding any other clause of this Constitution, but subject to the Corporations Act and the conditions of any applicable ASIC Relief being satisfied, the Trustee may offer for subscription and an Applicant may subscribe for, a Unit to be issued at an issue price determined by the Trustee in circumstances outlined in the applicable ASIC Relief.

5.5 **Number of Units created**

Subject to clause 5.10, the number of additional Units which will be created in respect of an Application accepted by the Trustee is the number calculated by the Trustee dividing the Application Money (less any application fee) by the Issue Price for the Units.

5.6 **Uncleared funds**

Notwithstanding any other act of the Trustee or any of its agents, the Trustee may elect to treat an Application as not having been made or accepted, make appropriate entries in the records of the Fund and, if applicable, return the Application Money to the Applicant if:

- (1) any Application Money for Units is tendered by way of uncleared funds or cheque and the funds are not cleared or the cheque is dishonoured;
- (2) the Applicant is not entitled to hold Units; or
- (3) the Application was accepted in error.

5.7 **Fractional Units**

The Trustee may issue and allow to remain on issue fractional Units. The provisions of this Constitution relating to Units and Unitholders apply to fractional Units and holders of fractional Units in the proportion which the value of the relevant fractional Unit bears to the value of a Unit (calculated to such number of decimal places as the Trustee determines). The Trustee may add any fractional Unit held by a Unitholder to, and consolidate it with, any other fractional Units held by that Unitholder.

5.8 **Confirmations**

The Trustee may promptly issue written confirmations to Unitholders in respect of Units that are issued.

5.9 **Certificates**

Subject to the Corporations Act, the Trustee is not required to issue Unit certificates.

5.10 **Transfer of Property**

- (1) The Trustee may, subject to clauses 5.10(2) and 16.2(2), in its absolute discretion, accept a transfer of Property to the Fund (rather than Cash) as payment of part or all of the Issue Price for Units for which a person is subscribing.

- (2) If clause 5.10(1) applies, the number of Units to be issued is to be calculated as follows:

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

where:

- A = the value of the Property determined by the Trustee in accordance with clause 16.2.
- B = the transaction costs of transferring the property.
- C = the issue price of a Unit calculated as at that time, calculated in accordance with paragraph (b) of the definition of Issue Price.

5.11 **Restriction on new Units**

The Trustee must not issue any Units after the 80th anniversary from the day before the Fund commenced (being the perpetuity period specified for the Fund) if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. This clause prevails over all other provisions of this Constitution.

6 **Transfer and transmission of Units**

6.1 **Transfer or transmission of Units**

- (1) The Trustee may refuse to register any transfer of Units in its absolute discretion without providing any reason.
- (2) Subject to this Constitution, Units may be transferred or transmitted if no Unitholder would as a result of the transfer hold less than the Minimum Holding.

6.2 **Form of transfer**

All transfers of Units must be in writing and be made in such a usual form or the form as required under the Corporations Act or that the Trustee may from time to time accept. An application for the registration of a transfer of Units must be made by delivering to the Trustee:

- (1) a transfer form executed by both the transferor and the transferee and, if required, duly stamped; and
- (2) such evidence (if any) as the Trustee requires to prove the transferor's title or right to transfer the Units.

6.3 **Recognition of title**

- (1) The transferor of a Unit remains the Unitholder until the name of the transferee is entered in the Register as the new Unitholder in respect of the Unit.
- (2) If a Unitholder dies, the survivors or survivor where the deceased was a joint holder and the executors or administrators of the deceased where the Unitholder was a sole holder or held Units as tenants in common, are the only persons entitled to be recognised by the Trustee as having any title to the Units held by the Unitholder.

6.4 Registration of new holder in certain circumstances and election

- (1) Any person becoming entitled to any Units in consequence of the death, bankruptcy or other disability of a Unitholder (**Representative**) may upon such evidence being produced as is required by the Trustee, elect either to be registered as the holder of the Units or to have some other nominated person registered as the holder of the Units.
- (2) A Representative who wishes to make an election pursuant to clause 6.4(1) must deliver or send to the Trustee an election notice in writing in a form approved by the Trustee and signed by the Representative.
- (3) If the Representative elects to have the Representative's nominee registered, the election notice must also be signed by the Representative and the nominee.
- (4) All the provisions of this Constitution relating to the registration of transfers of Units apply to an election notice or transfer under this clause as if the death, bankruptcy, or disability of the Unitholder had not occurred and the election notice was a transfer executed by the Unitholder.

6.5 Representative's rights

- (1) A Representative is entitled to receive, and may give a discharge for, all money payable in respect of the Units of the Unitholder represented.
- (2) A Representative is not entitled to receive notices of, or to attend or vote at, any meetings of Unitholders until the Representative's name is entered in the Register as the Unitholder in respect of the relevant Units.

6.6 Assistance with sales

The Trustee is not responsible for selling any Unit or the enforcement of any terms of sale of any Unit.

6.7 Suspension

The Trustee may suspend the registration of transfers and transmissions of Units for up to 1 month in aggregate in each calendar year.

6.8 Right of first refusal – transfer of existing Units

- (1) If a Unitholder proposes to sell Units (**Offering Unitholder**), in addition to complying with the procedures in this clause 6, unless the Units are being offered to a Permitted Transferee pursuant to clause 6.9, and except to the extent that a Unitholder is prohibited by law, regulatory requirement or order of a regulatory body from following the process set forth in this clause 6.8, it must give the other Unitholders notice of the terms of the proposed sale (**Sale ROFR Notice**), which Sale ROFR Notice must also state:
 - (a) the name and address of the proposed transferee;
 - (b) the total number and class of Units offered under all Sale ROFR Notices (**Total Sale Units**);
 - (c) number of Units offered to the Unitholder under the Sale ROFR Notice, which must be its Respective Proportion of the Total Sale Units;

