

K2 Asset Management Ltd

(ACN 085 445 094)

Airwallex Yield Liquidity Fund Constitution

Contents

1.	Definitions and Interpretation	7
1.1	Definitions	7
1.2	Interpretation	15
1.3	Rounding and currency	16
1.4	Deed binding	16
2.	The Trust	17
2.1	Appointment of responsible entity	17
2.2	Declaration of trust	17
2.3	Name of Trust	17
2.4	Fixed Trust	17
2.5	Unitholders' Agreement	17
3.	Units and Unit Holders	18
3.1	Units	18
3.2	Classes of Units	18
3.3	Fractional Units	20
3.4	Equal value	20
3.5	Interest	20
3.6	Issue, consolidation and division	20
3.7	Rights attaching to Units	20
3.8	Directions	21
3.9	Information and notices from Unit Holders	21
3.10	Capital contributions	22
3.11	Holding Lock	23
4.	Options and Financial Instruments	23
4.1	Issue of Options	23
4.2	Reorganisation of Options	24
4.3	Option exercise	24
4.4	Financial Instruments	24
4.5	Rights attaching to Options and Financial Instruments	24
4.6	Information from Option Holders or Financial Instrument Holders	25
5.	Offer of Units, Options and Financial Instruments	25
5.1	Offer and minimum subscription	25
5.2	Form of application	25
5.3	Acceptance or rejection	25
5.4	Uncleared funds	25
5.5	Issue of Units, Options and Financial Instruments	25
5.6	Number of Units issued	26
5.7	Units as consideration	26
5.8	Certificates	26
5.9	Defective applications	26
5.10	Restriction on issue and redemption of interests	27
5.11	Less than whole Units	27
6.	Partly Paid Units and Cancellation	27
6.1	Terms of Issue	27

6.2	Calls	27
6.3	Interest on late payment of Call	27
6.4	Non-receipt of notice of Call	28
6.5	Deductions for unpaid Calls	28
6.6	Notice requiring payment of sums payable	28
6.7	Cancellation on non-compliance with notice	28
6.8	Entry on Register of Unit Holders	28
6.9	Issue of Replacement Units	28
6.10	Not proceeding with Cancellation	29
6.11	Liability notwithstanding Cancellation	29
6.12	Proceeds of issue	29
6.13	Joint Holders	29
6.14	Winding up	29
7.	Issue Price	30
7.1	Issue Price	30
7.2	Determination of Issue Price in relation to Classes	30
7.3	Rights issues	31
7.4	Satisfaction of Issue Price	31
8.	Redemption of Units	32
8.1	Terms of Issue	32
8.2	Redemption request while Trust is not a Registered Scheme or is Liquid	32
8.3	Action following request	32
8.4	When Trust is Liquid	33
8.5	Minimum Redemption Amount	33
8.6	Suspension of redemptions	33
8.7	Redemption while Trust is not Liquid	33
8.8	Minimum holding	34
8.9	Sums arising	34
8.10	Transfer of Assets	34
8.11	Liquid or not Liquid	34
8.12	Effective time of a redemption and cancellation of Units upon redemption	35
8.13	Order	35
8.14	Redemption by Responsible Entity	36
8.15	Other Redemptions	36
8.16	Buy back of Units and cancellation	36
8.17	Redeeming via on-market disposal	37
8.18	Redeeming via off-market disposal	37
9.	Redemption Price	37
9.1	Redemption Price	37
9.2	Determination of Redemption Price in relation to Classes	38
10.	Transfers	38
10.1	Terms of Issue	38
10.2	Transferability	39
10.3	Registration of transfers	39
10.4	Where registration may be refused	39
10.5	Tax status	40
10.6	Notice of non-registration	40

10.7	Suspension of transfers	40
11.	Transmission of Units, Options and Financial Instruments	40
11.1	Entitlement to Units on death	40
11.2	Registration of persons entitled	41
11.3	Distributions and other rights	41
12.	Exchange of Units	41
13.	AMIT rules	42
14.	Net Accounting Income	43
14.1	Interpretation	43
14.2	Income of the Trust	43
14.3	Expenses and provisions of the Trust	43
14.4	Net Accounting Income	43
14.5	Net Income	44
15.	Distributions	44
15.1	Distributable Income	44
15.2	Present entitlement	44
15.3	Distribution of Distributable Income	44
15.4	Capital distributions	45
15.5	Grossed up Tax amounts	45
15.6	Excess distribution	45
15.7	Unit Holder's rights	45
15.8	Trust taxed as company	46
15.9	Minimum and other distributions	47
15.10	Accounts	47
15.11	Reinvestment	47
16.	Powers of Responsible Entity	47
16.1	Powers	47
16.2	Registration as Registered Scheme	49
16.3	Unit Holders' consent to AMIT election	49
16.4	Delegation	49
16.5	Advisers	49
17.	Valuations	49
17.1	Valuation of an Asset	49
17.2	Valuation if required	49
17.3	Valuation method	49
17.4	Determination of Net Asset Value and Net Class Value	50
17.5	Suspension of Valuation	50
18.	Holding Assets	50
18.1	How held	50
18.2	Other Custodian	51
18.3	Holding of Assets	51
19.	The Register	51
19.1	Keeping Registers	51
19.2	Information in and form of Registers	51
19.3	Changes	51
19.4	Register	51

19.5	Holding Statements	52
20.	The Responsible Entity's Limitation of Liability	52
20.1	General	52
20.2	Specific	52
20.3	Responsible Entity may rely	52
21.	Indemnities	52
21.1	Responsible Entity's indemnity	52
21.2	Responsible Entity's indemnity continuing	53
21.3	Payment	53
21.4	The Responsible Entity not required to incur liability	53
21.5	Compliance committee	53
21.6	Right of indemnity not affected by an unrelated breach	53
21.7	Indemnity under Law	53
22.	The Responsible Entity's Indemnity by Holders for Tax Liability	54
22.1	Liability limited	54
22.2	Joint Holders	54
23.	Change of Responsible Entity	54
23.1	Voluntary retirement while a Registered Scheme	54
23.2	Voluntary retirement while not a Registered Scheme	54
23.3	Compulsory retirement	54
23.4	New Responsible Entity	54
23.5	Release	54
23.6	Retirement benefit	54
24.	Amendments to Deed	55
24.1	General	55
24.2	Limits on amendments	55
24.3	Registration as Registered Scheme	55
24.4	Deemed provisions	55
24.5	Amendments for AMIT rules	56
25.	Statements, Accounts and Audit	56
25.1	Appointment of auditors	56
25.2	Retirement of auditors	56
25.3	Remuneration of auditors	56
25.4	Accounts and reports	56
25.5	Audit	56
26.	Meetings of Holders	57
26.1	Convening meetings	57
26.2	Calling and holding meetings while a Registered Scheme	57
26.3	Calling and holding meetings while not a Registered Scheme	58
26.4	Cancellation or adjournment	58
26.5	Non-receipt	58
26.6	Resolution binding on Unit Holders	58
26.7	Written resolution	58
26.8	Minutes or Signed Resolution	58
26.9	Extension	59
26.10	Classes of Unit Holders, Option Holders and Financial Instrument Holders	59

27.	Service of Documents	59
28.	Termination Event	61
29.	Procedure After a Termination Event	61
29.1	Winding up	61
29.2	Realisation of Trust Fund	61
29.3	Final distribution	61
29.4	Transfer of Assets	61
29.5	Postponement of realisation	62
29.6	Retention of property	62
29.7	Continuation of powers	62
29.8	Cancellation of Units	62
29.9	Audit	62
30.	Fees	62
30.1	Responsible Entity Fees	62
30.2	Waiver, postponement or charging of lesser fees	62
30.3	Establishment Costs	62
30.4	Differential fee arrangements	63
30.5	Adviser monitoring fee	63
30.6	Expenses	63
30.7	Waiver or postponement of Expenses reimbursement	63
30.8	Units as payment for fees	63
30.9	Recovery of GST	64
30.10	Liability Net of GST	64
30.11	Input Tax Credits	64
30.12	Adjustment events	64
30.13	Proper performance	64
31.	Unit Holders' Liability	65
31.1	Liability	65
31.2	Limitation of liability	65
31.3	Sums owed to the Responsible Entity	65
32.	Other Activities and Obligations of The Responsible Entity	65
32.1	Other activities	65
32.2	Other obligations	66
32.3	Hold Units	66
33.	Payments	66
33.1	Money payable	66
33.2	Failed payments	66
33.3	Joint Holders	66
33.4	Deductions for Tax or other payments	66
33.5	Rounding	66
33.6	Posting of cheques	67
33.7	Third party arrangements	67
34.	Complaints	67
35.	Side Arrangements	68
36.	Governing Law and Jurisdiction	68
37.	Severability	68

38.	Exchange Rules	68
38.1	Compliance with Exchange Rules	68
38.2	Exchange Rules take precedence	69
38.3	Effect of ASIC Class Order relating to constitutions	69
38.4	Participation in CHESS	69
Schedule 1		70
	Expenses	70
Schedule 2		73
	Fees	73
Schedule 3		76
	Terms of Issue of the AUD Class Units (Clause 3.2(e))	76
Schedule 4		78
	Terms of Issue of the USD Class Units (Clause 3.2(e))	78
Execution		80

This Deed is made on 26 June

2023

Party

K2 Asset Management Limited (ACN 085 445 094) of Level 32, 101 Collins Street, Melbourne, Victoria, 3000 (the **Responsible Entity**).

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Deed the following definitions apply unless the context otherwise requires.

1997 Tax Act means the *Income Tax Assessment Act 1997*.

Acquisition Fee has the meaning given in clause 5 of Schedule 2.

Adviser includes any adviser, consultant or expert including any architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, investment manager, broker, administrator, property manager, environmental auditor or assessor and any other person appointed by the Responsible Entity to provide advice in relation to the Trust.

AMIT has the meaning given to it in section 276-10 of the 1997 Tax Act.

AML Legislation means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Financial Transaction Reports Act 1988* (Cth) and any similar legislation in any jurisdiction.

Applicable Legislation means the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other legislation applying to the Responsible Entity or the Trust that affects any limitation of the Responsible Entity's liability.

AQUA Product has the meaning given in the ASX Operating Rules.

ASIC means the Australian Securities and Investments Commission and its successors.

ASIC Exemption means:

- (a) an exemption, declaration or modification granted by ASIC in accordance with the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to (or could relate to) the Responsible Entity or the Trust,

whether conditional or unconditional and whether in the form of a class order, legislative instrument or a specific instrument and whether modifying the Corporations Act, exempting the Responsible Entity or others from provisions of that Act or otherwise.

Assessable Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Asset-Specific Class means a Class of Units to which particular Assets are attributed or attributable (and those Assets are not attributed or attributable to any other Class).

Assets mean all the Property, Investments, rights and income of the Trust from time to time.

Asset Value at any time means the value of all Assets in the Trust Fund at that time, as most recently calculated in accordance with clause 17.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ACN 008 624 691).

ASX AQUA Rules means Schedules 10 and 10A of the ASX Operating Rules and ASX Procedures and such other rules that govern the listing or transfer of AQUA Products, as those rules are amended or replaced from time to time.

ASX Listing Rules means the listing rules of ASX and any other rules of ASX which are applicable while the Trust is Quoted, as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

ASX Operating Rules means the operating rules of ASX, as amended or replaced from time to time.

ASX Procedures means the procedures of ASX, as amended or replaced from time to time.

ASX Settlement Period means the relevant trade date plus the specified number of Business Days in which an ASX traded product must be settled.

ASX Settlement Rules has the meaning given in the ASX Operating Rules.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act.
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Australian Common Reporting Standard Legislation means Subdivision 396–C of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

Australian FATCA Legislation means Subdivision 396–A of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

Business Day means a weekday on which banks are open in Melbourne, Australia.

Call means a call on a Unit Holder to pay all or any part of the unpaid Issue Price for a Partly Paid Unit.

Cancelled, in relation to a Partly Paid Unit, means terminated for failure to pay a Call and cancelled in the manner set out in clause 5.11 and the Terms of Issue of that Unit.

Cancellation Notice means a notice given under clause 6.6.

Cash includes cheques.

CD Date has the meaning given in clause 15.8(c).

CHESS has the meaning given in the ASX Listing Rules.

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class.

Class Value, in relation to an Asset-Specific Class, at any time, means the aggregate of the following at that time as calculated by the Responsible Entity:

- (a) the gross value of all Assets attributed or attributable to the relevant Class, as most recently calculated in accordance with clause 17;
- (b) the amount of Cash held in the Trust Fund that is attributed or attributable to the relevant Class (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets that are attributed or attributable to the relevant Class (to the extent not included in paragraphs (a) or (b)).

Class Liabilities in relation to an Asset-Specific Class, at any time, means all present liabilities of the Trust that are attributed or attributable to the relevant Class, including any provision which the Responsible Entity decides should be taken into account in determining the liabilities attributed or attributable to that Class but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves or any other amount representing the value of rights attaching to Units of that Class, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Commencement Date means the date on which the Trust commences in accordance with clause 2.2(b).

Commodity means any tangible personal property, currency, interest or other rate, financial or other index or indices (including any share index) and such other tangible or intangible thing determined by the Responsible Entity to be a Commodity for the purposes of this definition.

Complaint means an expression of dissatisfaction made to the Trust or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Compliance Plan Auditor means the last person (if any) appointed under clause 25.1(b) to audit the Trust compliance plan as required by section 601HG of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth) and includes the Corporations Act as modified by any ASIC Exemption.

Custodian means a custodian or nominee appointed under clause 18.2.

Derivative has the meaning given to it in the Corporations Act but also includes:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the Responsible Entity, for the purpose or anticipated or intended purpose of:
 - (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
 - (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
 - (iii) securing a profit or avoiding a Loss, associated with any Commodity, Property or Investment.

Distributable Amount has the meaning given in clause 15.8(c).

Distributable Income has the meaning given in clause 15.1.

Distribution Period has the meaning given in clause 15.8.

Establishment Costs has the meaning given in clause 30.3(a).

Elected Chair has the meaning given in clause 26.2.

Exchange means the ASX or any other securities exchange such as Cboe Australia Pty Ltd (ACN 129 584 667).

Exchange Offer has the meaning given in clause 12.

Exchange Listing Rules means the ASX Listing Rules and the equivalent rules of any other Exchange.

Exchange Rules means the ASX AQUA Rules or the equivalent rules of any other Exchange.

Exchange Settlement Rules means the ASX Settlement Rules or the equivalent rules of any other Exchange.

Exempt Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Exercise Price has the meaning given in clause 4.1.

Expenses include any costs, liabilities, expenses, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in Schedule 1.

Financial Instrument has the meaning given in clause 4.4.

Financial Instrument Holder means a person registered as the holder of a Financial Instrument (including persons registered jointly) and, pending their being entered on the Register, any person issued a Financial Instrument in accordance with clause 5.5.

Financial Year means a year ending on 30 June in each year but:

- (a) the period commencing on the Commencement Date and ending on the following 30 June will be a Financial Year; and
- (b) the period commencing on the 1 July immediately before the day all the Assets of the Trust have been realised and distributed in accordance with clause 29 and ending on that final distribution day will be a Financial Year.

Fractional Unit means a Unit designated as a fractional unit at issuance.

Fully Paid Unit means a Unit for which the Issue Price is fully paid.

Fund Termination Fee has the meaning given in clause 8 of Schedule 2.

Fund Value at any time, means the aggregate of the following at that time as calculated by the Responsible Entity:

- (a) the gross Asset Value;
- (b) the amount of money held in the Trust Fund (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets (to the extent not included in paragraphs (a) or (b)).

Government Authority means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a securities exchange.

GST has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

GST Amount has the meaning given in clause 30.9.

Holder means a Unit Holder, an Option Holder or a Financial Instrument Holder.

Holding Lock has the same meaning given to the term by the Exchange from time to time, a facility that prevents securities from being deducted from, or entered into, a holding pursuant to a transfer or conversion.

Indemnified Matter has the meaning given in clause 21.2.

Input Tax Credit has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Interest Rate means the daily buying rate displayed at or about 10.30am on the Reuters screen BBSW page for Australian bank bills of a three Month duration.

Interim Distribution has the meaning given in clause 15.3(a).

Interim Chair has the meaning given in clause 26.2.

Interim Distribution Period means any period determined by the Responsible Entity so long as the period commences and ends during the same Financial Year (but does not end on the last day of that Financial Year).

Investment means any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a trustee and includes (without limiting paragraph 1.1(d)):

- (a) financial products;
- (b) financial assets;
- (c) Cash and currencies; and
- (d) the pursuit of gain or the protection against Loss by way of any of the following:
 - (i) acquiring or holding of any Property;
 - (ii) making available financial accommodation, products and assets; or
 - (iii) entering into any contract or a Derivative,

and may involve incurring a liability or obligation of any kind.

Investment Management Fee has the meaning given in clause 1 of Schedule 2.

Issue Price in relation to a Unit means the price at which that Unit is issued and calculated in accordance with this Deed.

Land includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity and any buildings or other improvements on that land.

Law includes:

- (a) the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other statute;
- (b) any agreement made with a Government Authority; and
- (c) any rule of common law, rule of equity or judgement which applies to the Trust or the Responsible Entity (as the case may be).

Liabilities at any time means all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the

liabilities of the Trust but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder 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 Trust.

Liquid in relation to the Trust, has the meaning given by section 601KA(4) of the Corporations Act.

Loss means any losses, liabilities, costs, expenses or damages.

Managed Investment Trust has the meaning given by section 275-10 of the *Income Tax Assessment Act 1936* (Cth) and includes an AMIT.

Minimum Redemption Amount means an amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units or the usual minimum number of Units in a Class or value of Units in a Class, for which a redemption request may be made by a Unit Holder in accordance with clause 8.2.

Month means a calendar month.

Name Event has the meaning given in clause 2.3.

Net Accounting Income has the meaning given in clause 14.4.

Net Accounting Loss has the meaning given in clause 14.4.

Net Class Value at any time, in relation to an Asset-Specific Class, means the Class Value less the Class Liabilities at that time.

Net Asset Value at any time, means the Fund Value less the Liabilities at that time.

Net Income has the meaning given in clause 14.5.

