

CLAYTON UTZ

Asia Pacific Data Centre Trust Constitution

Timothy Colin Reid
Settlor

Asia Pacific Data Centre Limited
ACN 159 624 585
Responsible Entity

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Deed of Trust made on 1 November 2012

Party **Timothy Colin Reid** of Level 28, 71 Eagle Street, Brisbane, Queensland ("Settlor")

Asia Pacific Data Centre Limited ACN 159 624 585 of Level 4, 88 Creek Street, Brisbane, Queensland ("Responsible Entity")

Background

- A. The Responsible Entity intends to establish a managed investment trust to be called Asia Pacific Data Centre Trust.
- B. Asia Pacific Data Centre Limited is to be the Trust's first responsible entity.
- C. The Responsible Entity proposes that this Constitution is to be the Trust's constitution.
- D. The Settlor has paid to the Responsible Entity the Initial Sum of \$61.00.
- E. The Initial Sum forms part of the Trust Assets, and the Responsible Entity has consented to hold the Trust Assets on the terms and conditions of this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Constitution:

Acquisition Expenses means at any time, an amount (if any) which the Responsible Entity determines is the total of all Expenses which may be incurred or are expected to be incurred by the Responsible Entity to establish the Trust and if all Trust Assets held at that time were to be acquired at that time. If the Responsible Entity considers it appropriate, it may determine Acquisition Expenses to be a lesser sum or zero.

ASIC means the Australian Securities and Investments Commission or if it ceases to exist, any regulatory body or authority as then serves substantially the same objects.

ASIC Instrument means an exemption, modification, declaration, determination or any other instrument granted or issued by ASIC in respect of or applicable to the Trust (whether or not it may also have application to other registered managed investment trusts).

Associate of a person means another person who is associated with the first within the meaning of sections 10 to 17 of the Corporations Act.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532.

ASTC Settlement Rules means the operating rules of ASTC and, to the extent that they are applicable, the operating rules of each of ASX and Australian Clearing House Pty Limited ABN 48 001 314 503.

ASX means ASX Limited ACN 008 624 691.

Attached Security means a Company Share and any other financial product or financial products which are from time to time Stapled or to be Stapled to a Unit.

Attached Security Holder means a person registered as the holder of an Attached Security.

Attending Unitholders means, in relation to a meeting of Unitholders, the Unitholder present at the place of the meeting, in person or by proxy, by attorney, where the Unitholder is a body corporate, by a body corporate representative.

Business Day means a business day as defined in the Listing Rules if the Units are included in the official list of ASX at the time, but if Units are not Quoted, it means any day excluding a Saturday, Sunday or a public holiday on which banks are open for business generally in Sydney.

CC Member means a Unitholder of the Compliance Committee.

Class means a class of Units.

Class Expense in relation to a Class, means an Expense or that proportion of an Expense determined by the Responsible Entity to be referable to the Class in accordance with clause 15.2.

Company means Asia Pacific Data Centre Holdings Limited ACN 159 621 735.

Company Share means an ordinary share in the capital of the Company.

Compliance Committee means the committee (if any) established by the Responsible Entity pursuant to section 601JA(1) of the Corporations Act.

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

Derivative means an arrangement in relation to which the following conditions are satisfied:

- (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and
- (b) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies, by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:
 - (i) an asset;
 - (ii) a rate (including an interest rate or exchange rate);
 - (iii) an index;
 - (iv) a commodity.

Without limitation and for the removal of doubt, "Derivative" includes any contract commonly known as a derivative, futures contract or synthetic.

Designated Time means, in respect of an application for Units or a Withdrawal Request (as the case may be), the time during each Business Day designated from time to time by the Responsible Entity pursuant to clause 7.14 or clause 10.13 (as the case may be). The Designated Time applicable to applications for Units and to Withdrawal Requests may be the same or different.