- (d) that the Unitholder is also offered up to the Total Sale Units, to the extent that the offers under those Sale ROFR Notices are not accepted by other Unitholders (**Available Sale Units**);
 - (e) the consideration per Unit;
 - (f) any other terms of the proposed sale;
 - (g) the period during which the offer made in a Sale ROFR Notice is open for acceptance which may not be less than 20 Business Days from the date the ROFR Notice is delivered (**Sale Offer Period**); and
 - (h) the proposed settlement date for completion of the sale to the other Unitholders, which must be not be less than 10 Business Days after the day when all of the Sale Offer Periods have expired.
- (2) The Unitholders receiving a Sale ROFR Notice may accept the offer in a Sale ROFR Notice within the Sale Offer Period by notice to the Offering Unitholder stating:
- (a) the Unitholder accepts that offer for all of the Units set out in its Sale ROFR Notice; and
 - (b) if a Unitholder also wishes to purchase Available Sale Units, the maximum number of Available Sale Units that the Unitholder wishes to purchase (**Maximum Sale Units**).
- (3) Each Unitholder that has given notice to the Offering Unitholder within the Sale Offer Period that it wishes to purchase Available Sale Units (**Maximising Unitholder**) will be deemed to have agreed to purchase (up to its Maximum Sale Units):
- (a) the Maximising Unitholder's Respective Proportion (among all Maximising Unitholders) of the Available Units;
 - (b) if any other Maximising Unitholder's Maximum Units is less than the number of Units it would otherwise be allocated under clause 6.8(3)(a) then the Maximising Unitholder's Respective Proportion (among the Maximising Unitholders who have not been allocated their Maximum Units) of those Units; and
 - (c) so on until all Available Units are allocated to Maximising Unitholders (or all Maximising Unitholders have been allocated their Maximum Units).
- (4) Following acceptance of the offer in a Sale ROFR Notice under clauses 6.8(2) or 6.8(3), the Offering Unitholder must sell the relevant number and class of Units (on the terms specified in the relevant offer) to the accepting Unitholder and otherwise in accordance with this clause 6. Completion of the transfer will be 10 Business Days after the end of the Sale Offer Period.
- (5) The Offering Unitholder must provide customary fundamental representations and warranties on completion of the transfer of the Units including that it is the legal owner of the Units and has full power and authority to transfer the legal and beneficial title in the Units free of any encumbrances.
- (6) If the procedures in this clause 6.8 are followed and there remain unaccepted Units, the Offering Unitholder may, within 20 Business Days of the expiry of the last Sale Offer Period, transfer those unaccepted Units to a transferee on the terms of the Sale ROFR Notice.

6.9 Permitted Transferees

A Unitholder may, in its discretion and provided it has complied with the procedures in clause 6, nominate one or more Permitted Transferees to receive Units which would otherwise be the subject of a Sale ROFR Notice under clause 6.8 provided that if at any time after that transfer, it transpires or becomes known to the Trustee or any Unitholder that the transferee is not, or has ceased to be, a Permitted Transferee of the Unitholder, that transferee must immediately transfer the relevant Units to the original Unitholder or a Permitted Transferee of the original Unitholder. The original Unitholder must do all things necessary to give effect to this clause 6.9 and will continue to be bound by this obligation after it has ceased to be a Unitholder.

6.10 Compulsory Transfer

- (1) Subject to clause 6.10(3), where a Unitholder is an Employee or holds Units for the benefit of another person who is an Employee, and that Unitholder or the other person ceases to be an Employee, unless otherwise approved by the Manager, the Unitholder must follow the procedure set out in clause 6.8, except to the extent that a Unitholder is prohibited by law, regulatory requirement or order of a regulatory body.
- (2) Where a Unitholder must comply with the procedure in clause 6.8 in accordance with clause 6.10(1):
 - (a) the consideration payable per Unit as specified in the Sale ROFR Notice will be the Net Asset Value per Unit; and
 - (b) if the procedure in clause 6.8 is followed and there remain unaccepted Units, the Offering Unitholder may alternatively retain those Units and will not be required to dispose of them,
- (3) The compulsory transfer requirements under clause 6.10(1) will not apply to DRP Unit Trust as a Unitholder unless none of its own unitholders are an Employee or hold units in it for the benefit of another person who is an Employee.

7 Redemption of Units

7.1 Redemption Price

Subject to clause 7.5(1), a Unit must only be redeemed at the Redemption Price.

7.2 Request for redemption

- (1) A Unitholder may request the Trustee to redeem some or all of its Units by completion and lodgement of a Redemption Form prior to the Prescribed Time.
- (2) A Redemption Form received by the Trustee between a Prescribed Time and the following Valuation Time is deemed lodged immediately after that Valuation Time.
- (3) A Unitholder may not withdraw a redemption request without the consent of the Trustee.
- (4) Units which are redeemed pursuant to a redemption request will cease to carry any rights (except for the obligation of the Trustee to Pay the Redemption Amount in respect of the Units redeemed) on and from:
 - (a) (if the Fund is Liquid) the Redemption Date; or

- (b) (if the Fund is not Liquid) the time the relevant Withdrawal Offer closes.

7.3 Redemption procedure while the Fund is Liquid

Subject to clauses 7.4 and 7.6, while the Fund is Liquid or not a registered scheme the Trustee must:

- (1) accept any redemption request made in accordance with clause 7.2(1);
- (2) subject to clause 7.2(2), redeem the Units the subject of an accepted redemption request with effect as at the next Valuation Time after the Trustee receives that redemption request (**Redemption Date**);
- (3) cancel the Units by making appropriate changes to the Register with effect as at the Redemption Date; and
- (4) Pay the relevant Redemption Amount from the Assets within 21 days of the Redemption Date.

7.4 Minimum redemption

- (1) The Trustee may determine that redemption requests will only be accepted if the requests relate to a minimum number of Units (**Minimum Redemption**).
- (2) Without limiting any other provision, the Trustee may refuse a redemption request if the number of Units the subject of the request is less than the Minimum Redemption.
- (3) If the redemption of Units the subject of a redemption request by a Unitholder would result in the Unitholder having a Unit Holding of less than the Minimum Holding, the Trustee may, without receiving a request from the Unitholder, redeem all of the Units held by the Unitholder.

7.5 Redemption procedure while the Fund is not Liquid

- (1) While the Fund is a registered scheme but is not Liquid:
 - (a) a Unitholder may only withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with Part 5C.6 of the Corporations Act and this Constitution (**Withdrawal Offer**);
 - (b) a Unitholder has no right to withdraw from the Fund if there is no Withdrawal Offer currently open for acceptance by Unitholders; and
 - (c) the Trustee may determine the manner in which notice of any Withdrawal Offer is to be given to Unitholders.
- (2) Subject to the Corporations Act, the amount payable to a Unitholder on acceptance of a withdrawal request will be the Redemption Amount applicable to the Units referred to in the withdrawal request.

7.6 Amounts owed to the Trustee

The Trustee may deduct from the Redemption Amount, any amount due to the Trustee (in its capacity as Trustee) by the Unitholder to whom the Redemption Amount is owed.

7.7 Repurchase

The Trustee may, in its absolute discretion, decide or decide not, to repurchase some, or all, of the Units the subject of any redemption request out of its own funds at the Redemption Price.

7.8 No obligation

The Trustee is not at any time obliged, and may, decide or decide not to:

- (1) effect a repurchase of any Units under clause 7.7 either in whole or in part, out of the Assets or its own funds; or
- (2) make a Withdrawal Offer under clause 7.5.

7.9 Power of compulsory redemption

The Trustee may, subject to clauses 7.3 and 7.5 and in accordance with the Corporations Act, purchase Units out of the Assets of the Fund at the Redemption Price and cause the Units to be cancelled.

7.10 Allocation of Redemption Price

The Trustee may determine that the Redemption Price includes an amount which represents a distribution of the income of the Fund and the Trustee must notify the person redeeming Units of such an amount after the end of the Financial Year in which the redemption occurs.

