

## **ANNEXURE “A”**

### **CONSOLIDATED CONSTITUTION OF THE VENTURA GROWTH 90 FUND, TO BE KNOWN AS THE RUSSELL INVESTMENTS VENTURA GROWTH 90 FUND**

THIS IS THE CONSOLIDATED CONSTITUTION OF THE VENTURA GROWTH 90 FUND, TO BE KNOWN AS THE RUSSELL INVESTMENTS VENTURA GROWTH 90 FUND, ESTABLISHED BY DEED POLL DATED 7 APRIL 2009, AND INCORPORATING THE AMENDMENTS MADE BY SUBSEQUENT DEEDS DATED 30 APRIL 2009, 5 MARCH 2012, 10 SEPTEMBER 2012, 25 JUNE 2013, 31 MARCH 2015 AND 28 JUNE 2017.

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**VENTURA GROWTH 90 FUND, TO BE KNOWN AS THE RUSSELL INVESTMENTS VENTURA GROWTH  
90 FUND**

**CONSOLIDATED CONSTITUTION**

**OPERATIVE PROVISIONS**

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed and in all documents issued under this Deed, the following expressions, in the absence of a contrary intention have the following meanings:

**‘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;
- (c) where not inconsistent with the standards or requirements referred to in paragraph (a) or (b) generally accepted accounting principles and practices in Australia consistently applied;

**‘Adviser’** has the meaning provided in clause 12.2;

**‘Agent’** has the meaning provided in clause 12.1;

**‘AMIT’** has the meaning given to that word in the Tax Act;

**‘AMIT Class Election’** an election made by the Manager under section 276-20 of the Tax Act;

**‘AMIT Income Year’** a year of income for the purposes of the Tax Act that the Trust is an AMIT;

**‘AMIT Regime’** the regime for the taxation of AMITs, as set out in the following legislation:

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

**‘AMMA Statement’** has the meaning given to that phrase in section 276-460 of the Tax Act;<sup>1</sup>

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<sup>1</sup> Definitions of “AMIT”; “AMIT Class Election”; “AMIT Income Year”; “AMIT Regime”; and “AMMA Statement” inserted pursuant to the Supplemental Deed dated 28 June 2017.

**‘Application’** means an application for an Interest under clause 6;

**‘Application Form’** has the meaning provided in clause 6.1(b);

**‘Application Moneys’** means any form of valuable consideration received by the Manager for an Interest;

**‘Applicable Standards’** means:

- (a) to the extent they apply to the Trust from time to time, the Corporations Act, subject to any relief, exemption, declaration or modification granted or made by ASIC;
- (b) any Australian Financial Services Licence issued to the Manager;
- (c) this Constitution; and
- (d) other relevant legislation including any regulations made under it, as applying to the Trust or the Manager;

**‘ASIC’** means the Australian Securities and Investments Commission;

**‘Asset’** means any item of property comprised in the Trust Fund;

**‘Associate’** has the meaning given to that expression in Part 1.2 of the Corporations Act for the purposes of Chapter 5C of the Corporations Act;

**‘Auditor’** means the auditor of the Trust for the time being appointed under Part 2M.4 of the Corporations Act;

**‘Australian Financial Services Licence’** has the same meaning as in the Corporations Act;

**‘Authorised Investment’** means any investment the Manager is not prohibited from making under the Applicable Standards;

**‘Board’** means the board of Directors;

**‘Business Day’** means a day other than Saturday, Sunday, a bank holiday or public holiday in Melbourne;

**‘Business Hours’** means between 9.00am and 5.00pm (inclusive) on a Business Day or such other hours specified in the current Disclosure Document;

**‘Class’** has the meaning provided in clause 4.4;

**‘Clearly Defined Rights’** means where the rights to income and capital arising from each of the Units in the Trust are "clearly defined" at all times during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act;<sup>2</sup>

**‘Commencement Date’** has the meaning provided in clause 2.2(b);

**‘Compliance Committee’** means the compliance committee, if any, appointed by the Manager for the purposes of Part 5C.5 of the Corporations Act;

**‘Constituent Documents’** has the same meaning as the phrase "constituent documents" in section 276-210(3) of the Tax Act;<sup>3</sup>

**‘Corporations Act’** means the *Corporations Act 2001* and the *Corporations Regulations*;

**‘Current Value of the Trust Fund’** on any date means the amount derived by deducting from the Total Tangible Assets:

- (a) all moneys borrowed for the purpose of the Trust and remaining owing;
- (b) interest accrued on the amounts referred to in paragraph (a);
- (c) the amount of all actual liabilities of the Trust, other than:
  - (i) those referred to in paragraphs (a) and (b)) owing but unpaid; and
  - (ii) Unitholder Liabilities;
- (d) such amounts as the Manager thinks necessary to provide for all accrued and contingent outgoings and liabilities of the Trust (other than those referred to in paragraphs (a)-(c));
- (e) all amounts which have not been taken into account in determining Total Tangible Assets and which the Manager thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Assets (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (f) all other amounts which the Manager considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Trust Fund;

**‘Custodian’** has the meaning provided in clause 12.3;

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<sup>2</sup> Definition of “Clearly Defined Rights” inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>3</sup> Definition of “Constituent Documents” inserted pursuant to the Supplemental Deed dated 28 June 2017.



**‘Derivative’** means a contract whose value depends on, or derives from, the value of an underlying asset, reference rate or index and includes, without limitation, options, futures, swaps and forward contracts;

**‘Determined Member Component’** has the meaning given to that phrase in section 276-205 of the Tax Act;<sup>4</sup>

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

**‘Director’** means a director of the Manager;

**‘Disclosure Document’** means a product disclosure statement, an information memorandum or other disclosure document issued by the Manager in relation to an Offer of Interests in the Trust;

**‘Dispute Resolution Service’** means the dispute resolution service approved by ASIC of which the Manager is a member;

**‘Distributable Amount’** has the meaning provided in clause 10.8(a);

**‘Distribution’** means a distribution of income or capital of the Trust under this document;

**‘Distribution Account’** has the meaning provided in clause 10.11(a);

**‘Distribution Date’** means in respect of any Distribution Period, the date not more than 60 days or such other time required by the Applicable Standards after the end of that Distribution Period;

**‘Distribution Period’** means a period of not more than 12 months as determined by the Manager and notified to the relevant Unitholders or specified in a Disclosure Document. Where the termination of the Trust occurs during a Distribution Period, the last Distribution Period of the Trust will end on the date of termination. The Manager may change the duration or dates of the commencement or end of Distribution Periods, but the Manager must notify the Unitholders of such changes;

**‘Eligible Person’** means any person:

- (a) other than a U.S. Person; or

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<sup>4</sup> Definitions of “Determined Member Component” and “Determined Trust Component” inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (b) other than a person that the Manager has determined is not eligible to hold Units from time to time;<sup>5</sup>

**‘Eligible Person Statement’** means a statement in writing, in the form determined by the Manager from time to time, in relation to whether a person is an Eligible Person;

**‘Entitlement’** means, in respect of a Unitholder, a portion of the Distributable Amount for a Distribution Period calculated in accordance with clause 10.11;

**‘Expenses’** means all expenses, costs, losses and liabilities in respect of the Trust (whether paid or unpaid, actual or contingent, present or future) including, but not limited to, all expenses, costs, losses, liabilities and Taxes incurred by the Manager in establishing the Trust, Offering Interests, administering the Trust, winding up the Trust or otherwise performing its obligations under this document or the Applicable Standards;

**‘Financial Year’** means:<sup>6</sup>

- (a) for the first financial year, the period from the date the Trust commences to the next Financial Year Termination Date;
- (b) for the last financial year, the period from the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date,

but the application of this definition for the purposes of calculating distributions from the Trust and preparing the income tax return of the Trust does not affect the Manager's determination as to the financial year of the Trust for the purposes of preparing accounts and lodging returns required for registered schemes under the Corporations Act;

**‘Financial Year Termination Date’** means any of the following as the context requires:

- (a) 30 June;
- (b) if applicable, the day on which the Trust becomes a "subsidiary member" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a "subsidiary member" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act);

**‘GST’** has the same meaning as in the GST Act;

**‘GST Act’** means A New Tax System (Goods & Services Tax) Act 1999 as amended;

**‘Interest’** means each Unit;

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<sup>5</sup> Definitions of “Eligible Person” and “Eligible Person Statement” inserted pursuant to the Supplemental Deed dated 10 September 2012.

<sup>6</sup> Definitions of “Financial Year” and “Financial Year Termination Date” inserted pursuant to the Supplemental Deed dated 28 June 2017.

**‘Investment Strategy’** has the meaning provided in clause 3.7(a);

**‘Issue Price’** means in relation to the issue of a Unit:

- (a) in the case of the initial issue of Units mentioned in clause 7.1 and the first additional Units issued under a Disclosure Document after that initial issue, \$1.00 per Unit; or
- (b) the sum of:
  - (i) the Unit Value as determined on the Valuation Date of receipt (or deemed receipt) of the application;
  - (ii) any Tax, brokerage and all other charges and disbursements incurred or to be incurred by the Manager in respect of the Application for the Unit or the issue of the Unit, to the extent that it is not included in the amount referred to in paragraph (iii); and
  - (iii) any Transaction Costs;

**‘Issued Units’** means all Units for the time being created and issued;

**‘Manager’** means the person acting as responsible entity of the Trust from time to time;

**‘Member Component’** has the meaning given to that phrase in section 276-210 of the Tax Act;<sup>7</sup>

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

**‘Minimum Redemption Amount’** means the minimum redemption amount as disclosed in the current Disclosure Document or such lesser amount as determined by the Manager;

**‘Net Accounting Income’** has the meaning provided in clause 10.4;

**‘Net Taxable Income’** has the meaning provided in clause 10.5;

**‘Non-AMIT Income Year’** a Financial Year which is not an AMIT Income Year;<sup>8</sup>

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<sup>7</sup> Definitions of “Member Component” and “Member Objection Choice” inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>8</sup> Definition of “Non-AMIT Income Year” inserted pursuant to the Supplemental Deed dated 28 June 2017.

**‘Offer’** includes making available, issuing, offering for subscription or purchase and inviting to subscribe for or buy;

**‘Operative Date’** means the date of this document;

**‘Ordinary Resolution’** means a resolution passed at a meeting of Unitholders convened and held in accordance with the Applicable Standards by a majority of persons entitled to vote and voting at the meeting upon a show of hands and if a poll is determined, then by a majority of votes given on a poll;

**‘Over’** has the meaning given to that phrase in section 276-345 of the Tax Act;<sup>9</sup>

**‘Receipt’** has the meaning provided in clause 6.3;

**‘Record Date’** means the date determined by the Manager for determining the persons who are entitled to Distributions, new Interests or any other entitlement, having due regard to the Applicable Standards;

**‘Redemption Amount’** means the number of Units to be redeemed or repurchased multiplied by the relevant Redemption Price less any amount (for example, taxes) owing to the Manager by the relevant Unitholder;

**‘Redemption Date’** means the date determined by the Manager in accordance with clause 8.6 (subject to clauses 8.7 to 8.9) with effect from which a Unit is to be redeemed or repurchased;

**‘Redemption Notice’** means a notice given to the Manager for the purposes of clause 8.6;

**‘Redemption Price’** means the Unit Value less such Transaction costs (if any) as the Manager determines;

**‘Register’** has the meaning provided in clause 11(a);

**‘Registration Date’** means the date on which ASIC registers the Trust under section 601EB of the Corporations Act;

**‘Reserve Account’** has the meaning provided in clause 10.8(c);

**‘Resolution’** means:<sup>10</sup>

- (a) a resolution passed at a meeting of Unitholders in the Trust;
  - (i) on a show of hands, by the required majority of Unitholders present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll by the required majority of votes cast by Unitholders present in person or by proxy and voting on the poll; or

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<sup>9</sup> Definition of “Over” inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>10</sup> Definition of “Resolution” amended to replace all references to the word “Members” with the word “Unitholders” pursuant to the Supplemental Deed dated 28 June 2017.

