

## **ANNEXURE “A”**

### **CONSOLIDATED CONSTITUTION OF THE VENTURA HIGH GROWTH 100 FUND, TO BE KNOWN AS THE RUSSELL INVESTMENTS VENTURA HIGH GROWTH 100 FUND**

THIS IS THE CONSOLIDATED CONSTITUTION OF THE VENTURA HIGH GROWTH 100 FUND, TO BE KNOWN AS THE RUSSELL INVESTMENTS VENTURA HIGH GROWTH 100 FUND, ESTABLISHED BY DEED POLL DATED 1 DECEMBER 2007, AND INCORPORATING THE AMENDMENTS MADE BY SUBSEQUENT DEEDS DATED 19 DECEMBER 2007, 10 SEPTEMBER 2012, 25 JUNE 2013, 31 MARCH 2015 AND 28 JUNE 2017.

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**VENTURA HIGH GROWTH 100 FUND, TO BE KNOWN AS RUSSELL INVESTMENTS VENTURA HIGH  
GROWTH 100 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 14.2;

**‘Agent’** has the meaning provided in clause 14.1;

**‘AMIT’** has the meaning given to that word in the Tax Act;<sup>1</sup>

**‘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;

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

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

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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 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;
  - (d) other relevant legislation including any regulations made under it; and
  - (e) if the Trust is Listed, the Listing Rules and ASTC Settlement Rules,
- 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;

**‘ASTC Settlement Rules’** means the settlement rules of ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532;

**‘ASX’** means Australian Stock Exchange Limited ACN 009 624 691;

**‘ATO’** means the Australian Taxation Office;

**‘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;

**‘Certificated Bolding’** has the meaning provided in clause 10.2(a);

**‘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);

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



**‘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) Member 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 14.3;

**‘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;

**‘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;

**‘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;

**‘Dispose’** has the meaning provided in clause 24.1;

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

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

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**'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 12.8(a);<sup>5</sup>

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

**'Distribution Account'** has the meaning provided in clause 12.11(a);<sup>6</sup>

**'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 Members or specified in a Disclosure Document. Where the termination of the Trust Fund occurs during a Distribution Period, the last Distribution Period of the Trust Fund 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 Members of such changes;

**'Eligible Person'** means any person:<sup>7</sup>

- (a) other than a U.S. Person; or
- (b) other than a person that the Manager<sup>8</sup> has determined is not eligible to hold Units from time to time;

**'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;<sup>9</sup>

**'Entitlement'** means, in respect of a Unitholder, a portion of the Distributable Amount for a Distribution Period calculated in accordance with clause 12.11;<sup>10</sup>

**'Escrow Period'** has the meaning provided in clause 24.1;

**'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:

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<sup>5</sup> In the definition of "Distributable Amount", the words "clause 12.8(a)" replaced the words "clause 12.7(a)" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>6</sup> In the definition of "Distribution Account", the words "clause 12.11(a)" replaced the words "clause 12.10(a)" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>7</sup> Definitions of "Eligible Person" and "Eligible Person Statement" inserted pursuant to the Supplemental Deed dated 10 September 2012.

<sup>8</sup> In the definition of "Eligible Person", the word "Manager" replaced the words "Responsible Entity" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>9</sup> In the definition of "Eligible Person Statement", the word "Manager" replaced the words "Responsible Entity" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>10</sup> In the definition of "Entitlement", the words "clause 12.11" replaced the words "clause 12.10" pursuant to the Supplemental Deed dated 28 June 2017.

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- (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;<sup>11</sup>

**'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);

**'Foreign Members'** has the meaning provided in clause 7.2(b);

**'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 and each Option;

**'Investment Strategy'** has the meaning provided in clause 3.7(a);<sup>12</sup>

**'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 or, where the Trust is Listed and the Units are Officially Quoted, then the current market price (being the last sale price and if no sale then the last bid price) on the date of receipt (or deemed receipt) of the application, less any discount or adjustment permitted pursuant to clause 7<sup>13</sup>;

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<sup>11</sup> Definitions of "Financial Year" and "Financial Year Termination Date" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>12</sup> In the definition of "Investment Strategy", the words "clause 3.7 (a)" replaced the words "clause 3.4(a)" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>13</sup> In the definition of "Issue Price", the following words were inserted at the end of paragraph (b)(i), pursuant to the Supplemental Deed dated 19 December 2007: "or, where the Trust is Listed and the Units are Officially

- (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;

**'Listed'** means admitted to and not removed from the official list of ASX;

**'Listing Rules'** means the listing rules of ASX and any other rules of ASX which are applicable while the Trust is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver of ASX;

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

**'Member'** means each Unitholder and each Optionholder;

**'Member Component'** has the meaning given to that phrase in section 276-210 of the Tax Act;<sup>14</sup>

**'Member Liabilities'** means the liability of the Trust to the Member for their undivided interest in the Assets;

**'Member Objection Choice'** a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act;<sup>15</sup>

**'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 12.4;

**'Net Taxable Income'** has the meaning provided in clause 12.5;

**'Non-AMIT Income Year'** a Financial Year which is not an AMIT Income Year;<sup>16</sup>

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

**'Officially Quoted'** means official quotation by ASX;

**'Operative Date'** means the date of this document;

**'Option'** means an option to subscribe for a Unit;

**'Optionholder'** has the meaning provided in clause 5.3;

**'Ordinary Resolution'** means a resolution passed at a meeting of Members convened and held in accordance with the Applicable Standards by a majority of persons entitled to vote and voting at the

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Quoted, then the current market price (being the last sale price and if no sale then the last bid price) on the date of receipt (or deemed receipt) of the application, less any discount or adjustment permitted pursuant to clause 7".