Disposal Expenses means, at any time, an amount (if any) which the Responsible Entity determines is the total Expenses which may be incurred or are expected to be incurred by the

Responsible Entity if all Trust Assets held at that time were to be disposed of at that time. If the Responsible Entity considers it appropriate, it may determine Disposal Expenses to be a lesser sum or zero.

Distributable Income means:

- (a) the amount determined by the Responsible Entity; or
- (b) if the Responsible Entity does not determine an amount under paragraph (a), the net income of the Trust for the subject Financial Year determined in accordance with the Tax Act.

Distribution Account means the account referred to in clause 17.3.

Entry Fee means, in respect of an application for Units while the Trust is not Listed, an amount up to 5% of the Issue Price for Units or any other amount as agreed between the applicant and its adviser pursuant to the relevant disclosure document for the Trust and notified to the Responsible Entity.

Excess Returns means, in any Financial Year, the NAV Increase multiplied by the amount, if any, by which the Trust Return exceeds the Index Return.

Expenses includes any expenses, costs, charges, fees, commissions, brokerage, Taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

Financial Product has the same meaning as in the Corporations Act (which for the removal of doubt includes debentures, convertible notes or other instruments of a debt, equity or hybrid nature) but excluding Units.

Financial Year means the 12 month period beginning on 1 July and ending on 30 June in each year, except that:

- (a) the first Financial Year begins on the date of commencement of the Trust and ends on the first 30 June to occur thereafter; and
- (b) the last Financial Year begins on the last 1 July before the date of final distribution on winding up of the Trust and ends on the date of that final distribution.

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

Gross Asset Value of the Trust Assets means, at any time, the amount determined to be equal to the total value of the Trust Assets in accordance with clause 11 at that time adjusted for such provisions and incremental or decremental adjustments as the auditor of the Trust considers appropriate, having regard to Australian accounting principles.

Income means the Distributable Income of the Trust.

Income Distribution Date means 30 June each year and such other date or dates as may be specified by the Responsible Entity from time to time.

Income Distribution Period means the period beginning on the date of commencement of the Trust and ending on the first Income Distribution Date and thereafter, the period which begins on the day after the preceding Income Distribution Date to the next occurring Income

Distribution Date except that the last Income Distribution Period is the period commencing on the day after the preceding Income Distribution Date and ending on the date of final distribution on winding up of the Trust.

Income Entitlement means an entitlement to the Distributable Income of a Unitholder or Former Unitholder in respect of a Unit calculated in accordance with clause 17.

Index means the S&P/ASX 200 A-REIT Accumulation Index (as that index may be renamed from time to time) or, if that index is no longer published or if the Responsible Entity reasonably believes that index is no longer a reasonable basis for comparison with the Trust, then any other similar index published on a regular basis, as determined by the Responsible Entity.

Index Accumulation means the amount calculated in accordance with the following formula:

$$IA = (I_2 - I_1) / I_1,$$

where,

IA is the Index Accumulation;

I₁ is the Index on the first day that Units are Listed; and

I₂ is the Index on the last day of the relevant Financial Year.

Index Return means the amount calculated in accordance with the following formula:

$$IR = (I_2 - I_1) / I_1,$$

where,

IR is the Index Return;

I₁ is the Index on the first day of the relevant Financial Year; and

I₂ is the Index on the last day of the relevant Financial Year.

Initial Sum means the amount of \$61.00 referred to Recital D and Schedule 1.

Interim Distribution means a distribution pursuant to clause 17 out of or with respect to Distributable Income as determined by the Responsible Entity accruing during or with respect to an Interim Distribution Period.

Interim Distribution Period means any period determined by the Responsible Entity that commences and ends during the same Income Distribution Period and that does not end on the Income Distribution Date for that Income Distribution Period.

Issue Price means:

- (a) in relation to a Unit, the issue price calculated in accordance with clause 7.7 or 7.8. The Responsible Entity may calculate the Issue Price to the number of decimal places that the Responsible Entity determines; or
- (b) in relation to a Stapled Security, the issue price calculated in accordance with clause 22.4.