- (b) Where the law allows, a resolution in writing signed by Unitholders holding the required majority of the Units in the Trust,

except where this Constitution or any applicable law provides otherwise, the **'required majority'** is a simple majority;

**'Secretary'** means a company secretary of the Manager;

**'Special Resolution'** has the meaning set out in the Corporations Act;

**'Supply'** has the same meaning as in the GST Act;

**'Tax'** includes any tax, duty, impost and the like and includes any interest or penalty or the like imposed on those amounts;

**'Tax Income'** means the 'net income' of the Trust as defined in section 95 of the Income Tax Assessment Act, and, in relation to a Distribution Period, as determined by the Manager on the assumption that the Distribution Period is a year of income for the purposes of that Act;

**'Tax Invoice'** has the same meaning as in the GST Act;

**'Taxable Supply'** has the same meaning as in the GST Act;

**'Tax'** in relation to the Trust or Units means income tax, tax on the acquisition of any Asset, tax on the disposal of any Asset, goods and services tax, debits tax, land tax, withholding tax, financial institutions duty, stamp duty and other taxes, duties, levies, imposts and charges payable by the Manager to any person, referable to the Trust or the Units, and includes related interest, penalties and other amounts, but does not include Tax referable to the Manager in respect of income or gains for performing its functions as Manager;

**'Tax Act'** means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth) whichever is applicable;

**'Termination Date'** has the meaning provided in clause 15.1;

**'Total Tangible Assets'** means the amount derived by adding:

- (a) the total of all cash on hand or at bank;
- (b) the total of all Values of all Authorised Investments;
- (c) the total of the amounts owing to the Trust by way of debtors (not including amounts referred to in paragraph (d)) but after deducting any bad or doubtful debts;
- (d) the total of all prepaid expenses; and
- (e) the total of the values of all other Assets not included in the preceding paragraphs of this definition, as determined by the Auditor,

and subtracting any amount (whether of income or capital) for the time being transferred, or to be transferred as at a date prior to the date on which a calculation of Total Tangible Assets is to be made, to and held in the Distribution Account pending Distribution;

**'Transaction costs'** means an amount (if any) as determined by the Manager accruing to the Trust in respect of the actual or anticipated expenses associated with an issue or repurchase or redemption of Units or the investment of Application Moneys, or the acquisition or disposal of assets;

**'Trust'** means the trust created by this document;

**‘Trust Fund’** means:

- (a) amounts subscribed for any Interests;
- (b) any Authorised Investment made by the Manager;
- (c) the proceeds of sale, redemption or other dealing with any Authorised Investment;
- (d) all accretions to, or the income, profits or gains of any Authorised Investment;
- (e) money lent to or advanced to the Manager under this document;
- (f) amounts owing by debtors to the Trust; and
- (g) any property of any description held on the Trust of this document and not specifically included in any of the preceding paragraphs of this definition;

**‘Under’** has the meaning given to that phrase in section 276-345 of the Tax Act;<sup>11</sup>

**‘Unit’** means a unit in the Trust issued under this document;

**‘Unit Value’** means the amount computed by dividing the Current Value of the Trust Fund at the relevant time by the total number of Issued Units at that time. If there is more than one class of Units in issue, then in respect of Units in a class, the Unit Value means the Current Value of the Trust Fund referable to that class of Units divided by the number of Units in issue in that class (including a provision for Distributable Amount (if any));

**‘Unitholder’** has the meaning provided in clause 5.3;

**‘Unitholder Liabilities’** means the liability of the Trust to the Unitholder for their undivided interest in the Assets;

**‘U.S. Person’** means a "U.S. Person" as defined in Rule 902 in Regulation S under the Securities Act of 1933, of the United States of America;<sup>12</sup>

**‘Valuation Date’** means any date at which the Current Value of the Trust Fund is ascertained; and

**‘Value’** of an Authorised Investment means: subject to the following paragraphs in this definition, the value of any property is the market value, the net fair value, or other value appropriate to the nature of the property and the nature of the Trust and meeting the Accounting Standards from time to time. Property acquired must be valued at cost until revalued.

Subject to the above paragraph, the value of any Assets must be determined by:

- (a) a valuer who is independent of the Manager; or
- (b) a method determined by a valuer who is independent of the Manager; or

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<sup>11</sup> Definition of “Under” inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>12</sup> Definition of “U.S. Person” inserted pursuant to the Supplemental Deed dated 10 September 2012.

- (c) the Manager using any other appropriate method the Manager decides to adopt which is capable of being verified independently by a registered company auditor. The Manager may cause any Asset to be revalued whenever it sees fit and shall do so from time to time having regard to the nature of the Asset.

## **1.2 Construction**

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors, assigns and substitutes, including, without limitation, persons substituted by novation;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
  - (v) time is to local time in Melbourne, Australia;
  - (vi) '\$' or 'dollars' is a reference to the lawful currency of Australia; and
  - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions; and
- (d) a reference to this document includes all schedules, annexures and appendices referred to in it.

## **1.3 Headings**

Headings do not affect the interpretation of this document.

## **1.4 Registered Managed Investment Scheme**

- (a) The Trust has been established with the intention of becoming a registered managed investment scheme under Chapter 5C of the Corporations Act.
- (b) This document has been entered into as the constitution of the proposed registered managed investment scheme for the purposes of Chapter 5C of the Corporations Act.

## **2 THE TRUST**

### **2.1 Vesting of Assets**

- (a) The Assets of the Trust vest in the Manager on trust for the Unitholders for the term of the Trust.
- (b) The Trust is established and is to be maintained for the benefit of the Unitholders on and subject to the terms and conditions of this document.

### **2.2 Commencement**

- (a) This document commences on the Operative Date.
- (b) The Trust commences on the day ('**Commencement Date**') the Manager accepts the first application for issue of a Unit.

### **2.3 Name**

- (a) The Trust is called the Russell Investments Ventura Growth 90 Fund, previously known as the Ventura Growth 90 Fund.<sup>13</sup>
- (b) If the Manager ceases to hold office under this document, the newly appointed Manager will, on request by the retired Manager, amend this document so that the current or any former name of the retired Manager or any name similar to those names do not appear in the name of the Trust.

## **3 THE MANAGER**

### **3.1 Appointment**

The Manager:

- (a) declares it will hold the Assets on trust for the Unitholders; and
- (b) is appointed responsible entity of the Trust.

### **3.2 Management of Trust Assets**

The Manager must manage the Assets and perform its obligations in respect of the Trust in accordance with this document and the Applicable Standards.

### **3.3 Powers and Duties**

- (a) In relation to the Assets, the Manager has all the powers of a natural person who is the absolute and beneficial owner and may enter into contracts of all types including contracts of guarantee or indemnity, or both.

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<sup>13</sup> Clause 2.3(a) amended to replace the words "All Star High Growth Fund" with the words "Ventura Growth 90 Fund" pursuant to a Supplemental Deed dated 5 March 2012.



- (b) The Manager may exercise any of its powers in relation to the Trust as it considers necessary or desirable.
- (c) The Manager may exercise any of its powers in relation to the Trust notwithstanding that it may have a personal interest in the mode or result of exercising the power.
- (d) Without limiting the operation of this clause 3.3, and without prejudice to the Manager's obligations under this document, the Manager has the following powers in respect of the Trust:
  - (i) to make, purchase and sell or lend any Authorised Investment for cash or otherwise as the Manager determines; and
  - (ii) to borrow and incur liabilities and obligations of any kind either unsecured or secured and in no circumstances will the Manager be liable to satisfy any rights in respect of any matter undertaken in respect of this power out of any funds, property or assets other than the Assets.
- (e) The Manager need not perform any acts for which it considers it may not have a right of full indemnity from the Trust, other than to the extent it is required to act under the Applicable Standards.

### **3.4 AMIT powers<sup>14</sup>**

- (a) The Manager has, in addition to its other rights and powers provided for under the Deed:
  - (i) the power to make an election to determine the Trust to be an AMIT;
  - (ii) where there is more than one Class on issue, the power to make an AMIT Class Election; and
  - (iii) in respect of an AMIT Income Year, all of the powers and rights which are necessary or desirable to enable the Trust to:
    - (A) be eligible to apply the AMIT Regime;
    - (B) comply with the requirements of the AMIT Regime;
    - (C) be properly administered and operated under the AMIT Regime; and
    - (D) maintain equity between the Unitholders as a result of the operation of the AMIT Regime.
- (b) The Manager may under the AMIT Regime in respect of an AMIT Income Year:
  - (i) determine the taxable income of the Trust or each Class (as appropriate) for each Financial Year, including a determination of the taxable income of a

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<sup>14</sup> Clause 3.4 inserted pursuant to the Supplemental Deed dated 28 June 2017.

particular category, source or character for tax purposes. This includes all of the relevant Determined Trust Components and Trust Components;

- (ii) make an attribution of the taxable income of the Trust or each Class to Unitholders under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes. This includes all of each Unitholder's Determined Member Components and Member Components;
- (iii) make an alteration to the Manager's determination of the taxable income of the Trust or each Class for a Financial Year, or the Manager's attribution of the taxable income of the Trust or each Class to Unitholders under the AMIT Regime, including a determination or attribution of taxable income of a particular category, source or character for tax purposes. This includes making alterations to the relevant Determined Trust Components and Determined Member Components as a result of any Unders or Overs;
- (iv) determine whether to issue an AMMA Statement to any Unitholder of the Trust;
- (v) determine what information should be contained in any such AMMA Statement, and any other content of the AMMA Statement;
- (vi) issue an AMMA Statement to any Unitholder;
- (vii) amend an AMMA Statement that has been issued to Unitholders, and the basis on which the AMMA Statement issued to Unitholders will be amended;
- (viii) require a Unitholder to provide the Manager with an indemnity in respect of any Tax incurred by the Unitholder as a result of the application of the AMIT Regime. This includes any Tax paid by the Manager as a result of:
  - (A) the Trust or each Class having a shortfall for the purposes of section 276-405, 276-415, 276-420 or 276-425 of the Tax Act;
  - (B) the Trust or each Class having an excess for the purposes of section 276-410 of the Tax Act;
  - (C) the Trust or each Class having a trust component deficit relating to a tax offset under section 276-340 of the Tax Act; or
  - (D) the Manager making a deemed payment under section 12A-205 of the TAA 1953 to an entity covered by section 12-410 of the TAA 1953 or an entity that is not an Australian resident for the purposes of the Tax Act,
- (ix) require a Unitholder to provide the Manager with an indemnity in respect of any cost or expenses incurred by the Manager as a result of the Unitholder making a Member Objection Choice; and
- (x) determine how the Unitholder must indemnify the Manager, pursuant to an indemnity required by the Manager under clauses 3.4(b)(viii) or 3.4(b)(viii)(A) above.