7.11 Delay of Redemptions

While the Fund is Liquid or not a registered scheme, notwithstanding anything expressed or implied to the contrary in this Constitution, with the exception of clause 9, if the Trustee receives redemption requests of a particular class in respect of any Redemption Date in relation to more than 20% of (or such higher percentage as the Trustee may in its discretion determine) the Units in that class, the Trustee may reduce each redemption request in respect of the class pro-rata, so that only 20% in total of the Units in the class (or such higher percentage as the Trustee determines) are redeemed as at the relevant Valuation Time. The unredeemed portion of the relevant redemption requests are carried forward to the next Redemption Date in respect of which these clauses may apply again.

8 Suspensions

8.1 Ability to suspend

The Trustee may at any time suspend the acceptance and processing of redemption of Units if the Trustee believes that it is in the best interest of the Unitholders as a whole, including if:

- (1) it is desirable for the protection of the Fund or any relevant financial, stock, bond, note, derivative or foreign exchange market is closed or trading on any such market is restricted; or
- (2) an emergency (including an emergency caused by a mechanical or electronic malfunction) or other circumstances or state exists;
 - (a) as a result of which it is not reasonably practicable for the Trustee to acquire or dispose of Assets or to determine or to determine fairly the

Redemption Price or ability of any of these things is or may be significantly adversely affected; or

- (b) sufficient Assets of the Fund cannot be realised at an appropriate price or on adequate terms or otherwise

8.2 **Redemption and conversion following suspension**

The Redemption Price for Units the subject of a suspension under clause 8.1 will be the Redemption Price next determined after the end of the period of suspension. A Unitholder's redemption request which pursuant to clause 8.1 has not been accepted is deemed to be received and accepted immediately after the end of the period of suspension.

8.3 **Suspension of payment**

The Trustee may at any time extend the period for payment of a Redemption Amount under clause 7.3(4) if:

- (1) there are extreme market events which the Trustee was not reasonably able to foresee at the time it accepted the redemption request, in which case the payment period is extended for so long as those events exist; or
- (2) another fund in which the Fund invests provides a longer timeframe to pay withdrawal amounts.

9 **Cooling-off**

- (1) Notwithstanding clause 7, a Unitholder must not request a redemption of a Unit and the Trustee must not redeem a Unit, during the period the Unitholder has a right to return the Unit in accordance with the cooling off rights set out in the Corporations Act.
- (2) Nothing in clause 7 prevents the Trustee complying with its obligations under the Corporations Act in respect of the cooling-off rights of a Unitholder.

10 **Powers of the Trustee**

10.1 **Investment policy for the Fund**

The Trustee must determine, and may vary from time to time, the investment policy of the Fund.

10.2 **Trustee's powers**

- (1) Subject to the conditions of its Australian financial services licence, the Trustee has all the powers in respect of, and in connection with, the Fund, the Trust Fund, the Assets and the Liabilities that it is legally possible for a natural person, trustee or corporation to have including all and any powers:
 - (a) which it could exercise if it were the absolute and beneficial owner of the Assets, the Liabilities and the Trust Fund;
 - (b) to acquire, encumber, develop, maintain or invest in and to sell any Asset;
 - (c) to offer Units and to invite offers to subscribe for Units;

- (d) to carry on any business in connection with the Fund's investments and investment policy;
 - (e) to incur liabilities and obligations of any kind (including to enter into joint venture arrangements, grant indemnities and guarantees, make representations, give warranties and undertakings and enter into, offer or issue any sort of financial product or futures, derivative, swap, option contract or arrangement or instrument or combination of any of these) and including of a speculative nature;
 - (f) to borrow, procure financial accommodation and raise money for the purposes of the Fund and to grant security over, or security interests in, the Assets;
 - (g) to grant indemnities to directors and officers of the Trustee and delegates of the Trustee to the extent legally permissible; and
 - (h) to fetter future discretions.
- (2) Despite any other clause of this Constitution, if and for so long as the Fund has a Significant Investor, the Trustee must not without the consent of the Significant Investor:
- (a) change the name of the Fund;
 - (b) acquire, dispose or otherwise deal in any securities of a Subsidiary of the Fund, including to grant any option or encumbrance over such securities;
 - (c) appoint or remove any director of a Subsidiary of the Fund; and
 - (d) enter into, amend or terminate any Material Contract.

10.3 **Custodian**

If the Trustee has appointed a Custodian, the Trustee alone has power to direct the Custodian to perform or refrain from any act or exercise any power or right.

10.4 **Absolute discretion**

The Trustee has an absolute discretion as to the manner, mode and time of exercise of the powers, authorities, discretions, rights and duties conferred on it under this Constitution or the Corporations Act.

10.5 **Agents**

The Trustee, by power of attorney or otherwise, may authorise any person (whether or not being a Related Party of the Trustee) to do, or delegate to any person, anything that the Trustee may do, including to hold any Asset and to execute documents on its behalf. If the Trustee appoints a Custodian to hold Assets, the Custodian acts as the agent of the Trustee and references in this Constitution to the Trustee being paid Cash or receiving or holding Property includes a reference to the Custodian being paid Cash or receiving or holding Property.

10.6 **Appointment of advisers**

- (1) The Trustee may engage a Consultant to advise, provide services to or assist, the Trustee in discharging its duties, exercising its powers, managing the Fund or dealing with the Trust Fund, any Asset or, any Liability.

- (2) A Consultant appointed by the Trustee is not an agent of the Trustee and to the extent permitted by law, the liability of the Trustee is limited to exercising reasonable care in the selection of, and in monitoring the activities of, the Consultant.

11 Rights of Trustee

11.1 May act in relation to other trusts

Nothing in this Constitution or the fact of the Trustee acting as responsible entity or trustee of the Fund prevents the Trustee from establishing or acting as responsible entity, manager or trustee for trusts or schemes whether of a similar nature to or different from the Fund or to conduct any other business unrelated to the Fund.

11.2 Dealings with associates

- (1) Subject to the Corporations Act, the Trustee and its Related Parties may without any liability to account to any Unitholder or the Fund:
- (a) hold Units;
 - (b) deal with the Fund and any Unitholder;
 - (c) be interested in any contract or transaction with the Fund and any Unitholder;
 - (d) invest any Assets in any company, managed investment scheme or trust owned, controlled, managed (or any of its assets are managed by such a company or trust) or advised by, the Trustee or any of its Related Parties; and
 - (e) sell Property to, or acquire Property from, the Fund for Cash or Units or any combination of them.
- (2) A contract, arrangement or transaction referred to in clause 11.2(1) is not void, voidable or unenforceable, and no person is required to account to the Fund for any profit realised or benefit gained through it, by reason only of the interest of the Trustee or any of its Related Parties in that contract, arrangement or transaction.

12 Income of the Fund and Distributions

12.1 Attribution Managed Investment Trust Choice

This clause 12 is subject to the operation of clause 13 where the Trustee has resolved to make a choice under clause 13.1(1).