Liabilities at any time, means the aggregate of the following at that time as determined by the Responsible Entity:

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- (a) all liabilities of every nature of or in respect of the Trust including contingent liabilities and any anticipated liabilities or provisions for liabilities that the Responsible Entity considers should be included; and
 - (b) all amounts payable out of or reimbursable from Trust Assets or in relation to the Trust, including (without limitation) any unpaid amounts due and payable to any Unitholders or to the Responsible Entity (as its remuneration), or where determined by the Responsible Entity, provisions with respect to such amounts,

but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Unitholders (other than amounts in respect of Interim Distributions or other distributions that are due and payable to Unitholders). Where more than one Class is on issue and the Net Asset Value of the Trust Assets referable to a particular Class is being calculated, reference to "Liabilities" means that proportion of the Liabilities that the Responsible Entity considers are properly referable to each Class.

Liquid has the meaning given for the purposes of sections 601KA(4)-(6) inclusive of the Corporations Act.

Listed means admitted to the Official List.

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the Official List, each as amended replaced or waived (either generally or in favour of the Trust) from time to time.

Market Price of a Unit on a particular Business Day means for the purposes of clause 7.8:

- (a) the weighted average traded price for a Unit for all sales on ASX for the period of 10 Business Days ending on the relevant Business Day (whether or not a sale was recorded on any particular day) provided however that if the Unit to be offered or issued will be offered or issued ex distribution and the weighted average traded price is for a Unit cum distribution, the Market Price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the weighted average traded price were for Units cum distribution); or
- (b) if a reputable investment bank or independent adviser as referred to in paragraphs (i) or (ii) below determines that a measure of Market Price determined in accordance with paragraphs (i) or (ii) below is a more appropriate measure of Market Price, that other measure will be adopted:
 - (i) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds; or
 - (ii) an amount determined by an adviser who:
 - A. is independent of the Responsible Entity; and
 - B. is qualified to determine and has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the price of the Unit is being made;

as being the fair issue price of the Unit, having regard to:

- A. the nature and size of the proposed offer of Units for which purpose the Issue Price of a Unit is being calculated;
- B. the circumstances in which the proposed offer of Units will be made; and
- C. the interests of Unitholders generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

If any of paragraphs (a) or (b) in this definition is held to be void, invalid or otherwise unenforceable, it is deemed to be severed from the remainder of this definition, which will remain in full force and effect, and Market Price must be calculated in accordance with the clause which is not thereby deemed to be severed.

Marketable Parcel has the meaning given it in the Listing Rules.

Minimum Application Amount means such sum as the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

Minimum Balance means:

- (a) while Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; or
- (b) while Units are not admitted to the Official List, such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different Classes.

Minimum Withdrawal Amount means such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

NAV Accumulation means the amount calculated in accordance with the following formula:

$$NA = (NAV_2 - NAV_1) / NAV_1$$

where,

NA is the NAV Accumulation;

NAV₁ is the Net Asset Value of the Trust Assets on the first day that Units are Listed; and

NAV₂ is the Net Asset Value of the Trust Assets on the last day of the relevant Financial Year plus the amount of all Interim Distributions and other distributions to Unitholders made since the first day that Units are Listed.

NAV Increase means the amount calculated in accordance with the following formula:

$$NI = NAV_2 - NAV_1$$

where,

NI is the NAV Increase;

NAV₁ is the Net Asset Value of the Trust Assets on the first day of the relevant Financial Year; and

NAV₂ is the Net Asset Value of the Trust Assets on the last day of the relevant Financial Year plus the amount of any Interim Distributions made during the relevant Financial Year.

Net Asset Value of the Trust Assets means, at any time, the amount determined to be equal to the total value of the Trust Assets and in accordance with clause 11 at that time less the Liabilities of the Trust at that time and adjusted for such provisions and incremental or decremental adjustments as the auditor of the Trust considers appropriate, having regard to Australian accounting principles.