### **3.5 Limitation of liability for AMIT Regime powers<sup>15</sup>**

To the maximum extent permitted by law including the Corporations Act, provided that the Manager was acting in the proper performance of its duties, the Manager does not incur any liability nor is it obliged to account to anyone (including any Unitholder or former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under clause 3.4, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

### **3.6 Clearly Defined Rights<sup>16</sup>**

Any power, right or discretion conferred on the Manager under the terms of this Deed will be read down or regarded as void to the extent necessary to ensure that the Trust will have Clearly Defined Rights.

### **3.7 Investment Strategy**

- (a) The investment strategy for the Trust ('**Investment Strategy**') will be the strategy set out in the Disclosure Document issued by the Manager.
- (b) The Trust Fund may be invested, in accordance with the Investment Strategy, in any Authorised Investment.
- (c) The Manager must inform Unitholders of any proposal to vary the Investment Strategy in a material manner by providing Unitholders with at least 30 Business Days' prior notice.

### **3.8 Retirement**

The Manager:

- (a) may retire as Manager of the Trust in accordance with the Applicable Standards; and
- (b) must retire as Manager of the Trust if it is removed from its office under the Applicable Standards.

### **3.9 Appointment of new Manager**

On the retirement or removal of the Manager, the new Manager must be appointed in accordance with the Applicable Standards.

### **3.10 Consequences of change of Manager**

If the Manager changes:

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<sup>15</sup> Clause 3.5 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>16</sup> Clause 3.6 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (a) the new Manager may settle with the former Manager the amount of any sums payable to the former Manager under this document; and
- (b) the former Manager must vest the Assets in the new Manager.

## **4 TRUST DIVIDED INTO UNITS**

### **4.1 Units**

- (a) The beneficial interest in the Trust will be divided into Units. Subject to the provisions of this document, each Unit represents an undivided part of the beneficial interest in the Trust.
- (b) The Manager will create and issue Units.
- (c) Units must be issued at the Issue Price.

### **4.2 Interest conferred by Units**

A Unit in the Trust does not confer an interest in any particular part of the Trust or in any particular Asset.

### **4.3 Consolidation and division**

The Manager may, subject to the Applicable Standards, consolidate or divide the Trust into any number of Units, but must maintain the same relativity between Unitholders as immediately before the consolidation or division.

### **4.4 Different classes of Units<sup>17</sup>**

- (a) The Manager may issue different classes of Units, or divide issued Units into different classes with special rights or restrictions and those rights and restrictions will prevail over any inconsistent provisions of this Deed.
- (b) For the avoidance of doubt, where different classes of Units are created, the Issue Price and Redemption Price of those Units, and their income and capital rights, will be adjusted to reflect fees, costs, Expenses, assets and liabilities properly referable to those classes.
- (c) The Manager may in accordance with the Corporations Act:
  - (i) determine that a part of the Trust Fund is properly attributable to a class of Units;
  - (ii) determine that a class specific liability is properly attributable to that class of Units (including any accrued fees and costs properly attributable to that class of Units);

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<sup>17</sup> Clause 4.4 deleted and replaced pursuant to the Supplemental Deed dated 5 March 2012.

- (iii) subject to the Corporations Act and any determination made in accordance with clause 4.4(c)(ii), attribute all other liabilities of the Trust among the classes of Units in issue in the following proportions:

***Current Value (Class)***

***Current Value (Trust)***

where:

*Current Value (Class) = the Current Value of the Trust Fund properly attributable to a class of Units*

*Current Value (Trust) = the total Current Value of the Trust Fund;*

- (iv) for a Non-AMIT Income Year, determine that the Distributable Amount of the Trust is properly attributable to each class of Units based on the proportion that the Current Value (Class) bears to the total Current Value of the Trust Fund; and
  - (v) for an AMIT Income Year, determine that income of the Trust is properly attributable to each class of Units based on the proportion that the Current Value (Class) bears to the total Current Value of the Trust Fund.
- (d) The Manager must determine the proportion of net proceeds of realisation under clause 15.3 that is properly attributable to each class of Units and each proportion attributable to each class of Units must be distributed pro rata to Unitholders holding Units in that class according to the number of Units in that class they hold.
  - (e) At any time, all Units in a class rank equally and are of equal value regardless of when the Units were issued.

## **5 UNITHOLDERS**

### **5.1 Limited entitlement of Unitholders**

Subject to this document, an Interest does not entitle a Unitholder to:

- (a) interfere with the powers of the Manager;
- (b) exercise any right or lodge any caveat or other notice affecting an Asset or claim any interest in respect of any Asset; or
- (c) require the transfer to it of any Asset.

### **5.2 Unitholders bound by document**

This document binds each Unitholder and all persons claiming through each of them as if each Unitholder was severally a party to this document.

### **5.3 Term of Unitholdership**

A person becomes the holder of a Unit ('Unitholder') on the date their name is recorded on the Register in relation to that Unit and ceases to be a holder of the Unit when their name is removed from the Register in relation to that Unit.

## **6 APPLICATION FOR AND ISSUE OF INTERESTS**

### **6.1 Application**

- (a) The Manager may seek and receive Applications in a form which it approves and which is in accordance with the Applicable Standards.
- (b) Subject to the Applicable Standards a person wishing to subscribe for an Interest may complete an application form (**'Application Form'**) and lodge it with the Manager in the manner determined by the Manager.
- (c) Unless the Applicable Standards provide otherwise, any Application Form must be accompanied by:
  - (i) the relevant Application Moneys; or
  - (ii) if the Manager proposes to issue the Interests in satisfaction of the whole or part of the purchase price of an Authorised Investment, by an effective transfer of the Authorised Investment to the Manager.
- (d) No Interests may be issued in the circumstances mentioned in clause 6.1(c)(ii) unless the person to whom the Interests are issued executes an Application Form, which Application Form may be conditional on due completion of the agreement under which the Authorised Investment is to be acquired by the Manager.
- (e) If the Manager acting on an Application does not receive clear title to the relevant Application Moneys or other consideration in lieu of Application Moneys, any issue of Interests in respect of the Application is void and the Manager may reverse any entries on the Register made in relation to the issue.
- (f) Application Moneys must be paid by cheque, bank draft, telegraphic or electronic transfer into an account nominated by the Manager (or such other method as the Manager may accept) which may be non-interest bearing.
- (g) The minimum amount of Application Moneys which may be lodged with an Application will be the amount determined by the Manager from time to time or as set by the Manager in a current Disclosure Document in relation to the Interests.
- (h) Notwithstanding any other provision in this document, every Application is deemed to contain an acknowledgment that:
  - (i) the Application is subject to the terms and conditions of this document; and
  - (ii) the Manager does not make any warranty or representation in connection with the Trust or as to the future price of Interests, or the income payable in respect of Units, other than as specifically made in any Disclosure Document in relation to the Interests issued.
- (i) Subject to the Applicable Standards, Applications may not be withdrawn unless the Manager agrees.

### **6.2 Discretion to accept or refuse**

- (a) The Manager may, subject to the Applicable Standards, reject any Application in whole or in part and will not be required to give any reason for the rejection.

- (b) The Manager must make the decision to accept or refuse any Application within the time required by the Applicable Standards, or if no time is so required, promptly after the receipt of the Application.
- (c) If an Application is rejected in whole or in part by the Manager, the Manager must promptly return the Application Moneys or proportional part of them to the applicant in full, or less reasonable expenses.

### **6.3 Receipt for Application Moneys**

- (a) The Manager may issue a receipt ('**Receipt**') for Application Moneys received.
- (b) A Receipt is not evidence of the issue of an Interest or title to it.

### **6.4 Fractional Interests**

- (a) Fractions of a Unit may be issued and redeemed or created by consolidation or division, as determined by the Manager.
- (b) The provisions of this Deed relating to Units and Unitholders apply to fractions of Units in the proportion which the fraction bears to one Unit.

### **6.5 Date of Issue**

Subject to the Applicable Standards, if the Application is accepted by the Manager, the Interests are to be issued on the date determined by the Manager.

### **6.6 Certificates**

Unless required by the Applicable Standards, the Manager will not issue certificates for Units.

### **6.7 Eligible Person<sup>18</sup>**

- (a) No application will be accepted from and no Units will be issued to any person other than an Eligible Person, unless otherwise determined by the Manager.
- (b) The Manager may determine that it will not permit a person:
  - (i) to become a Unitholder; or
  - (ii) to acquire or be issued with further Units,

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<sup>18</sup> Clause 6.7 inserted pursuant to the Supplemental Deed dated 10 September 2012.

unless the Manager has received an Eligible Person Statement (or such other document as the Manager may require) from that person.

## **7 ISSUE PRICE OF UNITS**

### **7.1 Issue Price**

Subject to clause 20.5, the Manager must issue Units at the Issue Price.<sup>19</sup>

### **7.2 Force Majeure**

- (a) The obligations of the Manager under clauses 7.1 and 8 are suspended to the extent that it is wholly or partly precluded from complying with its obligations under clauses 7.1 and 8 by force majeure.
- (b) Force majeure includes, but is not limited to fire, storm, flood, earthquake, explosion, war or other state of armed hostilities, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, act of God, act (including laws, regulations, disapprovals or failure to approve) of any government or agency whether national, municipal or otherwise or where the manager of a fund in which the Trust has invested has suspended redemptions from that fund.
- (c) If after a period of 7 Business Days the force majeure persists, the Manager subject to its obligations at law, and under the Applicable Standards has the right in its sole discretion to continue the suspension until the Manager determines it is in the interests of Unitholders as a whole to remove the suspension. An application to which this clause applies is taken to be received on the Business Day after the suspension ends.<sup>20</sup>

## **8 TRANSFER, TRANSMISSION AND REDEMPTION OF INTERESTS**

### **8.1 Transfer**

Subject to the provisions of this document and the Applicable Standards, an Interest may be transferred or transmitted.

### **8.2 Instrument of Transfer**

Subject to the Applicable Standards the Manager may at its sole discretion accept the transfer of an Interest in any form it considers acceptable or appropriate.

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<sup>19</sup> The words “, however Units may be issued at a price other than the Issue Price in the circumstances referred to in clause 7.2” in clause 7.1 deleted pursuant to a Supplemental Deed dated 30 April 2009.

<sup>20</sup> The sentence “An application to which this clause applies is taken to be received on the Business Day after the suspension ends.” inserted in clause 7.2(c) pursuant to a Supplemental Deed dated 30 April 2009.



### **8.3 Date of Transfer**

The transferor remains the holder of the Interest until the name of the transferee is entered in the Register.

### **8.4 Refusal to Register**

The Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.

### **8.5 Transmission**

The Manager is obliged only to recognise:

- (a) any surviving joint Unitholder or the legal personal representative of a Unitholder who is not subject to a legal disability; and
- (a) the person legally entitled to an Interest consequent on a bankruptcy, liquidation or administration of a Unitholder,

as having any rights in relation to that Unitholder's Interest in those circumstances.

### **8.6 Obligation to redeem**

- (a) While the Trust is liquid (as that term is defined in Part 5C.6 of the Corporations Act):
  - (i) A Unitholder (or a Unitholder's duly authorised agent approved by the Manager) may give the Manager a Redemption Notice specifying the number of Units to be redeemed or the amount of the proceeds which the Unitholder wishes to receive from the redemption.
  - (ii) A Redemption Notice may be in such form as the Manager determines and need not be in writing. The Manager may specify a minimum redemption amount in the Disclosure Document.
  - (iii) Subject to the following provisions of this clause 8, the Manager must, with effect from a date determined by the Manager (no later than 30 days after the next Valuation Date following receipt of the relevant Redemption Notice, redeem the required Units out of the Trust at the Redemption Price.
  - (iv) In lieu of the redemption of any Units, the Manager may, at its discretion, repurchase those Units out of its own funds at the Redemption Price.
- (b) While the Trust is in a non-liquid scheme (as that term is defined in Part 5C.6 of the Corporations Act), Unitholders are not entitled to withdraw from the Trust other than as provided in Part 5C.6 of the Corporations Act.