12.2 Distributions

- (1) The Trustee may:
- (a) make an Interim Distribution to Unitholders in respect of a Period which ends on a date other than the last day of the Financial Year;
 - (b) make a Financial Year End Distribution to Unitholders in respect of a Period which ends on the last day of a Financial Year; and

- (c) make a distribution of any other amount, whether of income or capital, or otherwise according to such terms, as are prescribed by the Trustee.
- (2) The Trustee must distribute the Distributable Amount to Unitholders in accordance with this clause 12.2.
 - (3) The Trustee must calculate the income of the Fund for each Period and may decide:
 - (a) the classification of any item including as being on income or capital account;
 - (b) the extent to which reserves or provisions need to or should be made; and
 - (c) the extent to which any item is referable to one or more particular classes of units, provided that such decision is made on a fair and reasonable basis.
 - (4) The Trustee may determine standing principles for calculating the income of the Fund for any Period and may change the principles from time to time. However, the Trustee may not determine standing principles, and may not change any existing standing principles, in such a way as to defease any Unitholder of a vested entitlement to income or capital of the Fund.
 - (5) A Unitholder cannot be defeased of any share of Distributable Amount to which the Unitholder is entitled under clause 12.5.
 - (6) The Trustee may maintain separate accounts in relation to different categories and sources of income, or deductions or credits for tax purposes and may allocate income or deductions from or attached to a particular category or source to particular Unitholders from those accounts for the purposes of, amongst other things, Division 6E of the *Income Tax Assessment Act 1936*.
 - (7) Prior to the end of each Period, the Trustee must determine on a fair and reasonable basis the Distributable Amount attributable to each class of Units and must ensure that the total Distributable Amount attributable to all classes of Units is equal to the Distributable Amount of the Fund for the Period.

12.3 Interim Distribution

Any Interim Distribution must be distributed to persons who were Unitholders as at the end of the relevant Period, on the basis that the amount of the Interim Distribution as properly referable to a class of Units is distributed to Unitholders in that class in proportion to the number of Units in that class held by them at that time compared to the number of Units in that class in issue at that time.

12.4 Financial Year End Distribution

Any Financial Year End Distribution must be distributed to persons who were Unitholders as at the end of the relevant Financial Year, on the basis that the amount of the Financial Year End Distribution as properly referable to a class of Units is distributed to Unitholders in that class in proportion to the number of Units in that class held by them at that time compared to the number of Units in that class in issue at that time.

12.5 Present entitlement to Distributable Amount

- (1) As at the end of each Period, the Unitholders are presently and absolutely entitled to all of the Distributable Amount for the relevant Period.

- (2) Each Unitholder is entitled to a share of the Distributable Amount calculated as follows:

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

where:

- A = the Distributable Amount for the Period properly referable to the class of Units held by the Unitholder less amounts of income paid as part of the Redemption Price of Units in that class redeemed during the Period as determined pursuant to clause 7.10 and less any income properly referable to that class paid pursuant to clause 12.8 during that period;
- B = the number of Units in that class held by the Unitholder immediately before midnight on the last day of the Period; and
- C = the total number of Units in that class held by all Unitholders immediately before midnight on the last day of the Period.
- (3) At the end of each Financial Year, the Trustee must inform each Unitholder of its share of the Net Taxable Income or other kinds of income or capital, and all other details, including deductions, credits, rebates or other benefits attaching to the payment of the Distributable Amount necessary to determine the tax position of the Unitholder in relation to its share of the Distributable Amount.
- (4) The Trustee may deduct or Pay an amount in respect of Tax under clause 15.2 in respect of a Unitholder from the payment of the share of the Distributable Amount that Unitholder is entitled to.

12.6 Manner in which a distribution is effected

Subject to any contrary determination made by the Trustee, the Distributable Amount must be distributed to the Unitholders in accordance with this Constitution.

12.7 Participation in Distributable Amount

Subject to clause 12.5(1) and the rights attaching to each class of Units, each Unit ranks equally for distribution of the Distributable Amount from the day it was created.

12.8 Return of capital or income

Without limiting any other clause, the Trustee may at any time distribute, or may direct the Custodian to distribute, any amount of capital or income of the Fund to the Unitholders as at a date specified by the Trustee, on the basis that the amount of the income or capital properly referable to a class of Units is distributed to Unitholders in that class, in proportion to the number of Units in that class held by them on that date compared to the number of Units in that class then on issue, by the payment of cash or the issue of Units.

12.9 Payment of distribution

The Trustee must Pay:

- (1) an Interim Distribution or a Financial Year End Distribution as soon as practicable after the end of the relevant Period;
- (2) an income distribution within two months of the relevant date for determining entitlements to the distribution; and

- (3) a capital distribution, within two months of the relevant date for determining entitlements to the distribution.

12.10 **Records**

The Trustee must keep separate accounts of different categories or sources of income or capital or deductions or credits for tax purposes.

12.11 **Fund taxed as a company**

Notwithstanding the other provisions of this clause 12, the Trustee has complete and absolute discretion as to how much of the Distributable Amount will be distributed to Unitholders in respect of any Financial Years in which the income of the Fund is subject to tax under the Tax Act as if the Fund were a company.

12.12 **Reinvestment**

- (1) The Trustee may offer Unitholders the right to reinvest some or all of any distribution by acquiring Units in the Fund (**Reinvestment Arrangement**).
- (2) If a Reinvestment Arrangement is offered and a Unitholder elects to participate, the Trustee is deemed to have received and accepted an Application from the Unitholder for the amount to be reinvested on the day the Unitholder becomes entitled to the distribution.
- (3) The procedure for reinvestment of distributions is to be prescribed by the Trustee and notified to Unitholders from time to time.

13 Attribution Managed Investment Trust

13.1 **Choices under the Attribution Managed Investment Trust regime**

The Trustee may, in accordance with the Tax Act, resolve to:

- (1) make a choice with respect to the Fund to be an attribution managed investment trust for the purposes of the Tax Act; and
- (2) where the Trustee has made a choice under clause 13.1(1), make a choice to treat each class of Units in the Fund as being a separate attribution managed investment trust for the purposes of the Tax Act.

13.2 **Priority of Clause 13**

Notwithstanding the other provisions of this Constitution which relate to the income of the Fund and to distributions, including clause 12, where the Trustee has resolved to make a choice under clause 13.1(1) the provisions of this clause 13 apply with respect to a Financial Year for which the choice was made and for each following Financial Year during which the Fund is an attribution managed investment trust for the purposes of the Tax Act.

13.3 **Taxation of the Fund**

- (1) Terms used in this clause 13.3 that are not otherwise defined in this Constitution take their meaning from the Tax Act.
- (2) The attribution model of taxation as set out in Division 276 of the *Income Tax Assessment Act 1997* (Cth) (or any successor provisions) applies to the Fund where the Trustee has made a choice under clause 13.1.