Net Proceeds From Realisation means the proceeds from sale or other realisation of the Assets after paying or providing for:

- (a) all Liabilities of the Trust;
- (b) any unpaid fees payable (or to be payable) to the Responsible Entity; and
- (c) any Expenses incurred in realising the Assets.

Non-assessable, Non-exempt Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Option means an option to be issued a Unit.

Option Holder means a person registered as the holder of an Option (including persons registered jointly) and, pending their being entered on the Register, any person issued Options in accordance with clause 5.5.

Over has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Partly Paid Proportion means the number derived from multiplying the number of Partly Paid Units on issue by the following fraction:

$$\frac{\text{the total of all amounts paid or due but unpaid for Partly Paid Units on issue}}{\text{the total of all Issue Prices for Partly Paid Units on issue}}$$

and in relation to a Class, means the number derived from multiplying the number of Partly Paid Units in that Class on issue by the fraction above, but as if references to 'Partly Paid Units' were to Partly Paid Units in that Class.

Partly Paid Units means Units which have an Issue Price which is payable by instalments and in respect of which all instalments have not been called.

Performance Fee has the meaning given in clause 2 of Schedule 2.

Property means property of any description, whether in Australia or elsewhere, and includes:

- (a) Land and any personal property;
- (b) any estate or interest in property;
- (c) any debt or chose in action or any other right or interest;
- (d) any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property; and
- (e) anything regarded as an asset for the purposes of Australian Accounting Standards.

Quarter means a period of three Months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or winding up of the Trust) and Quarterly has a corresponding meaning.

Quoted means quoted on the ASX AQUA or any other Exchange trading platform.

Redemption Price in relation to a Unit means the price at which that Unit is to be redeemed in accordance with clause 9.1.

Register means each of the registers kept under clause 19.

Registered Scheme means a managed investment scheme which is registered under Chapter 5C of the Corporations Act.

Regulatory Requirements means the operation of each of the following, to the extent applicable:

- (a) Exchange Rules, if the Trust is Quoted;
- (b) CHESS;
- (c) Corporations Act; and
- (d) any applicable ASIC Exemption.

Relevant Class has the meaning given in clauses 7.2 and 9.2 (as applicable).

Retirement or Removal Fee has the meaning given in clause 2 of Schedule 2.

Replacement Units has the meaning given in clause 6.9.

Required Information has the meaning given in clause 3.9(a).

Required Information Request has the meaning given in clause 3.9(a).

Restructure Proposal means any proposal to reorganise or restructure the capital of the Trust in any way, including:

- (a) for the Trust to acquire assets of other entities; or
- (b) by merging or combining the Trust with one or more entities.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Side Arrangement has the meaning given in clause 35.

Special Resolution has the meaning given in the Corporations Act in relation to a Registered Scheme (whether or not the Trust is a Registered Scheme) and, where the Trust is not a Registered Scheme, includes by way of a written resolution in accordance with clause 26.7.

Subsidiary has the meaning given to 'subsidiary' in the Corporations Act, amended as necessary such that:

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

Tax means all income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority in Australia or elsewhere, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

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

Tax Offset has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Termination Event means the Responsible Entity:

- (a) decides that the Trust should terminate and the Assets be realised in accordance with clause 29; or
- (b) is required by the Corporations Act to wind up the Trust or is otherwise required by Law to realise the Assets and distribute the proceeds.

Terms of Issue, in relation to a Unit, an Option or a Financial Instrument, means the terms and conditions on which that Unit, Option or Financial Instrument is issued.

Transaction Costs means:

- (a) when calculating the Issue Price of a Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time; and
 - (b) when calculating the Redemption Price of a Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time,
- (in each case excluding the actual cost of the Assets); or
- (c) in either case, to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the Responsible Entity.

In estimating the total Expenses the Responsible Entity may from time to time take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

Trust means the trust constituted by this Deed.

Trust Auditor means the last person appointed under clause 25.1(a).

Trust Component Deficit has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Trust Fund means all Assets of the Trust (including money paid to the Responsible Entity for the issue of any Units except where an application for that issue has not been accepted).

Responsible Entity means K2 Asset Management Ltd or any other person appointed as responsible entity of the Trust.

Under has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Unit means a unit created under this Deed and for the time being held by Unit Holders.

Unitholders' Agreement means any agreement between the Responsible Entity and the Unit Holders that governs the relationship between them and the affairs of the Trust, as amended from time to time.

Unit Holder means the person registered as the holder of that Unit (including persons registered jointly) and, pending their being entered on the Register, any person issued Units in accordance with clause 5.5 (including persons entitled to be entered into the Register as a Unit Holder without the payment of additional contributions to the Trust) and subject to clause 26.10.

Units on Issue in relation to a Unit or Class means the total number of Units of that kind issued which have not been redeemed.

Valuation Time means any time the Net Asset Value or Net Class Value is determined.

Variable Costs has the meaning given in clause 3.2.

Withdrawal Offer means an offer made by the Responsible Entity in accordance with section 601KB of the Corporations Act.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity and the converse also applies.
 - (v) A reference to a clause, paragraph, subparagraph or schedule is to a clause, paragraph, subparagraph of, or schedule to, this Deed.
 - (vi) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (vii) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals and schedules to that agreement or document.
- (viii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory or legislative instrument issued under it.
- (ix) A reference to dollars or \$ is to Australian currency unless otherwise stated (or specified in the Terms of Issue of a Class).
- (x) A word or phrase appearing in a certain context which, when used in a similar context in the Corporations Act or Australian Accounting Standards would have a particular meaning, has that meaning in this Deed.
- (xi) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (xii) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (xiii) Any appointment of the Responsible Entity as an attorney under this Deed is irrevocable.
- (xiv) All references to the Unitholders' Agreement in this Deed will be disregarded where, at the relevant time, there is no Unitholders' Agreement in force.

1.3 Rounding and currency

- (a) Subject to clause 3.3, all calculations under this Deed may be rounded up or down to the number of decimal places (or nearest whole number) determined by the Responsible Entity.
- (b) Subject to clauses 3.3, 5.6 and 15.7, where total amounts payable to or by a person include a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Responsible Entity.
- (c) Where the Responsible Entity needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units, Options or Financial Instruments to be issued to an applicant, the Responsible Entity will disclose the method of calculating the conversion to the applicant.
- (d) Any excess application or other money or property which results from rounding or any other calculation performed under this becomes an Asset of the Trust.

1.4 Deed binding

This Deed binds the Responsible Entity, each Unit Holder, any other person with an interest in the Trust and any person claiming through any of them as if each of them had been a party to it.

2. The Trust

2.1 Appointment of responsible entity

The Responsible Entity agrees to act as responsible entity of the Trust.

2.2 Declaration of trust

- (a) The Responsible Entity holds the Trust Fund on trust for the Unit Holders in accordance with this Deed.
- (b) The Trust commences on the date Units are first issued.

2.3 Name of Trust

- (a) The name of the Trust is the Airwallex Yield Liquidity Fund or any other name that the Responsible Entity determines.
- (b) Subject to paragraphs (c) and (d), if:
 - (i) the Responsible Entity retires or is removed as responsible entity of the Trust; or
 - (ii) there is a change in who controls the Responsible Entity;(each a **Name Event**) then the name of the Trust must be changed by deleting the words 'K2' (in the event the fund name refers to 'K2'), and the Responsible Entity or new trustee must not use either of those words (or any substantially or deceptively similar word or words) in connection with the Trust. The Responsible Entity or new trustee must amend this Deed to reflect the change in the name of the Trust within 20 Business Days of the Name Event occurring. The Responsible Entity or new trustee covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.
- (c) The Responsible Entity or new trustee may use the words 'K2' for the purpose of advertising the change of name of the Trust for 20 Business Days after the Name Event or in the case of the Responsible Entity retiring or being removed, such longer period as the Responsible Entity agrees. In the case of the Responsible Entity retiring or being removed, any advertisement must be approved by the Responsible Entity. That approval will not be unreasonably withheld.
- (d) Paragraph (b) does not apply if K2 Asset Management Limited agrees otherwise subject to any conditions it may specify (in its absolute discretion).

2.4 Fixed Trust

When the Trust is not an AMIT, it is intended that the Trust nevertheless will be administered to be a 'fixed trust' for the purposes of the Tax Act and the provisions of this Deed will be interpreted and administered by the Responsible Entity accordingly to the maximum extent possible to give effect to this intention, and in exercising the powers provided to it under this Deed, the Responsible Entity will not take any action that would result in the Trust ceasing to be a fixed trust for the purposes of the Tax Act.

2.5 Unitholders' Agreement

- (a) This clause 2.5 applies only for so long as a Unitholders' Agreement is in force.
- (b) This Deed is to be read subject to the Unitholders' Agreement. If there is any inconsistency between this Deed and the Unitholders' Agreement then, to the maximum extent permitted by Law, the Unitholders' Agreement (as in force)

prevails to the extent of the inconsistency and this Deed must be read and construed accordingly.

- (c) Each Unit Holder undertakes with each other Unit Holder and the Responsible Entity to:
 - (i) exercise all of its votes, powers and rights under this Deed and the Law so as to give full force and effect to the Unitholders' Agreement; and
 - (ii) exercise all of its votes, powers and rights in relation to the Trust so as to ensure that the Responsible Entity fully and promptly observes, complies with and gives effect to the Unitholders' Agreement and this Deed.
- (d) To the maximum extent permitted by Law, The Responsible Entity must do all things necessary and desirable to give effect to the Unitholders' Agreement in accordance with its terms.
- (e) If it is necessary to amend this Deed to ensure that the Unitholders' Agreement is effective in accordance with its terms, the Unit Holders agree to procure the amendment of this Deed.

3. Units and Unit Holders

3.1 Units

- (a) The beneficial interest in the Trust Fund will be divided into Units which may be issued by the Responsible Entity at any time. Unless the Terms of Issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations, of Unit Holders under this Deed.
- (b) Subject to the rights, obligations or restrictions attaching to any particular Unit, each Unit other than a Fractional Unit confers an equal undivided interest and a Fractional Unit confers a proportion of that equal interest.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset. The Responsible Entity may attach any terms and conditions to the issue of Units and entitlements to the Units themselves so long as the terms and conditions and entitlements are consistent with this Deed and the Corporations Act.

3.2 Classes of Units

(a) Different Classes

Different Classes may be issued by the Responsible Entity at any time. Subject to clauses 24.2 and 3.2(e), if the Responsible Entity determines in relation to a Class or particular Units, the Terms of Issue of those Units may do any of the following:

- (i) provide for an issue price or redemption price that is specified or calculated in a way that is different from the prices or methods set out in clauses 7 and 8.17 respectively;
- (ii) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by Units;
- (iii) create rights which are preferred or subordinate to those that apply to other Units or another Class;
- (iv) provide for Assets to be attributed or attributable to a particular Class; and

- (v) provide for conversion of Units from one Class to another Class and, if the Responsible Entity so determines, change the number of Units on such a conversion.

(b) **Investment Management Fees, Expenses or Taxes referable to a Class**

If a Class is created in accordance with this clause and Units in the Class have at any time either or both of:

- (i) An Investment Management Fee that is referable to that Class that is different to the Investment Management Fee that is generally payable or payable in relation to another Class; and
- (ii) a type or a particular Expense or Tax or a proportion of a particular Expense or Tax referable to that Class,

(**Variable Costs**) the Responsible Entity must:

- (iii) calculate each Unit Holder's share of Distributable Income by first calculating for each Unit in a Class held by the Unit Holder that amount of the Variable Costs required to calculate Distributable Income under clause 15.1 that the Responsible Entity determines is properly referable to the Class and the Units held by the Holder and then aggregating those amounts; and
- (iv) determine the proportion of Net Proceeds From Realisation under clause 29.3 that is properly referable to each Class having regard to the Variable Costs and each proportion referable to each Class must be distributed pro rata to Unit Holders according to the number of Units in that Class they hold.

(c) **Determination of variables in relation to a Class**

The Responsible Entity in making any determination of Variable Costs properly referable to a Class under this Deed must ensure that any Variable Cost which relates:

- (i) only to a particular Class, and does not relate to other Classes, is solely referable to that Class; and
- (ii) to more than one Class, is apportioned between those Classes in the same proportions as:
 - (A) the aggregate value of Units on issue in each such Class as at the most recent Valuation Time adjusted to reflect the value of Units in each such Class issued or redeemed since the last Valuation Time,
bears to:
 - (B) the aggregate value of Units in all of those Classes on issue at that Valuation Time adjusted to reflect the value of Units issued or redeemed in those Classes since the last Valuation Time.

(d) **Value of Class rights**

In clause 3.2(c), the value of a Unit in a Class is the Redemption Price for Units in that Class (assuming that the Transaction Costs are zero) at the most recent Valuation Time.

(e) **Terms of Issue**

- (i) While the Trust is a Registered Scheme, unless permitted otherwise under an ASIC Exemption, the Terms of Issue of a Class of Units must be set out in this Deed (which may include in a schedule).
- (ii) Subject to the Corporations Act, the Terms of Issue for a Class of Units prevail over the terms of this Deed to the extent of any inconsistency.

(f) **Asset-Specific Classes**

In relation to each Asset-Specific Class:

- (i) all the Class Liabilities must only be satisfied from the Assets attributed or attributable to that Class; and
- (ii) all Assets attributed or attributable to a Class must be held by the Responsible Entity for the benefit of that Class.

3.3 Fractional Units

Subject to clause 3.6 and the Regulatory Requirements, Fractional Units may be issued. The fraction of a whole Unit that a Fractional Unit represents must be specified in the Register. The fraction must be indicated to at least four decimal places.

3.4 Equal value

At any time, all the Units of a Class are of equal value.

3.5 Interest

Subject to the Terms of Issue of a Unit or a Class, a Unit confers an interest in the Trust Fund as a whole. No Unit confers any interest in any particular Asset.

3.6 Issue, consolidation and division

- (a) Subject to clause 3.6(b), the Regulatory Requirements and the Terms of Issue of a Unit or a Class, the Responsible Entity may at any time issue, consolidate or divide the Trust Fund into any number of Units other than the number into which the Trust Fund is for the time being divided.
- (b) An issue, consolidation or division of a kind referred to in clause 3.6(a) must not change the ratio of Units of a Class registered in the name of any Unit Holder to the Units on Issue in that Class.

3.7 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with any rights or powers of the Responsible Entity under this Deed;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).
- (c) Subject to the Corporations Act, a Unit Holder has no right to access the books of the Trust or to require the Responsible Entity to provide information relating to the Trust.

3.8 Directions

Unit Holders may not give any directions to the Responsible Entity if it would require the Responsible Entity to do or omit doing anything which:

- (a) may result in the Responsible Entity acting contrary to Law or this Deed; or
- (b) would otherwise be within the scope of any discretion or power expressly conferred on the Responsible Entity by this Deed.

3.9 Information and notices from Unit Holders

- (a) Each Unit Holder must provide to the Responsible Entity any information requested by the Responsible Entity (**Required Information**) in a notice sent to the Unit Holder (a **Required Information Request**).
- (b) Subject to clause 3.9(c):
 - (i) the Responsible Entity may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
 - (ii) each Unit Holder authorises the Responsible Entity to use Required Information in any way, including providing it to third parties.
- (c) The Responsible Entity may only issue a Required Information Request if it believes the Required Information is necessary to:
 - (i) comply with any law of Australia (including AML Legislation, the Australian FATCA Legislation or the Australian Common Reporting Standard Legislation) or any other jurisdiction or a request for information by a Government Authority where that request is binding on the Responsible Entity; or
 - (ii) give effect to or comply with Australia's Managed Investment Trust regime or the AMIT tax rules;
 - (iii) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or
 - (iv) lessen the risk of the Trust or any Unit Holder suffering a material detriment (whether or not financial),and the Required Information Request specifies a reasonable period within which the Unit Holder must provide the Required Information.
- (d) If any Required Information is not provided by the Unit Holder within the time and in the manner specified in a Required Information Request then, despite any other provision of this Deed, the Unit Holder must indemnify the Responsible Entity for any Loss suffered by the Responsible Entity in relation to the Unit Holder's failure to provide the Required Information.
- (e) Each Unit Holder undertakes that any payment of money by the Responsible Entity in accordance with instructions provided by the Unit Holder (or any agent of the Unit Holder) will not breach any law of Australia or any other jurisdiction.

- (f) The Responsible Entity may from time to time enter into agreements with any Government Authority in any jurisdiction where the Responsible Entity believes it is reasonably necessary to do so to:
 - (i) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or
 - (ii) lessen the risk of the Trust or any Unit Holder suffering a material detriment (whether or not financial).
- (g) If the Responsible Entity is required to provide any information about Unit Holders under any Law then, to the extent permitted by Law, each Unit Holder consents to the Responsible Entity providing that information.
- (h) A notice required under this Deed to be given to the Responsible Entity must be given in writing (which includes fax and any electronic format), or in such other manner as the Responsible Entity determines (including any electronic means of communication).
 - (i) The notice is effective only at the time of receipt.
 - (ii) The notice must bear the actual, facsimile or electronic signature of the Unit Holder or a duly authorised officer or representative of the Unit Holder unless the Responsible Entity dispenses with this requirement.

3.10 **Capital contributions**

- (a) Subject to clauses 3.10(b) and (e), a Unit Holder may, at any time, pay an amount to the Responsible Entity as an additional capital contribution to the Trust.
- (b) The Responsible Entity may from time to time accept or decline an additional capital contribution under clause 3.10(a) in its absolute discretion. However, unless the Responsible Entity decides otherwise and subject to clause 3.10(e):
 - (i) the amount of the capital contribution must be calculated on a per Unit basis;
 - (ii) the total amount to be contributed by the Unit Holder must be the per Unit amount multiplied by the total number of Units held by the Unit Holder;
 - (iii) where there is more than one Unit Holder, the amount of the capital contribution must be the same on a per Unit basis for each Unit Holder and each Unit Holder must make a total contribution as calculated under subclause 3.10(b)(ii); and
 - (iv) each Unit Holder contribution must be paid as one payment within a time specified by the Responsible Entity.
- (c) Any amount contributed under this clause 3.10 will become an Asset on payment of the amount to the Responsible Entity or as the Responsible Entity directs.
- (d) Nothing in this clause 3.10:
 - (i) restricts the Responsible Entity's power to issue Units or any Options or Financial Instruments and no clause relating to issuing Units, Options or Financial Instruments limits the Responsible Entity's powers under this clause; or
 - (ii) prevents the Responsible Entity from approaching a Unit Holder regarding an additional capital contribution or proposing a capital contribution.