<sup>14</sup> Definition of "Member Component" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>15</sup> Definition of "Member Objection Choice" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>16</sup> Definition of "Non-AMIT Income Year" inserted pursuant to the Supplemental Deed dated 28 June 2017.

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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>17</sup>

**'Partly Paid Unit'** has the meaning provided in clause 9.1(a);

**'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 10.7 (subject to clauses 10.8 to 10.10) 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 10.7.

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

**'Register'** has the meaning provided in clause 13(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 12.8(c);<sup>18</sup>

**'Resolution'** means:

- (a) a resolution passed at a meeting of Members in the Trust;
  - (i) on a show of hands, by the required majority of Members 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 Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members 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.

**'Restricted Interest'** has the meaning provided in clause 24.1;

**'Restriction Agreement'** has the meaning provided in clause 23.1;

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

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<sup>17</sup> Definition of "Over" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>18</sup> In the definition of "Reserve Account", the words "clause 12.8(c)" replaced the words "clause 12.7(c)" pursuant to the Supplemental Deed dated 28 June 2017.

**‘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 17.1;

**‘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 the amounts of the Issue Price of Partly Paid Units which has not then been paid, whether or not then due and payable;
- (e) the total of all prepaid expenses; and
- (f) 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 Fund 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;

**'Uncertificated Holding'** has the meaning provided in clause 10.2(b);

**'Under'** has the meaning given to that phrase in section 276-345 of the Tax Act;<sup>19</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 and for the sole purpose of this calculation, all Partly Paid Units are deemed to be fractional Units, where the fraction is the total paid on the Unit at the relevant time as a proportion of the Issue Price at which the Unit was issued. 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;

**'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>20</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
- (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:

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<sup>19</sup> Definition of "Under" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>20</sup> Definition of "U.S. Person" inserted pursuant to the Supplemental Deed dated 10 September 2012.

- (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**') this Deed is executed.

## **2.3 Name**

- (a) The Trust is called the Russell Investments Ventura High Growth 100 Fund, previously known as the Ventura High Growth 100 Fund.
- (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.
- (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>21</sup>**

- (a) The Manager has, in addition to its other rights and powers provided for under the constitution:
  - (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 Members 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 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;

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<sup>21</sup> Clause 3.4 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (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)(ix) above.

### **3.5 Limitation of liability for AMIT Regime powers<sup>22</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 above, 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>23</sup>**

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

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<sup>22</sup> Clause 3.5 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>23</sup> Clause 3.6 inserted pursuant to the Supplemental Deed dated 28 June 2017.

### **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 Members of any proposal to vary the Investment Strategy in a material manner by providing Members 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:

- (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 and the same relativity between the amount unpaid and the amount paid up on a Partly Paid Unit.

#### **4.4 Different classes of Units**

- (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);
  - (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 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.

#### **4.5 Rights Issue**

- (a) The Manager may, subject to clauses 7 and 8, Offer further Interests for subscription to all Members registered on a date determined by the Manager having due regard to the Applicable Standards.
- (b) A Member may renounce its entitlement in respect of any Interests Offered to it under clause 4.5(a) in favour of another person, unless the issue is expressed to be non-renounceable.

### **5 MEMBERS**

#### **5.1 Limited entitlement of Members**

Subject to this document, an Interest does not entitle a Member 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 Members bound by document**

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

#### **5.3 Term of Membership**

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

### **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 are 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).
- (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 Underwriting of Issue**

- (a) The Manager may determine that any issue of Interests be underwritten and all management fees, underwriting commissions, sub-underwriting fees, brokerage, handling fees and other amounts payable in connection with the underwriting (including where payable to any Associate of the Manager) will be paid out of the Trust Fund as an Expense.
- (b) The underwriter or its nominee may subscribe for such Interests in accordance with the relevant underwriting agreement at an Issue Price not less than that at which the Interests were Offered under the relevant Disclosure Document.

## **6.7 Certificates**

- (a) The Manager will issue certificates for Interests in accordance with the requirements of the Applicable Standards.
- (b) If the Applicable Standards do not require the issue of such certificates, the Manager may determine whether or not certificates will be issued for Interests.
- (c) Subject to the Applicable Standards, any certificate will not be evidence of title to the Interests.

## **6.8 Eligible Person<sup>24</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,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 22.5, the Manager must issue Units at the Issue Price, however Units may be issued at a price other than the Issue Price in the circumstances referenced to in clause 7.2, 7.3, 7.4, 7.5 and 8.1.

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<sup>24</sup> Clause 6.8 inserted pursuant to the Supplemental Deed dated 10 September 2012.



## 7.2 Rights Issues

- (a) Where:
  - (i) subject to paragraph (b), the Units are Offered to all Members on the Record Date and the Offers are made at substantially the same time;
  - (ii) all the Units Offered are in the same Class;
  - (iii) the Units are Offered for subscription at the same price; and
  - (iv) the amount of Units Offered to each Member is proportionate to the Unit Value of that Member's Units,

the Units may be issued at a price determined by the Manager, provided the price will be an amount not less than 85% of the Issue Price calculated at the close of the Business Day of the Offer or, if the Trust is Listed, at the close of the Business Day of the announcement of the Offer by the Manager to ASX.
- (b) If the Manager reasonably considers that it would be in the best interest of Members to exclude certain Members that are resident in a country outside Australia or, if the Trust is listed, outside Australia and New Zealand (**'Foreign Members'**) and not unfair to those Foreign Members, the Manager may sell the Units that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Units to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