### **8.7 Suspension by Manager**

The Manager may suspend the redemption of Units for such period as it determines where the Manager reasonably considers that it is in the interests of the Unitholders to suspend redemptions or where it is impractical to calculate the current Unit Value for reasons including:

- (a) the closure of a securities exchange or trading restrictions on a securities exchange;

- (b) suspension or absence of a requirement to make payment or failure of a counterparty to make payment under a Derivative;
- (c) an emergency or other state of affairs;
- (d) the declaration of a moratorium in a country where the Trust has investments;
- (e) a closure of or restrictions on trading in the relevant foreign market;
- (f) where the manager of a fund in which the Trust has invested has suspended redemptions from that fund; or
- (g) the realisation of investments not being able to be effected at prices which would be realised if investments were realised in an orderly fashion over a reasonable period in a stable market.

Any Redemption Notice received, while the redemption of Units is suspended, or which was received but not redeemed prior to the commencement of the suspension, is deemed to be received on the first Business Day after the suspension ceases.

### **8.8 Other suspension of redemption obligation**

The Manager is not obliged to redeem Units in the Trust in any of the following circumstances:

- (a) the Manager believes it is in the best interests of the Unitholders in the Trust or in the class;
- (b) the person making the request holds more than the Minimum Redemption Amount in the Trust and the request relates to less than the Minimum Redemption Amount;
- (c) carrying out the redemption will result in the person making the request holding less than the Minimum Redemption Amount in the Trust;
- (d) the request is made while the Trust is being wound up; or
- (e) the request relates to Units which were issued by way of an offer that does not need disclosure to investors.

### **8.9 Staggering of Redemption Dates**

Despite any provision of this deed, the Manager may determine more than one Redemption Date for Units to be redeemed pursuant to a Redemption Notice and such Units will be redeemed over those days in such proportions as the Manager determines.

### **8.10 Funding of redemption**

To fund the redemption of Units, the Manager may:

- (a) apply or realise part of the Trust Fund; or
  - (b) obtain financial accommodation,
- or a combination of both.

### **8.11 Time for Payment of Redemption Amount**

Subject to clause 8.7 and clause 8.8, the Manager will pay the Redemption Amount in respect of any Units within 30 days of the Redemption Date.

### **8.12 Resale and redemption of Units by Manager**

- (a) Units repurchased out of the Manager's own funds will remain in existence and may be sold by the Manager or alternatively held by the Manager for its own benefit.
- (b) Where the Manager holds Units for its own benefit, it may redeem those Units out of the Trust. Clause 8.6 to 8.16 will apply, with the necessary changes, to that redemption.

### **8.13 Cancellation of Units**

Units which have been redeemed out of the Trust will be cancelled and the Manager will record the cancellation in the Register.

### **8.14 Transfer of specific assets**

The Manager may, in its absolute discretion, determine that the Redemption Amount payable to that Unitholder will be satisfied wholly or in part by the transfer of investments of the Trust at their Market Value. Expenses incurred in respect of the transfer must be paid by the Unitholder.

### **8.15 Compulsory redemption**

- (a) If the Current Unit Value of Units in the Trust Fund held by a Unitholder is less than the Minimum Redemption Amount, the Manager may redeem those Units at the Redemption Price on such Redemption Date as is determined by it with clause 8 applying to the redemption to the extent applicable.
- (b) The Manager may, in its absolute discretion, redeem or repurchase any Units held by a Unitholder if:
  - (i) holding those Units contravenes any applicable law;
  - (ii) the Unitholder is not or has ceased to be eligible to hold the Units;
  - (iii) the Unitholder does not provide information as and when requested by the Manager;
  - (iv) the Manager considers in its absolute discretion that the nature of the Unitholder may prejudice the Trust or a class of Units or the way in which the Trust or a class of Units is administered or taxed; or
  - (v) the Manager considers that such compulsory redemption is in the best interests of Unitholders as a whole, or of Unitholders in a class.
- (c) The Manager may, in its absolute discretion, redeem or repurchase any Units held by a Unitholder in a class if the Manager has determined to terminate that class of Units in accordance with clause 15.

### **8.16 Accrued income entitlement**

Unless the Manager otherwise determines, the Redemption Amount paid to a Unitholder will comprise capital only. The Manager may however determine<sup>21</sup> that the Redemption Amount comprises part capital and part Distributable Amount for the Financial Year in which the redemption occurs.

#### **8.16A Determination of accrued income entitlement<sup>22</sup>**

Where the Manager makes a determination under clause 8.16 in respect of a Unitholder or former Unitholder, the Manager must:

- (a) make the determination by reference to:
  - (i) where there is only one Class on issue:
    - (A) that component of the Distributable Amount of the Trust for the Distribution Period to date that has not been distributed at the time the Redemption Price in respect of the Redemption Notice is determined under clause 8.16 that the Manager determines is referable to:
      - (aa) capital gains; or
      - (ab) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and
    - (B) the increase in the component of the Distributable Amount of the Trust referred to in clause 8.16(a)(i)(A) as a result of the Manager realising sufficient Assets to satisfy the Redemption Notice; and
    - (C) the number of Units specified in the Redemption Notice and the number of Units in issue at the time the Redemption Notice is given; and
  - (ii) where there is more than one Class on issue:
    - (A) the component of the Distributable Amount of the Trust referred to in clause 8.16(a)(i)(A) that the Manager determines is referable to the Class for which the Unitholder has submitted the Redemption Notice; and

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<sup>21</sup> Clause 8.16 amended by removing the words “in its discretion” pursuant to the Supplemental Deed dated 31 March 2015.

<sup>22</sup> Clause 8.16A inserted pursuant to the Supplemental Deed dated 31 March 2015.

- (B) the increase in the component of the Distributable Amount of the Trust referred to in clause 8.16(a)(i)(A) as a result of the Manager realising sufficient Assets to satisfy the Redemption Notice; and
  - (C) the number of Units of the relevant Class or Classes of Units specified in the Redemption Notice and the number of Units in the relevant Class or Classes of Units at the time the Redemption Notice is given; and
- (b) notify the Unitholder or former Unitholder of the composition of the Redemption Amount.

#### **8.17 Components of Redemption Price and payment of accrued distributions<sup>23</sup>**

- (a) Where the Redemption Price paid to a Unitholder comprises a Distributable Amount and capital, the Unitholder will be presently entitled (within the meaning of the Income Tax Assessment Act) to the Distributable Amount component and the Manager must, in respect of a redemption during a Non-AMIT Income Year,<sup>24</sup> notify the Unitholder of the Distributable Amount component of the Redemption Price paid to them. This notice may be given at the time of redemption or repurchase but must in any case be given within 3 months' of the end of the Non-AMIT Income Year<sup>25</sup> in which the redemption or repurchase occurs.
- (b) Where a Unit is redeemed or repurchased after a right to a distribution, whether of income or capital, has accrued in respect of that Unit, that distribution may be paid to the holder of the Unit at the time of payment of the applicable Redemption Price notwithstanding that the distribution has not been paid at that time to holders of other Units.

#### **8.18 When a Unitholder ceases to be eligible to hold Units<sup>26</sup>**

Where:

- (a) a Unitholder advises the Manager that the Unitholder is not an Eligible Person; or
  - (b) the Manager forms the view that the Unitholder is not an Eligible Person;
- the Manager may request that the Unitholder:

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<sup>23</sup> Clause 8.17(a) deleted and replaced pursuant to the Supplemental Deed dated 31 March 2015.

<sup>24</sup> The words “, in respect of a redemption during a Non-AMIT Income Year,” inserted in clause 8.17(a) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>25</sup> The words “financial year of the Trust Fund” in clause 8.17(a) replaced with the words “Non-AMIT Income Year” pursuant to the Supplemental Deed dated 28 June 2017.

<sup>26</sup> Clauses 8.18, 8.19 and 8.21 (then clause 8.20) inserted pursuant to the Supplemental Deed dated 10 September 2012.

- (i) dispose of all Units held by the Unitholder within 30 days (or such longer period as the Manager may determine from time to time) to a person who is an Eligible Person; or
- (ii) if the Trust is liquid at the relevant time (as that term is defined in Part 5C.6 of the Corporations Act), lodge a Redemption Notice in respect of all of the Units held by the Unitholder, within 30 days (or such longer period as the Manager may determine from time to time).

#### **8.19 Failure to comply with request under clause 8.18**

Where a Unitholder fails to comply with a request under clause 8.18 and the Trust is liquid at the relevant time (as that term is defined in Part 5C.6 of the Corporations Act), the Manager may compulsorily redeem all of the Units held by the Unitholder. The Manager is deemed to have received and accepted a Redemption Notice from the Unitholder immediately before the next Valuation Date after the Manager determined to compulsorily redeem all of the Units held by the Unitholder.

#### **8.20 Satisfaction of AMIT indemnity<sup>27</sup>**

The Manager may redeem without a Redemption Notice some or all of the Units held by a Unitholder to satisfy any amount due to it by the Unitholder under clauses 3.4(b)(viii)(A), 3.4(b)(viii)(A) or 13.5 or under the AMIT Regime more generally. In these circumstances, the Manager will be taken to have received and accepted a Redemption Notice in respect of the Units for the purposes of this clause 8.

#### **8.21 Redemption under clauses 8.18 to 8.20<sup>28</sup> otherwise subject to clause 8**

The redemption of Units by the Manager pursuant to clauses 8.18 to 8.20<sup>29</sup> will be subject to, and in accordance with, the provisions of clauses 8.6 to 8.17.

### **9 VALUATION OF ASSETS**

- (a) The Manager is not to be regarded as having any special expertise in valuation. The Manager may at its discretion cause all or any Assets to be valued by an Adviser. The cost of any valuation will be an Expense.
- (b) The Manager may, at any time, ascertain the Current Value of the Trust Fund, but must do so at least once every month.
- (c) The most recently determined Current Value of the Trust Fund must be recorded by the Manager, but if the Manager reasonably believes that the value is inaccurate,

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<sup>27</sup> Clause 8.20 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>28</sup> The words “or 8.19” in clause 8.21 replaced with the words “to 8.20” pursuant to the Supplemental Deed dated 28 June 2017.

<sup>29</sup> The words “or 8.19” in clause 8.21 replaced with the words “to 8.20” pursuant to the Supplemental Deed dated 28 June 2017.

incomplete or out of date, then the Manager must redetermine the Current Value of the Trust Fund or have the Current Value of the Trust Fund revalued by an Adviser.

## **10 DISTRIBUTION OF INCOME AND CAPITAL**

### **10.1 Manager to receive income**

The Manager will collect all income of the Trust.

### **10.2 Payment of Expenses**

The Manager must in each Distribution Period cause all Expenses to be paid, in the first instance out of the Net Accounting Income<sup>30</sup> and then, if the income is insufficient, out of the balance of the Trust Fund.

### **10.3 Income of Trust**

The decision of the Manager as to whether any item is income or capital will be final.