- (e) This clause 3.10 has effect in respect of each Class of Units but is subject to the Terms of Issue of that Class.

3.11 Holding Lock

- (a) While the Trust is Quoted and subject to the Exchange Rules, the Responsible Entity may request a Holding Lock be applied to any Units where:
 - (i) the Responsible Entity has a lien on the Units subject to the transfer;
 - (ii) the Responsible Entity is served with a court order that restricts a Unit Holder's capacity to transfer the Unit;
 - (iii) registration of a transfer may break an Australian law and Exchange has agreed in writing to the application of a Holding Lock (which must not breach the Exchange's Settlement Rules) or that the Responsible Entity may refuse to register a transfer;
 - (iv) if the transfer is paper-based:
 - (A) either a law related to stamp duty prohibits the Responsible Entity from registering it or the Responsible Entity is otherwise allowed to refuse to register it under the Exchange Rules; or
 - (B) registration of the transfer will create a new holding which at the time of the transfer is lodged is less than a 'marketable parcel' as defined in the Exchange Rules;
 - (v) the relevant Unit Holder has agreed in writing to the application of a Holding Lock (which must not breach the Exchange Settlement Rules) or that the Responsible Entity may refuse to register a transfer; or
 - (vi) it is otherwise permitted under the Exchange Rules, and the Responsible Entity must do so if the Exchange Rules require, but must tell the Unit Holder or the broker as the Corporations Act or the Exchange Rules require.

4. Options and Financial Instruments

4.1 Issue of Options

- (a) Subject to clause 24.2, the Responsible Entity may from time to time issue Options:
 - (i) subject to clause 4.1(b), on the basis that the price for a Unit to be issued on exercise of the Option (the **Exercise Price**) is a price determined by the Responsible Entity;
 - (ii) for consideration of \$1 or, subject to clause 4.1(b), for other consideration determined by the Responsible Entity (including no consideration); and
 - (iii) on such other terms as the Responsible Entity determines.
- (b) If the Trust is a Registered Scheme, the Responsible Entity may from time to time issue an Option on the basis that the Exercise Price is a price determined by the Responsible Entity or consideration other than \$1 (including for no consideration), to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms of that ASIC Exemption).

4.2 **Reorganisation of Options**

The Responsible Entity may at any time reorganise Options in accordance with their terms.

4.3 **Option exercise**

- (a) Options may only be exercised in accordance with their terms.
- (b) The Responsible Entity must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an application for Units but the Responsible Entity must not refuse to issue any Units except if the Terms of Issue permit (or if any Law requires) such refusal.

4.4 **Financial Instruments**

Subject to clause 24.2 and the Corporations Act:

- (a) from time to time the Responsible Entity may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (**Financial Instruments**); and
- (b) Financial Instruments may be issued:
 - (i) for consideration or no consideration; and
 - (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Responsible Entity determines.

4.5 **Rights attaching to Options and Financial Instruments**

- (a) An Option will not confer any interest in, or any rights to participate in the income or capital of, the Trust Fund.
- (b) Subject to the terms of the Financial Instrument, a Financial Instrument will not confer any interest in, or any right to participate in the income or the capital of, the Trust Fund.
- (c) Each Option Holder and, subject to the terms of the Financial Instrument, each Financial Instrument Holder agrees not to:
 - (i) interfere with any rights or powers of the Responsible Entity under this Deed;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to them (or any other person).
- (d) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is entitled to attend any meeting of Unit Holders but is not entitled to receive notice of or speak or vote at such a meeting.
- (e) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is not entitled to any other rights of a Unit Holder.
- (f) While the Trust is a Registered Scheme, if an Option or a Financial Instrument constitutes an interest in the Trust for the purposes of the Corporations Act, the Terms of Issue must be set out in this Deed (which may include in a schedule).

4.6 Information from Option Holders or Financial Instrument Holders

Subject to the terms of the Option or Financial Instrument, clause 3.9 applies to a Holder who is not a Unit Holder as if they were a Unit Holder.

5. Offer of Units, Options and Financial Instruments

5.1 Offer and minimum subscription

The Responsible Entity may at any time offer Units, Options or Financial Instruments for subscription or sale. The Responsible Entity may determine a minimum amount which must be lodged with an application for Units, Options or Financial Instruments and a minimum holding of Units, Options or Financial Instruments for the Trust. The Responsible Entity may invite persons to make offers to subscribe for or buy Units, Options or Financial Instruments.

5.2 Form of application

Each application for Units, Options or Financial Instruments will, unless the Responsible Entity approves otherwise:

- (a) conform with the form and content requirements of any relevant disclosure document; and
- (b) be accompanied by application moneys as required by any relevant disclosure document; or
- (c) if there is no relevant disclosure document, be made in such manner as the Responsible Entity approves.

5.3 Acceptance or rejection

The Responsible Entity may from time to time, without giving any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of the application.

5.4 Uncleared funds

Units, Options or Financial Instruments issued against application money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not cleared within five Business Days (or other period stated in a relevant disclosure document) of being presented for payment.

5.5 Issue of Units, Options and Financial Instruments

Units, Options or Financial Instruments are issued when:

- (a) the Responsible Entity accepts the application; or
- (b) the application money is received by (or Property which is acceptable to the Responsible Entity against which Units, Options or Financial Instruments are to be issued is transferred to) the Responsible Entity,

whichever is the later. The Responsible Entity must promptly update the Register to reflect the issue of Units, Options or Financial Instruments under this clause. The Units, Options or Financial Instruments are deemed to have been issued on the date specified in the Register.

5.6 Number of Units issued

Subject to clause 5.7 and the terms of any Option, Financial Instrument or Partly Paid Unit, the number of Units issued at any time in respect of an application for Units will be calculated as follows:

- (a) by dividing the application moneys or the value of the Property paid by the applicable Issue Price at that time; and
 - (b) by rounding down to the nearest Unit,
- and any balancing amount will become an Asset.

5.7 Units as consideration

Where an Investment is acquired for consideration which includes the issue of Units by the Responsible Entity, the number of Units created and issued by the Responsible Entity is determined in accordance with the following formula.

$$\frac{MVA - C}{IP}$$

Where:

- MVA = the value of the Investment being acquired as determined in accordance with this Deed
- C = the amount of the Cash consideration paid in respect of the Investment (if any)
- IP = the Issue Price of the Units being issued (as determined in accordance with clause 7.1)

5.8 Certificates

Unless their Terms of Issue require it, no certificates will be issued for Units, Options or Financial Instruments (unless the Responsible Entity determines otherwise in relation to some Units, Options or Financial Instruments, a Class or all Units).

5.9 Defective applications

Where, within 10 Business Days of the issue of Units, Options or Financial Instruments (or such longer period as the Responsible Entity determines), the Responsible Entity determines that:

- (a) the applicant was not entitled to hold the Units, Options or Financial Instruments;
- (b) the application form was incorrectly executed or executed without power or authority;
- (c) the application form was defective and was accepted in error; or
- (d) the application moneys due were not credited to the Responsible Entity's account or, if credited, were later reversed by the paying party,

the Responsible Entity may, in its sole discretion, cancel those Units, Options or Financial Instruments and make an appropriate entry in the Register and, if necessary, repay the application moneys to the applicant out of the Trust Fund. If Units, Options or Financial Instruments are cancelled under this clause 5.9, the Responsible Entity is not required to adjust the Fund Value, Issue Price or Redemption Price determined before the cancellation of the Units, Options or Financial Instruments.

5.10 Restriction on issue and redemption of interests

The perpetuity period for the purposes of section 5 of the *Perpetuities and Accumulations Act 1968* (Vic) is the period of 80 years from the day before the Commencement Date.

The Responsible Entity cannot issue or redeem any Units or any other interests in the Trust from the 80th anniversary of the Commencement Date if that issue or redemption 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 Deed.

The specification of a perpetuity period in this clause 5.10 does not require that the Trust be terminated (and the Assets realised) on the expiration of that period.

5.11 Less than whole Units

Where an application, cancellation or redemption would result in the issue of less than a whole Unit to a Holder, the Responsible Entity in its absolute discretion may:

- (a) issue a Fractional Unit;
- (b) contribute its own funds to round up the number of Units issued to a whole number;
- (c) round the Unit up or down; or
- (d) hold the residual amount of interest and pay it to the next application, cancellation or redemption made by the Holder or pay the amount to the Holder when the moneys are next paid by the Responsible Entity under this Deed.

6. Partly Paid Units and Cancellation

6.1 Terms of Issue

- (a) The Responsible Entity may from time to time issue Partly Paid Units on such terms and conditions as it determines. In particular, without limitation, the Responsible Entity may determine the number of instalments and the terms on which they are payable.
- (b) This clause 5.11 applies to all Partly Paid Units unless the Terms of Issue of a Unit specify otherwise. If there is an inconsistency between this clause 6 and the Terms of Issue, the Terms of Issue prevail.

6.2 Calls

Each Holder of a Partly Paid Unit must pay a Call made in accordance with the Terms of Issue of the Unit. The Responsible Entity may only make a Call if the Call is made on all Unit Holders of that Class. If the date fixed for payment of a Call is not a Business Day, the Call is due and must be paid on the immediately preceding Business Day.

6.3 Interest on late payment of Call

If any Call is not paid on or before the day appointed for payment, the Holder of the Partly Paid Unit must pay interest on the amount of the Call from the day appointed for the payment to the time of actual payment. Interest which accrues on an unpaid Call will become an Asset. Interest will be payable at the Interest Rate (determined as at the day appointed for payment or, if a rate cannot be determined on that day, on the next day that the rate can be determined).

6.4 **Non-receipt of notice of Call**

A Call is not invalidated because any Unit Holder does not receive a notice of the Call, or because notice is accidentally not sent to any Unit Holder.

6.5 **Deductions for unpaid Calls**

If all or part of a Call is not paid by the date appointed for payment, the Responsible Entity may apply any amount payable to the relevant Unit Holder under this Deed to pay amounts unpaid under the Call (as well as accrued interest and all Expenses incurred by the Responsible Entity in relation to the unpaid Call).

6.6 **Notice requiring payment of sums payable**

- (a) Without limiting clause 6.5, if a Call is not paid in full by the day appointed for the payment, the Responsible Entity may give a notice to the Unit Holder requiring payment of the unpaid amounts, accrued interest and all Expenses incurred by the Responsible Entity in relation to the unpaid Call.
- (b) The notice must appoint a day (at least 14 days after the date of the notice) by which the payment required by the notice is to be made.
- (c) The notice must also state that, if the payment is not made by the day appointed, the Units to which the Call related will be liable to be Cancelled.

6.7 **Cancellation on non-compliance with notice**

- (a) If a Unit Holder does not comply with a Cancellation Notice, any Units the subject of the Cancellation Notice may be Cancelled. The Responsible Entity is not liable to a Unit Holder for any Loss suffered by the Unit Holder as a result of the Cancellation.
- (b) Cancellation may be effected by a notice from the Responsible Entity, with effect from the date of the notice.
- (c) Cancellation includes cancelling all rights to any distributions (and other money payable to the Unit Holder relating to the Cancelled Units) not actually paid to the Unit Holder before the Cancellation (except where such amounts have already been applied to reduce the Call amount under clause 6.5).
- (d) Cancellation of Units in those circumstances is a right of the Responsible Entity arising from the Unit Holder's failure to comply with a Cancellation Notice. The Responsible Entity's right to Cancel a Partly Paid Unit in those circumstances is a Term of Issue of the Unit.

6.8 **Entry on Register of Unit Holders**

Where any Unit has been Cancelled in accordance with this clause, the Responsible Entity will enter the Cancellation and the date of the Cancellation in the Register of Unit Holders.

6.9 **Issue of Replacement Units**

- (a) The Responsible Entity may issue Units (**Replacement Units**) to replace the Cancelled Units.
- (b) Subject to clause 6.9(c), the Replacement Units will be issued with the same Terms of Issue as Cancelled Units (including the Issue Price). However, subject to clause 6.9(c), the amount immediately payable in relation to the Replacement Unit will be equal to the amount paid up and payable in relation to the Cancelled Unit

(including the amount payable in relation to the Call made but not paid in relation to the Cancelled Unit).

Also, the Call not paid in relation to the Cancelled Units will be taken to have been paid in relation to the Replacement Units.

- (c) Despite clause 6.9(b), the Responsible Entity may determine the Issue Price of the Replacement Unit as the Responsible Entity considers appropriate (including as to the amount immediately payable in relation to the Replacement Unit).

6.10 Not proceeding with Cancellation

At any time before a Unit is Cancelled:

- (a) the Responsible Entity may decide not to proceed with the Cancellation on such conditions as it determines; and
- (b) if the Unit Holder pays to the Responsible Entity the full amount owing in relation to the Units in question (including accrued interest and all Expenses incurred by the Responsible Entity in relation to the unpaid Call), the Responsible Entity must not proceed with the Cancellation.

6.11 Liability notwithstanding Cancellation

A Unit Holder whose Units have been Cancelled remains liable to pay to the Responsible Entity all amounts unpaid specified in clauses 6.12(a), 6.12(b) and 6.12(c) which are referable to the Cancelled Units. That liability ceases when the Responsible Entity is paid all such amounts under clause 6.12 or otherwise, and (if relevant) amounts under clause 6.13, in relation to the Cancelled Units.

6.12 Proceeds of issue

The amounts received from issuing the Replacement Units (and all distributions and other money from time to time payable but not paid to the Unit Holder in relation to the Cancelled Units) must be applied to pay:

- (a) first, all costs which have been or will be incurred in relation to the Cancellation and the issue;
- (b) second, the amount of the unpaid Call; and
- (c) third, any accrued interest on the Call and any other moneys payable to the Responsible Entity.

The balance (if any) must be paid to the Unit Holder whose Units have been Cancelled. If the net proceeds of the issue of Replacement Units are insufficient to pay the amounts in paragraphs (a), (b) and (c) then the Unit Holder remains liable for the difference between the net proceeds of issue and the sum of those amounts.

6.13 Joint Holders

Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due on the Partly Paid Units held by them.

6.14 Winding up

The whole of the unpaid Issue Price of each Partly Paid Unit is payable on a Termination Event occurring.

7. Issue Price

7.1 Issue Price

- (a) The Issue Price for the Units issued to establish the Trust under clause 2.2(b), or issued to establish a new Class is \$1 per Unit.
- (b) Unless the Responsible Entity determines otherwise or the Terms of Issue of a Class of Units provide otherwise, but subject to clause 24.4, the Issue Price for any Unit issued after Units have been issued in accordance with paragraph (a) will be equal to:
 - (i) for Classes that do not have Partly Paid Units:

$$\frac{\text{Net Asset Value}}{\text{number of Fully Paid Units on Issue}} \times (1 + \text{Transaction Costs})$$

- (ii) for Classes that do have Partly Paid Units:

$$\frac{\text{Net Asset Value} \times (1 + \text{Transaction Costs})}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}}$$

(or the appropriate proportion of that amount in the case of a Fractional Unit. For example, half of that amount for a 0.5 Fractional Unit)

all calculated as at the first Valuation Time after the Responsible Entity receives:

- (iii) the application for Units; or
 - (iv) the application money (if applicable) or the Property (or other Investment) to be transferred to the Responsible Entity,
- whichever happens later. However, Units may also be issued at a price which is the price determined under this clause less a reduction of fees disclosed in accordance with clause 30.4 (where such disclosure is required by an ASIC Exemption).
- (c) The Responsible Entity may determine that an application for Units or application money or Property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.
 - (d) The Issue Price will be rounded to the nearest one (1) cent.

7.2 Determination of Issue Price in relation to Classes

- (a) If Units in a Class have at any time:
 - (i) an Investment Management Fee referable to that Class that is different from the Investment Management Fee that is referable to another Class;
 - (ii) a type or a particular Expense or Tax or a proportion of a particular Expense or Tax referable to that Class; or
 - (iii) been issued as an Asset-Specific Class,

the Responsible Entity may decide all or any of the following matters affecting the value of any factor in the formula or any aspect of the method of calculating the

Issue Price of Units in the Class in question (**Relevant Class**) in accordance with clause 7.1(b):

- (iv) allocating a portion of the Net Asset Value to the Relevant Class in accordance with the methodology in clause 3.2(c);
 - (v) if the Class is an Asset-Specific Class, using the Net Class Value instead of the Net Asset Value in the numerator;
 - (vi) calculating the Transaction Costs having regard to the portion of the Net Asset Value of the Relevant Class referred to in clause 7.2(a)(iv), the Net Class Value referred to in clause 7.2(a)(v), or a portion of the Transaction Costs;
 - (vii) dividing the portion referred, to in clause 7.2(a)(iv), or the Net Class Value referred to in clause 7.2(a)(v), by the number of Units in the Relevant Class and the Partly Paid Proportion for that Class; and
 - (viii) setting the Valuation Time, which may be the time the Responsible Entity calculates the Net Asset Value or Net Class Value or allocates the portion of the Net Asset Value to the Relevant Class.
- (b) The exercise by the Responsible Entity of its powers under this clause 7.2:
- (i) is relevant to applying the formula or method provided in clause 7.1(b) for calculating the Issue Price of Units or the Issue Price of Units in the Relevant Class;
 - (ii) does not create a separate trust fund for the Relevant Class or any other Class; and
 - (iii) may be made for each other Class, as if that other Class was the Relevant Class.

Nothing in this clause limits the Responsible Entity's discretion in clause 7.1(b).

7.3 Rights issues

The Responsible Entity may from time to time issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clause 7.1 by way of rights issue or similar offering when the Responsible Entity offers the Units to persons who are Unit Holders (or who are Unit Holders holding Units in a particular Class) on a date determined by the Responsible Entity (**Rights Unit Holders**), in proportion to the value of each Rights Unit Holder's Units in the Trust or the value of each Rights Unit Holder's Units in a particular Class (as applicable) on that date, subject to the exclusion of any Unit Holder from the offer where it is not a contravention of section 601FC(1)(d) of the Corporations Act.