- (3) Subject to clause 13.3(4), and without limiting its rights and powers provided for in this Constitution, the Trustee may make any determination or choice, and may take any action which it can or is required to make or take under the Tax Act for the relevant Financial Year, including:
- (a) the determination of the taxable income of the Fund or each class of Units;
 - (b) the determination of assets and liabilities attributable to a class of Units;
 - (c) the determination of the trust component and determined trust component of a particular character for the Fund or each class of Units, including the determination of the particular character of an item and the timing of its inclusion in a trust component and a determined trust component;
 - (d) the attribution of the determined trust component to determine the member component and determined member component of a particular character for each Unitholder (including a former Unitholder);
 - (e) the making of alterations to the relevant trust components and determined trust components and the relevant member components and determined member components as a result of any unders or overs (those terms having the definitions attributed to them in Division 276 of the *Income Tax Assessment Act 1997* (Cth) (or any successor provisions));
 - (f) the giving of an annual statement, within the period set out in the Tax Act, to each Unitholder (including a former Unitholder for the relevant Financial Year) which includes information that reflects:
 - (i) the amount and character of each member component of the Unitholder (or of a former Unitholder); and
 - (ii) any cost base adjustment in respect of the Units of the Unitholder (or of a former Unitholder); and
 - (g) the amendment of an annual statement that has been issued to a Unitholder (or a former Unitholder), and the basis upon which the annual statement issued is to be amended.
- (4) In making a determination or choice, or in taking an action, as contemplated by clause 13.3(3), the Trustee must ensure that any determination, allocation or attribution is made on a fair and reasonable basis.

13.4 Attribution of taxable income upon redemption

The Trustee is entitled to attribute the determined trust component to determine the member component and determined member component of a particular character in respect of a Financial Year to be attributed to a Unitholder, pursuant to clause 13.3, upon a redemption or withdrawal (or any other similar action) of Units by that Unitholder.

13.5 Determination of amounts to be distributed to Unitholders

Notwithstanding any other provision of this Constitution, the Trustee is entitled to determine the amount to be distributed to Unitholders for a Financial Year.

13.6 Statements to Unitholders

Notwithstanding any other provision of this Constitution, if the Trustee has given a statement to a Unitholder in accordance with Division 276 of the *Income Tax Assessment*

Act 1997 (Cth) (or any successor provisions), the Trustee is not required to otherwise notify a Unitholder of their proportionate share of the Fund's income or capital, including income of the trust estate or net income calculated under Division 6 of the *Income Tax Assessment Act 1936 (Cth)* as if the choice in clause 13.1(1) had not been made.

13.7 Indemnity

Subject to the Corporations Act, the Trustee is entitled to be indemnified out of the Assets for:

- (1) any tax liabilities incurred by the Trustee as a result of the application of clause 13.3; or
- (2) any liability that results from a Unitholder (or a former Unitholder) making a claim against the Trustee in relation to a tax liability of the Unitholder (or a former Unitholder) that results from the application of clause 13.3,

together with any other costs, expenses or liabilities incurred by the Trustee as a result of incurring any such liability.

14 Payments to Unitholders

14.1 Money payable

The Trustee's obligations in respect of any money payable to any Unitholder may be fully discharged by:

- (1) compliance with clause 14.4 or this clause 14;
- (2) (if the Trustee so agrees) deposit into an account with a bank or other financial institution nominated by the Unitholder and approved by the Trustee;
- (3) (if the Trustee so agrees) complying with directions from the Unitholder;
- (4) payment by cheque which the Trustee may prepare or cause to be prepared, posted to the Unitholder; or
- (5) in the case of a payment under a Reinvestment Arrangement, reinvesting the money payable to a Unitholder in additional Units.

14.2 Cancel cheques

The Trustee may cancel cheques drawn by the Trustee that are not presented within 6 months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Unitholder or where the Trustee attempts to make a payment to a Unitholder by electronic transfer of funds and the transfer is unsuccessful, the money may be:

- (1) reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled or the Trustee determines that an electronic funds transfer has not been successful;
- (2) held by the Trustee for the benefit of the Unitholder;
- (3) paid by the Trustee in accordance with applicable unclaimed money legislation; or
- (4) in the case of an unsuccessful electronic transfer of funds, used to draw a cheque in favour of the Unitholder.

14.3 **Joint holders**

A payment to any one of joint Unitholders will discharge the Trustee for the payment.

14.4 **Transfer of Assets**

The Trustee may transfer specified Assets to a Unitholder in lieu of payment of Cash in satisfaction of part or all of a Redemption Amount, pursuant to a Withdrawal Offer, in payment of Distributable Amount or a distribution of any amount of capital or income of the Fund or on the winding up of the Fund. The aggregate value of the specified Assets and any Cash paid must equal the amount due to the Unitholder, as the case may be, based on a reasonably current valuation done before the date of the proposed transfer which is consistent with the range of ordinary commercial practice for valuing assets of that type. The Trustee may deduct the cost of transferring the Assets and the cost of any valuation from the amount due to the Unitholder.

15 **Deduction of Tax**

15.1 **Payments**

The Trustee may make a payment in respect of any amount of Tax that the Trustee believes is payable or anticipated to become payable by the Trustee being Tax which is referable to a distribution otherwise payable to a Unitholder or for which a Unitholder is primarily liable.

15.2 **Deductions**

The Trustee may deduct from any amount payable or distributable to a Unitholder, or received from a Unitholder, any amount of Tax (or an estimate or instalment of it) which, in the Trustee's opinion, it is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution. For example, this includes any amount of Tax which may be payable by the Trustee or the Custodian on, or in respect of, the issue of Units to, the redemption, repurchase, forfeiture or cancellation of Units of, or distributions to, a Unitholder.

15.3 **Notification**

The Trustee must advise the Unitholder or cause the Unitholder to be advised, of any payment or deduction made under this clause as soon as possible after the time the payment or deduction is made.

15.4 **Application**

The Trustee may apply a deduction made under this clause 15 towards:

- (1) reimbursement of the Fund for an amount paid or reimbursed out of the Fund;
- (2) reimbursement of the Trustee for an amount paid by the Trustee; or
- (3) the payment of the Tax to the person or authority entitled to it.

15.5 **Indemnity**

The Trustee is entitled to be indemnified out of the Assets in relation to any amount of Tax referred to in clause 15.1 or 15.2 paid (whether or not the amount was due or payable) or payable by it.

16 Accounts and valuation

16.1 Preparation of accounts

The Trustee must keep proper accounts in respect of the Fund or cause them to be kept in accordance with any applicable Accounting Standards and the Corporations Act or otherwise as approved by the Trustee.

16.2 Valuation

The Trustee:

- (1) may cause any Asset or Liability to be valued at any time;
- (2) must cause any Property to be acquired by the Fund in accordance with clause 5.10 to be valued prior to the acquisition;
- (3) must value an Asset, Property or a Liability at regular intervals appropriate to the nature of the Asset, Property or Liability and in accordance with any applicable Accounting Standards and the requirements of the Corporations Act and ASIC policy (if any);
- (4) may determine valuation methods and policies for categories of Assets, Property and Liabilities (which methods must be consistent with ordinary commercial practice for valuing that type of Asset or Property and produce a value that is reasonably current at the time of valuation) and may change them periodically; and
- (5) is not to be regarded as or be taken as holding out that it has expertise as regards the valuation of the Assets, Property or the Liabilities.