### **10.4 Net Accounting Income**

**‘Net Accounting Income’** of the Trust in respect of any Distribution Period (the **‘applicable period’**) means the net income of the Trust for that period determined by the Manager by:

- (a) aggregating all income accrued or due or receivable or received (and not previously accounted for) on all Assets during the applicable period; and
- (b) deducting an amount estimated by the Manager to cover all disbursements, reimbursements, fees, duties and charges, costs, expenses and outgoings whatsoever due or incurred by the Trust or in connection with the operation, administration or management of the Trust or any Asset in respect of the applicable period including, without limitation:
  - (i) valuation fees, where appropriate;
  - (ii) interest on any unrepaid moneys borrowed for the Trust;
  - (iii) all amounts of reimbursements, fees, costs, disbursements, duties and charges and expenses payable under this document to the Manager or a Custodian, including any deferred payment;
  - (iv) the fees and expenses of the Auditor and compliance plan auditor in connection with the audit of the accounts of the Trust, the compliance plan or any other activity undertaken by the Auditor or the compliance plan auditor at the request of the Manager under this document;

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<sup>30</sup> The words “income of the Trust according to Accounting Standards” in clause 10.2 replaced with the words “Net Accounting Income” pursuant to a Supplemental Deed dated 25 June 2013.

- (v) all depreciation of Assets, if the Manager determines that depreciation should be charged against income;
- (vi) the cost of any stand-by or other financial facilities as the Manager determines to be desirable in the interests of the Trust;
- (vii) all amounts considered by the Manager to be necessary to provide for the amortisation of the costs of any leasehold property comprising an Asset;
- (viii) all costs and expenses incurred in repairing and maintaining Assets;
- (ix) all financial institutions duties and bank accounts debit tax incurred in or about the receipt, collection, acquisition, investment, disposal or distribution of money or other property under or in relation to the Trust (including without limiting the generality of the foregoing the receipt of Application Moneys);
- (x) all allowances for prepayments, doubtful debts and bad debts;
- (xi) all amounts allocated to a provision or reserve account;
- (xii) all Tax payable by the Manager in respect of the Trust;
- (xiii) all underwriting expenses incurred in respect of the issue of Interests; and
- (xiv) the amount of such other provisions and expenses as the Manager considers necessary to bring to account in order that the net income for the applicable period may fairly represent the results of the Trust for the relevant Distribution Period or which in the opinion of the Manager should otherwise be deducted.

#### **10.5 Net Taxable Income<sup>31</sup>**

**'Net Taxable Income'** for each Distribution Period means:

- (a) where the Distribution Period is within a Non-AMIT Income Year,<sup>32</sup> the amount which the Manager determines to be the "net income of the trust estate" for the Trust for the purposes of section 95 of the Tax Act for the Distribution Period

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<sup>31</sup> Clause 10.5 deleted and replaced pursuant to the Supplemental Deed dated 25 June 2013.

<sup>32</sup> The words "where the Distribution Period is within a Non-AMIT Income Year," inserted in clause 10.5(a) pursuant to the Supplemental Deed dated 28 June 2017.



determined as if the Distribution Period is a "year of income" for the purposes of the Tax Act, but disregarding:

- (i) any amounts the Manager determines are included in the "net income of the trust estate" of the Trust for the Distribution Period that represent either or both franking credits or foreign tax offsets; and<sup>33</sup>
  - (ii) any reduction in the net capital gain for the Trust for the Distribution Period which the Manager determines arises as a result of the discount capital gains concession;<sup>34</sup> and<sup>35</sup>
- (b) where the Distribution Period is within an AMIT Income Year, the amount determined by the Manager as being the minimum amount which, if distributed by the Manager in respect of the Financial Year, would prevent there being an adjustment to the tax cost base of any Units in the Trust under the AMIT Regime for the Financial Year, assuming that the Determined Member Components for each Unitholder for the Financial Year equal the Unitholder's entitlement to the distribution.<sup>36</sup>

#### **10.6 Power to accumulate amounts<sup>37</sup>**

- (a) The Manager may, for any Distribution Period within an AMIT Income Year, determine at any time prior to the end of the Distribution Period that all or part of the Net Taxable Income of the Trust for the Financial Year will be accumulated, provided that the Net Taxable Income has not already been distributed to Unitholders as an Entitlement or under clauses 8.16A and 8.17.
- (b) The effect of the Manager exercising its power to accumulate an amount under clause 10.6(a) is to exclude the relevant amount from the Distributable Amount for the Distribution Period.
- (c) For the purposes of identifying the Unitholders to whom any Trust Components that are reflected in the amounts accumulated under paragraph 10.6(a) are to be attributed under the AMIT Regime, any amounts accumulated are to be treated as having been accumulated for the benefit of Unitholders at the date specified by the Manager for these purposes at the time the Manager determined to accumulate the amount.
- (d) If the Manager mistakenly seeks to exercise its power to accumulate an amount in a Non-AMIT Income Year, the Manager's exercise of the power will be treated as

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<sup>33</sup> Clause 10.5(a) changed to clause 10.5(a)(i) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>34</sup> Clause 10.5(b) changed to clause 10.5(a)(ii) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>35</sup> The word "and" inserted in clause 10.5(a)(ii) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>36</sup> Clause 10.5(b) inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>37</sup> Clause 10.6 inserted pursuant to the Supplemental Deed dated 28 June 2017.

invalid and the relevant amount will be included in the Distributable Amount for the Distribution Period.

## 10.7 Determination of source

If a question arises as to whether any money or property constitutes Net Accounting Income or Net Taxable Income or not, or as to whether any loss or outgoing or any charge or provision (including an allowance) of any kind whatsoever is chargeable against Net Accounting Income or Net Taxable Income or not, the decision of the Manager will be final.

## 10.8 Distributable Amount

(a) **'Distributable Amount'** for each Distribution Period means the aggregate of:

- (i) the Net Taxable Income for the Distribution Period; and
- (ii) any additional amount the Manager considers appropriate for distribution in respect of the Distribution Period,<sup>38</sup>

but excluding, for any Distribution Period within an AMIT Income Year, any amounts that have been accumulated by the Manager pursuant to clause 10.6.<sup>39</sup>

(b) <sup>40</sup>For a Distribution Period that is within a Non-AMIT Income Year,<sup>41</sup> the Manager may determine that where the Net Accounting Income exceeds the Net Taxable Income in respect of a Distribution Period then it may characterise the excess into the following categories:

- (i) excess referable to amounts allowable as deductions pursuant to division 43 of the Income Tax Assessment Act 1997; and
- (ii) excess referable to other matters or causes.

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<sup>38</sup> Clause 10.8(a) deleted and replaced pursuant to the Supplemental Deed dated 25 June 2013.

<sup>39</sup> The words "but excluding, for any Distribution Period within an AMIT Income Year, any amounts that have been accumulated by the Manager pursuant to clause 10.6." inserted in clause 10.8(a) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>40</sup> Clause 10.8(b) deleted (then clause 12.7(b)) pursuant to the Supplemental Deed dated 25 June 2013.

<sup>41</sup> Replaced the letter "T" with the words "For a Distribution Period that is within a Non-AMIT Income Year, t" in clause 10.8(b) pursuant to the Supplemental Deed dated 28 June 2017.

- (c) For Distribution Periods that are within a Non-AMIT Income Year,<sup>42</sup> the Manager may establish or cause to be established the following reserve accounts:
- (i) a building allowance reserve;
  - (ii) an others reserve;
  - (iii) an asset revaluation reserve; and
  - (iv) a realisation reserve,
- and such other reserves as the Manager may from time to time determine (**'Reserve Account'**).
- (d) If so determined by the Manager, then for Distribution Periods that are within a Non-AMIT Income Year,<sup>43</sup> any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to the Reserve Account.
- (e) During Distribution Periods that are within Non-AMIT Income Years,<sup>44</sup> the Manager may distribute to the Unitholders from time to time by way of cash or other Assets of the Trust as at a date determined by the Manager an amount equal to so much of the net realised capital gains credited to that Reserve Account which is called the asset realisation reserve as the Manager may determine in the same manner as the Distributable Amount. The Manager must adjust the Reserve Account for the amount so distributed.
- (f) During Distribution Periods that are within Non-AMIT Income Years,<sup>45</sup> any amount standing to the credit of the Reserve Account may be distributed to Unitholders as cash under clause 10.10 or capitalised by a determination of the Manager. The capitalisation is to be effected by dividing the number of Units held by Unitholders by a proportion determined by the Manager which takes into account the number of Units held by the Unitholder, the amount to be capitalised and other matters in

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<sup>42</sup> Replaced the letter "T" with the words "For Distribution Periods that are within a Non-AMIT Income Year, t" in clause 10.8(c) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>43</sup> Inserted the words "then for Distribution Periods that are within a Non-AMIT Income Year," in clause 10.8(d) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>44</sup> Replaced the letter "T" with the words "During Distribution Periods that are within Non-AMIT Income Years, t" in clause 10.8(e) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>45</sup> Replaced the letter "A" with the words "During Distribution Periods that are within Non-AMIT Income Years, a" in clause 10.8(f) pursuant to the Supplemental Deed dated 28 June 2017.

relation to the particular Unitholder determined by the Manager. Following the capitalisation:

- (i) new fully paid Units will be created and the number of issued Units will increase accordingly;
  - (ii) the new Units so created will be issued to Unitholders in proportion to the number of Units held by each Unitholder as at the relevant Record Date;
  - (iii) the sum capitalised must be debited to the relevant Reserve Account and after that time be treated in the same manner as funds subscribed by Unitholders to the Trust; and
  - (iv) the additional Units created will rank for Distribution and for all other purposes from a date determined by the Manager.
- (g) The number of additional Units created under clause 10.8(f)<sup>46</sup> must not be less than the number calculated in accordance with the following formula:

$$\frac{A}{B}$$

Where:

- A** is the amount standing to the credit of the Reserve Account which is to be capitalised; and
- B** is the Issue Price applicable on the day upon which the capitalisation is to take place.

Each Unit created upon the capitalisation must be issued at the same price.

- (h) In addition to the Distribution of income referred to in this clause 10, the Manager may, at its absolute discretion, distribute from time to time to Unitholders the amount determined by the Manager representing capital arising from the net proceeds of realisation of Assets or representing other capital of the Trust howsoever arising. Any such amount will be Distributed by the Manager in cash to the Unitholders in the proportions being their Entitlement (determined as if the Distribution was a Distributable Amount).

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<sup>46</sup> Reference to clause 10.7(f) replaced with reference to clause 10.8(f) pursuant to the Supplemental Deed dated 28 June 2017.

## **10.9 Apportionment and distribution of Income categories**

The Manager may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unitholder.

## **10.10 Deemed Receipt**

If any income is received at such a time that it is in the opinion of the Manager not practicable to include it in the Net Accounting Income for the Distribution Period in which it is entitled to be received, that income may be treated by the Manager as having been received in the next Distribution Period.

## **10.11 Distribution**

- (a) Subject to the terms of issue of any Units, the Distributable Amount for each Distribution Period must, subject to clause 10.8(d),<sup>47</sup> be credited to an account for that purpose ('**Distribution Account**').
- (b) After payment of all Taxes payable by the Manager in respect of the Distributable Amount or in respect of the Entitlement of the Unitholder, the Manager must distribute the Distributable Amount to Unitholders on the Record Date for determining Entitlements for that Distribution Period, in proportion to the number of Units of which they are the registered holders at such time.

## **10.12 Present entitlement to Distributable Amount**

Unitholders will be presently entitled (within the meaning of the Tax Act) to the Distributable Amount for a Distribution Period on the last day of that period in the proportions determined according to clause 10.11.

## **10.13 Time for Distribution**

The Unitholder's Entitlement must be distributed by the Manager to Unitholders no later than the applicable Distribution Date.