## 7.3 Placements- Units Officially Quoted

- (a) This clause 7.3 does not apply in the circumstances referred to in clauses 7.2, 7.4, 8.1 and 12.8(g) or if it is not required by the Applicable Standards.
- (b) If the Trust is Listed, and the Units, or if the Units to be issued are in a Class of Units, Units of that Class have not been suspended from Official Quotation, where the Units are not issued to the Manager or an Associate of it, the Units may be issued at a price determined by the Manager, provided that where:
  - (i) the Units, together with any Interests issued within a period of 1 year prior to the date of the proposed issue (but excluding an issue approved or ratified by Members in accordance with the provisions of paragraphs (iii) to (viii)) would, immediately after the issue, comprise more than 15% of either all the Interests on issue or the Units in the same Class as the Units to be issued; or
  - (ii) the Price at which the Units are to be issued is less than 90% of the Issue Price calculated on the Business Day immediately preceding the date of issue of the Units,

the following conditions must be satisfied:

  - (iii) the Members approve the issue;
  - (iv) if the Units are in a particular Class, Unitholders in that Class approve the issue;

- (v) unless the Manager reasonably considers that the issue will not adversely affect the interests of Members in any other Class, Members in that other Class approve the issue;
- (vi) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
- (vii) an approval for the purposes of paragraphs (iii), (iv) or (v) is given by Special Resolution of the relevant Members where holders of at least 25% of the total Unit Value of all the relevant Units of Members entitled to vote on the question, vote on the question at the meeting; and
- (viii) for the purposes of the calculations referred to paragraph (vii), any vote of a person to whom the Units are to be issued, or any vote of an Associate of that person, must not be counted.

#### **7.4 Reinvestment Plan**

- (a) Where:
  - (i) under an arrangement the whole or any part of any money payable to a Unitholder under this document, by way of Distribution, is applied in payment for the subscription of Units;
  - (ii) all Units issued are of the same class or classes;
  - (iii) the price of all such Units of each class issued at substantially the same time is the same; and
  - (iv) subject to paragraph (b), all Unitholders may from time to time elect to participate in the arrangement as to the whole or some proportion of the distribution which is payable to the Unitholder,

the Units may be issued at a price determined by the Manager, provided the price will be an amount not less than 90% of the Issue Price calculated on the Business Day immediately after the Record Date for the relevant Distribution.
- (b) If the Manager reasonably considers that it would be in the best interest of Members to exclude Foreign Members and not unfair to those Foreign Members, the Manager may sell the Units that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Units to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

#### **7.5 Force Majeure**

- (a) The obligations of the Manager under clauses 7.1 and 10 are suspended to the extent that it is wholly or partly precluded from complying with its obligations under clauses 7.1 and 10 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 Members as a whole to remove the suspension.

## **8 OPTIONS**

### **8.1 Issue of Options by Manager**

Subject to the Applicable Standards, the Manager may issue Options on such terms and conditions as it determines, provided that:

- (a) subject to paragraph (c), the issue price of an Option will be 10% of the Issue Price of a Unit calculated on the date of issue of the Option, and will become part of the Trust Fund and not form part of the exercise price if the Option holder exercises the Option;
- (b) subject to paragraph (c), the exercise price of a Unit pursuant to the exercise of an Option must be 90% of the Issue Price of a Unit calculated on the date of issue of the Option, however, if the Trust is Listed and the exercise price so calculated would be below any minimum exercise price set by the Listing Rules, then that minimum exercise price will apply;
- (c) where Options are Offered to all Members on the Record Date for the relevant Offer and the Offers are made at substantially the same time, the Options, and Units issued upon the exercise of those Options, may be issued at a price determined by the Manager, if:
  - (i) the amount of Options offered to each Member is proportionate to the Unit Value of that Member's Interest;
  - (ii) all the Options Offered are in the same class;
  - (iii) the issue price of Options is the same;
  - (iv) the exercise price of Options is the same;
  - (v) the means of calculating the exercise price is set out in the terms of issue of the Options; and
  - (vi) the exercise price is an amount greater than 90% of the Issue Price of a Unit calculated on the date of issue of the Option, however, if the Trust is Listed and the exercise price so calculated would be below any minimum exercise price set by the Listing Rules, then that minimum exercise price will apply,

provided that if the Manager reasonably considers that it would be in the best interest of Members to exclude Foreign Members and not unfair to those Foreign Members, the Manager may sell the Options that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Options to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

## **8.2 Exercise of Options**

- (a) If required to do so by the Listing Rules, the Manager must, within the time required by the Listing Rules, send to each Optionholder prior to the expiry date of the Option a notice containing the information required by the Listing Rules.
- (b) Options may be exercised by lodging with the Manager a notice of exercise of the Options, together with the Option certificate (if any) and payment for the number of Units in respect of which the Options are being exercised.
- (c) Payment for and the issue of Units on exercise of Options will be dealt with by the Manager as if the payment and issue were in relation to an Application for Units, but the Manager may not refuse to issue any Units on exercise of Options.

## **8.3 Interest of Optionholders**

An Option does not confer any interest in the Trust or any right to participate in the income or capital of the Trust.

## **8.4 Rights of Optionholders**

Optionholders who are not Unitholders are entitled to receive notices of, and to attend and vote at meetings of Unitholders.

# **9 PARTLY PAID UNITS**

## **9.1 Terms of Issue**

- (a) Subject to the Applicable Standards, the Manager may issue Units on terms that the Issue Price (or any part of the Issue Price) of the Units will be payable at call by the Manager or by instalments of such amounts and at such times as the Manager determines at the date of issue ('**Partly Paid Unit**').
- (b) Any sum that, under the terms of issue of a Partly Paid Unit, becomes payable at a fixed date, will for the purposes of this clause 9 be deemed to be a call duly made and payable on the date on which, under the terms of issue, the sum becomes payable.