16.3 Calculations

Any amount or item required to be calculated or determined for the purpose of this Constitution is to be calculated or determined by, or on behalf of, the Trustee, unless the Constitution otherwise provides as at a time prescribed by the Trustee and in accordance with any applicable Accounting Standards.

16.4 Amortisation

The Trustee may capitalise or amortise Costs in accordance with any applicable Accounting Standards over such periods as it thinks fit.

17 The Trustee's liability

17.1 Limitation on Trustee's liability

Except as the Corporations Act expressly provides otherwise, the Trustee and each director and officer of the Trustee is not liable to one or more or all of the Unitholders, the Fund, any creditors of the Fund or any other person for any amount, beyond the amount which the Trustee is entitled to recover and is actually indemnified for out of the Trust Fund, through its right of indemnity in respect of the Fund.

17.2 Reliance

Without limiting the application of clause 17.1, the Trustee is not liable beyond the amount referred to in clause 17.1, for any Loss or damage to one or more or all of the Unitholders, the Fund, any creditors of the Fund or any other person in acting or omitting to act where:

- (1) it exercised, or did not exercise, or proposed to exercise, any trust, right or power under the Constitution;
- (2) it relied upon information or the authenticity of any document, signature or marking, provided that it believed that the information was correct or the document, signature or marking was authentic;
- (3) it relied upon or acted or did not act, or purported to act on the advice, services, information or opinion of any person or Consultant whether or not instructed or engaged by the Trustee, provided that the Trustee believed the person to have relevant expertise;
- (4) it acted or omitted to act in accordance with a resolution or direction of the Unitholders;
- (5) it acted or omitted to act as approved by or on a direction of Unitholders;
- (6) in relation to a specific Unitholder, it acted with the agreement of, or on the specific direction of, that Unitholder;
- (7) it relied on any document upon which it was reasonable for it to rely;
- (8) it paid or retained money in good faith;
- (9) it paid or retained money to meet a liability or to pay an amount to a fiscal authority which the Trustee believed in good faith was due or payable to the fiscal authority;
- (10) it acted under the compulsion of a law of the Commonwealth, a State or a Territory or in accordance with the terms of an order or judgment of any competent court; or
- (11) a person (other than a company under its control) failed to carry out or was negligent in the carrying out of any agreement with it or any of its agents in connection with the Fund.

17.3 **Contractual limitation of liability**

The Trustee is not required to do anything or refrain from doing anything which involves or could involve the Trustee incurring a liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its Liability is satisfactorily limited.

17.4 **Other obligations excluded**

All obligations or Liabilities of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including any obligation of the Trustee in its capacity as trustee or Trustee of the Fund arising under any statute.

17.5 **Separate limitations**

Each provision that provides, or relates to, a right of the Trustee to Pay or be reimbursed out of the Assets or indemnified or a limitation of the Trustee's liability:

- (1) is separate and independent of any other right, indemnity or limitation of liability;
- (2) does not limit any other provision of this Constitution; and
- (3) applies to the maximum extent permitted by law.

17.6 **Directors and officers**

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

17.7 **Additional indemnity**

Any indemnity or right of reimbursement to which the Trustee is entitled under this Constitution is in addition to any indemnity or right of reimbursement available or provided by law. Each indemnity or right of reimbursement available or provided by law is deemed to be included in this Constitution.

17.8 **Separate indemnities**

Each indemnity or right of reimbursement to which the Trustee is entitled is to be read separately and does not limit any other indemnity. The Trustee's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

17.9 **Agents**

To the extent not prohibited by the Corporations Act, the right or entitlement of the Trustee to be reimbursed or indemnified or paid a fee and any limitation of liability in favour of the Trustee applies regardless of whether the Trustee itself or an agent on its behalf has incurred the relevant obligation or liability, acted or omitted to act or perform the relevant function.

17.10 **Compliance Committee**

If a person who is or has been a Compliance Committee Member incurs a liability in that capacity in good faith and in the person's proper performance of his or her duties, the person is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act. This indemnity is a continuing obligation and is enforceable even when a person has ceased to be a Compliance Committee Member.

18 **Retirement of the Trustee**

18.1 **Retirement**

The Trustee:

- (1) must retire as the Trustee when required to do so by law;
- (2) subject to the Corporations Act, may retire as the Trustee at any time; and
- (3) whilst the Fund is not a registered scheme, may retire as the Trustee on giving 90 days' notice to the Unitholders and on retirement, the Trustee may appoint in writing another person to be the Trustee.

18.2 **Release**

When it retires or is removed, the Old Trustee is released from all obligations and Liabilities in relation to, or in connection with, the Fund arising after the time it retires or is removed.

18.3 **Retirement payment**

Subject to the Corporations Act, the Old Trustee is entitled to agree with the New Trustee to be remunerated by, or to receive a benefit from, the New Trustee and is not required to

account to the Unitholders or the Fund for such remuneration or benefit. The Old Trustee is also entitled to sell part or all of its business relating to managing the Fund to the incoming Trustee (or a Related Party of the New Trustee) for any consideration the parties may agree.

18.4 New Trustee

Any New Trustee must execute a deed in which it covenants to be bound by this Constitution as if it had originally been a party to it.

19 Remuneration and expenses of the Trustee

19.1 Trustee's fees

In consideration for the performance of its duties, the Trustee is entitled to fees as agreed with any Manager or Significant Investor from time to time.

19.2 Indemnity

- (1) The Trustee is indemnified and to be kept indemnified on a full indemnity basis and is entitled to Pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, all Costs and Losses (which are to be calculated on a GST inclusive basis) which it may Pay or incur in the exercise of the Trustee's powers, in the course of its office or in relation to the administration or management of the Fund, in the proper performance of the Trustee's duties.
- (2) Without limiting clause 19.2(1), the Trustee is to be indemnified and entitled to Pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, any management, performance or other fees payable to investment managers and advisors in connection with the Fund.
- (3) The Trustee is not entitled to be indemnified out of the Assets for costs relating to the overhead expenses and in-house administrative costs of the Trustee including rent, office maintenance, salaries and personal income tax of the Trustee.

19.3 GST

- (1) If in the Trustee's opinion, the Trustee becomes liable to Pay GST in respect of any supply made by it in connection with the Fund, the fees and expenses referred to in this clause 19 will be automatically adjusted to ensure that the Trustee's fees net of the impact of the GST are the same as set out in clause 19.1.
- (2) For the avoidance of doubt, the Trustee will be entitled to be paid out of the Assets, any fee increased in accordance with this clause.
- (3) Nothing in this clause empowers the Trustee to do any act prohibited by the *Competition and Consumer Act 2010* (Cth) or any other law or regulation.

19.4 Payments to Related Parties

Payments made under this Constitution may be made to a Related Party of the Trustee.

19.5 Differential fee arrangement

Subject to the Corporations Act and the conditions of any applicable ASIC Relief being satisfied, the Trustee may agree with any Unitholder fee arrangements in respect of the Unitholder which are different to those provided for under this Constitution.