## **10.14 Ranking for Distribution**

Except where the Manager has determined a different basis on which Units will rank for Distribution in accordance with clause 10.8(f)(iv),<sup>48</sup> all issued Units will rank for Distribution equally.

## **10.15 Reinvestment of Entitlement**

- (a) The Manager may invite Unitholders to reinvest their Entitlement by way of Application for additional Units. The terms of any such invitation will be determined

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<sup>47</sup> Reference to clause 10.7(d) replaced with reference to clause 10.8(d) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>48</sup> Reference to clause 10.7(f)(iv) replaced with reference to clause 10.8(f)(iv) pursuant to the Supplemental Deed dated 28 June 2017.

by the Manager, subject to the Applicable Standards. Any invitation may be withdrawn or varied by the Manager.

- (b) The number of Units to be issued will be calculated as if the Entitlement comprised Application Moneys, so that the number of Units to be issued will be the number calculated by dividing the amount of the Entitlement of that Unitholder by the Issue Price of those Units, calculated on the date the Manager determines the reinvestment should be effected.

#### **10.16 Attribution of income under AMIT Regime - basis for attribution<sup>49</sup>**

- (a) For any AMIT Income Year, the Manager must, following the end of the Financial Year, attribute all of the Trust Components and Determined Trust Components of the Trust, or each Class in the Trust where there is an AMIT Class Election in force, to the Unitholders or former Unitholders under the AMIT Regime.
- (b) The Manager undertakes to perform attribution under clause 10.16(a) in accordance with the following principles:
  - (i) the amount of each Unitholder's or former Unitholder's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the units in the Trust held by the Unitholder or former Unitholder having regard to the provisions of this Deed;
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this Deed and any other documents that constitute Constituent Documents for the Trust;
  - (iii) the Manager must not attribute any part of a Determined Trust Component to a Unitholder or former Unitholder because of the tax characteristics of the Unitholder or former Unitholder; and
  - (iv) if there is more than one Class on issue in the Trust and the Manager elects for each Class on issue in the Trust to be a separate AMIT under the AMIT Regime, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 10.16(a).
- (c) Subject to clause 10.16(a) but without limiting the generality of paragraph 10.16(b), the Manager must attribute in respect of an AMIT Income Year:
  - (i) to each Unitholder or former Unitholder, so much of the Determined Trust Components of the Trust or the relevant Class (where there is an AMIT Class Election in effect) as are reflected in any Entitlements under clause 10.11 or entitlements to Distributable Amount under clauses 10.17(a) and 8.17 that

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<sup>49</sup> Clause 10.16 inserted pursuant to the Supplemental Deed dated 28 June 2017.

the Unitholder or former Unitholder has become entitled to during the Financial Year; and

- (ii) to each Unitholder or former Unitholder of the Trust at a time or times specified in clause 10.6(c) ('**Relevant Time**'), so much of the Determined Trust Components of the Trust or the relevant Class (where there is an AMIT Class Election in effect) for the Financial Year as the Manager reasonably determines are reflected in any Entitlements that the Unitholder or former Unitholder would have become entitled to at the Relevant Time. if the Relevant Time was the end of a Distribution Period and the amount accumulated under clause 10.6(a) were the Distributable Amount for that Distribution Period.

#### **10.17 Attribution of income under AMIT Regime -AMIT Class Election<sup>50</sup>**

Where there is an AMIT Class Election in effect, and without limiting the generality of clause 10.16:

- (a) in calculating the Determined Trust Components of each Class, the Manager must take into account the terms of issue of Units of that Class; and
- (b) the Manager must only attribute Determined Trust Components of a particular Class to Unitholders of that Class (and not any other Class).

#### **10.18 Attribution of income under AMIT Regime- Unitholder objections<sup>51</sup>**

If a Unitholder or former Unitholder makes an objection or proposed objection in relation to how the Manager attributes the Trust Components and Determined Trust Components of the Trust or a particular Class (where there is an AMIT Class Election in effect) under the AMIT Regime for an AMIT Income Year:

- (a) the Unitholder or former Unitholder must:
  - (i) provide the Manager with written notice of the Unitholder's or former Unitholder's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
  - (ii) include, in the notice provided to the Manager, a summary of the reasons why the Unitholder or former Unitholder considers the attribution to be inappropriate;
  - (iii) provide to the Manager any information the Manager reasonably requests in relation to the Unitholder's or former Unitholder's objection or proposed objection and proceeding in relation to the objection;
  - (iv) consent to the Manager becoming a party to any proceedings with the Commissioner of Taxation relating to the objection;

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<sup>50</sup> Clause 10.17 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>51</sup> Clause 10.18 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (v) indemnify the Manager against all costs and liabilities incurred by the Manager as a result of the objection or proposed objection; and
  - (vi) do, or omit to do, any other such acts, matters or things as the Manager reasonably requests in order to appropriately protect the interests or rights of other Unitholders or former Unitholders of the Trust in relation to the objection, proposed objection or any proceedings arising in relation to the objection;
- (b) the Manager may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Unitholders or former Unitholders of the Trust to be protected, including in dealings with the Commissioner of Taxation; and
  - (c) the Manager may amend its attribution of income for tax purposes to Unitholders based on the Manager's determination of what attribution is appropriate, and take such actions as the Manager determines is necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Unitholders.

### **10.19 Unders/Overs<sup>52</sup>**

The Manager must address any Unders or Overs that arise in respect of an AMIT Income Year in accordance with the AMIT Regime. Subject to the Corporations Act, the Manager is not liable to any Unitholder or former Unitholder with respect to how it addresses any Unders or Overs provided that the Manager addresses them in accordance with the AMIT Regime and irrespective of whether any choices made by the Manager results in a different attribution outcome for the Unitholder than if the Manager had not made the choice, or had made the choice in a different way.

### **10.20 Liability<sup>53</sup>**

To the maximum extent permitted by law, provided that the Manager was acting in the proper performance of its duties, the Manager does not incur any liability, is not obliged to account to anyone (including any Unitholder or former Unitholder) and is not liable for any loss or damage to any Unitholder or former Unitholder:

- (a) as a result of the exercise of any discretion or power under this clause 10, to the extent that the exercise of the discretion or power is necessary for, or incidental to the Trust being operated in a manner permitted by the AMIT Regime, or is exercised under the AMIT Regime in respect of an AMIT Income Year; or
- (b) in respect of any defemination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for tax.

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<sup>52</sup> Clause 10.19 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>53</sup> Clause 10.20 inserted pursuant to the Supplemental Deed dated 28 June 2017.



## **11 REGISTERS**

- (a) The Manager must keep a register of Unitholders (a 'Register') and record in each Register such information as is required by the Applicable Standards.
- (b) Except as required by the Applicable Standards, the Manager is not required to record notice of any trust or equitable interest on any Register, and may treat the registered holder of a Unit as the absolute owner of the Unit for all purposes. The Manager may at its discretion agree to record an interest or lien in relation to Units where requested to do so by the Unitholder holding those Units.
- (c) The recording of a person's name on a Register in relation to Units is the sole evidence of title to those Units.

## **12 AGENTS AND ADVISERS**

### **12.1 Agents**

The Manager may appoint any person as its agent ('**Agent**') with such duties, powers, authorities and discretions as it thinks fit, including the power to sub-delegate its authority. The Manager is liable for the acts or omissions of any Agent as if they were the acts or omissions of the Manager. The remuneration of an Agent will be fixed by the Manager and, subject to clause 14.7 is payable as an Expense. Nothing in this clause prevents the Manager from paying the Agent from its own fee.

### **12.2 Advisers**

The Manager may appoint any valuer, solicitor, barrister, accountant, surveyor, engineer, broker, consultant, underwriter or any other adviser ('**Adviser**') necessary, usual or desirable to enable the Manager to be properly advised in performing its functions concerning the Trust. The remuneration of an Adviser will be fixed by the Manager and, subject to clause 14.7, payable as an Expense.

### **12.3 Custodian**

Without limiting clause 12.1, the Manager may appoint a custodian ('**Custodian**') in respect of any Asset having such powers as it sees fit, including the power to appoint a sub-custodian. The appointment will be in such form as the Manager determines, having due regard to the Applicable Standards, and may include provisions to protect and assist those dealing with the Custodian. The Manager is liable for the acts or omissions of any Custodian in relation to any Asset as if they were the acts or omissions of the Manager. The remuneration of the Custodian will be fixed by the Manager and, subject to clause 14.6, payable as an Expense.

### **12.4 Associates**

Subject to the Applicable Standards, the Manager and any Associate may:

- (a) act for other persons in a similar capacity to which it acts under this document or in any other capacity;
- (b) hold Interests;
- (c) except in its capacity as Manager, act for or represent individual Unitholders;
- (d) buy Assets in its own right or any other capacity and sell any assets held by it in its own right or in any other capacity to the Trust; and

- (e) deal with each other.

## **13 INDEMNITIES**

### **13.1 Indemnification**

The Manager is indemnified out of the Trust Fund for all expenses, losses and liabilities (whether actual, contingent, prospective or otherwise) incurred, arising out of or in connection with acting in connection with the Trust or in connection with any of the matters listed in clause 13.2. This indemnity:

- (a) is without prejudice to any indemnity allowed by law;
- (b) survives the termination of this document; and
- (c) may be claimed from the Assets,

but the indemnity is not available where the indemnity is not permitted under the Applicable Standards.

The Manager will have a lien on and may use the Assets for the purpose of this indemnity and generally for the payment of all legal and other costs, charges and expenses of administering or winding up the Trust and otherwise properly performing its duties in relation to the Trust.

### **13.2 Liability is limited**

Subject to the Applicable Standards, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Manager will not be liable to any person 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 Fund, including but not limited to liability by reason of:

- (a) the Assets not maintaining or realising any specific value, price or reserve or yielding any specific return;
- (b) not exercising any power which is reasonably impracticable to exercise;
- (c) making any payment to any person in good faith, even if such payment ought or need not have been made;
- (d) the acts, omissions or default of any person (including any Adviser);
- (e) acting in good faith on the advice or opinion of or information obtained from, any person (including any Adviser);
- (f) the misconduct, mistake, oversight or error of judgment of any person (including any Adviser);
- (g) any act performed or omission made by it in reliance on any document or information which was reasonably believed by it to be accurate, genuine, properly executed or executed by a person with appropriate authority;
- (h) performing any act or making any omission in accordance with a resolution passed at a Unitholders' meeting;
- (i) waiving, exercising, not exercising or delay in the exercise of any function by another person; or

- (j) liability attaching to any property accepted from any Unitholder.

Without limiting any other provision of this Deed and for the avoidance of doubt, the Manager is indemnified and is to be kept indemnified on a full indemnity basis and is entitled to pay or to be paid or reimbursed out of the Trust Fund under clauses 13.2(a) to (j) (inclusive) in respect of, or in connection with, any tax or other liability or cost which it may pay or incur pursuant to Divisions 275 or 276 of the Income Tax Assessment Act or pursuant to Schedule 1 of the Taxation Administration Act 1953 (as amended) in properly performing or exercising any of its powers, duties, rights or obligations in connection with the Trust Fund or the Unitholders or as a consequence of any act or omission of any Unitholder.

The rights of indemnity provided in this clause 13.2 shall continue in favour of the Manager after it has ceased to be Manager to the Trust.