## **9.2 Calls**

Each holder of a Partly Paid Unit will be liable to pay the amount of a call in accordance with the terms and conditions of issue of the Unit. All moneys payable in respect of a call must be paid to the Manager.

## **9.3 Prepayment of calls**

The Manager may:

- (a) accept from a Member a sum representing all or part of any amount unpaid in respect of a Partly Paid Unit although no part of that amount is then the subject of a call;
- (b) pay interest on any sum so accepted, until that sum becomes payable, at any rate agreed between the Manager and the Member; and

- (c) except where otherwise agreed between the Member and the Manager, repay the sum or any part of it,

but payment and acceptance of that sum does not confer any right to participate in a Distribution and must not be considered in ascertaining the amount of a Distribution attributable to that Unit.

#### **9.4 Interest on late payment of calls**

If any call is not paid on or before the day appointed for payment, the holder of the Partly Paid Unit must pay interest on the amount of the call (such interest to accrue for the benefit of the Trust) from the day appointed for the payment to the time of actual payment, at 10% per annum, and all reasonable costs and expenses incurred by the Manager by reason of such non-payment.

#### **9.5 Non-receipt of notice of call**

The non-receipt of a notice required to be given in respect of any call, or the accidental omission to give such a notice of a call, to any Unitholder will not invalidate the call.

#### **9.6 Deductions for unpaid calls**

If all or part of a call is not paid on or before the date appointed for payment, then until such time as the call is paid, the Manager will deduct such unpaid amount (together with interest accrued and all reasonable costs and expenses incurred by the Manager by reason of the non-payment) from any amount payable to the relevant Unitholder under this document.

#### **9.7 Forfeiture**

If a call is not paid on or before the day appointed for the payment, the Manager may at any time after that day, whilst any part of such call, interest accrued on that part or the costs and expenses incurred by the Manager by reason of non-payment, remains unpaid, cause the Partly Paid Units in respect of which such amounts are payable to be forfeited to the Manager with effect from a date determined by the Manager. Forfeiture will include forfeiture of all distributions and other moneys payable to the Unitholder in respect of the forfeited Partly Paid Units and not actually paid before the forfeiture.

#### **9.8 Entry on Register**

Where any Unit has been forfeited in accordance with this clause, an entry of the forfeiture and the date of forfeiture will be made in the Register.

#### **9.9 Disposal of forfeited Units**

- (a) Except where paragraph (b) applies, any Unit forfeited by the Manager must be sold by the Manager or its Agent at the Issue Price calculated on the date of the sale.
- (b) Any Unit forfeited may be sold by the Manager or its Agent at any price determined by the Manager where:
  - (i) the forfeited Units are in a Class of Unit Officially Quoted and are not suspended from quotation;
  - (ii) the Issue Price or part of the Issue Price of the Unit remains unpaid and the Unit has been forfeited to the Manager;

- (iii) the sale of the forfeited Unit is in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), (10) and (13) as if the Units were shares, the Trust was the company and the Manager was the directors of the company; and
- (iv) the sale of the forfeited Unit is in accordance with the Listing Rules.

#### **9.10 Annulment of forfeiture**

The Manager may at any time before a forfeited Unit is sold, annul the forfeiture upon such conditions as the Manager determines.

#### **9.11 Transfer of forfeited Units**

- (a) The Manager may, on any sale of a forfeited Unit, receive the sale price and effect in the name of the Unitholder whose Unit has been forfeited, a transfer of the Unit in favour of the person to whom the Unit has been sold.
- (b) Upon effecting the transfer, the transferee will be registered as the holder of the Unit and the transferee's title to the Unit will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Unit.

#### **9.12 Liability notwithstanding forfeiture**

Any Unitholder whose Units have been forfeited will, notwithstanding such forfeiture, be liable to pay and must promptly pay to the Manager the amount not paid and all other moneys payable in accordance with the provisions of this clause 9.

#### **9.13 Manager's lien**

Subject to the Listing Rules, the Manager will have a first and paramount lien upon every Unit for amounts called or payable at a fixed time in respect of a Unit. The lien will extend to all distributions and other moneys from time to time payable in respect of that Unit.

#### **9.14 Sale of Units to enforce Lien**

For the purpose of enforcing a lien, the Manager may sell the Units subject to the lien, in the same manner as if the Units had been forfeited.

#### **9.15 Proceeds of sale**

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien will be applied:

- (a) firstly, in payment of all costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale;
- (b) secondly, in satisfaction of the amount of the unpaid call and interest on the unpaid call; and
- (c) the residue (if any) will be paid to the person registered as the Unitholder in respect of the subject Units immediately prior to the sale.

### **9.16 Joint holders**

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

## **10 TRANSFER TRANSMISSION AND REDEMPTION OF INTERESTS**

### **10.1 Transfer**

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

### **10.2 Instrument of Transfer**

- (a) A transfer of an Interest (being a holding in respect of which certificates have been issued and have not been cancelled (a '**Certificated Holding**') will not be registered unless there has been lodged with the Manager a proper instrument of transfer duly stamped (if necessary) and executed by the transferor and the transferee, together with the certificates of the Interest to which it relates. The Manager may waive production of any certificate upon evidence satisfactory to the Manager as to its loss or destruction.
- (b) Any transfer of an Interest (being a holding in respect of which certificates have not been issued or have been issued and cancelled (an '**Uncertificated Holding**') must be effected in accordance with any applicable Listing Rules and the ASTC Settlement Rules.
- (c) 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.