19.6 Units as payment for fees

Subject to the Corporations Act, the Trustee may elect that it is to be issued Units instead of Cash in payment of its fees or reimbursement of its Costs under this Constitution.

19.7 Deferral and waiver

The Trustee may accept lower fees than it is entitled to receive under this Constitution, waive, defer, assign or rebate any fees or the reimbursement of any or all amounts to which it is entitled to be Paid or reimbursed under this Constitution. Where payment of any fee which the Trustee is entitled to receive under this Constitution is deferred, the fee still accrues daily.

19.8 Proper performance

The rights of the Trustee to be paid fees or reimbursed or to be indemnified out of the Assets in relation to the performance of its duties are available:

- (1) only in relation to the proper performance of those duties; and
- (2) regardless of whether the Trustee or its delegate or agent incurs the Loss.

19.9 Trustee's indemnity

The right of indemnity of the Trustee out of Assets and, by Unitholders in respect of Tax liability continues to be available after the Trustee retires or is removed as Trustee of the Fund.

20 The Register

20.1 Trustee must maintain Register

The Trustee must maintain and keep, or cause to be maintained and kept, a Register. The Register is to be kept by the Trustee in such jurisdiction as the Trustee determines from time to time.

20.2 No notice of trusts

The Trustee will not be deemed to be on notice of the existence of any trust and is not required to enter notice of any trust or the interest of any person other than the Unitholder in the Register. The person from time to time entered in the Register as the holder of Units or their Representative will be the only person recognised by the Trustee as entitled to the Units registered in that name or to exercise the rights and privileges attaching to those Units pursuant to this Constitution.

20.3 Joint Unitholders

The Trustee is not required to register more than three persons as joint Unitholders.

20.4 Joint tenancy

Persons registered jointly as the holder of a Unit hold the Unit as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

20.5 **Change in information**

A Unitholder must advise the Trustee of any change to the information noted in the Register in respect of that Unitholder. Upon receipt of such advice the Trustee must promptly update the information contained in the Register.

20.6 **Conclusiveness of Register**

Subject to clause 5.3, the Register is evidence of title to Units.

20.7 **Appointment of third party to maintain Register**

The Trustee may cause the Register to be maintained by a third party on its behalf and require that person to discharge the Trustee's obligations in relation to the Register. The Trustee is not liable for any act or omission of such person provided the Trustee has taken reasonable steps to select a person to perform this function.

21 **Meetings of Unitholders**

21.1 **Trustee's powers**

Subject to the Corporations Act and this Constitution, meetings of Unitholders may be convened and conducted in such manner as the Trustee determines, including the requirements in relation to the period of notice and proxies and their use.

21.2 **Notice**

- (1) A meeting of Unitholders must be convened by notice in writing sent to every Unitholder entitled to attend and vote. The notice of meeting need not set out the terms of any resolution unless required under the Corporations Act. If a Unitholder does not receive a notice of meeting (including if the giving of notice was accidentally omitted) the meeting is not invalidated.
- (2) The Trustee must convene a meeting of Unitholders if required by the Corporations Act.

21.3 **Quorum**

Notwithstanding section 252R(2) of the Corporations Act, the quorum for a meeting of Unitholders or of a class of Unitholders is at least two Unitholders referable to the relevant class (as applicable) present in person or by proxy and the quorum must be present at all times during the meeting.

21.4 **No quorum**

- (1) If a quorum is not present 15 minutes after the scheduled time for the commencement of the meeting, the meeting is:
 - (a) if convened on the requisition of Unitholders, dissolved; or
 - (b) otherwise, adjourned to such place and time as the Trustee decides.
- (2) At any adjourned meeting, those Unitholders present in person or by proxy constitute a quorum.

21.5 **Chair**

Subject to the Corporations Act, the Trustee may appoint a person to chair a meeting of Unitholders. The decision of the chair on any matter relating to the conduct of the meeting including any objection to a vote cast at a meeting is final.

21.6 **Adjournment**

The chair has power to adjourn a meeting for any reason and to such place and time as the chair thinks fit. Subject to the Corporations Act, adjournment of a meeting need not be notified to Unitholders.

21.7 **Postponement or cancellation**

The Trustee may postpone or cancel any meeting of the Unitholders, other than a meeting convened on the requisition of Unitholders. The Trustee must as soon as possible after determining that a meeting of Unitholders is to be postponed or cancelled, notify the Unitholders of the postponement or cancellation (as the case may be).

21.8 **Poll**

A poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting.

21.9 **Proxy**

The Trustee may, in its absolute discretion, decide to accept an appointment of a proxy as valid even if it does not comply with all of the requirements of section 252Y(1) of the Corporations Act.

21.10 **Voting**

- (1) The provisions of Division 6 of Part 2G.4 of the Corporations Act govern voting at meetings of Unitholders.
- (2) Subject to this Constitution and the Corporations Act, all questions will be decided by a majority vote.

21.11 **Resolutions**

- (1) A resolution passed by Unitholders at a meeting convened in accordance with this Constitution binds all Unitholders, regardless of whether:
 - (a) the Unitholder was present at the meeting;
 - (b) the giving of notice of the meeting to that Unitholder was omitted; and
 - (c) the Unitholder voted in favour of or against the resolution.
- (2) No objection may be made to any vote cast unless the objection is made at the meeting.

21.12 **Minutes**

The minutes of a meeting of Unitholders signed by the chairperson of the meeting or the meeting at which the minutes were accepted as a true and correct record are conclusive evidence of the matters stated in them unless the contrary is proved.

21.13 Application of Chapter 2G.4 of the Corporations Act

Subject to clauses 21.1 to 21.12 (inclusive), meetings of Unitholders will be called and held in accordance with Part 2G.4 of the Corporations Act regardless of whether the Fund is a registered scheme. However:

- (1) if at any time, there is only one Unitholder, the quorum for a meeting is one; and
- (2) if an individual is attending a meeting both as a Unitholder and as a proxy or body corporate representative, the Trustee may in determining whether a quorum is present, count the individual in respect of each such capacity.

21.14 Written resolutions

If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed, is assented to by:

- (1) if an Ordinary Resolution is required, Unitholders entitled to vote and holding between them more than 50% of the Units on Issue in the Fund; and
- (2) if the Fund has only one Unitholder, that Unitholder,

that act, matter or thing or resolution is to be taken as having been done at or passed by a meeting of the Unitholders of the Fund and the document is to be taken as a minute of the passing of that resolution.

22 Notices

22.1 Giving of notices

Any notice required to be given to a Unitholder under this Constitution or the Corporations Act will be deemed to have been duly given if it is delivered or sent by post in a postage paid envelope addressed to the Unitholder's address appearing in the Register and will be deemed to be served on the day after the notice is posted.

22.2 Service of notice

Service of any notice or document on any one of several joint Unitholders will be deemed effective service on the other joint Unitholder or Unitholders.

22.3 Other methods

Subject to the Corporations Act, the Trustee may determine methods including electronic methods of giving notices to Unitholders and may also determine corresponding rules relating to deemed service and proof of service.