### **13.3 Liability of Unitholders is limited**

- (a) A Unitholder will not, by virtue of being a Unitholder, be liable to make any payment to the Manager other than amounts owing under clause 13.5.<sup>54</sup>
- (b) Except where clause 13.5 applies,<sup>55</sup> no Unitholder will be under any obligation to indemnify the Manager or any creditor of either of it for any liabilities in connection with the Trust.

### **13.4 No agency or partnership**

The relationship between a Unitholder and the Manager is not one of agency or partnership.

### **13.5 Right of indemnity for tax – AMIT<sup>56</sup>**

- (a) Without limiting the generality of clause 13.1, each Unitholder is required to indemnify the Manager for:
  - (i) any Tax payable by the Manager for an AMIT Income Year in the circumstances contemplated in clause 3.4(b)(viii) and / or clause 3.4(b)(ix) which the Manager reasonably determines relates to the Unitholder, Units held by the Unitholder, or an attribution of taxable income made to the Unitholder; and
  - (ii) any other costs, expenses or liabilities incurred by the Manager as a result of being liable to such Tax, and claiming on the indemnity provided by the Unitholder under clause 13.5(a)(i),

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<sup>54</sup> The words “other than amounts owing under clause 13.5” inserted in clause 13.3(a) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>55</sup> The letter “N” with the words “Except where clause 13.5 applies, n” in clause 13.3(b) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>56</sup> Clause 13.5 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (b) The Manager may prescribe particular terms and conditions which apply in the event that the Manager is entitled to be indemnified by a Unitholder under this clause 13.5. or under the AMIT Regime for an AMIT Income Year.
- (c) Each Unitholder agrees that the Manager may, if it is entitled to be indemnified by the Unitholder under clause 13.5, or under the AMIT Regime for an AMIT Income Year, undertake the following actions in order to satisfy that indemnity:
  - (i) deduct from any amounts owing to the Unitholder the aggregate of any amounts which the Manager is entitled to be indemnified under clause 13.5, or under the AMIT Regime; and
  - (ii) compulsorily redeem such number of Units held by the Unitholder which the Manager reasonably determines is sufficient to cover the amounts which the Manager is entitled to be indemnified under clause 13.5, or under the AMIT Regime.

## **14 FEES AND EXPENSES**

### **14.1 Management fee**

- (a) The Manager is entitled to receive out of the Trust Fund a management fee calculated at the rate of 2% per annum of the Current Value of the Trust Fund, inclusive of the net effects of GST.
- (b) The Manager's management fee is calculated and accrues daily and must be paid within 30 days after the end of each Quarter in arrears.

### **14.2 Performance fee**

#### **(a) Rate**

The Manager is entitled to receive out of the Trust Fund a performance fee calculated at the rate of 25% per annum of the Fund Performance as calculated under clause 14.2(c), inclusive of the net effects of GST.

The Manager's performance fee is calculated daily ('**calculation period**') and accrues daily and must be paid within 30 days after the end of each Quarter in arrears. The Manager may pay the performance fee from the Trust Fund directly to any investment manager appointed by the Manager as its agent under clause 12.1.

#### **(b) General**

At the end of each calculation period, the Manager will determine the Fund Performance.

If at the end of a calculation period the Fund Performance is a negative number, then subject to this clause no performance fee is payable to the Manager and no further performance fee will accrue until the full amount of the negative has been made up by the Fund Performance.

If the Manager appoints a new investment manager to replace an existing investment manager, the performance fee calculation will be reset at zero on the date the new investment manager commences managing the Trust.

Otherwise the Manager is entitled to receive out of the Trust Fund the performance fee as calculated under this clause.

(c) **Defined Terms**

In clauses 14.1 and 14.2 the following definitions apply:

**Fund Performance:**

*Fund Performance = Fund Return – Benchmark Return)% × Value of the Trust Fund*

**Fund Return:**

$$Fund\ Return = \frac{F_e}{F_s} \times \frac{100}{1}$$

Where:

$F_e$  = the Current Value of the Trust Fund calculated as at the end of the calculation period.

$F_s$  = the Current Value of the Trust Fund calculated as at the start of the calculation period.

**Benchmark Return:**<sup>57</sup>

$$\frac{B_e - B_s}{B_s} \times \frac{100}{1}$$

Where:

$B_e$  = the combined levels of an appropriate composite benchmark made up of recognised benchmarks used for each of the various asset classes held by the Trust (or equivalent replacement index) at the end of the calculation period.

$B_s$  = the combined levels of an appropriate composite benchmark made up of recognised benchmarks used for each of the various asset classes held by the Trust (or equivalent replacement index) at the start of the calculation period.

**Value of the Trust Fund:**<sup>58</sup>

Value of the Trust Fund = on any date the amount derived by deducting from Total Tangible Assets the amount equal to the fee of any investment

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<sup>57</sup> Clause 14.2(c) amended by replacing the words “MSCI World Index” with the words “an appropriate composite benchmark made of recognised benchmarks used for each of the various asset classes held by the Fund” wherever the words “MSCI World Index” appeared in clause 14.2(c), pursuant to the Supplemental Deed dated 5 March 2012.

<sup>58</sup> Definition of “Value of the Trust Fund” deleted and replaced pursuant to the Supplemental Deed dated 5 March 2012.

manager appointed by the Manager under clause 14.1 (excluding the performance fee calculated under this clause) and if the Manager so determines, also deducting the amount equal to any expenses and liabilities which may be incurred in connection with the Trust.

**Quarter** means each 3 month period ending on the last day of March, June, September and December each year.

### **14.3 Reimbursement of costs, charges and expenses**

The Manager will be paid or reimbursed on a full indemnity basis out of the Trust for all expenses and liabilities which the Manager may incur in connection with the Trust or in performing its obligations or exercising its powers under this deed including any expenses and liabilities connected with:

- (a) preparation, postage, electronic transfer and the like of cheques, certificates, investment advices, accounts, distribution statements, and other communications sent to one or more Unitholders;
- (b) establishment and maintenance of registers and accounting records;
- (c) convening and holding any meetings;
- (d) the acquisition, custody, management, maintenance, valuation or disposal or attempted or proposed acquisition or disposal of or any other transaction in relation to investments of the Trust and the investigation and research of markets including travel and accommodation expenses, investment or portfolio manager's fees and advisors' and consultants' fees incurred in carrying out the functions of the Manager, taxes, and rates;
- (e) preparation and auditing of accounts and preparation of taxation returns;
- (f) taxes (including any goods and services tax), rates, charges (including bank charges), duties, and other imposts which are or may be imposed on or about the performance or exercise of the duties and powers of the Manager and otherwise in respect of the Trust;
- (g) establishing the Trust and any restructuring of the Trust including costs of preparation of this deed and any supplemental deed and the cost of legal, accounting, tax, financial and other services;
- (h) retaining delegates, custodians, agents, investment or portfolio manager, economists, researchers, valuers, advisers, brokers, underwriters, contractors, barristers, solicitors, experts and other persons including members of any Compliance Committee (including fees, brokerage and commissions);
- (i) developing, operating and maintaining computer hardware, software and other equipment;
- (j) all insurance premiums and incidental costs (including the Manager's professional indemnity insurance costs) referable to the Trust (including any Compliance Committee, its investments and the Manager);
- (k) any fees, costs or expenses incurred by the Manager in complying with, or the consequences of, any regulatory requirements (for example, the Applicable

Standards) in connection with the Trust including costs associated with converting or restructuring the Trust, Unitholder meetings, amending this Deed, preparing constitutions and compliance plans, compliance committees, audits, licences and scheme registration;

- (l) the issue, redemption and transfer of Interests, including the preparation, registration, promotion and distribution of any Disclosure Document or other offer document;
- (m) promoting the Trust to, or communicating with, Unitholders, potential investors and their advisers including preparation, registration, printing, promotion and distribution of any prospectus or offer document;
- (n) Unitholder complaints resolution, including membership of external bodies and the costs of considering and responding to Unitholder complaints;
- (o) retaining delegates, custodians, agents, investment or portfolio managers, economists, researchers, valuers, advisers, brokers, underwriters, contractors, barristers, solicitors (including solicitors' costs on a full indemnity basis) and other persons retained in the exercise of their powers or the discharge of their duties;
- (p) operation and maintenance of computer hardware and software and other equipment;
- (q) development of computer hardware and software and other equipment;
- (r) any court proceedings, arbitration or dispute and obtaining legal advice;
- (s) termination of the Trust and the retirement or removal of the Manager and the appointment of another person as Manager;
- (t) the Compliance Committee established by the Manager in connection with the Trust (if any) including any fees paid to or insurance premiums in respect of Compliance Committee members;
- (u) while there is no Compliance Committee, any costs and expenses associated with the Board carrying out the functions which would otherwise be carried out by a Compliance Committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act; and
- (v) complying with any law, and any request or requirement of ASIC.

#### **14.4 Payments to Associates**

Payments under clause 14.3 may be made to an Associate of the Manager.

#### **14.5 Waiver of fees**

The Manager may accept lower fees than it is entitled to receive under this deed, or may defer payment for any period. The Manager may do so in relation to Unitholders generally or, if and to the extent permitted by the Corporations Act (including any instrument of relief granted by ASIC), based on bands, tiers, classes of Units or criteria nominated by the Manager. Where payment is deferred, the fee accrues daily until paid.

## **14.6 Goods and Services Tax**

If any Supply made by the Manager under this Trust or any variation to it is a Taxable Supply:

- (a) then in addition to any amount or consideration expressed as payable to the Manager elsewhere in this deed, but subject to issuing a valid Tax Invoice, the Manager shall be entitled to recover from the Trust an additional amount on account of GST, such amount to be equal to the amount of the Manager's GST liability in respect of each Supply and shall be recoverable at the same time as the amount or consideration is payable for such Supply. This clause does not apply to Supplies in respect of which the relevant fees are expressed as GST inclusive in this deed;
- (b) the Manager and the Unitholders acknowledge and agree that each Supply made by the Manager under this deed is made:
  - (i) on a progressive or periodic basis;
  - (ii) for consideration that is to be provided on a progressive or periodic basis; and
- (c) each progressive or periodic component of the Supply is to be treated as a separate Supply.

## **14.7 Expenses**

- (a) All Expenses properly incurred in respect of the Trust will be paid from the Assets of the Trust although the Manager may pay any such Expense and reimburse itself from the Assets.
- (b) The Manager is not entitled to reimburse itself for any Expense not incurred in the proper performance of its duties in connection with the Trust.
- (c) The Manager may following consultation with the Auditor amortise expenses incurred by it on behalf of the Trust.

## **14.8 Rebate as fees**

The Manager may agree a rebate or other arrangements for payment of monies from the underlying manager to the Manager (which it may retain for its own benefit) and any such payment (which will be set off against fees the Manager is entitled to receive under clauses 14.1 or 14.2) will be disclosed in the relevant Disclosure Document or otherwise notified to investors to the extent required under the Corporations Act.

## **15 TERMINATION OF TRUST**

### **15.1 Termination of Trust**

The Trust terminates on the earliest date ('**Termination Date**') to occur of:

- (a) the date on which a Unitholders' meeting passes a resolution in accordance with the Applicable Standards directing the Manager to wind up the Trust;
- (b) the date on which the court makes an order in accordance with the Applicable Standards directing the Manager to wind up the Trust;



- (c) the date on which a Unitholders' meeting passes a resolution in accordance with the Applicable Standards to remove the Manager but does not, at the same meeting, pass a resolution in accordance with the Applicable Standards choosing a company to be a new Manager that consents to becoming the Trust's Manager;
- (d) if the Manager has suspended redemptions in accordance with clause 8 for a period of 120 consecutive days, and the Manager resolves it is in the best interests of Unitholders as a whole that the Trust be wound up;
- (e) the Manager complies with sections 601NC of the Corporations Act;
- (f) the date specified by the Manager as the date of termination of the Trust in a notice given to Unitholders; or
- (g) the day immediately preceding the 80th anniversary of the Commencement Date.