### **10.3 Date of Transfer**

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

### **10.4 Form of Transfer**

- (a) Each transfer of a Certificated Holding of an Interest must be in writing and comply with the Corporations Act, and if the Interest is Officially Quoted, the Listing Rules, and if the Interest is not Officially Quoted, be in such form as the Manager may approve.
- (b) Any transfer of Uncertificated Holdings of an Interest must be carried out in the manner required by the Listing Rules and the ASTC Settlement Rules.

### **10.5 Refusal to Register**

- (a) While the Trust is not Listed, the Manager may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (b) While the Trust is Listed, the Manager may decline to register a transfer of an Interest where to do so would not contravene the Listing Rules and must do so when required by law, by the Listing Rules or by the ASTC Settlement Rules. Where the Listing Rules so require, the Manager must notify the lodging party of the refusal to

register the transfer and the reasons for the refusal within the time prescribed by the Listing Rules.

#### **10.6 Transmission**

The Manager is obliged only to recognise:

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

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

#### **10.7 Obligation to redeem**

- (a) While the Trust is liquid (as that term is defined in Part 5C.6 of the Corporations Act):
  - (i) A Member (or a Member'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 Member wishes to receive from the redemption. Such notice must be accompanied by the relevant certificates (if any).
  - (ii) A Redemption Notice may be in such form as the Manager determines and need not be in writing.
  - (iii) Subject to the following provisions of this clause 10, 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 and certificates (if any)), redeem the required Units out of the Trust Fund 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), Members are not entitled to withdraw from the Trust other than as provided in Part 5C.6 of the Corporations Act.

#### **10.8 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 Fund has investments;



- (e) a closure of or restrictions on trading in the relevant foreign market; or
- (f) where the manager of a fund in which the Trust Fund 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.

#### **10.9 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; or
- (c) carrying out the redemption will result in the person making the request holding less than the Minimum Redemption Amount in the Trust; or
- (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.

#### **10.10 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.

#### **10.11 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.

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

Subject to clause 10.8 and clause 10.9, the Manager will pay the Redemption Amount in respect of any Units within 30 days of the Redemption Date.

#### **10.13 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 10.7 to 10.17 will apply, with the necessary changes, to that redemption.

#### **10.14 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.

#### **10.15 Transfer of specific assets**

The Manager may, in its absolute discretion, determine that the Redemption Amount payable to that Member 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 Member.

#### **10.16 Compulsory redemption**

- (a) If the Current Unit Value of Units in the Trust Fund held by a Member 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 10 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 17.

#### **10.17 Accrued income entitlement**

Unless the Manager otherwise determines, the Redemption Amount paid to a Member will comprise capital only. The Manager may however determine<sup>25</sup> that the Redemption Amount comprises part capital and part Distributable Amount<sup>26</sup> of the Financial Year in which the redemption occurs.

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<sup>25</sup> In clause 10.17, the words “in its discretion” removed pursuant to the Supplemental Deed dated 31 March 2015.

<sup>26</sup> In clause 10.17, the words “Distributable Amount” replaced the words “Distributable Income” pursuant to the Supplemental Deed dated 31 March 2015.

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### **10.17A Determination of accrued income entitlement<sup>27</sup>**

Where the Manager makes a determination under clause 10.17 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 10.17 that the Manager determines is referable to:
      - (aa) capital gains; or
      - (bb) 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 10.17A(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 10.17A(a)(i)(A) that the Manager determines is referable to the Class for which the Unitholder has submitted the Redemption Notice; and
    - (B) the increase in the component of the Distributable Amount of the Trust referred to in clause 10.17A(a)(ii)(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.

### **10.18 Components of Redemption Price and payment of accrued distributions**

- (a) <sup>28</sup>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

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<sup>27</sup> Clause 10.17A inserted pursuant to the Supplemental Deed dated 31 March 2015.

<sup>28</sup> Clause 10.18(a) deleted and replaced pursuant to the Supplemental Deed dated 31 March 2015.

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Manager must, in respect of a redemption during a Non-AMIT Income Year,<sup>29</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>30</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.

#### **10.19 When a Unitholder ceases to be eligible to hold Units<sup>31</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:

- (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).

#### **10.20 Failure to comply with request under clause 10.19<sup>32</sup>**

Where a Unitholder fails to comply with a request under clause 10.19 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.

#### **10.21 Satisfaction of AMIT Indemnity<sup>33</sup>**

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<sup>29</sup> In clause 10.18(a), the words “, in respect of a redemption during a Non-AMIT Income Year” inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>30</sup> In clause 10.18(a), the words “Non-AMIT Income Year” replaced “financial year of the Trust Fund” pursuant to the Supplemental Deed dated 28 June 2017.

<sup>31</sup> Clause 10. 19 inserted pursuant to the Supplemental Deed dated 10 September 2012.

<sup>32</sup> Clause 10.20 inserted pursuant to the Supplemental Deed dated 10 September 2012.

<sup>33</sup> New clause 10.21 inserted and existing clause 10.21 renumbered as clause 10.22, pursuant to the Supplemental Deed dated 28 June 2017.

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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), 3.4(b)(ix) or 15.5 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 10.

**10.22 <sup>34</sup> Redemption under clauses 10.19 to 10.21<sup>35</sup> otherwise subject to clause 10**

The redemption of Units by the Manager pursuant to clauses 10.19 to 10.21<sup>36</sup> will be subject to, and in accordance with, the provisions of clauses 10.7 to 10.18.