7.4 Satisfaction of Issue Price

The Issue Price may be satisfied by payment of Cash or by transfer to the Responsible Entity of Property or another Investment acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts Property or Investments, it may determine that some or all of the costs associated with the valuation, transfer or assignment of the Property or Investments are payable or reimbursable out of the Trust Fund or by the applicant (or both in agreed proportions).

8. Redemption of Units

8.1 Terms of Issue

This clause 8 and clause 8.17 have effect in respect of each Class of Units but are subject to the Terms of Issue of that Class.

8.2 Redemption request while Trust is not a Registered Scheme or is Liquid

- (a) Subject to clauses 8.4, 8.6 and the terms of the Unitholders' Agreement, while the Trust is not a Registered Scheme or is a Registered Scheme and is Liquid, any Unit Holder may request that some or all of their Units be redeemed. Each request must:
 - (i) satisfy the form and content requirements prescribed by the Responsible Entity; and
 - (ii) be delivered to the Responsible Entity at its registered office (or other place nominated by the Responsible Entity).

On making such a request, the Unit Holder will have no right to deal with the Units (unless and until the request is denied by the Responsible Entity). A Unit Holder may not withdraw a redemption request unless the Responsible Entity agrees.

8.3 Action following request

- (a) Within a reasonable time of receiving a redemption request under clause 8.2, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:
 - (i) accept or deny the request (but it must then notify the Unit Holder accordingly) within 21 days of receiving the redemption request; or
 - (ii) effect the redemption by causing the number (or value) of Units held by the Unit Holder referred to in the redemption notice to be redeemed at the applicable Redemption Price out of the Trust Fund within 21 days of the redemption of units outlined in clause 8.12. The Responsible Entity may extend the period within which it must satisfy a redemption request by up to 30 days if it considers that it is in the interests of Holders to do so; or
 - (iii) to the extent permitted by the Corporations Act, purchase (in a capacity other than as trustee of the Trust) or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the redemption notice; or
 - (iv) partially effect the redemption in the manner described in paragraph (b) and partially purchase (or arrange for Units to be purchased) in the manner described in paragraph (c); or
 - (v) if the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside of its control, the period allowed for satisfaction of redemption requests may be extended by the number of days during which such circumstances apply.
- (b) The Responsible Entity need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Responsible Entity from time

to time unless the redemption request relates to the balance of the Holder's holding.

- (c) The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.
- (d) If compliance with a redemption request would result in the Holder holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Holder's holding.
- (e) If the Responsible Entity is not obliged to give effect to a redemption request, it may, subject to section 601FC(1)(d) of the Corporations Act, redeem some or all of the Units which are the subject of the request.

8.4 When Trust is Liquid

Clauses 8.2, 8.3 and 8.4 only apply while the Trust is Liquid, and also in circumstances where the redemption request was received and accepted by the Responsible Entity and the Redemption Price in respect of that redemption request was calculated at a time when the Trust was Liquid (even if it is no longer Liquid at the time the Responsible Entity exercises its powers and discretions under those clauses).

8.5 Minimum Redemption Amount

The Responsible Entity may from time to time determine or vary the Minimum Redemption Amount either generally or in relation to one or more Classes.

8.6 Suspension of redemptions

The Responsible Entity may at any time suspend the right to make a redemption request under clause 8.2 if the Responsible Entity considers this to be in the best interests of Unit Holders. The suspension may be immediate or take effect at a specified time and may be indefinite or for a specified period.

8.7 Redemption while Trust is not Liquid

- (a) This clause 8.7 applies except while the Trust is Liquid.
- (b) While the Trust is a Registered Scheme but is not Liquid, the Responsible Entity may from time to time make a Withdrawal Offer to all Unit Holders or to Unit Holders in a Class. A Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Unit Holder has no right to request that some or all of the Unit Holder's Units be redeemed. A Unit Holder may not withdraw an acceptance of a Withdrawal Offer unless the Responsible Entity agrees.
- (c) If, after a Holder has made a redemption request, the Trust ceases to be Liquid before the redemption requested is accepted or denied by the Responsible Entity, the redemption request is deemed to be withdrawn.
- (d) A Withdrawal Offer must contain the information required by the Corporations Act for a withdrawal offer by a Registered Scheme.
- (e) If there is no Withdrawal Offer currently open for acceptance by Holders, a Holder has no right to redeem from the Trust.
- (f) The Responsible Entity is not at any time obliged to make a Withdrawal Offer.

- (g) If the Responsible Entity receives a redemption request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the Withdrawal Offer effective as at the time the Withdrawal Offer is made.

8.8 Minimum holding

- (a) If the Responsible Entity has established a minimum number of Units for which an application can be made then the Responsible Entity may treat a redemption request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Unit Holder to hold less Units than that minimum number of Units or value of Units, as a request for the redemption of all that Unit Holder's Units. If there is more than one Class, this clause only applies to Units in the same Class.
- (b) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days notice to a Holder who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Holder's holding without the need for a redemption request.
- (c) If a Holder's holding is less than the minimum holding amount, the Responsible Entity, may (after giving 30 days notice to the Holder), redeem that Holder's holding without the need for a redemption request.

8.9 Sums arising

The Responsible Entity may from time to time deduct from the proceeds of redemption of Units any money due to the Responsible Entity in relation to the Unit Holder.

8.10 Transfer of Assets

To the extent permitted by Law, the Responsible Entity may from time to time transfer Assets to a Unit Holder (or the Unit Holder's nominee) rather than pay Cash to effect a redemption (or pay a distribution) in whole or in part but only if the Unit Holder consent to the transfer. The Responsible Entity must satisfy itself that the value of the Assets (with any Cash paid) will equal the total amount of Cash otherwise payable. The Responsible Entity may do this on the basis of a valuation of the Assets undertaken in accordance with clause 17.3. Expenses incurred in transferring the Assets will be borne by the Unit Holder or deducted from the amount due to the Unit Holder.

8.11 Liquid or not Liquid

- (a) The Responsible Entity will determine whether or not the Trust is Liquid. Such a determination is binding on Holders and no Holder will challenge it.
- (b) The following clause apply whether or not the Trust is Liquid:
 - (i) The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Holder.
 - (ii) Except in relation to a redemption contemplated under clause 8.17, the Responsible Entity may transfer Assets to a Holder rather than pay cash in satisfaction of all or part of a redemption request or Withdrawal Offer. These Assets with any cash paid must be of equal value to the total amount due to the Holder pursuant to the redemption request or Withdrawal Offer (based on valuations consistent with the range of ordinary commercial practice for valuing assets of that type, and which are reasonably current at the date of the proposed transfer).

- (iii) The Redemption Fee (if any) is payable to the Responsible Entity out of the proceeds of the redemption upon completion of redemption of the Units in accordance with clause 30.1.
- (iv) If the Responsible Entity considers that an Input Tax Credit for the benefit of the Trust is likely to arise and is properly attributable to the redemption, the Responsible Entity may determine that the redemption proceeds be increased by an amount equal to the Input Tax Credit. Subsequent to the payment, if the Input Tax Credit does not arise or the amount of the Input Tax Credit was incorrectly estimated, the Responsible Entity must recover from or credit to the Holder the amount of any inaccuracy in the estimate.
- (v) The Responsible Entity will not generally accept direct redemption requests from Holders and Holders wishing to redeem Units will be required to sell their Units on-market. Where the Trust is Liquid and trading in the Units on the Exchange has been suspended, for any reason, for five (5) consecutive Business Days, the Responsible Entity may facilitate direct redemptions of Units the subject of a redemption request at the Redemption Price.
- (vi) Subject to any cooling off rights under the Regulatory Requirements and any other provision of this Deed, the Responsible Entity may at any time suspend the redemption or issue of Units in the Trust or the payment of proceeds of redemptions for up to 28 days, if:
 - (A) the quotation of Units is suspended, halted or revoked;
 - (B) the Responsible Entity's approval as an Exchange Product Issuer is suspended or revoked;
 - (C) clause 17.6 applies;
 - (D) the Responsible Entity reasonably considers that it is in the interest of Holders;
 - (E) a redemption would cause the Responsible Entity to breach any law, regulation or obligation under which the Responsible Entity operates;
 - (F) it is allowed by any form of ASIC Relief; or
 - (G) it is otherwise permitted by law.

8.12 **Effective time of a redemption and cancellation of Units upon redemption**

A redemption under this clause 8 is effective at the time the Unit Holder's name is removed from the Register (or, where not all the Unit Holder's Units are redeemed, the number of Units recorded on the Register is reduced to reflect the redemption). From that time until payment of the redemption proceeds, the former holder of the redeemed Units ceases to be a Unit Holder in relation to the redeemed Units and is a creditor of the Responsible Entity for the amount of those proceeds. Units are automatically cancelled upon redemption.

8.13 **Order**

Unless the Responsible Entity decides otherwise, the first Units issued to a Unit Holder are the first Units redeemed.

8.14 Redemption by Responsible Entity

- (a) The Responsible Entity may, in its absolute discretion, redeem some or all Units held by a Unit Holder or held by all Unit Holders (and may also redeem all or any Units of a Class). The Responsible Entity may do this whether or not the Trust is Liquid.
- (b) Subject to clause 8.14(c), the Responsible Entity must give at least 30 Business Days' notice of its intention to redeem Units under this clause.
- (c) The Responsible Entity need not give notice under clause 8.14(b), or may give shorter notice, if the Responsible Entity considers that the redemption is necessary:
 - (i) in order to comply with a Law;
 - (ii) to comply with the terms of any agreement with a Government Authority (including any agreement with the United States Internal Revenue Service under Chapter 4 of subtitle A of the Internal Revenue Code of 1986); or
 - (iii) to lessen the risk of the Trust or Unit Holders (or a Class of them) suffering a material detriment.
- (d) Subject to the Terms of Issue of each Class of Units, Units redeemed under this clause will be redeemed at the Redemption Price determined under clause 8.17 as at the next Valuation Time after notice is given of the proposed redemption (or, if no notice is given, at the next Valuation Time after the Responsible Entity decides to effect the redemption but, in any event, immediately before the redemption) and for this purpose the Trust will be take to be Liquid.

8.15 Other Redemptions

In addition to and without limiting any clause of this clause 8, the Responsible Entity may redeem Units to the extent permitted by the Corporations Act and the terms and conditions of any relevant ASIC Exemption.

8.16 Buy back of Units and cancellation

- (a) Subject to the provisions of this clause 8, the Responsible Entity may, in its absolute discretion, in accordance with the Corporations Act and the Exchange Rules and provided the Responsible Entity has given at least 30 Business Days' notice of its intention to buy-back Units under this clause, effect a buy-back of Units by purchasing some or all Units held by a Unit Holder or held by all Unit Holders. For the avoidance of doubt, this clause 8.16 does not apply to redemption of Units under this Deed.
- (b) Units subject to a buy-back under this clause 8.16 shall be purchased by the Responsible Entity at the Redemption Price determined under clause 8.17 as at the next Valuation Time after notice is given of the proposed buy-back in accordance with clause 8.16(a).
- (c) The Responsible Entity need not give notice under clause 8.16(a), or may give shorter notice, if the Responsible Entity considers that the buy-back is necessary:
 - (i) in order to comply with a Law;
 - (ii) to comply with the terms of any agreement with a Government Authority (including any agreement with the United States Internal Revenue Service under Chapter 4 of subtitle A of the Internal Revenue Code of 1986); or

- (iii) to lessen the risk of the Trust or Unit Holders (or a Class of them) suffering a material detriment.

8.17 Redeeming via on-market disposal

While the Trust is Quoted and subject to the Exchange Rules:

- (a) Holders have the right to withdraw their Units where they contract to sell their Units on-market to the Responsible Entity;
- (b) where the Responsible Entity acquires Units on-market to facilitate a Holder's withdrawal as specified in clause 8.17(a), the Responsible Entity will honour any contract to buy Units it enters in accordance with Exchange settlement procedures under the Exchange Listing Rules and Exchange Rules;
- (c) subject to the Regulatory Requirements, the price at which the Responsible Entity transacts on-market will be based on the Responsible Entity's assessment of market conditions at the time it transacts;
- (d) any bids for the Units that the Responsible Entity places on-market will be subject to:
 - (i) the Exchange Listing Rules and Exchange Rules; and
 - (ii) interventions by Exchange as the market operator, including, for example, suspensions and trading halts;
- (e) any Units that the Responsible Entity has acquired on-market in excess of Units sold on-market by the Responsible Entity as soon as reasonably practicable upon settlement of those Units; and
- (f) subject to the Regulatory Requirements, the Responsible Entity will make a market and provide liquidity in respect of the Units for so long as the Responsible Entity is required to do so under the Exchange Operating Rules.

8.18 Redeeming via off-market disposal

Subject to the Exchange Rules, the Responsible Entity may determine a manner and procedure to apply in particular specified circumstances for Holders to redeem units without selling them on-market.

9. Redemption Price

9.1 Redemption Price

Subject to the Terms of Issue of a Unit or a Class, the Redemption Price for any Unit will be equal to:

- (a) for Classes that do not have Partly Paid Units:

$$\frac{\text{Net Asset Value}}{\text{number of Fully Paid Units on Issue}} \times (1 - \text{Transaction Costs})$$

- (b) for Classes that have Partly Paid Units:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}} \times \frac{\text{amount paid up on that Unit}}{\text{Issue Price of that Unit}}$$

While the Trust is not a Registered Scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the Responsible Entity received (or is taken to have received) the redemption request. If the Trust is a Registered Scheme but is not

Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes.

9.2 Determination of Redemption Price in relation to Classes

- (a) If Units in a Class have at any time:
 - (i) an Investment Management Fee referable to that Class that is different from the Investment Management Fee that is referable to another Class;
 - (ii) a type or a particular Expense or Tax or a proportion of a particular Expense or Tax referable to that Class; or
 - (iii) been issued as an Asset-Specific Class,the Responsible Entity may decide all or any of the following matters affecting the value of any factor in the formula or any aspect of the method of calculating the Redemption Price of Units in the Class in question (**Relevant Class**) in accordance with clause 9.1:
 - (iv) allocating a portion of the Net Asset Value to the Relevant Class in accordance with the methodology in clause 3.2(c);
 - (v) if the Class is an Asset-Specific Class, using the Net Class Value instead of the Net Asset Value in the numerator;
 - (vi) calculating the Transaction Costs having regard to the portion of the Net Asset Value of the Relevant Class referred to in clause 9.2(a)(iv), the Net Class Value referred to in clause 9.2(a)(v), or a portion of the Transaction Costs;
 - (vii) dividing the portion referred to in clause 9.2(a)(iv), or the Net Class Value referred to in clause 9.2(a)(v), by the number of Units in the Relevant Class and the Partly Paid Proportion for that Class; and
 - (viii) setting the Valuation Time, which may be the time the Responsible Entity calculates the Net Asset Value or Net Class Value or allocates the portion of the Net Asset Value to the Relevant Class.
- (b) The exercise by the Responsible Entity of its powers under this clause 9.2:
 - (i) is relevant to applying the formula or method provided in clause 9.1 for calculating the Redemption Price of Units in the Relevant Class;
 - (ii) does not create a separate trust fund for the Relevant Class; and
 - (iii) may be made for each other Class, as if that other Class was the Relevant Class.
- (c) The Responsible Entity may determine that a redemption request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

10. Transfers

10.1 Terms of Issue

This clause 10 and clause 11 each have effect in respect of each Class of Units but are subject to the Terms of Issue of that Class and the terms of the Unitholders' Agreement.

10.2 Transferability

- (a) Subject to this Deed and their Terms of Issue, a Unit, Option or Financial Instrument may be transferred by instrument in writing, in any form authorised by Law or in any other form that the Responsible Entity approves.
- (b) A transferor of Units, Options or Financial Instruments remains the Holder of the Units, Options or Financial Instruments (as the case may be) transferred until the transfer is registered.
- (c) While the Trust is Quoted, transfers must be in a form approved by the Responsible Entity and be accompanied by such evidence (if any) required by the Responsible Entity, CHESS or the Exchange to prove the transferor's title or right to transfer the Units.

10.3 Registration of transfers

- (a) Where Units, Options or Financial Instruments are transferred, the following documents must be lodged for registration at the registered office of the Responsible Entity or the location of the Register:
 - (i) the instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units, Options or Financial Instruments; and
 - (iii) any other information that the Responsible Entity may require to establish the transferor's right to transfer the Units, Options or Financial Instruments.
- (b) On compliance with clause 10.3(a), the Responsible Entity will, subject to the powers or obligations of the Responsible Entity to refuse registration, register the transferee as a Holder.
- (c) The Responsible Entity may waive compliance with subclause 10.3(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.
- (d) A transfer is not effective until Registered or, while the Trust is Quoted, dealt with as CHESS contemplates and the Exchange Rules make such transfer effective.

10.4 Where registration may be refused

Subject to the Corporations Act, the Terms of Issue and the Unitholders' Agreement, the Responsible Entity may in its discretion refuse to register any transfer of Units, Options or Financial Instruments and is not required to provide any reasons for such refusal. Without limitation, the Responsible Entity may refuse to register any transfer of Units, Options or Financial Instruments where:

- (a) registration of the transfer will prejudice the Trust's ability to obtain or maintain concessional treatment under any applicable state stamp duty legislation or, in any other way, prejudices the Trust's or the Responsible Entity's compliance with any relevant Australian law, the interest of any other Unit Holder or the taxation or stamp duty status of the Trust; or
- (b) any instrument of transfer is not duly stamped and accompanied by the certificate (if any) issued under this Deed in respect of the relevant Units or Financial Instruments and any other evidence the Responsible Entity reasonably requires to show the right of the transferor to transfer those Units or Financial Instruments.

In cases where the instrument of transfer has not been stamped, the transferee will be responsible for paying any applicable duty.