## **15.2 Procedures**

As soon as reasonably practicable after the Termination Date, the Manager will cause the Trust to be wound up in accordance with this document and the Applicable Standards.

## **15.3 Winding up**

After the termination of the Trust, the Manager must:

- (a) not accept any further Applications;
- (b) sell and realise the Assets;
- (c) apply the Assets of the Trust, or the proceeds of their realisation, to pay any Expenses (including Expenses associated with its remuneration, the remuneration of any Agent or Adviser employed in connection with the termination of the Trust and any other Expenses associated with the termination of the Trust);
- (d) subject to Class rights, distribute the remaining Assets or the net proceeds to Unitholders in proportion to the number of Units of which they are the registered holder on the Termination Date, but the Manager may retain Assets or their proceeds for contingent Expenses and liabilities; and
- (e) prepare or cause to be prepared accounts which correctly record and explain the winding up of the Trust, appoint a registered company auditor (within the meaning of the Corporations Act) to audit those accounts, and send a copy of the auditor's report to each Unitholder.

## **15.4 Postponement of Realisation**

The Manager is entitled to postpone the realisation of any of the Trust Fund for the time that it thinks is desirable so to do in the interests of the Unitholders or the interests of the Unitholders in the applicable class and will not be responsible for any loss or damage attributable to that postponement except if and to the extent expressly provided for in clause 13.2.

# **16 AMENDMENTS TO THIS CONSTITUTION**

## **16.1 Manager may amend**

If the Corporations Act allows, this Constitution may be amended:

- (a) by Resolution; or
- (b) by deed executed by the Manager.

If the Constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

## **16.2 Statutory requirements**

If the Corporations Act or any relief from the provisions of the Corporations Act granted by ASIC requires that this Constitution contains certain provisions, then 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 16.1 does not apply to provisions deemed by this clause 16.2 to be incorporated in the Constitution.

## **17 COMMUNICATIONS**

### **17.1 Service**

- (a) Communication between the Manager and Unitholders may be sent or given by any of the following methods as determined by the Manager in accordance with the Corporations Act and disclosed in the current Disclosure Document:
  - (i) given personally;
  - (ii) left at the other's address;
  - (iii) sent by email;
  - (iv) sent to the other's address by pre-paid mail;
  - (v) sent by facsimile to the other's facsimile number; or
  - (vi) delivered by any other means permitted under the Applicable Standards.
- (b) The address of a Unitholder is the address shown in the Register and, if joint holders, the address of the first named holder.
- (c) The address of the Manager is the address set out at the beginning of this document or any other address notified by the Manager to all Unitholders or contained in the current Disclosure Document.

### **17.2 Timing**

If a communication is given by:

- (a) post, it will be deemed received, if posted to an Australian address, 3 Business Days and in any other case 5 Business Days after posting;
- (b) facsimile, a report of the sender's machine confirming receipt will be prima facie evidence that the facsimile was received at the time shown on the report, provided such time shown on the report is within Business Hours, otherwise the facsimile will be deemed to have been received at 9.00am on the next Business Day; and
- (c) email, it will be deemed to be received at the time that the email was sent provided:
  - (i) it is sent to the correct email address; and
  - (ii) the sender does not receive notice the email has remained undelivered; and

- (iii) such time is within Business Hours,  
otherwise the email will be deemed to have been received at 9.00am on the next Business Day.

### **17.3 Signature on communication**

The signature to any communication by the Manager may be written, printed, stamped or produced electronically and the signature may be that of the Manager or of any director or secretary of the Manager.

## **18 MEETINGS**

### **18.1 Convening and conduct of meetings**

- (a) Subject to the Corporations Act, but without prejudice to this clause 18, meetings of Unitholders may be convened and conducted in such manner as the Manager determines, including requirements in relation to proxies and their use.
- (b) Accidental omission to give notice to, or the non-receipt of notice of meeting by, a Unitholder will not invalidate a meeting.
- (c) The chair may adjourn a meeting for any reason to such place and at such time as they think fit. Subject to the Corporations Act, adjournment of a meeting need not be notified to Unitholders.
- (d) The quorum for a meeting of Unitholders shall be 2 Unitholders at all times during the meeting present in person or by proxy together holding at least 10% by value of the Units in issue at such date prior to the meeting as determined by the Manager.
- (e) If a poll is demanded, it will be taken in such manner and at such time as the chair directs.
- (f) In the case of equality of votes, the chair shall have a casting vote.
- (g) In the case of joint Unitholders, any one of the joint holders may vote except on a poll, in which case the vote of the holder first named in the Register shall be counted to the exclusion of the remaining joint holder.

### **18.2 Use of technology at meetings**

- (a) In accordance with s252P(c) of the Corporations Act, the Manager may hold a meeting of Unitholders using virtual meeting technology that enables the Manager to conduct meetings without the need to be physically situated in a particular geographical location.
- (b) Subject to the Corporations Act, a meeting of Unitholders may also be convened at two or more venues, provided that the form of technology used provides the Unitholders participating at each venue the reasonable ability to participate in the meeting at the same time.
- (c) Where a meeting is held virtually or at two or more venues using any form of technology:
  - (i) a Unitholder participating in the meeting is taken to be present in person at the meeting;

- (ii) the provisions of this deed relating to meetings apply, so far as they can and with any necessary changes, to meetings held using that technology; and
  - (iii) the meeting is to be taken to be held at the place determined by the chair provided that at least one of the Unitholders present at the meeting was at the place for the duration of the meeting.
- (d) If the technology used in a meeting encounters a technical difficulty, whether before or during the meeting, which results in a Unitholder not being able to participate in any part of the meeting, the chair may, subject to the Corporations Act:
  - (i) allow the meeting to continue; or
  - (ii) adjourn the meeting either for a reasonable period of time as may be required to fix the technology or to such other date, time and location as the chair of the meeting considers appropriate.
- (e) To avoid doubt, where the chair has allowed the meeting to continue in accordance with clause 18.2(c)(i), any resolution passed at that meeting is valid.

### **18.3 Proxies**

- (a) An appointment of a proxy must be signed in such manner as the Manager requires.
- (b) The Manager may determine that proxies may be received less than 48 hours before the meeting.
- (c) No proxy is valid after the expiration of 12 months from the date of its execution.

### **18.4 Form and effect of resolutions**

- (a) A resolution passed at a meeting of Unitholders shall be binding on all Unitholders, whether or not present at the meeting. The decision of the chair on any matter shall be final.
- (b) If all Unitholders have signed a resolution, that resolution shall be deemed to have been passed by the requisite majority of Unitholders at a meeting of Unitholders on the day and at the time at which the resolution was last signed by a Unitholder. The resolution may consist of several documents in the same form, each signed by one or more Unitholders.

## **19 RESOLUTION OF DISPUTES**

### **19.1 Complaints Handling System**

The Manager shall establish a complaints handling framework that complies with the Applicable Standards.

### **19.2 Essential Elements**

The complaints handling process shall have the following characteristics:

- (a) **(Commitment)**. There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness)**. The complaints handling process shall recognise the need to be fair to both the complainant Unitholder and the Manager.

- (c) **(Resources)**. There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility)**. The complaints handling process shall be well publicised to Unitholders and staff of the Manager and shall include information to Unitholders about the right to complain.
- (e) **(Access)**. The complaints handling process shall be accessible to all Unitholders and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance)**. Assistance shall be available for Unitholders in a formulation and lodgement of complaint.
- (g) **(Responsiveness)**. Complaints shall be dealt with quickly and the Unitholders shall be treated courteously.
- (h) **(Charges)**. Complaints handling shall be at no charge to the particular complaining Unitholder. The Manager shall be entitled to be reimbursed for its costs from Trust assets in dealing with the particular complaints.
- (i) **(Remedies)**. The complaints handling process shall have the capacity to determine and implement remedies.
- (j) **(Data collection)**. There shall be appropriate systematic recording of complaints by Unitholders and their outcome.
- (k) **(Systematic and recurring problems)**. Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (l) **(Accountability)**. There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review)**. The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

### **19.3 Disputes between the Manager and Unitholders**

A Unitholder claiming that a dispute has arisen must notify the Manager giving details of the dispute in writing.

### **19.4 Best Efforts to Resolve the Dispute**

- (a) On receipt of a written or verbal notice of dispute from the Unitholder, the Manager shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Manager shall immediately investigate the complaint and if necessary correspond directly with the complainant Unitholder in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Unitholder finalise its investigation of the dispute and report in writing to the Unitholder the result of the dispute, including what avenues of appeal may be available.

- (d) If the Unitholder is dissatisfied with the determination of the dispute resolution officer then the Unitholder may refer the complaint to the Dispute Resolution Service.
- (e) The Manager is entitled to be reimbursed from the Assets its reasonable costs incurred in complying with this clause.

## **20 MISCELLANEOUS**

### **20.1 Further assistance**

The Manager and Unitholders must do all things reasonable required to effect, perfect or complete the provisions of this document and any matter contemplated by it.

### **20.2 Governing law and jurisdiction**

This document is governed by the laws in Queensland and the parties unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and the parties waive any right to object to any proceedings being brought in those courts.

### **20.3 Joint and several liability**

Obligations of two or more Unitholders bind them jointly and severally.

### **20.4 Severance**

- (a) If reading down a provision of this document would prevent the provision being invalid or voidable it must be read down to the extent that it is necessary and capable of being read down;
- (b) If notwithstanding clause 20.4(a), a provision of this document is still invalid or voidable:
  - (i) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words must be deleted; and
  - (ii) in any other case, the whole provision must be deleted,and the remainder of this document continues to have full force and effect.

### **20.5 Specified time**

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

- (a) applications for Units;
- (b) the issues of Units; or
- (c) Redemption Notices,

different times being applicable to different locations or methods of communication or payment. The times relevant to applications for Units, issues of Units and to Redemption Notices may differ.

## **20.6 Calculations**

Any calculation for the purposes of this Deed must be to the second decimal place of a cent or, in any case, as otherwise determined by the Manager from time to time.

## **21 PAYMENTS**

### **21.1 Money payable**

Money payable by the Manager to a Unitholder may be paid in any manner the Manager decides.

### **21.2 Cancel cheques**

The Manager may cancel cheques drawn by it that are not presented within six months subject to the Corporations Act. When such a cheque was drawn for a Unitholder, the money may be:

- (a) in the case of a Unitholder, reinvested in Units at the Issue Price prevailing at the next Valuation Date after the day the cheque is cancelled;
- (b) held by the Manager for the benefit of the Unitholder; or
- (c) paid by the Manager in accordance with applicable unclaimed money legislation.

This also applies where the Manager attempts to make a payment to a Unitholder by electronic transfer of funds and the transfer is unsuccessful three times. The Manager may then draw a cheque in favour of the Unitholder.

### **21.3 Joint Unitholders**

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

### **21.4 Deductions for Tax or other payments**

The Manager may deduct from any amount payable to a Unitholder or former Unitholder (or received from a Unitholder or former Unitholder) any amount of Tax or other payment (or an estimate of it) which the Manager reasonably believes it must or should deduct, in respect of that Unitholder or former Unitholder.

EXECUTED as a Deed in New South Wales