**11 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, 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.

**12 DISTRIBUTION OF INCOME AND CAPITAL**

**12.1 Manager to receive income**

The Manager will collect all income of the Trust.

**12.2 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>37</sup> and then, if the income is insufficient, out of the balance of the Trust Fund.

**12.3 Income of Trust**

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

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<sup>34</sup> Clause 10.22 (originally clause 10.21) inserted pursuant to the Supplemental Deed dated 10 September 2012.

<sup>35</sup> In clause 10.22, the words “10.19 to 10.21” replaced the words “10.19 or 10.20” pursuant to the Supplemental Deed dated 28 June 2017.

<sup>36</sup> In clause 10.22, the words “10.19 to 10.21” replaced the words “10.19 or 10.20” pursuant to the Supplemental Deed dated 28 June 2017.

<sup>37</sup> In clause 12.2, the words “Net Accounting Income” replaced the words “income of the Trust according to Accounting Standards” pursuant to the Supplemental Deed dated 25 June 2013.

## 12.4 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;
  - (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.

## 12.5 Net Taxable Income<sup>38</sup>

'Net Taxable Income' for each Distribution Period means:

- (a) where the Distribution Period is within a Non-AMIT Income Year,<sup>39</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 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;<sup>40</sup> and
  - (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>41</sup> and<sup>42</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>43</sup>

## 12.6 Power to accumulate amounts<sup>44</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 10.17A and 10.18.
- (b) The effect of the Manager exercising its power to accumulate an amount under clause 12.6(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 12.6(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

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<sup>38</sup> Previous clause 12.5 deleted and replaced pursuant to the Supplemental Deed dated 25 June 2013.

<sup>39</sup> In clause 12.5(a), the words "where the Distribution Period is within a Non-AMIT Income Year" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>40</sup> Clause 12.5(a)(i) renumbered from clause 12.5(a) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>41</sup> Clause 12.5(a)(ii) renumbered from clause 12.5(b) pursuant to the Supplemental Deed dated 28 June 2017.

<sup>42</sup> In clause 12.5(a)(ii), the word "and" inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>43</sup> Clause 12.5(b) inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>44</sup> Clause 12.6 inserted pursuant to the Supplemental Deed dated 28 June 2017.

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

## 12.7 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.

## 12.8 Distributable Amount<sup>45</sup>

- (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.but excluding, for any Distribution Period within an AMIT Income Year, any amounts that have been accumulated by the Manager pursuant to clause 12.6.<sup>46</sup>
- (b) <sup>47</sup>For a Distribution Period that is within a Non-AMIT Income Year,<sup>48</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.
- (c) For Distribution Periods that are within a Non-AMIT Income Year,<sup>49</sup> the Manager may establish or cause to be established the following reserve accounts:
  - (i) a building allowance reserve;

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<sup>45</sup> Clause 12.8(a) (previously clause 12.7(a)) deleted and replaced with clause 12.8(a) pursuant to the Supplemental Deed dated 25 June 2013.

<sup>46</sup> In clause 12.8(a), 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 12.6." inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>47</sup> Previous clause 12.7(b) removed pursuant to the Supplemental Deed dated 25 June 2013.

<sup>48</sup> In clause 12.8(b), the words "For a Distribution Period that is within a Non-AMIT Income Year, inserted at the beginning of the clause, pursuant to the Supplemental Deed dated 28 June 2017.

<sup>49</sup> In clause 12.8(c), the words "For Distribution Periods that are within a Non-AMIT Income Year," inserted at the beginning of the clause pursuant to the Supplemental Deed dated 28 June 2017.

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- (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>50</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 a Reserve Account.
- (e) During Distribution Periods that are within Non-AMIT Income Years,<sup>51</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 a Reserve Account for the amount so distributed.
- (f) During Distribution Periods that are within Non-AMIT Income Years,<sup>52</sup> any amount standing to the credit of a Reserve Account may be 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, in the case of Partly Paid Units, the amount of the Issue Price paid up on those Partly Paid Units, the amount to be capitalised and other matters in 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 and, in the case of Partly Paid Units, according to the proportion of the Issue Price paid up on those Partly Paid Units as at that 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.

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<sup>50</sup> In clause 12.8(d), the words "then for Distribution Periods that are within a Non-AMIT Income Year," inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>51</sup> In clause 12.8(e), the words "During Distribution Periods that are within Non-AMIT Income Years," inserted at the beginning of the clause pursuant to the Supplemental Deed dated 28 June 2017.

<sup>52</sup> In clause 12.8(f), the words "During Distribution Periods that are within Non-AMIT Income Years," inserted at the beginning of the clause pursuant to the Supplemental Deed dated 28 June 2017.

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- (g) The number of additional Units created under clause 12.8(f)<sup>53</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 12, 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).

## 12.9 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.

## 12.10 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.

## 12.11 Distribution

- (a) Subject to the terms of issue of any Units and to clauses 9.6 and 24.4, the Distributable Amount for each Distribution Period must, subject to clause 12.8(d),<sup>54</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 and, in the case of Partly Paid Units, according to the proportion or proportions of the Issue Price paid

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<sup>53</sup> In clause 12.8(g), the words "clause 12.8(f)" replaced the referenced to "clause 12.7(f)" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>54</sup> Clause 12.11 the words "clause 12.8(d)" replaced the reference to "clause 12.7(d)" pursuant to the Supplemental Deed dated 28 June 2017.

upon those Partly Paid Units and the proportion of the Distribution Period (calculated in days) for which the relevant proportion or different proportions of the Issue Price have been paid up.