10.5 Tax status

Despite any other provision in this Deed:

- (a) a Unit Holder may not (nor may it attempt to) transfer of all or any of its Units, and must ensure that its interest in Units through a holding trust or other interposed vehicle is not transferred, and the Responsible Entity may not take any other action (including to issue, redeem or buy-back securities), if, following such transfer or other action, the Trust would not continue to qualify as a Managed Investment Trust or AMIT; and
- (b) if:
 - (i) an event occurs that results in, or is likely to result in, a Unit Holder ceasing to be an eligible investor for the purpose of section 275-20(4) of the 1997 Act; or
 - (ii) as a result of a Unit Holder continuing to hold Units, the Trust will not continue, or is unlikely to continue, to qualify as a Managed Investment Trust or AMIT,

the relevant Unit Holder must notify the Responsible Entity and the other Unit Holders as soon as practicable after it becomes aware of the event or circumstances referred to in clauses 10.5(a)(i) and (ii) and agrees to co-operate in good faith, and take any such steps reasonably requested by the Responsible Entity, so as to ensure that the Trust continues to qualify as a Managed Investment Trust or AMIT.

10.6 Notice of non-registration

If the Responsible Entity declines to register any transfer of Units, Options or Financial Instruments, the Responsible Entity must within five Business Days after the transfer was lodged with the Responsible Entity (or registrar), give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration. Failure to give such notice does not invalidate the decision of the Responsible Entity.

10.7 Suspension of transfers

The registration of transfers of Units, Options or Financial Instruments may be suspended at any time and for any period as the Responsible Entity may decide. However, the aggregate of those periods must not exceed 30 days in any calendar year.

11. Transmission of Units, Options and Financial Instruments

11.1 Entitlement to Units on death

- (a) If a Holder dies:
 - (i) the survivor (or survivors, where the Holder was a joint Holder); and
 - (ii) the legal personal representatives of the deceased, where the Holder was a sole holder,

will be the only persons recognised by the Responsible Entity as having any title to the Holder's interest in the Units, Options or Financial Instrument (as the case may be).
- (b) The Responsible Entity may require evidence of a Holder's death as it thinks fit.

- (c) This clause does not release the estate of a deceased joint Holder from any liability in respect of a Unit, Option or Financial Instrument that had been jointly held by the Holder with other persons.

11.2 Registration of persons entitled

- (a) Subject to the *Bankruptcy Act 1966* (Cth), the Corporations Act and to the production of any information that is properly required by the Responsible Entity, a person becoming entitled to a Unit, Option or Financial Instrument in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Holder may elect to:
 - (i) be registered personally as a Holder; or
 - (ii) have another person registered as the Holder.
- (b) All the limitations, restrictions and provisions of this Deed relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units, Options or Financial Instruments apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.

11.3 Distributions and other rights

- (a) If a Holder dies or suffers a legal disability, the Holder's legal personal representative or the trustee of the Holder's estate (as the case may be) is, on the production of all information as is properly required by the Responsible Entity, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Holder would have been entitled to if the Holder had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit, Option or Financial Instrument as a result of the death or legal disability of a Holder, they will, for the purposes of this Deed, be taken to be joint Holders of the Unit, Option or Financial Instrument (as the case may be).

12. Exchange of Units

- (a) Subject to the Corporations Act, the Responsible Entity may, or may approve a third party making, a written offer to all Unit Holders (or to a Class or to one or more specific Unit Holders) (**Offer Unit Holders**) to transfer or redeem some or all of the Offer Unit Holders' Units. The consideration for the transfer or redemption may be any or all of:
 - (i) the issue or transfer of units in another trust or any other financial product;
 - (ii) a Cash payment; or
 - (iii) a transfer of Assets,and there may be a choice of consideration (eg, Cash or financial products) (an **Exchange Offer**).

- (b) Offer Unit Holders must be given at least 21 days' notice (or any longer period required by Law) to elect whether or not to accept the Exchange Offer. Subject to clause 12(c) Offer Unit Holders may elect whether or not to accept an Exchange Offer.
- (c) Subject to the Corporations Act, if the Responsible Entity considers it is in the best interests of Unit Holders as a whole, then an Exchange Offer may be made where the Offer Unit Holders are offered a choice of considerations and must accept one of the choices offered. Where such an offer is made and an Offer Unit Holder does not make a choice within the required time then, where an Exchange Offer is comprised of:
 - (i) Cash and one or more other alternatives, the Offer Unit Holder is taken to have elected to accept the Cash alternative; and
 - (ii) one or more non Cash alternatives, the Offer Unit Holder is taken to have elected to accept the alternative determined by the Responsible Entity.
- (d) The Responsible Entity is irrevocably authorised to complete any application for units, forms of transfer or other documents reasonably required for the purposes of this clause, in each case on behalf of and in the name of the relevant Offer Unit Holder, as agent or attorney.
- (e) Payment made to or an issue or transfer effected in favour of a Unit Holder pursuant to this clause is in full discharge of the Unit Holder's rights in respect of the Units to which the Exchange Offer relates.

13. **AMIT rules**

For each Financial Year during which the Trust is an AMIT, the Responsible Entity must:

- (a) determine the total amounts of particular characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Off-sets for the Trust and any Class;
- (b) apply any Unders, Overs and Trust Component Deficits to the amounts in clause 13(a) in accordance with subdivision 276-F of the 1997 Tax Act and subject to the discretions in that subdivision;
- (c) subject to the Terms of Issue of any particular Unit or Class, allocate the amounts so determined after the application of clause 13(b):
 - (i) first, to Unit Holders where their Units have been redeemed during the Financial Year, in the proportion that is equal to the amount of the Distributable Income of the Trust or Class, as relevant, to which the Unit Holder was entitled in relation to their redeemed Units for the Financial Year divided by the total Distributable Income of the Trust or Class available for distribution for the Financial Year;
 - (ii) in relation to the remainder amounts after the allocations in paragraph 13(c)(i), to each Unit Holder who is on the Register on the last day of the Financial Year in the proportion that is equal to the sum of:
 - (A) the amounts of Distributable Income distributed to the Holder from the Trust or Class during the Financial Year; and
 - (B) any other entitlements of the Holder to a portion of the Distributable Income of the Trust or Class for the Financial Year,

divided by the total Distributable Income of the Trust or Class for the Financial Year after it has been reduced by any amounts allocated under paragraph (i) above; and

- (d) ensure that any allocation made in accordance with this clause is made on a fair and reasonable basis having regard to the Terms of Issue of a Unit or Class; and
- (e) comply with the documentation requirements under subdivision 276-H of the 1997 Tax Act, including the preparation of AMIT member annual statements within the prescribed time frames.

This clause shall prevail over clause 14.5, 15.5 and 15.6.

14. Net Accounting Income

14.1 Interpretation

For the purposes of this clause 14 and clause 15, while:

- (a) the Trust does not have more than one Class; or
- (b) the Trust has more than one Class but is not an AMIT, a reference to a Class or each Class is a reference to the Trust.

14.2 Income of the Trust

The income of each Class for each Financial Year will be determined in accordance with applicable Australian Accounting Standards.

14.3 Expenses and provisions of the Trust

For each Financial Year:

- (a) the Expenses of each Class will be determined in accordance with applicable Australian Accounting Standards;
- (b) the Expenses of the Trust which are not allocable to a particular Class in accordance with clause 14.3(a) will be determined in accordance with applicable Australian Accounting Standards and allocated to each Class on a fair and reasonable basis; and
- (c) provisions or other transfers to or from reserves may be made in relation to such items as the Responsible Entity considers appropriate, provided that allocation is a fair and reasonable allocation between Classes.

14.4 Net Accounting Income

The **Net Accounting Income** of a Class for each Financial Year will be the income of that Class for that Financial Year less:

- (a) the Expenses, provisions and reserve transfers referred to in clause 14.3, subject to any other prudent adjustments in accordance with applicable Australian Accounting Standards; and
- (b) any Net Accounting Loss (as defined below in this clause) carried forward from a preceding Financial Year,

adjusting the amount calculated under clause 14.4(a) by any unrealised gains or losses (including revaluation of a capital Asset and the effect of marking to market any derivative contracts) so that the Net Accounting Income for the period may fairly represent the amount

of income of the Class available for distribution for that Financial Year. Where the amount is negative it will be the **Net Accounting Loss** for that Financial Year.

14.5 **Net Income**

Subject to clause 13, the Responsible Entity will determine (or cause to be determined) the **Net Income** for each Financial Year in accordance with section 95(1) of the *Income Tax Assessment Act 1936* (Cth).

15. **Distributions**

15.1 **Distributable Income**

- (a) Subject to clauses 15.1(b) and (c), Distributable Income of a Class for each Financial Year is the Net Accounting Income of that Class (as determined in accordance with clause 14.4 for that Financial Year).
- (b) The Responsible Entity may determine before the end of a Financial Year that the Distributable Income of a Class for a Financial Year will be some other amount including an amount equal to the Net Income for that Financial Year or an amount equal to the total of amounts of particular characters for that Class determined in accordance with clause 13.
- (c) The Responsible Entity may also determine prior to the end of the Financial Year, Distributable Income as:
 - (i) the amount which, if distributed, would prevent the Responsible Entity being liable to tax on the income of the Trust; plus
 - (ii) such amount as the Responsible Entity considers is appropriate to distribute.
- (d) The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

15.2 **Present entitlement**

On and from the last day of each Financial Year the Unit Holders of a particular Class on the Register on the last day of the Financial Year have a vested and indefeasible interest in, and will be presently entitled to, the Distributable Income of that Class for that Financial Year (less any part of the Distributable Income which has previously been distributed in that Financial Year as permitted by this clause 15) in the proportion specified in clause 15.3(c).

15.3 **Distribution of Distributable Income**

- (a) The Responsible Entity may determine to make an interim distribution out of Net Accounting Income accruing during any Interim Distribution Period (an **Interim Distribution**). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Unit Holders of a Class that are on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in paragraph (c).
- (b) Within 90 days of the end of the Financial Year, the Responsible Entity must pay to the Unit Holders of a Class that are on the Register at the end of the last day of that Financial Year an amount equal to the Distributable Income of that Class for the Financial Year less any amounts previously distributed during that Financial

Year under paragraph (a). If the audit (if any) for the Distribution Period has not been completed, as soon as possible after its completion.

(c) Subject to the Terms of Issue of any particular Unit or Class, a Unit Holder of a Class that is on the Register at the end of the last day of the Financial Year or Interim Distribution Period:

- (i) for the purposes of clause 15.2, has a vested and indefeasible interest in, and is presently entitled to;
- (ii) for the purposes of clause 15.3(b), is entitled to a distribution of; and
- (iii) for the purposes of clause 15.3(a), is entitled to an Interim Distribution out of Net Accounting Income of,

the proportion of the Distributable Income for that Class, or such Interim Distribution of Net Accounting Income for that Class which the Responsible Entity determines to make, as is equal to the number of Units held by that Unit Holder on that date divided by the number of Units on Issue for that Class on that date.

15.4 Capital distributions

The Responsible Entity may from time to time distribute capital of the Trust to the Unit Holders. Subject to the Terms of Issue of any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on the Register on that date. A distribution may be in Cash or of Assets or by way of bonus Units. The Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to do all things which it reasonably considers are necessary or desirable to be done on behalf of the Unit Holders to give effect to a distribution of Assets under this clause.

15.5 Grossed up Tax amounts

Subject to clause 13 and the Terms of Issue of any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders of a Class in proportion to the Unitholders' entitlements to the Distributable Income for that Class for a Financial Year or an Interim Distribution, as the case may be, which is referable to a dividend or other income to which they are presently entitled.

15.6 Excess distribution

Subject to clause 13, if it is determined that, as at the end of a Financial Year, the aggregate amounts that have been distributed in accordance with this clause 15 exceed the actual Distributable Income for the Financial Year, the excess will be taken to be a distribution of capital.

15.7 Unit Holder's rights

Despite anything in this clause 15:

- (a) the rights of a Unit Holder under this clause 15 are subject to the Terms of Issue of the Units which they hold; and
- (b) subject to their Terms of Issue, for the purposes of distribution entitlements, Partly Paid Units will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest two decimal

places, or will be treated in such other manner as the Responsible Entity determines.

15.8 Trust taxed as company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this clause 15.8 applies to any period (a **Distribution Period**) instead of clauses 15.1 to 15.6. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise before the end of the Distribution Period, income will be calculated in accordance with applicable Australian Accounting Standards.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Unit Holders on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Unit Holders under this clause 15.8 the Responsible Entity:
 - (i) must comply with the Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Unit Holder is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

- A = the aggregate of the number of Units held by the Unit Holder as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Unit Holder holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement in accordance with clause 15.7, the aggregate number of such Units held by that Unit Holder multiplied by the relevant proportion;
 - B = the aggregate of the total number of Units entitled to a full income distribution plus, if Units have been issued which have a proportionate income entitlement in accordance with clause 15.7, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for that Distributable Amount; and
 - C = the Distributable Amount.
- (f) The Distributable Amount must be paid to Unit Holders within 60 Business Days after the relevant CD Date.

15.9 Minimum and other distributions

- (a) The Responsible Entity may transfer capital to enable distribution to Unit Holders of the minimum amount necessary to avoid the Responsible Entity as trustee of the Trust being assessed to pay tax under the Tax Act.
- (b) The Responsible Entity may at any time distribute any amount of capital or income to Holders pro rata according to the number of Units held as at a time decided by the Responsible Entity.

15.10 Accounts

- (a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Unit Holders.
- (b) Income in the distribution account when a transfer or transmission of Units is Registered remains credited to the transferor.

15.11 Reinvestment

- (a) The Responsible Entity may decide whether to permit or require Unit Holders to reinvest some or all of any distribution to acquire Units.
- (b) In accordance with section 601GAD(5) of the Corporations Act, the Responsible Entity may set the amount of consideration to acquire interests (including, but not limited to, a calculation based on the on-market volume weighted price of the Units) where the whole or part of any money payable to a Unit Holder under this Deed, by way of distribution of capital or income, is applied in payment for the issue of interests in the scheme.
- (c) If the Responsible Entity decided to permit or require investment, it must notify Unit Holders of the procedure for reinvestment and any change in the procedure.
- (d) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest immediately before the next Valuation Time after the end of the relevant Distribution Period.

16. Powers of Responsible Entity

16.1 Powers

- (a) The Responsible Entity has all the powers:
 - (i) in respect of the Trust that it is possible under the Law to confer on a responsible entity;
 - (ii) as though it were the absolute owner of the Assets and acting in its personal capacity; and
 - (iii) necessary for fulfilling its obligations under this Deed and at Law.
- (b) Without limiting paragraph (a), the Responsible Entity's powers include the following:
 - (i) To acquire Property and dispose of Assets for Cash or other consideration.
 - (ii) To develop, improve and otherwise deal with any Assets (including by granting a lease or licence over an Asset).

- (iii) To lend money or otherwise provide financial accommodation (for example, for the purposes of subparagraphs 16.1(b)(vii).
- (iv) To borrow, raise money or otherwise obtain financial accommodation (for example, for the purposes of subclauses 16.1(b)(i) and (ii)) and to incur all types of obligations and liabilities.
- (v) To create Security Interests over the Trust Fund or any Asset (for example, for the purposes of subclauses 16.1(b)(iv) and (vi)).
- (vi) To guarantee liabilities of any person or provide indemnities in respect of such liabilities.
- (vii) To make any kind of Investment and to manage the Investments of the Trust.
- (viii) To enter into Derivatives.
- (ix) Subject to clause 8, to buy-back Units on any terms and conditions determined by the Responsible Entity. The consideration paid for a buy back of Units may include specific assets, including financial products of the Trust or of any other corporation, trust or entity.
- (x) To fetter future discretions, such as by the granting of options.
- (xi) To enter into any arrangement or agreement with underwriters in relation to the Trust.
- (xii) To institute, defend and compromise legal proceedings, including arbitrations and investigations.
- (xiii) To insure any Assets against all or any risks and for amounts the Responsible Entity considers appropriate.
- (xiv) To attend and vote at meetings of any company or other entity.
- (xv) To make the choice for the Trust to be an AMIT for the purpose of section 276-10 of the 1997 Tax Act.
- (xvi) To make a choice that each Class will be treated as a separate AMIT for the purposes of section 276-20 of the 1997 Tax Act.
- (xvii) To comply with the requirements in the Tax Act and the *Taxation Administration Act 1953* relating to the administration and operation of AMITs, including information disclosure and documentation requirements.
- (xviii) To exercise any discretions in the Tax Laws relating to the administration and operation of AMITs, including the allocation of Unders, Overs and Trust Component Deficits in complying with clause 13.
- (xix) To apportion Assets between Classes (including where any Asset relates to more than one Class).
- (xx) To apportion Liabilities between Classes (including where any Liability relates to more than one Class).
- (xxi) To apportion Expenses between Classes (including where any Expense relates to more than one Class).
- (xxii) Request information from Holders to enable the Responsible Entity or the Trust to comply with Regulatory Requirements or any other relevant laws (including the laws of other countries).

- (c) The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

16.2 Registration as Registered Scheme

Without limiting clause 16.1, the Responsible Entity may at any time decide to register the Trust as a Registered Scheme and is authorised to take all steps necessary or desirable to effecting registration (including amending this Deed).

16.3 Unit Holders' consent to AMIT election

The Unit Holders consent to the Responsible Entity making the choice to be treated as one or more AMITs in accordance with clauses 16.1(b)(xv) and 16.1(b)(xvi).

16.4 Delegation

- (a) The Responsible Entity may from time to time appoint delegates or agents (including Custodians) to perform any act or exercise any power of the Responsible Entity (including a power in turn to appoint its own agent or delegate).
- (b) Subject to Part 5C.7 of the Corporations Act, an agent or delegate may be an associate or employee of the Responsible Entity or any Unit Holder.
- (c) An appointment may be joint, in this case the delegation will be jointly and severally.
- (d) The Responsible Entity will not be liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting the delegate. The Responsible Entity may include provisions in the delegate's appointment to protect and assist those dealing with the delegate as the Responsible Entity thinks fit.
- (e) If the Trust is a Registered Scheme, paragraph (d) operates subject to section 601FB of the Corporations Act.

16.5 Advisers

Without limiting clause 16.1, the Responsible Entity may from time to time engage Advisers to assist it with its duties and functions under this Deed. An Adviser may be an associate or employee of the Responsible Entity or any Unit Holder.

17. Valuations

17.1 Valuation of an Asset

Subject to clause 17.2, the Responsible Entity may cause an Asset to be valued at any time.