Net Investment means, in respect of an application for Units, an amount equal to the cash payment accompanying that application or (as the case may be) the market value of the property (as determined by the Responsible Entity) transferred pursuant to clause 7.2, in each case minus the aggregate of the following sums (to the extent any of those sums have not been paid by the applicant before the Responsible Entity accepts the application):

- (a) the applicable Entry Fee;
- (b) any Expenses incurred or payable by the Trust or the Responsible Entity in respect of the payment of any application money or otherwise in respect of the issue and allotment of the Units; and
- (c) such of the Expenses in respect of the valuation of the property or transfer to (or at the direction of) or acceptance by (or on behalf of) the Responsible Entity of the property as the Responsible Entity determines not to be payable or reimbursable out of Trust Assets.

Official List means the official list of ASX as defined in the Listing Rules.

Officially Quoted means quoted on the Official List including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Original Unit Holder means a person named in Schedule 2 as an Original Unit Holder for as long as that person is the holder of an Original Unit.

Original Units means the Unit or Units set out respectively opposite the name of an Original Unit Holder in Schedule 2 for as long as it or they are held by an Original Unit Holder.

Personal Representative means the legal personal representative, executor or administrator of the estate of a deceased person.

Proceedings means, in relation to a person, any proceedings (whether civil or criminal) in which it is alleged that the person has done or omitted to do some act, matter or thing:

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

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

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

Register means the register of Unitholders maintained by the Responsible Entity pursuant to Chapter 2C of the Corporations Act and, where appropriate, includes any subregister and branch register.

Registered means registered as a managed investment trust by ASIC under Chapter 5C of the Corporations Act.

Responsible Entity means, Asia Pacific Data Centre Limited (while the Trust is not Registered), and (while the Trust is Registered) the company named in clause 2.1 or otherwise named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust.

Restricted Securities has the meaning given to it in the Listing Rules and includes Shares defined as such in any Restriction Agreement.

Restriction Agreement means a restriction agreement within the meaning and for the purposes of the Listing Rules and includes any agreement which the Company and any Shareholder agrees is a restriction agreement.

Stapled Entity means the Trust and any other trust, company, entity or managed investment scheme whose financial products are from time to time Stapled to the Units pursuant to clause 22.

Stapled Security means one Unit and one of each category of Attached Security which are Stapled together and registered in the name of the Unitholder.

Stapling means the linking together of all the rights and obligations which attach to a Stapled Security, so that the Units and the Attached Securities may only be dealt with together.

Tax means any kind of tax, levy, charge, impost, rate, fee, deduction, duty, excise, or withholding or instalment amount, whether direct or indirect, by whatever method imposed, collected or recovered, together with any interest, fine, penalty or statutory charge payable, imposed or claimed in respect of any such amount.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable, and where appropriate, includes the *Taxation Administration Act 1953* (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

Tax Loss, means a "tax loss" as defined in section 272-140 of Schedule 2F to the Tax Act and/or a "capital loss", "net capital loss" or "unapplied net capital loss" as defined in Division 100 of the Tax Act.

Trust means the Asia Pacific Data Centre Trust constituted by this Constitution in respect of the Trust Assets.

Trust Group means the Trust and any sub-trusts, subsidiaries or other child entities or structures of the Trust.

Trust Assets means the Initial Sum and all cash, property, rights and income of the Trust Group from time to time (including without limitation all the cash or property transferred to (or at the direction of) the Responsible Entity by an applicant but only on and from the time when Units are taken to be created and issued to the applicant) and where the context permits, includes any part of it. Where more than one Class is on issue and the Net Asset Value of the Trust Assets referable to a particular Class is being calculated, reference to "Trust Assets" means that proportion of the Trust Assets that the Responsible Entity considers are properly referable to each Class.