23 Amendment

23.1 Power to amend

Subject to the Corporations Act, this Constitution may be amended, deleted, added to or repealed and replaced with a new Constitution by a supplemental deed executed by the Trustee if:

- (1) the amendment is made by a deed executed by the Trustee before the issue of any Units in addition to the original 100 Units issued;

- (2) the Fund is not a registered scheme, the amendments are minor, administrative in nature or to correct a manifest error or the Unitholders have passed a resolution in writing to the amendment in accordance with clause 21.14;
- (3) the provisions of the supplemental deed have been approved by a special resolution of the Unitholders;
- (4) the Trustee reasonably considers that the provisions of the supplemental deed will not adversely affect the rights of the Unitholders; or
- (5) clause 23.2 applies.

23.2 Required Part

If any part of this Constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act or ASIC Relief and that requirement ceases or changes the Unitholders:

- (1) agree that unless the Trustee determines otherwise, this Constitution may be amended by removing the Required Part (or amending it to reflect the altered requirement) and authorise the Trustee to make that amendment in a deed made for that purpose; and
- (2) agree and acknowledge that an amendment to this Constitution in accordance with clause 23.2 will not adversely affect their rights.

24 Limitation of liability of Unitholders

24.1 General limitation

The liability of each Unitholder is limited to the amounts subscribed and agreed to be subscribed by the Unitholder for Units. A Unitholder need not indemnify the Trustee, the Custodian or any other person if there is a deficiency in the Assets as compared to Liabilities or to meet the claim of the Trustee, any creditor of the Trustee in respect of, or in connection with the Fund, the Assets or Liabilities. Subject to clause 24.2 recourse of the Trustee and any creditors of the Fund is limited to the Assets.

24.2 Tax indemnity

The Trustee is entitled to be indemnified by a Unitholder to the extent that the Trustee incurs any liability for Tax as a result of the Unitholder's action or inaction.

24.3 Joint Unitholders tax indemnity

Joint Unitholders are jointly and severally liable in respect of all payments of, or liability for, Taxes referred to in clause 24.2.

25 Complaints handling

If the Fund is:

- (1) a registered scheme; or
- (2) not a registered scheme but is offered to retail clients in accordance with any applicable exemption from registration under the Corporations Act or ASIC Relief,

the Trustee must, as an Australian financial services licensee, comply with the dispute resolution requirements in section 912A(2) of the Corporations Act in dealing with any complaint made by a Unitholder or made pursuant to clause 5.1(3).

26 Winding up of the Fund

26.1 Termination Event

Each of the following is a Termination Event:

- (1) the Unitholders by extraordinary resolution direct the Trustee to wind up the Fund;
- (2) the Court makes an order directing the Trustee to wind up the Fund;
- (3) Unitholders pass, in accordance with section 601FM of the Corporations Act, an extraordinary resolution to remove the Trustee but do not, at the same meeting, pass an extraordinary resolution choosing a company to be the new Trustee that consents to becoming the Fund's Trustee;
- (4) the Trustee gives notice under section 601NC of the Corporations Act and no meeting of the Unitholders is called in accordance with that section within 28 days of the Trustee giving notice; and
- (5) the occurrence of the date specified by the Trustee as the date of termination of the Fund in a notice given to Unitholders.

26.2 No further dealings in Units

Following the occurrence of a Termination Event no Units may be redeemed, transferred or issued.

26.3 Notice of Termination Event

Within a reasonable time before, or as soon as practicable after, a Termination Event, the Trustee must give to each Unitholder notice of the termination and of its intention to distribute the Trust Fund.

26.4 Realisation

As soon as practicable after a Termination Event, the Trustee must realise the Assets and satisfy the Liabilities. The Trustee may agree with a Unitholder that the Unitholder's entitlement in whole or in part on winding up be satisfied by transferring specified Assets to that Unitholder in accordance with clause 14.4.

26.5 Final distribution

- (1) Pursuant to clause 19.2, the Trustee is indemnified out of the Assets in respect of all Costs and Liabilities in connection with termination of the Fund and, to the extent that the Trustee is not entitled to be indemnified under clause 19.2, the Trustee will bear those Costs and Liabilities in its personal capacity.
- (2) The Trustee will rank equally alongside other creditors of the Fund with respect to the discharging of its own fees and expenses in connection with termination.
- (3) The net proceeds of realisation, after discharging all Liabilities and meeting the Costs (including anticipated expenses and fees of the Trustee) of termination of the Fund must be distributed to the Unitholders by the Trustee. The net proceeds of realisation must be distributed among the Unitholders as at the date of distribution,

on the basis that the amount of the net proceeds of realisation as properly referable to a class of Units is distributed to Unitholders in that class in proportion to the number of Units in that class held by them at that time compared to the number of Units in that class in issue at that time.

- (4) Proceeds of realisation may be distributed in instalments. The Trustee must ensure that the final accounts in respect of the Fund are subject of an independent audit by a registered company auditor.

26.6 Postponement of realisation

Subject to the duties of the Trustee under the Corporations Act, the Trustee may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interest of Unitholders. The Trustee will not be responsible for any Loss attributable to the postponement.

26.7 Retention

Subject to this clause and the Corporations Act, the Trustee may retain in its hands or under its control any Assets as in its opinion may be required to meet any Liabilities, provided that any Assets so retained to the extent that they are ultimately found not to be required will remain subject to the Fund for conversion and distribution in accordance with this Constitution.

26.8 Powers and rights continue

The powers, rights and discretions of the Trustee under this Constitution (including the rights to fees) continue in full effect until there has been a final distribution to Unitholders and all Liabilities have been paid.

26.9 Cancellation of Units

All Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from realisation is made to Unitholders.

27 Merger

27.1 Application for interests in another trust

The Unitholders may, by special resolution, resolve that each Unitholder is obliged to apply for units or interests in another trust in return for the transfer or cancellation of the Units or transfer of Assets and any such resolution binds every Unitholder (whether or not the Unitholder voted in favour of the resolution) and each Unitholder appoints the Trustee as its attorney to sign any documents (including Unit transfers and application forms) required to implement the resolution.

27.2 Power of Trustee

The Trustee will have power to do all things it considers necessary, desirable or reasonably incidental to give effect to a resolution referred to in clause 27.1.

28 No agency

Except as provided for in clause 27, nothing in this Constitution makes the Trustee the agent of any Unitholder nor creates any relationship other than that of beneficiary and trustee.

29 Severability

If any provision of this Constitution is illegal or invalid because it offends any law (including the Corporations Act) or is inconsistent with the Corporations Act:

- (1) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (2) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

30 Governing law

- (1) This Constitution is governed by the law of New South Wales.
- (2) The Trustee and the Unitholders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Executed as a deed.

Executed by **Melbourne Securities Corporation Limited** ACN 160 326 545 in accordance with section 127 of the *Corporations Act 2001*:



~~Director~~/company secretary

Lauree Blair
Name of ~~director~~/company secretary
(BLOCK LETTERS)



Director

Shelley Brown
Name of director
(BLOCK LETTERS)