17.2 Valuation if required

The Responsible Entity must cause an Asset to be valued if required by ASIC or under the Corporations Act and the valuation must be undertaken in accordance with those requirements.

17.3 Valuation method

The Responsible Entity may determine and vary valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Responsible Entity values an Asset at otherwise than its market value, the valuation methods and policies applied by the Responsible Entity

must be consistent with ordinary commercial practice for valuing an Asset of that kind and must be reasonably current having regard to the nature of the Asset and capable where it is necessary to calculate an Issue Price under clause 7.1 or a Redemption Price under clause 9.1.

17.4 Determination of Net Asset Value and Net Class Value

The Responsible Entity may determine the Net Asset Value and any Net Class Value at any time in its discretion, including more than once a day.

17.5 Suspension of Valuation

- (a) The Responsible Entity may at any time and from time to time suspend the determination of the Net Asset Value of the Trust during, and/or extend the period of the payment of the Redemption Price to persons who have redeemed Units by the number of days comprised in, the whole or any part of a period:
 - (i) during which any stock exchange, commodities exchange, futures exchange or over the counter market on which any significant portion of the investments of the Trust is listed, quoted, traded or dealt in is closed (other than customary weekend and holiday closing) or trading on any stock exchange or market is restricted or suspended; or
 - (ii) when circumstances exist as a result of which in the opinion of the Responsible Entity it is not reasonably practicable for the Trust to dispose of investments or as a result of which any such disposal would be materially prejudicial to Unit Holders; or
 - (iii) when a breakdown occurs in any of the means normally employed in ascertaining the value of the investments or the Net Asset Value of the Trust or the Net Asset Value per unit or when for any other reason the value of any of the investments or other assets of the Trust or the Net Asset Value of the Trust or the Net Asset Value per Unit cannot in the opinion of the Responsible Entity reasonably or fairly be ascertained; or
 - (iv) during which the Trust is unable to repatriate funds for the purpose of making payments on the redemption of Units or during which any transfer of funds involved in the realisation or acquisition of investments or payments due on redemption of Units cannot in the opinion of the Responsible Entity be effected at normal rates of exchange.
- (b) No Units may be issued or redeemed during such a period of suspension.

18. Holding Assets

18.1 How held

Subject to the Regulatory Requirements and clauses 18.2 and 18.3, all Assets will be held in the name of the Responsible Entity. The Assets vest in the Responsible Entity but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.

18.2 Other Custodian

If the Responsible Entity considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Responsible Entity and acting as agent for the Responsible Entity.

18.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Responsible Entity (while the Trust is a Registered Scheme, to the extent permitted by the Corporations Act or an ASIC Exemption).

19. The Register

19.1 Keeping Registers

The Responsible Entity must establish and keep a register of Unit Holders and, where applicable, a register of Option Holders and a register of Financial Instrument Holders. The Responsible Entity must enter on the register of Unit Holders the Class of Units held by a Unit Holder.

19.2 Information in and form of Registers

- (a) To the extent applicable, the Registers must be kept in accordance with, and contain the information required by the Corporations Act provided that, while the Trust is not a Registered Scheme, the Responsible Entity is not required to comply with section 173 of the Corporations Act to the extent this would require the Responsible Entity to allow anyone other than a Unit Holder to inspect any register. Otherwise, subject to clause 19.1, the Responsible Entity may decide what information is included in the Registers. If the Corporations Act applies, the Responsible Entity has the powers conferred under the Corporations Act in relation to the Register.
- (b) Persons Registered jointly as the holder of a Unit will hold the Unit as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees. The Responsible Entity is not obliged to register more than three persons as joint Holders.
- (c) The Responsible Entity is not required to enter notice of any trust on the Register.
- (d) The Responsible Entity may treat the registered Holder as the absolute owner of Units registered in the Holder's name and is not bound to take notice of any trust or equity affecting a Unit. Entry on the Register is conclusive evidence of a Holder's title to Units.

19.3 Changes

Every Holder must promptly notify the Responsible Entity of any change of name or address and the Responsible Entity must alter the relevant Register accordingly.

19.4 Register

Only the persons entered into the relevant Register are recognised as having any interest in a Unit, Option or Financial Instrument.

19.5 Holding Statements

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a holding statement in accordance with the requirements of the Exchange Operating Rules may be issued to Holder to evidence the holding of Units.

20. The Responsible Entity's Limitation of Liability

20.1 General

To the extent permitted by Applicable Legislation, if the Responsible Entity acts in good faith without fraud or dishonesty, the Responsible Entity is not liable for any Loss to any person (including any Unit Holder, Option Holder or Financial Instrument Holder) arising out of any matter relating to, or connected with, the Trust. In any case, to the extent permitted by Applicable Legislation, the liability of the Responsible Entity in relation to the Trust is limited to the Assets, from which the Responsible Entity is entitled to be, and is in fact, indemnified.

20.2 Specific

In particular, to the extent permitted by Applicable Legislation, the Responsible Entity is not liable for any Loss to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
- (b) it acted or refrained from acting as required by Law; or
- (c) it relied in good faith on any signature, marking or documents.

20.3 Responsible Entity may rely

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of Advisers, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Deed or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any Advisers consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Unit Holder of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Responsible Entity in connection with the Trust upon which it is reasonable for the Responsible Entity to rely;

and the Responsible Entity will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

21. Indemnities

21.1 Responsible Entity's indemnity

- (a) In addition to any right of indemnity under any Law, the Responsible Entity has a right of indemnity out of the Trust Fund on a full indemnity basis, in respect of any

liability incurred by the Responsible Entity in properly performing or exercising any of its powers or duties in relation to the Trust. This right includes a right of reimbursement and a right of exoneration. Where the right of indemnity relates to the actions of the Responsible Entity with respect to an Asset-Specific Class, or the Assets of such Class, the indemnity is restricted to the Assets of that Class.

- (b) To the extent permitted by the Corporations Act, the indemnity under clause 21.1(a) includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) Subject to the Corporations Act, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Responsible Entity will not be liable to Unit Holders to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liability out of the Trust.

21.2 Responsible Entity's indemnity continuing

Such right of indemnity in respect of a matter (an **Indemnified Matter**) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the Responsible Entity retires or is removed as responsible entity of the Trust.

21.3 Payment

The Responsible Entity may from time to time pay out of the Trust Fund any amount for which it would be entitled to be indemnified under clause 21.1 or clause 22.

21.4 The Responsible Entity not required to incur liability

The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

21.5 Compliance committee

If the Trust is a Registered Scheme and any member of a compliance committee established by the Responsible Entity in connection with the Trust incurs a liability in that capacity in good faith, the Responsible Entity may indemnify the compliance committee member out of the Trust Fund, to the extent permitted by the Corporations Act.

21.6 Right of indemnity not affected by an unrelated breach

Where a liability is incurred by the Responsible Entity in properly performing or exercising any of its powers or duties in relation to the Trust, the Responsible Entity may exercise any of its rights to be indemnified or reimbursed out of the Trust Fund to meet that liability. It may do so despite any Loss incurred in relation to the Trust or any reduction in the value of the Assets arising from any unrelated act or omission by the Responsible Entity or by any person acting on behalf of the Responsible Entity.

21.7 Indemnity under Law

The indemnities conferred under this clause 20.3 are in addition to any right of indemnity allowed by or arising under any Law for a trustee of any trust (including any rights of reimbursement or exoneration) and, subject to the Corporations Act if the Trust is a registered scheme, nothing in this Deed limits those rights.

22. The Responsible Entity's Indemnity by Holders for Tax Liability

22.1 Liability limited

The Responsible Entity is entitled to be indemnified by a Holder or a former Holder to the extent that it incurs any liability for Tax as a result of the Holder's or former Holder's action or inaction or as a result of an act or omission requested by the Holder or former Holder.

22.2 Joint Holders

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 22.1 applies.

23. Change of Responsible Entity

23.2 Voluntary retirement while a Registered Scheme

While the Trust is a Registered Scheme, the Responsible Entity may retire as the responsible entity of the Trust as permitted by the Corporations Act.

23.3 Voluntary retirement while not a Registered Scheme

While the Trust is not a Registered Scheme, the Responsible Entity may retire on not less than 60 Business Days' notice to Unit Holders (or such shorter period as they agree). On retirement, the Responsible Entity may appoint in writing another person to be the responsible entity.

23.4 Compulsory retirement

If the Trust is a Registered Scheme, the Responsible Entity must retire as the responsible entity of the Trust when required by Law.

23.5 New Responsible Entity

Any replacement responsible entity must execute a deed by which it covenants to be bound by this Deed as if it had originally been a party to it. While the Trust is not a Registered Scheme the Responsible Entity must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of responsible entity.

23.6 Release

When the Responsible Entity retires or is removed, subject to the Corporations Act (while the Trust is a Registered Scheme) and clause 23.4, the Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed.

23.7 Retirement benefit

Subject to the Corporations Act, the Responsible Entity is entitled to be paid by, or receive a benefit from, the incoming responsible entity or any other person for:

- (a) agreeing to submit a proposal for its retirement to a meeting of Unit Holders, and nominating to the Unit Holders the incoming responsible entity as its replacement; or
- (b) retiring as responsible entity,

and is not required to account to Unit Holders for such payment or benefit. The Unit Holders consent to the receiving any such payment or benefit. The Responsible Entity is also entitled to sell part or all of its business relating to managing the Trust to the incoming

responsible entity (or any related body corporate or associate of the incoming trustee) for any consideration the parties may agree and the Unit Holders consent to it doing so.

24. Amendments to Deed

24.1 General

Subject to clause 24.2, the Responsible Entity may from time to time amend this Deed (including this clause) by deed in the following circumstances:

- (a) while the Trust is a Registered Scheme:
 - (i) as permitted by the Corporations Act; and
 - (ii) if the amendment relates to a particular Class or particular Classes of Units, including the Terms of Issue of a Class, where the amendment is approved by a Special Resolution of the Unit Holders in that Class or those Classes, unless the Responsible Entity reasonably considers the amendment will not adversely affect the rights of the Unit Holders in that Class or those Classes.
- (b) while the Trust is not a Registered Scheme:
 - (i) where the Responsible Entity reasonably considers that the amendment will not materially adversely affect the rights of Unit Holders as a whole or Unit Holders of a Class;
 - (ii) if clause 24.1(b)(i) does not apply and the amendment does not relate only to a particular Class or particular Classes of Units, where the amendment is approved by a Special Resolution of Unit Holders;
 - (iii) if clause 24.1(b)(i) does not apply and the amendment relates only to a particular Class or particular Classes of Units, including the Terms of Issue of a Class, where the amendment is approved by a Special Resolution of the Unit Holders in that Class or those Classes; or
 - (iv) where the amendment is to correct a manifest error.

24.2 Limits on amendments

While the Trust is not a Registered Scheme, subject to clause 24.3 and clause 24.4:

- (a) the rights or obligations attaching to Units cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Trust cannot be affected in any way, without a Special Resolution of Unit Holders;
- (b) the rights or obligations attaching to Units of a Class cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Trust cannot be affected in any way, without a Special Resolution of Unit Holders, and a Special Resolution of Unit Holders of the Class affected.

24.3 Registration as Registered Scheme

Subject to clause 24.2, the Responsible Entity is authorised to make any amendments to this Deed to facilitate the Trust becoming a Registered Scheme.

24.4 Deemed provisions

If the Trust is a Registered Scheme and the Corporations Act or a condition of any relief from the provisions of the Corporations Act granted by ASIC require that this constitution

contain certain provision, then subject to section 601GC of the Corporations Act those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 24.1 does not apply to provisions deemed by this clause 24.4 to be incorporated in the constitution.

24.5 Amendments for AMIT rules

The Responsible Entity may make such amendments to this Deed as are necessary or incidental to the administration or operation of the Trust by the Responsible Entity in accordance with the legislation relating to the taxation of AMITs without a Special Resolution.

25. Statements, Accounts and Audit

25.1 Appointment of auditors

- (a) While the Trust:
 - (i) is a Registered Scheme, the Responsible Entity must; and
 - (ii) is not a Registered Scheme, the Responsible Entity may, appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under this Deed and the Corporations Act.
- (b) While the Trust is a Registered Scheme, the Responsible Entity must appoint a Compliance Plan Auditor.

25.2 Retirement of auditors

While the Trust is a Registered Scheme, the Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act. Otherwise, the Trust Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the Responsible Entity.

25.3 Remuneration of auditors

The remuneration of the Trust Auditor and any Compliance Plan Auditor will each be fixed by the Responsible Entity.

25.4 Accounts and reports

- (a) The financial statements of the Trust must be kept and prepared by the Responsible Entity in accordance with applicable Australian Accounting Standards.
- (b) If the Trust is a Registered Scheme, the Responsible Entity must report to Unit Holders concerning the affairs of the Trust and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.

25.5 Audit

The Responsible Entity will cause:

- (a) the Trust Auditor to audit and report on the financial statements; and
- (b) while the Trust is a Registered Scheme, the Compliance Plan Auditor to audit and report on the compliance plan,

each in the manner required by the Corporations Act to the extent it applies.

26. Meetings of Holders

26.2 Convening meetings

The Responsible Entity may at any time convene a meeting of Unit Holders and must convene a meeting of Unit Holders when required to do so by the Corporations Act or the Exchange Rules. While the Trust is a Registered Scheme, Unit Holders may convene a meeting when permitted by the Corporations Act, but not otherwise.

26.3 Calling and holding meetings while a Registered Scheme

Where the Trust is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) (Section 252G) Despite section 252G(3) of the Corporations Act, the Responsible Entity may give a notice of meeting in accordance with clause 27 and despite section 252G(4) of the Corporations Act, a notice of meeting will be taken to be sent in accordance with clause 27.
- (b) (Section 252R(2)) Despite section 252R(2) of the Corporations Act, if, at any time, there is at least two (2) Unit Holders of the Trust present in person or by proxy together holding at least 5% of all Units of the Trust, unless the Trust has only one Unit Holder who may vote on a resolution, in which case that one unit Holder constitutes a quorum.
- (c) (Section 252R(3)) Despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual in respect of each such capacity.
- (d) If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Unit Holders – dissolved; or
 - (ii) otherwise – adjourned to such place and time as the Responsible Entity decides.

At any adjourned meeting, those Unit Holders present in person or by proxy constitute a quorum.

- (e) (Section 252W(2)) A proxy is entitled to vote on a show of hands.
- (f) (Section 252W(3)) A proxy is entitled to speak and vote for a Unit Holder (to the extent allowed by the appointment) even if the Unit Holder is present at the meeting, but only so long as the Unit Holder does not speak or vote.
- (g) (Section 252Y(2)) Despite section 252Y(1) of the Corporations Act, an appointment of proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.
- (h) (Section 252Z(5)) The Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any period less than 48 hours before the meeting.

- (i) (Section 253K(2)) A poll cannot be demanded on any resolution concerning either the election of the chair of the meeting or the adjournment of the meeting.

At any meeting where the chair of the meeting is to be elected by Unit Holders (including under sections 252C, 252D or 252E of the Corporations Act) (an **Elected Chair**) the Responsible Entity must appoint a person to facilitate convening the meeting and appointing an Elected Chair (the **Interim Chair**). The Interim Chair must endeavour to ensure that an Elected Chair is appointed as quickly as possible. Until the Elected Chair is appointed, the Interim Chair is taken to be the chair of the meeting for all purposes and has all the powers, duties and discretions of a chair at a meeting of Unit Holders. The powers of the Interim Chair include determining how to call for nominations of an Elected Chair and the election process.

Where a meeting has been called by the Unit Holders under section 252D of the Corporations Act, those Unit Holders, or their representative, must provide all information relating to the meeting that the Responsible Entity requests (acting reasonably). Without limiting section 252D(1), the Unit Holders calling the meeting will be jointly and severally liable for all Expenses in relation to that meeting (including all associated Expenses incurred by the Responsible Entity).

26.4 **Calling and holding meetings while not a Registered Scheme**

While the Trust is not a Registered Scheme, meetings of Unit Holders will be called and conducted as if Part 2G.4 applied (as modified by clause 26.2) with any necessary modifications except:

- (a) sections 252B, 252C, 252D, 252E, Division 3, section 253E, and Division 7 will not apply; and
- (b) the procedures for calling and conducting one or more meetings may be changed if the modification is approved by a resolution passed at a meeting of Unit Holders.

For the avoidance of doubt, the Responsible Entity and its Associates are not precluded from voting their interest on any resolution at a meeting of Unit Holders while the Trust is not a Registered Scheme.

26.5 **Cancellation or adjournment**

The chair of a meeting of Unit Holders has power to cancel a meeting or to adjourn the meeting for any reason to such place and time as the chair thinks fit.

26.6 **Non-receipt**

If a Unit Holder does not receive a notice (including if the notice was accidentally omitted to be given to them) the meeting is not invalidated.

26.7 **Resolution binding on Unit Holders**

A resolution passed at a meeting of Unit Holders or under clause 26.7 is binding on all Unit Holders.

26.8 **Written resolution**

Except in circumstances where the Corporations Act applies and requires a resolution to be passed at a meeting of members, a resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each

signed by one or more Unit Holders. A document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is taken to be a document in writing signed by the Unit Holder.

26.9 Minutes or Signed Resolution

The minutes of a meeting of Unit Holders signed by the chair of the meeting or, where the law allows, a resolution signed by the required majority of Unit Holders, is conclusive evidence of the matters stated in them unless the contrary is proved.

26.10 Extension

For the purposes of this clause 26, while the Trust is a Registered Scheme, **Unit Holder** includes any person holding an interest in the Trust by virtue of which, and to the extent that, the person has rights to vote under Part 2G.4 of the Corporations Act.

26.11 Classes of Unit Holders, Option Holders and Financial Instrument Holders

This clause 26 applies to meetings of a Class of Unit Holders, Option Holders and Financial Instrument Holders with any necessary modifications.