Trust Return means the amount calculated in accordance with the following formula:

$$TR = (NAV_2 - NAV_1) / NAV_1$$

where,

TR is the Trust Return;

NAV₁ is the Net Asset Value of the Trust Assets on the first day of the relevant Financial Year; and

NAV₂ is the Net Asset Value of the Trust Assets on the last day of the relevant Financial Year plus the amount of any Interim Distributions made during the relevant Financial Year.

Unit means, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Trust Assets as provided in this Constitution.

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

Unstapled means:

- (a) in relation to a Trust Unit, not being Stapled to an ordinary Share or another Attached Security; and
- (b) in relation to an ordinary Share, not being Stapled to a Trust Unit or another Attached Security.

Valuation Time means a time at which the Responsible Entity calculates the Net Asset Value of the Trust Assets.

Withdrawal Fee means in respect of a Withdrawal Request, an amount up to 5% of the Withdrawal Price.

Withdrawal Offer means a withdrawal offer made by the Responsible Entity from time to time.

Withdrawal Price means, in respect of a Unit or Units in a Class, the amount determined by the Responsible Entity from time to time by subtracting the Disposal Expenses at that time from the Net Asset Value of the Trust Assets at that time, dividing the resultant amount by the total number of Units on issue at that time and then subtracting the Withdrawal Fee (if any) from that quotient. The Responsible Entity may calculate the Withdrawal Price to the number of decimal places that the Responsible Entity determines and may round the Withdrawal Price up or down as the Responsible Entity thinks fit. In determining the Withdrawal Price, the Responsible Entity may to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:

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

Withdrawal Request means a request to withdraw from the Trust in response to a Withdrawal Offer.

1.2 Interpretation

In this Constitution:

- (a) headings are for convenience only and do not affect interpretation;

- (b) the recitals form part of this Constitution;
- (c) in calculating the number of Units in issue for the purposes of any clause in this Constitution, the Responsible Entity must aggregate the number of fully paid Units and the sum of the amounts calculated in respect of each partly paid Unit by dividing the amount paid up in respect of each partly paid Unit by the total Issue Price of that Unit;
- (d) a reference to a security in another Stapled Entity includes a share or security in a company or entity that is a Stapled Entity;
- (e) a reference to the responsible entity of another Stapled Entity includes the board of a company or other entity that is a Stapled Entity; and
- (f) a reference to Stapling a Unit to a security in another Stapled Entity includes Stapling one Unit to a fixed number of securities in another Stapled Entity; and

unless the context indicates a contrary intention;

- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns, including any person taking by way of novation;
- (h) the expression "**person**" includes an individual, a corporation and an unincorporated association, an authority, a partnership and a trust;
- (i) a reference to any statute or to any statutory provision includes any statutory modification, re-enactment or replacement of it or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
- (j) a reference to the Listing Rules or the ASTC Settlement Rules includes any modification or replacement of those rules or any other rules (however described) issued under those rules;
- (k) words importing the singular include the plural (and vice versa) and words indicating a given gender include all other genders;
- (l) the word "includes," in any form, is not a word of limitation;
- (m) where a word or phrase has a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (n) if the day by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next succeeding Business Day;
- (o) a reference to cash includes cheque and bank cheque;
- (p) a reference to a month or a quarter means a calendar month or calendar quarter respectively;
- (q) a reference to any document or agreement (including this Constitution) is to that document or agreement as amended, novated (including pursuant to section 601FT of the Corporations Act), varied or replaced from time to time; and
- (r) terms defined in the Corporations Act are used in this Constitution with their same defined meaning.