#### **12.12 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 12.11.<sup>55</sup>

#### **12.13 Time for Distribution**

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

#### **12.14 Ranking for Distribution**

- (a) Except where the Manager has determined a different basis on which Units will rank for Distribution in accordance with clause 12.8(f)(iv),<sup>56</sup> all issued Units will rank for Distribution equally.
- (b) Where an instalment of the Issue Price of a Partly Paid Unit is paid into the Trust Fund, the Unit will rank for a Distribution in accordance with the terms of issue of the Partly Paid Units.

#### **12.15 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 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 in accordance with clause 7.4.

#### **12.16 Attribution of income under AMIT Regime - basis for attribution<sup>57</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 12.16(a) in accordance with the following principles:

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<sup>55</sup> In clause 12.12, the words "clause 12.11" replaced the reference to "clause 12.10" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>56</sup> In clause 12.14(a), the words "clause 12.8(f)(iv)" replaced the reference to "clause 12.7(f)(iv)" pursuant to the Supplemental Deed dated 28 June 2017.

<sup>57</sup> Clause 12.16 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (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 constitution;
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the 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 12.16(a);
- (c) Subject to clause 12.17, but without limiting the generality of paragraph 12.16(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 12.11 or entitlements to Distributable Amount under clauses 10.17A and 10.18 that 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 12.6(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 12.6(a) were the Distributable Amount for that Distribution Period.

#### **12.17 Attribution of income under AMIT Regime - AMIT Class Election<sup>58</sup>**

Where there is an AMIT Class Election in effect, and without limiting the generality of clause 12.6:

- (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).

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<sup>58</sup> Clause 12.17 inserted pursuant to the Supplemental Deed dated 28 June 2017.

### **12.18 Attribution of income under AMIT Regime- Member objections<sup>59</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;
  - (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.

### **12.19 Unders/Overs<sup>60</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

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<sup>59</sup> Clause 12.18 inserted pursuant to the Supplemental Deed dated 28 June 2017.

<sup>60</sup> Clause 12.19 inserted pursuant to the Supplemental Deed dated 28 June 2017.

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.

#### **12.20 Liability<sup>61</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 12, 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 determination 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.

### **13 REGISTERS**

- (a) The Manager must keep a register of Unitholders and, where applicable, a register of Optionholders (each 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 or Option as the absolute owner of the Unit or Option 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 Member holding those Units.
- (c) The recording of a person's name on a Register in relation to Units or Options is the sole evidence of title to those Units or Options.

### **14 AGENTS AND ADVISERS**

#### **14.1 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 16.7 is payable as an Expense. Nothing in this clause prevents the Manager from paying the Agent from its own fee.

#### **14.2 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 16.7, payable as an Expense.

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<sup>61</sup> Clause 12.20 inserted pursuant to the Supplemental Deed dated 28 June 2017.

### **14.3 Custodian**

Without limiting clause 14.1, 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 16.6, payable as an Expense.

### **14.4 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 Members; and
- (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.

## **15 INDEMNITIES**

### **15.1 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 15.2. 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.

### **15.2 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 or Optionholder.

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 15.2(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 15.2 shall continue in favour of the Manager after it has ceased to be Manager to the Trust.

### **15.3 Liability of Unitholders and Optionholders is limited**

- (a) A Unitholder will not, by virtue of being a Unitholder, be liable to make any payment to the Manager other than the unpaid part of the Issue Price for each Partly Paid Unit issued to the Unitholder or amounts owing under clause<sup>62</sup> 15.5.
- (b) An Optionholder will not, by virtue of being an Optionholder and whilst the Options remain unexercised, have any liability to make any payment to the Manager.

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<sup>62</sup> In clause 15.3(a), the words "or amounts owing under clause" inserted pursuant to the Supplemental Deed dated 28 June 2017.

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- (c) Except where clause 15.5 applies,<sup>63</sup> no Member will be under any obligation to indemnify the Manager or any creditor of either of it for any liabilities in connection with the Trust.

#### **15.4 No agency or partnership**

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

#### **15.5 Right of indemnity for tax – AMIT<sup>64</sup>**

- (a) Without limiting the generality of clause 15.1, 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 15.5(a)(i).
- (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 15.5, 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 15.5, 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 15.5, 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 15.5, or under the AMIT Regime.

### **16 FEES AND EXPENSES**

#### **16.1 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.

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<sup>63</sup> In clause 15.3(c) the words “Except where clause 15.5 applies,” inserted at the beginning of the clause pursuant to the Supplemental Deed dated 28 June 2017.

<sup>64</sup> Clause 15.5 inserted pursuant to the Supplemental Deed dated 28 June 2017.

- (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.

## 16.2 Performance fee

(a) **Rates**

- (i) 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 16.2(c), exclusive of GST.
- (ii) 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 14.1.

(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 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.

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 16.1 and 16.2 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:**

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

Where:

$B_e$  = the combined levels of the MSCI World (ex Australia) Accumulation Index and the S&P/ASX200 Accumulation Index (in the proportions advised in the current Disclosure Document) at the end of the calculation period.

$B_s$  = the combined levels of the MSCI World (ex Australia) Accumulation Index and the S&P/ASX200 Accumulation Index (in the proportions advised in the current Disclosure Document) at the start of the calculation period.

#### **Value of the Trust Fund**

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 manager appointed by the Manager as its agent under clause 14.1 (excluding the performance fee calculated under this clause)

#### **Quarter**

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

### **16.3 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 Members;
- (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.

#### **16.4 Payments to Associates**

Payments under clause 16.3 may be made to an Associate of the Manager.

#### **16.5 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 Members 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.