27. Service of Documents

A reference to a document includes a notice. Subject to the Corporations Act:

- (a) A document may be given by the Responsible Entity to any Holder by, in the Responsible Entity's discretion:
 - (i) serving it on the Holder personally;
 - (ii) sending it by post to the Holder or leaving it at the Holder's address as shown in the Register or the address nominated by the Holder to the Responsible Entity for the giving of documents;
 - (iii) sending it to the fax number nominated by the Holder to the Responsible Entity for the giving of documents;
 - (iv) sending it to the electronic address nominated by the Holder to the Responsible Entity for the giving of documents or by other electronic means nominated by the Holder;
 - (v) if a Holder nominates any electronic means by which the Holder may be notified that documents are available and may access documents, sending a notification that the document is available for access, in each case by the relevant electronic means; or
 - (vi) serving it in any manner contemplated in this clause 27(a) on a Holder's attorney as specified by the Holder in a notice given under clause 27(b).
- (b) By written notice left at or sent to the registered office of the Responsible Entity or the Responsible Entity's securities registry, a Holder may request that all documents to be given by the Responsible Entity be served on the Holder's attorney at an address, or by the electronic means, nominated in the notice and the Responsible Entity may do so in its discretion.
- (c) A document may be sent to a Holder whose address for documents is outside Australia by airmail, air courier or fax or otherwise be sent or made available electronically (including as contemplated by subclause 27(a)(v)).

- (d) Any document sent by post is conclusively considered to have been served at the expiration of the second Business Day after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Holder personally or left at the Holder's registered address is conclusively considered to have been served when delivered. Any document sent to a Holder by fax or other electronic means is conclusively considered to have been served when the fax or other electronic transmission is sent. Any document made available to a Holder by electronic means as contemplated by subclause 27(a)(v) is conclusively considered to have been served when notification that the document is available for access by that means is sent.
- (e) The Responsible Entity may give a document or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.
- (f) Every person who, by operation of Law, transfer or any other means, becomes entitled to be registered as the holder of any Units, Options or Financial Instruments is bound by every document that, before the person's name and address being entered in the Register in respect of the Units, Options or Financial Instruments, was properly given to the person from whom the person derived title to those Units, Options or Financial Instruments.
- (g) A document served in accordance with this Deed is (despite the fact that the Holder is then dead and whether or not the Responsible Entity has notice of the Holder's death) conclusively considered to have been properly served in respect of any registered Units, Options or Financial Instruments, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's place as the holder or joint holder. The service is sufficient service of the document on the Holder's personal representative and any persons jointly interested with the Holder in the Units, Options or Financial Instruments.
- (h) Where a Holder does not have a registered address or where the Responsible Entity has a reason in good faith to believe that a Holder is not known at the Holder's registered address, a document is conclusively deemed to be given to the Holder if the document is exhibited in the registered office of the Responsible Entity for a period of 24 hours (and is conclusively deemed to be duly served at the commencement of that period) unless and until the Holder informs the Responsible Entity of a new registered address.
- (i) The signature to any document or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of the Responsible Entity or of any director or secretary of the Responsible Entity.
- (j) A Holder may send a document to the Responsible Entity by delivering it to the Responsible Entity's registered address or any other means permitted by the Responsible Entity and communicated to Holders in writing. A document is effective when it is received by the Responsible Entity. A document must be signed by the Holder or a duly authorised representative (unless the Responsible Entity waives this requirement).
- (k) A notice, cheque or other communication sent by post is taken to be received on the day after it is posted, a fax is taken to be received one (1) hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine and an electronic communication is taken to be received one (1) hour after being sent

by the transmitter. Proof of actual receipt is not required. Subject to the relevant laws, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

28. Termination Event

When a Termination Event occurs, the Responsible Entity must immediately:

- (a) cease issuing Units or any other interests in the Trust; and
- (b) cease approving redemption requests under clause 8.2.

29. Procedure After a Termination Event

29.1 Winding up

- (a) Winding up of the Trust must be consistent with:
 - (i) Part 5C.9 of the Corporations Act (including any ASIC Relief) while the Trust is a Registered Scheme; and
 - (ii) the Exchange Rules while the Trust is Quoted.
- (b) The Responsible Entity must give Unit Holders notice of a Termination Event as soon as possible after it has occurred. The notice must provide reasonable details of the Termination Event and summarise the procedures contemplated by this clause 29.

29.2 Realisation of Trust Fund

Subject to clauses 29.4 and 29.5, as soon as practicable after giving of the notice under clause 29.1 the Responsible Entity must sell or realise the Assets in such manner as the Responsible Entity considers appropriate and in the interests of the Holders, but subject to the Terms of Issue of any Unit or Class.

29.3 Final distribution

- (a) Subject to the Terms of Issue of any Unit or Class and after making allowance for all Liabilities for the Trust, the Net Proceeds From Realisation must be distributed among the Unit Holders in proportion to the number of Units they hold. The Responsible Entity may make more than one distribution or in instalments under this clause. The Responsible Entity is authorised to give notice under section 60 of the Responsible Entity Act 1925 (NSW) and equivalent provisions in other legislation before making any distributions under this clause.
- (b) For the purposes of distribution entitlements, subject to their Terms of Issue, Partly Paid Units will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest two decimal places, or will be treated in such other manner as the Responsible Entity determines.
- (c) Clause 30.5 applies to any Expenses incurred in selling or realising the Assets in accordance with clause 29.2.
- (d) This clause does not limit clause 29.6.

29.4 Transfer of Assets

Despite clause 29.3, but subject to the Terms of Issue of any Unit or Class, the Responsible Entity may from time to time transfer Assets to any Unit Holder holding Units

having a value in excess of an amount as determined by the Responsible Entity in satisfaction of that Unit Holder's entitlement in the Trust Fund. The value of the Assets transferred will be calculated at market value, as determined by the Responsible Entity, and the Expenses incurred in transferring the Assets will be borne by the Unit Holder or Unit Holders.

29.5 Postponement of realisation

The Responsible Entity may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Unit Holders. To the extent permitted by Applicable Legislation, the Responsible Entity will not be responsible for any Loss attributable to the postponement.

29.6 Retention of property

The Responsible Entity may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any Expenses or Liabilities (actual or contingent) in respect of the Trust. If any Asset retained is ultimately found not to be required, then it must be distributed to the Unit Holders in accordance with this clause 29.

29.7 Continuation of powers

The powers, duties and rights of the Responsible Entity (including the rights to remuneration and to any indemnities under this Deed or the Law) continue following a Termination Event to the extent to which they are not inconsistent with this clause 29 but during this period, the Responsible Entity may not accept any applications for Units and is under no obligation to process redemption requests after the date of termination.

29.8 Cancellation of Units

Unless the Responsible Entity determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date the final distribution of the Net Proceeds From Realisation is made.

29.9 Audit

If, at the time the final distribution of the Net Proceeds From Realisation is made, the Trust is a Registered Scheme and ASIC policy requires it, the Responsible Entity will provide for an independent audit by a registered company auditor of the final accounts of the Trust.

30. Fees

30.1 Responsible Entity Fees

The Responsible Entity is entitled to be paid the fees set out in Schedule 2.

30.2 Waiver, postponement or charging of lesser fees

The Responsible Entity may from time to time in its discretion waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it is entitled to receive under this Deed. Where the payment is deferred, the fee continues to accrue daily until paid.

30.3 Establishment Costs

- (a) The Responsible Entity, or an associate of the Responsible Entity may pay, on behalf of the Trust, any or all Expenses incurred in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first disclosure document (the **Establishment Costs**).

- (b) In such a case, the Responsible Entity or the associate (as the case may be) will be entitled to be reimbursed out of the Trust Fund for all Establishment Costs that were reasonably and properly incurred. Where there is more than one Class, the Responsible Entity will allocate Establishment Costs to each Class of Units on a fair and reasonable basis.
- (c) The Responsible Entity or the associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Trust Fund in a year or years later than the year in which the Establishment Cost was incurred.

30.4 Differential fee arrangements

Subject to the Corporations Act and any ASIC Exemption, the Responsible Entity may agree with any Unit Holder in a Class, fee arrangements in respect of that Unit Holder which are different to those provided for under this Deed for that Class. The following conditions apply to the extent that they reflect the requirements of a relevant ASIC Exemption:

- (a) the fee arrangement can only be with a wholesale client;
- (b) the Responsible Entity must give all Holders a statement that fees may be individually negotiated with wholesale clients on or before the first date when the Responsible Entity sends a communication to all Holders after a fee reduction is first offered; and
- (c) each product disclosure statement for Units, Options or Financial Instruments contains a statement that fees may be individually negotiated with wholesale clients.

30.5 Adviser monitoring fee

The Responsible Entity may make separate arrangements from time to time with any Holder concerning the payment by the Holder of adviser monitoring fees. Where such an arrangement is entered into between a Holder and the Responsible Entity, the fee may be paid by the cancellation of the required number of Units held by the Holder to satisfy the payment of the fee or by such other means not involving a payment out of the Assets as determined by the Responsible Entity and agreed by the Holder.

30.6 Expenses

All Expenses incurred or payable by the Responsible Entity in connection with the Trust or in performing its obligations under this Deed can be paid out of or reimbursed from the Trust Fund. Where there is more than one Class, the Responsible Entity will allocate such Expenses to each Class of Units on a fair and reasonable basis. Amounts payable under this clause 30.7 are in addition to fees otherwise payable under this clause 30 and Schedule 1 and rights to indemnification or reimbursement conferred under this Deed or by Law.

30.7 Waiver or postponement of Expenses reimbursement

The Responsible Entity may in whole or in part waive or postpone the reimbursement of any or all Expenses under this clause 30 for any period.

30.8 Units as payment for fees

Subject to the Corporations Act, the Responsible Entity may elect that it is to be issued Units instead of Cash in payment of its fees or reimbursement of its Expenses under this Deed.

30.9 Recovery of GST

- (a) The fees payable to the Responsible Entity under this Deed do not include any amount referable to GST. If GST is payable in respect of any supply made by the Responsible Entity under or in connection with this Deed, the Responsible Entity is entitled to be paid as additional consideration an amount equal to the amount of GST payable on that supply (the **GST Amount**). The Responsible Entity will be entitled to be reimbursed or indemnified for such amount out of the Trust Fund of the Assets of the Trust.
- (b) In relation to any fee that is expressed as GST inclusive in this Deed, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).

30.10 Liability Net of GST

- (a) Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement in relation to the relevant cost, expense or other liability.
- (b) If the Responsible Entity is not entitled to an Input Tax Credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply under or in connection to this Deed, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such Input Tax.

30.11 Input Tax Credits

If the Responsible Entity considers that an Input Tax Credit for the benefit of the Trust is likely to arise and is properly attributable to an application, the Responsible Entity may determine that the amount of payment in respect of the application is increased by an amount equal to the Input Tax Credit. In other words, the amount of the payment is taken to be the sum of:

- (a) the application money or Property; and
- (b) the amount of the Input Tax Credit.

Subsequent to the payment, if the Input Tax Credit does not arise or the amount of the Input Tax Credit was incorrectly estimated, the Responsible Entity must recover from or credit to the Holder the amount of any inaccuracy in the estimate.

30.12 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

30.13 Proper performance

Despite anything else in this clause 30, while the Trust is a Registered Scheme then, to the extent required by the Corporations Act, the Responsible Entity's right to be paid fees, or to be indemnified out of the Fund (including to recover (or pay) Expenses) is available only in relation to the proper performance of the Responsible Entity's duties.

31. Unit Holders' Liability

31.1 Liability

To the extent permitted by Law but subject to this Deed and the Terms of Issue relating to a Class of Units, no Unit Holder will, in its capacity as Unit Holder, be personally liable for any obligation of, or liability incurred by, the Responsible Entity and:

- (a) a Unit Holder is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in relation to the Trust; and
- (b) the recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the Assets.

Except as expressly provided, nothing in this Deed makes the Responsible Entity the agent of a Unit Holder nor does it create any relationship between the Responsible Entity and each Unit Holder other than that of responsible entity and beneficiary.

31.2 Limitation of liability

To the extent permitted by Law but subject to this Deed and the Terms of Issue relating to a Class of Units, each Unit Holder's liability to the Responsible Entity or the Trust is limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for their Units. This is subject to any separate agreement between a Unit Holder and the Responsible Entity.

31.3 Sums owed to the Responsible Entity

The Responsible Entity may redeem some or all of the Units held by a Holder to satisfy any amount of money due to it by the Holder.

32. Other Activities and Obligations of The Responsible Entity

32.1 Other activities

Except to the extent prohibited by the Corporations Act, the Responsible Entity (in any capacity) or its related bodies corporate or other associates may:

- (a) deal with itself (as trustee or another capacity), an associate or with any Holder including in relation to the purchase or other acquisition of any Asset or with any Holder;
- (b) be interested in any contract, transaction, or matter with itself (as trustee or another capacity), an associate or with any Holder;
- (c) act as trustee or a similar capacity in relation to any other trust or managed investment scheme;
- (d) deal with any entity in which the Responsible Entity holds an Investment on behalf of the Trust;
- (e) undertake any other business activity (including any activities relating to Property or an Investment in which the Trust may have an interest); or
- (f) hold Units in the Trust in any capacity;

and:

- (g) none of them, unless they have contracted otherwise, has any obligation to present or grant any right over any Property (including Land) to the Trust; and

- (h) in each case set out in clauses 32.1(a) to (e) the Responsible Entity (or any associate) may retain for its own benefit all profits or benefits derived from that activity and each Holder consents to any such dealing, interest or activity.

32.2 Other obligations

Subject to the Corporations Act, all obligations of the Responsible Entity or restrictions on its power which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

32.3 Hold Units

Subject to the Corporations Act, the Responsible Entity and its associates may hold Units, Options or Financial Instruments in any capacity.

33. Payments

33.1 Money payable

Subject to the Terms of Issue relating to a Class of Units, money payable by the Responsible Entity to a Holder may be paid in any manner the Responsible Entity decides. Unless the Responsible Entity decides otherwise, payments will be made by electronic transfer to an account nominated by the Holder. Subject to the Corporations Act, if a Holder does not nominate an account, then the Responsible Entity is not obliged to make the payment by cheque or other means and clause 33.2 will be taken to apply to the payment.

33.2 Failed payments

Subject to the Corporations Act, where the Responsible Entity attempts to make a payment to a Holder by electronic transfer of funds and the transfer is unsuccessful three times the money may be:

- (a) in the case of a Unit Holder, reinvested in Units at a price determined under clause 15.11(b) for amounts reinvested that accrued in the Distribution Period current after the third unsuccessful attempt at transfer;
- (b) held by the Responsible Entity for the benefit of the Holder; or
- (c) paid by the Responsible Entity in accordance with applicable unclaimed money legislation.

However, the Responsible Entity may also then draw a cheque in favour of the Holder.

If the Responsible Entity decides to make any payments to Holders by cheque, the Responsible Entity may cancel any cheque that is not presented within six Months of its date. In that case, the Responsible Entity may take any of the actions described in clauses 33.2(a) to (c) above.

This clause applies to any other method of payment selected by the Responsible Entity (with any necessary changes to take account of that means of payment).

33.3 Joint Holders

A payment to any one of joint Holders will discharge the Responsible Entity for the payment.

33.4 Deductions for Tax or other payments

The Responsible Entity may from time to time deduct from any amount payable to a Holder or former Holder (or received from a Holder or former Holder) any amount of Tax or other

payment (or an estimate of it), including in respect of any amount attributed to a Holder under the AMIT rules, which the Responsible Entity reasonably believes it must or should deduct, in respect of that Holder or former Holder.

33.5 Rounding

Only whole cents are to be paid and any remaining fraction of a cent becomes an Asset.

33.6 Posting of cheques

A cheque payable to a Holder may be posted to the Holder's physical address or handed to the Holder or a person authorised in writing by the Holder

33.7 Third party arrangements

The Responsible Entity may from time to time make available to Holders a third party payment facility on terms and conditions determined by the Responsible Entity. Where, under the terms of a third party payment facility the Holder requests that the proceeds of a redemption of Units be paid to a third party, the redemption proceeds may be paid to a third party in accordance with that request.

34. Complaints

If a Unit Holder submits to the Responsible Entity a Complaint, in relation to the Trust, the Responsible Entity:

- (a) Must, if the Unit Holder is a retail Client, notwithstanding any provision of this clause, the Responsible Entity shall at all times comply, as an Australian Financial Services licensee, with the requirements set out at section 912A(2) of the Corporations Act in dealing with the complaint submitted by that Unit Holder; and
- (b) In respect of a Complaint from a Unit Holder who is not a Retail Client:
 - (i) must, if the Complaint is in writing, acknowledge in writing receipt of the Complaint as soon as practicable and in any event within 14 days from receipt;
 - (ii) must ensure that the Complaint receives proper, equitable, objective and unbiased consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints and ensure that the complainant and the relevant parties subject to the Complaint have adequate opportunity to make their case;
 - (iii) must act in good faith to deal with the Complaint by endeavouring to correct any error with is capable of being corrected without affecting the rights of third parties;
 - (iv) may in its discretion give any of the following remedies to the complainant:
 - (A) information and explanation regarding the circumstances giving rise to the Complaint;
 - (B) an apology; or
 - (C) compensation for loss incurred by the Unit Holder as direct result of the breach (if any);

- (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint:
 - (A) the determination of the Responsible Entity in relation to the Complaint;
 - (B) the remedies (if any) available to the Unit Holder; and
 - (C) information regarding any further avenue for complaint; and
- (vi) must provide the Unit Holder with access to an external dispute resolution scheme.
- (c) Where the Trust is a Registered Scheme, if a Complaint is not resolved within 45 days, or the Unit Holder is not satisfied with the resolution of the Complaint, the Responsible Entity or the Unit Holder shall be referred to an external complaints resolution scheme approved by ASIC of which the Responsible Entity is a member.

35. **Side Arrangements**

The Responsible Entity may, but is under no obligation to, enter into arrangements with any Unit Holder that may in each case provide for terms of investment, including with respect to any fees, that vary or are otherwise more favourable than the terms described in this Deed, and/or have the effect of establishing rights under, or altering or supplementing, the terms of, this Deed or any other document as they apply to that Unit Holder (**Side Arrangement**). The Responsible Entity will not enter into any Side Arrangement which:

- (a) would have a material adverse effect on any other Unit Holder; or
- (b) would cause the Trust to fail to qualify as a Managed Investment Trust or AMIT, (in which case the Side Arrangement would not be enforceable).