#### **16.6 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 Members 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.

#### **16.7 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.

#### **16.8 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 16.1 or 16.2) will be disclosed in the relevant Disclosure Document or otherwise notified to investors to the extent required under the Corporations Act.

## **17 TERMINATION OF TRUST**

### **17.1 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 Trust is Listed, the last day of a period of 120 consecutive days during which the main class of Units (within the meaning of the Listing Rules) have been suspended by ASX from Official Quotation, unless prior to that day an Ordinary Resolution resolves that the Trust will not terminate on that day;
- (e) if the Trust is not Listed and the Manager has suspended redemptions in accordance with clause 10 for a period of 120 consecutive days, and the Manager resolves it is in the best interests of Members as a whole that the Trust be wound up;
- (f) if the Trust is Listed, the day on which ASX removes the Trust from the Official List, unless prior to that day an Ordinary Resolution resolves that the Trust will not terminate on that day;
- (g) the Manager complies with sections 601NC of the Corporations Act;
- (h) the date specified by the Manager as the date of termination of the Trust in a notice given to Unitholders; or
- (i) the day immediately preceding the 80th anniversary of the Commencement Date.

### **17.2 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.

### **17.3 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 and clause 17.3(e), 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;

- (e) in calculating the amount to be distributed to each Unitholder, add to the net proceeds the balance of the Issue Price remaining unpaid in respect of any Partly Paid Units and deduct that balance from the amount to be distributed to holders of Partly Paid Units;
- (f) 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.

#### **17.4 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 15.2.

#### **17.5 Partly Paid Units**

In the event of there being any deficiency of the Trust Fund as compared with the liabilities of the Trust, the holders of the Partly Paid Units at the Termination Date will be liable to pay to the Manager upon demand by the Manager, the balance of the Issue Price unpaid on those Partly Paid Units or such lesser amount as is so demanded and is necessary to meet such deficiency, and in the latter case, the amount payable for Partly Paid Units will be calculated on the basis that the amount of deficiency is divided and payable amongst all Partly Paid Units in proportion to the respective proportions of the Issue Price unpaid on those Partly Paid Units.

### **18 AMENDMENTS TO THIS CONSTITUTION**

#### **18.1 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.

#### **18.2 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 18.1 does not apply to provisions deemed by this clause 18.2 to be incorporated in the Constitution.

## **19 COMMUNICATIONS**

### **19.1 Service**

- (a) Communication between the Manager and Members 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 Member 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 Members or contained in the current Disclosure Document.

### **19.2 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.

### **19.3 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.

## **20 MEETINGS**



## **20.1 Convening and conduct of meetings**

- (a) Subject to the Corporations Act, but without prejudice to this clause 20, 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.

## **20.2 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 constitution 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 general 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 20.2(d)(i), any resolution passed at that meeting is valid.

### **20.3 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.

### **20.4 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.

## **21 RESOLUTION OF DISPUTES**

### **21.1 Complaints Handling System**

The Manager shall establish a complaints handling framework that complies with Applicable Standards for the handling of disputes under this Constitution.

### **21.2 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 Member 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 Members and staff of the Manager and shall include information to Members about the right to complain.

- (e) **(Access)**. The complaints handling process shall be accessible to all Members and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance)**. Assistance shall be available for Members in a formulation and lodgement of complaint.
- (g) **(Responsiveness)**. Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (h) **(Charges)**. Complaints handling shall be at no charge to the particular complaining Member. 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 Members 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.

### **21.3 Disputes between the Manager and Members**

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

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

- (a) On receipt of a written or verbal notice of dispute from the Member, 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 Member 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 Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute, including what avenues of appeal may be available.
- (d) If the Member is dissatisfied with the determination of the dispute resolution officer then the Member 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.

## **22 MISCELLANEOUS**

### **22.1 Further Assistance**

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

### **22.2 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.

### **22.3 Joint and several liability**

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

### **22.4 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 22.4(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.

### **22.5 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;
- (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.

### **22.6 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.

## **23 PAYMENTS**

### **23.1 Money payable**

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

### **23.2 Cancel cheques**

The Manager may cancel cheques drawn by the Manager that are not presented within six months subject to the Corporations Act, when such a cheque was drawn in favour of a Member, the money may be:

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

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

### **23.3 Joint Members**

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

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

The Manager may deduct from any amount payable to a Member or former Member (or received from a Member or former Member) 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 Member or former Member.

## **24 RESTRICTED INTERESTS**

### **24.1 Definitions**

For the purpose of this clause 24:

**‘Dispose’** has the meaning given to that term in the Listing Rules;

**‘Escrow Period’** means the escrow period in the relevant Restriction Agreement;

**‘Restricted Interest’** means an Interest that is a restricted security for the purposes of the Listing Rules;

**‘Restriction Agreement’** means a restriction agreement in accordance with appendix 9A of the Listing Rules or as ASX requires in a particular case.

### **24.2 No disposal**

A Member cannot Dispose of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or ASX.

### **24.3 Refusal of acknowledge**

The Manager will refuse to acknowledge a disposal (including registering a transfer) of Restricted interests during the Escrow Period except as permitted by the Listing Rules or ASX.

#### **24.4 Distribution and voting rights**

During such period as there is a breach of the Listing Rules relating to Restricted Interests, or a breach of a Restriction Agreement relating to Restricted Interests, the holder of the Restricted Interests is not entitled to any Distribution, or voting rights, in respect of the Restricted Interests.

#### **25 LISTING RULES**

Notwithstanding anything else contained in this document, while the Trust is Listed:

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

EXECUTED as a deed in New South Wales