36. **Governing Law and Jurisdiction**

This Deed is governed by the laws of Victoria. In relation to it and related non contractual matters the Responsible Entity and each Holder irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

37. **Severability**

If any provision of this Deed is held or found to be void, invalid or otherwise unenforceable then so much of it as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this Deed remains in full force and effect.

38. **Exchange Rules**

38.1 **Compliance with Exchange Rules**

While the Trust or a class of Units in the Trust is Quoted, the Responsible Entity must comply with the Exchange Rules for the issue of holding statements, the transfer and transmission of Units in the Listed class and the establishment and maintenance of a

register of holders of Units.

38.2 Exchange Rules take precedence

While the Trust or a class of Units in the Trust is Quoted:

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

38.3 Effect of ASIC Class Order relating to constitutions

In accordance with ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 38.2 is not a modification of, or the repeal or replacement of the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

38.4 Participation in CHESS

While the Trust is Quoted, the Responsible Entity may resolve that the Listed class will participate in CHESS.

If the Trust is granted participation in CHESS:

- (a) the Trust must comply with the Exchange Settlement Rules, including the Exchange Settlement Rules for the maintenance of registers, the issuing of holding statements and transfers for its CHESS approved securities;
- (b) the Responsible Entity must, in addition to the CHESS sub-register, provide for an issuer sponsored sub-register, or a certificate sub-register or both; and
- (c) the Responsible Entity must not in any reasonable way prevent, delay or interfere with the generation of a proper transfer for the Trust in accordance with the Exchange Settlement Rules or the registration of a paper-based transfer in registrable form (which satisfies the requirement of clause 10.3), except as permitted by clause 10.4, clause 3.11, the Exchange Rules or the Exchange Settlement Rules.

Schedule 1

Expenses

The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Deed, the formation of the Trust and the Responsible Entity and any supplemental deed amending this Deed or proposed supplemental deed to amend this Deed, including Advisers' fees;
- (b) the preparation of and compliance with a compliance plan in respect of the Trust;
- (c) preparation, printing, review, distribution and promotion of any disclosure document, offering memorandum for Units, Options or Financial Instruments or marketing material (in particular, all amounts disclosed in the first disclosure document) or any document required by Law to be prepared in respect of the Trust;
- (d) the sale or proposed sale, purchase, a proposed purchase, registration, holding, valuation, insurance, custody, development, supervision, project management, property management, leasing, repair, maintenance and any other dealing with Assets or Property;
- (e) the investigation, negotiation or acquisition of any proposed Investment;
- (f) the establishment, administration, management, promotion or valuation of the Trust or its Assets and Liabilities, including:
 - (i) the establishment and maintenance of accounts and Registers and the calculation of income;
 - (ii) issuing of Units, Options or Financial Instruments by the Responsible Entity or any sales of Units, Options or Financial Instruments by one or more Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units, Options or Financial Instruments;
 - (iii) computer operation, hardware and software systems, development and data processing;
 - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Holder under this Deed;
 - (v) dealing with Holder enquiries and complaints;
 - (vi) communications with Holders (written or otherwise);
 - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;
 - (viii) purchasing or leasing premises for the Responsible Entity in connection with the Trust;
 - (ix) salaries of the employees of the Responsible Entity;

- (x) any travel expenses incurred by the Responsible Entity in connection with the Trust, including inspections of Properties and tenants; and
- (xi) the expenses of the board of directors of the Responsible Entity (including any directors fees);
- (g) fees payable to ASIC and any other regulatory body in relation to the Trust, Units, Options or Financial Instruments;
- (h) fees payable to ASX or any other Exchange on which Units are or are to be quoted;
- (i) costs associated with the Trust's continuing compliance with the rules of the Exchange, or in relation to any removal of the Trust from the official list of an Exchange or the suspension of Units from trading by an Exchange;
- (j) costs, fees, charges or spreads in relation to the engagement of agents including in relation to the provision of liquidity and market making conduct;
- (k) the assigning or maintenance of a credit rating to the Trust or any Assets;
- (l) convening and holding meetings of Holders, or of directors of the Responsible Entity, and the implementation of any resolutions;
- (m) Tax including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (n) financial institution fees and charges, including any charges incurred under a facility for the direct transfer from or to a Holder's bank account;
- (o) the engagement of Custodians, Advisers, delegates, agents, and contractors whether or not they are associates of the Responsible Entity;
- (p) preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Trust;
- (q) audit of the compliance plan;
- (r) termination and winding up (including realising the Assets of) the Trust and the retirement or removal of the Responsible Entity and the appointment of a new Responsible Entity, including the costs incurred by one as a consequence of a retirement or removal of the other;
- (s) any membership fees paid to an external dispute resolution scheme in relation to the Trust;
- (t) any court proceedings, arbitration or other dispute concerning the Trust, the interpretation or construction of this Deed or any provision of this Deed, including proceedings against the Responsible Entity, costs of obtaining opinions from Advisers and costs in anticipation of any such proceeding, arbitration or dispute;
- (u) raising or borrowing money or otherwise obtaining financial accommodation for the Trust (including interest), including a capital raising by the Trust, fees payable to any underwriter or broker, and discounts and fees in respect of bill facilities and any Taxes payable in respect of raising money or obtaining financial accommodation;
- (v) giving guarantees in relation to any person or granting security over all or part of the Assets;
- (w) entry into Derivatives, including payments made under them;

- (x) operation of the compliance committee (whether or not such a committee was required to be constituted under the Corporations Act), including fees payable to or insurance premiums payable in respect of any compliance committee member and travel and accommodation costs, regardless of where the compliance committee members live or where the meetings are held, and any remuneration payable to the members of the committee (including members who are directors of the Responsible Entity);
- (y) making a takeover bid for, or participating in a scheme of arrangement (or a trust scheme) in relation to, another entity or responding to a takeover bid for the Trust or any other proposal relating to the control of the Trust; and
- (z) the choice to be an AMIT for the purpose of section 276-10 of the 1997 Act and compliance with the requirements in the Tax Act and the Taxation Administration Act 1953 relating to the administration and operation of AMITs, including information disclosure and documentation requirements.

Schedule 2

Fees

Subject to clause 30, the Responsible Entity is entitled to be paid the following fees:

1 Investment Management Fee

- 1.1 An Investment Management Fee of up to 5% per annum (excluding GST) of either the gross Asset Value or the gross value of all Assets attributed or attributable to the relevant Class (**Investment Management Fee**) as determined by the terms of that Class, each of which accrues on a daily basis.
- 1.2 The Investment Management Fee payable in accordance with this clause 1 of Schedule 2 is payable out of the Trust Fund in arrears at the end of each Month.
- 1.3 The Responsible Entity is entitled to the Investment Management Fee up to and including the day it ceases to act as trustee or until a final distribution is made under clause 29 (in either case pro-rated to that day from the end of the previous Month).
- 1.4 The Responsible Entity may from time to time waive or postpone the receipt of the Investment Management Fee (or any part of the Investment Management Fee) or charge a lesser Investment Management Fee than it is entitled to receive under this Deed, either generally or in relation to one or more Classes, on a fair and reasonable basis.

2 Performance Fee

- 2.1 A Performance Fee, in respect of each Unit (in issue at the beginning of the relevant calculation period or at the time the Performance Fee is calculated), of up to 25% of the Unit Return, calculated as at the end of the last Business Day of each calendar month and payable on the last Business Day of each calendar month (each such period being a 'calculation period'). The Performance Fee is also calculated and payable in respect of a Unit when it is redeemed.
- 2.2 The Trustee may determine that the Performance Fee is calculated and payable at times other than that set out in clause 2.1 above provided that such a determination is made before the relevant calculation period commences and the Trustee advises Holders in writing of the calculation period (which it may do so in a Disclosure Document).
- 2.3 In this clause 2:

High Water Mark on a date, for a Unit, means the greater of the:

- (i) Issue Price of the Unit; and
- (ii) Net Unit Value (after all fees are accrued or paid) as at the end of the period (if any) for which a Performance Fee was last paid or payable.

Unit Return on a date, in respect of a Unit, is an amount equal to:

- (i) the change in the Net Unit Value of a Unit; plus
- (ii) any distributions paid or payable to Holders,

of that class, since the last time an Performance Fee was payable or in the case of the first calculation period or for a Unit issued during a calculation period, since the issue of the Unit.

- 2.4 Where Units are reorganised pursuant to this constitution (such as by way of a division or consolidation of Units) the variables in this clause 2.1, in respect of those Units, are adjusted proportionate to the organisation.

- 2.5 For Units issued at different times which comprise the same class, the definition of 'High Water Mark' in this clause 2 must be determined on the basis of the performance of the first Units in that class (regardless of the performance of additional Units issued in that class) including such that a reference in those definitions to 'Issue Price of the Unit', 'the issue of that Unit', 'the issue of the Unit' and 'the issue of the relevant Unit' will each be read as being references to 'the issue of the first Unit in the class of that Unit'.

3 Application Fee

- 3.1 Subject to the proper performance by the Responsible Entity of its duties under this Deed and the Corporations Act, an application or establishment fee of up to 0.5% of the application moneys may be charged by the Responsible Entity.

4 Redemption Fee

- 4.1 Subject to the proper performance by the Responsible Entity of its duties under this Deed and the Corporations Act, a redemption fee of up to 0.5% of the aggregate Redemption Price of the Units being redeemed may be charged by the Responsible Entity.

5 Responsible Entity Fee

- 5.1 Subject to the proper performance by the Responsible Entity of its duties under this Deed and the Corporations Act, a responsible entity fee in respect of each day it has acted as Responsible Entity calculated at a rate of up to 2% per annum of the gross Asset Value of the Trust determined as at the end of that day.
- 5.2 The responsible entity fee is calculated and accrued daily and is payable out of the income or, if the income is insufficient, out of the capital of the Trust within one month after the last day of each month or part month the responsible entity has acted as Responsible Entity.

6 Retirement or Removal Fee

- 6.1 A responsible entity retirement or removal fee of up to 0.5% (excluding GST) of the gross Asset Value of the Trust (**Retirement or Removal Fee**). The Retirement or Removal Fee is payable out of the Trust Fund on the date of the resignation, retirement or removal of the Responsible Entity (other than as a result of the Trust being terminated).
- 6.2 The Responsible Entity may from time to time waive or postpone the receipt of the Retirement or Removal Fee (or any part of the Retirement or Removal Fee) or charge a lesser Retirement or Removal Fee than it is entitled to receive under this Deed, either generally or in relation to one or more Classes, on a fair and reasonable basis.

7 Fund Termination Fee

- 7.1 A Fund Termination Fee of up to 1% (excluding GST) of the Net Asset Value of the Trust payable out of the Trust Fund as at the date of termination of the Trust.
- 7.2 The Responsible Entity may from time to time waive or postpone the receipt of the Fund Termination Fee (or any part of the Fund Termination Fee) or charge a lesser Fund Termination Fee than it is entitled to receive under this Deed.

8 Acquisition Fee

- 8.1 An Acquisition Fee of up to 2% (excluding GST) of the purchase price of any Land acquired by the Trust (directly or indirectly) or by any controlled sub-trust of the Trust.
- 8.2 The Responsible Entity may from time to time waive or postpone the receipt of the Acquisition Fee (or any part of the Acquisition Fee) or charge a lesser Acquisition Fee than it is entitled to receive under this Deed.

9 Entry Fee

An **Entry Fee** of up to 5% of the consideration payable on an application for a Unit. This amount may be paid to the Responsible Entity or the Trust provided such is set out in the Disclosure Document governing the issue of the relevant Unit. The Entry Fee is calculated and payable after the processing of the relevant application for Units.

10 Exit Fee

An **Exit Fee** of up to 5% of the Redemption Price payable on redemption of a Unit. This amount may be paid to the Responsible Entity or the Trust provided such is set out in the Disclosure Document governing the issue of the relevant Unit. The Exit Fee is calculated and payable after the processing of the relevant redemption of Units.

Schedule 3

Terms of Issue of the AUD Class Units (Clause 3.2(e))

The terms of issue of the AUD Class Units are as follows:

AUD Class Units confers exclusive rights to AUD Class Assets and are exclusively subject to AUD Class Liabilities. AUD Class Units are Units of an Asset-Specific Class. All AUD Class Assets are attributed or attributable to the AUD Class.

$$\frac{\text{Net Class Value}}{\text{number of Fully Paid AUD Class Units on Issue}} \times (1 + \text{Class Transaction Costs})$$

(or the appropriate proportion of that amount in the case of a Fractional Unit. For example, half of that amount for a 0.5 Fractional Unit)

all calculated as at the first Valuation Time after the Responsible Entity receives:

The Redemption Price for any AUD Class Unit will be equal to:

$$\frac{\text{Net Class Value}}{\text{number of Fully Paid AUD Class Units on Issue}} \times (1 - \text{Class Transaction Costs})$$

While the Trust is not a Registered Scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the Responsible Entity received (or is taken to have received) the redemption request. If the Trust is a Registered Scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes.

The Responsible Entity may from time to time distribute capital of the Trust attributable to AUD Class Assets to the Unit Holders of AUD Class Units. a Unit Holder of an AUD Class Unit is entitled to that proportion of the capital to be distributed as is equal to the number of AUD Class Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of AUD Class Units on the Register on that date.

The Responsible Entity may from time to time transfer AUD Class Assets to any Unit Holder holding AUD Class Units having a value in excess of an amount as determined by the Responsible Entity in satisfaction of that Unit Holder's entitlement in the Trust Fund. The value of the AUD Class Assets transferred will be calculated at market value, as determined by the Responsible Entity, and the Expenses incurred in transferring the AUD Class Assets will be borne by the AUD Class Unit Holder or AUD Class Unit Holders.

AUD Class Units cannot be converted to another Class.

AUD Class means the class of AUD Class Units.

AUD Class Asset means all Assets attributed or attributable to the AUD Class by the Responsible Entity from time to time.

AUD Class Liability means the Class Liabilities of the AUD Class

AUD Class Unit means a Unit issued on the Terms of Issue specified in this Schedule and entered on the Register as an 'AUD Class Unit'.

Class Transaction Cost means:

- (a) when calculating the Issue Price of an AUD Class Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the AUD Class Assets were to be acquired at the relevant time; and

- (b) when calculating the Redemption Price of an AUD Class Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the AUD Class Assets were to be disposed of at the relevant time,

(in each case excluding the actual cost of the AUD Class Assets); or

- (c) in either case, to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the Responsible Entity.

In estimating the total Expenses the Responsible Entity may from time to time take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

Schedule 4

Terms of Issue of the USD Class Units (Clause 3.2(e))

The terms of issue of the USD Class Units are as follows:

USD Class Units confers exclusive rights to USD Class Assets and are exclusively subject to USD Class Liabilities. USD Class Units are Units of an Asset-Specific Class. All USD Class Assets are attributed or attributable to the USD Class.

$$\frac{\text{Net Class Value}}{\text{number of Fully Paid USD Class Units on Issue}} \times (1 + \text{Class Transaction Costs})$$

(or the appropriate proportion of that amount in the case of a Fractional Unit. For example, half of that amount for a 0.5 Fractional Unit)

all calculated as at the first Valuation Time after the Responsible Entity receives:

The Redemption Price for any USD Class Unit will be equal to:

$$\frac{\text{Net Class Value}}{\text{number of Fully Paid USD Class Units on Issue}} \times (1 - \text{Class Transaction Costs})$$

While the Trust is not a Registered Scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the Responsible Entity received (or is taken to have received) the redemption request. If the Trust is a Registered Scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes.

The Responsible Entity may from time to time distribute capital of the Trust attributable to USD Class Assets to the Unit Holders of USD Class Units. a Unit Holder of an USD Class Unit is entitled to that proportion of the capital to be distributed as is equal to the number of USD Class Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of USD Class Units on the Register on that date.

The Responsible Entity may from time to time transfer USD Class Assets to any Unit Holder holding USD Class Units having a value in excess of an amount as determined by the Responsible Entity in satisfaction of that Unit Holder's entitlement in the Trust Fund. The value of the USD Class Assets transferred will be calculated at market value, as determined by the Responsible Entity, and the Expenses incurred in transferring the USD Class Assets will be borne by the USD Class Unit Holder or USD Class Unit Holders.

USD Class Units cannot be converted to another Class.

- (a) when calculating the Issue Price of an USD Class Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the USD Class Assets were to be acquired at the relevant time; and
- (b) when calculating the Redemption Price of an USD Class Unit, the Responsible Entity's estimate of the total Expenses which would be incurred if all the USD Class Assets were to be disposed of at the relevant time,

(in each case excluding the actual cost of the USD Class Assets); or

- (c) in either case, to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the Responsible Entity.

In estimating the total Expenses the Responsible Entity may from time to time take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

USD Class means the class of USD Class Units.

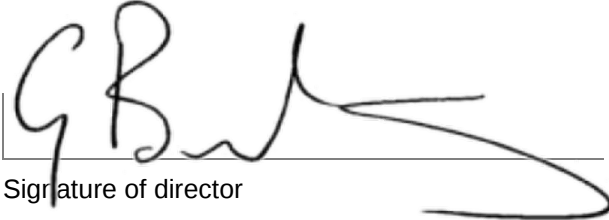
USD Class Asset means all Assets attributed or attributable to the USD Class by the Responsible Entity from time to time.

USD Class Liability means the Class Liabilities of the USD Class

USD Class Unit means a Unit issued on the Terms of Issue specified in this Schedule and entered on the Register as an 'USD Class Unit'.

Executed and delivered as a Deed in Melbourne

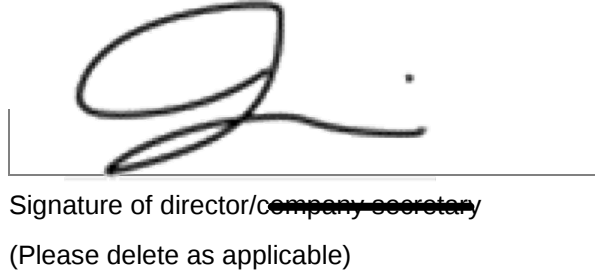
Executed as a deed in accordance with section 127
of the *Corporations Act 2001* by K2 Asset
Management Limited ACN 085 445 094



Signature of director

George Boubouras

Name of director (print)



Signature of director/~~company secretary~~
(Please delete as applicable)

Hollie Wight

Name of director/~~company secretary~~ (print)