1.3 Governing Law

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

1.4 Corporations Act

If and for so long as the Trust is Registered, then notwithstanding any other provision in this Constitution (whether expressed or implied):

- (a) Subject to clause 1.4(b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, then to that extent that provision does not have any force or effect.
- (b) Clause 1.4(a) is subject to any ASIC Instrument from time to time and, subject to clause 1.4(c), if before any such ASIC Instrument (or part thereof) can apply to this Constitution this Constitution is required to contain certain provisions, then to the extent that those provisions (or provisions to their effect) have not been expressly included in this Constitution, those provisions are deemed to be incorporated into this Constitution at all times that they are required to be included and prevail over the other provisions of this Constitution to the extent of any inconsistency. For the removal of doubt ASIC Class Order 05/26 is an ASIC Instrument for the purposes of this clause 1.4(b), subject to clause 1.4(c).
- (c) If the Responsible Entity determines that a particular ASIC Instrument (or any part of it) does not or should not apply to this Constitution, then clause 1.4(b) does not apply to that particular ASIC Instrument or part of it (as the case may be). The Responsible Entity may make and revoke that determination at any time.

1.5 Listing Rules

If and for so long as the Trust is admitted to the Official List the following applies (notwithstanding clause 30):

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

1.6 References to Corporations Act and Listing Rules

Notwithstanding any other provisions in this Constitution (whether express or implied), a clause of this Constitution which is expressed to apply subject to:

- (a) the Listing Rules, is only so subject while the Trust is admitted to the Official List (and the clause is to be read accordingly); and
- (b) the Corporations Act, is only so subject while the Trust is Registered (and the clause is to be read accordingly).

1.7 Rounding of Payments

Where any calculations under this Constitution would result in a total amount payable to a person including a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Responsible Entity. Any excess money which results from rounding becomes part of Trust Assets.

2. The Trust

2.1 Trust's Constitution

Asia Pacific Data Centre Limited is the Trust's initial Responsible Entity and this Constitution is the constitution for the Trust.

2.2 Constitution is legally binding

The Responsible Entity and each Unitholder and former Unitholder from time to time (and each person claiming through the Unitholder and former Unitholder) is entitled to the benefit of and is bound by this Constitution in accordance with and to the extent provided for in this Constitution as if each of them is a party to this Constitution.

3. Trust Assets held on Trust

3.1 Commencement of Trust

The Trust commences when the Responsible Entity issues the Original Units.

3.2 Declaration of Trust

- (a) The Settlor directs, and the Responsible Entity accepts, that the it will hold the Trust Assets on trust for the Unit Holders on the terms and conditions set out in this deed. The Trust Assets vest in the Responsible Entity.
- (b) If and to the extent the Corporations Act requires, the Responsible Entity must ensure the Trust Assets are clearly identified as property of the Trust and held separately from all other property of the Responsible Entity and property of any other managed investment trust.

3.3 Exclusion of other obligations

To the maximum extent permitted by law, all duties, obligations, liabilities or restrictions on powers which might otherwise be implied or imposed by law or equity upon the Responsible Entity in any capacity are hereby excluded.

4. Units

4.1 Nature of a Unit

- (a) The beneficial interest in the Trust Assets is divided into a changeable number of Units.
- (b) Subject to any rights, obligations and restrictions attaching to any particular Unit or Class:
 - (i) all Units in a Class rank equally with each other; and
 - (ii) a Unit confers an undivided interest in the Trust Assets as a whole, subject to the Liabilities; and
 - (iii) a Unit does not confer any interest in any particular part of the Trust Assets nor in any particular part of the Trust.

4.2 Consolidation of Units

Subject to the law, the Responsible Entity may at any time consolidate or divide the number of Units on issue on any basis it determines.

4.3 Fractions of Units and Rounding

Fractions of a Unit may be issued or redeemed or created by consolidation or division, as determined by the Responsible Entity, rounded up or down to any number of decimal places which the Responsible Entity determines. The value of, and all rights and obligations attaching to, a fractional Unit will be in the proportion which the fraction bears to a whole Unit. Any excess money or property which results from rounding becomes part of Trust Assets.

4.4 Issue of Units and Classes

Subject to the law and to the Listing Rules, the Responsible Entity may allot and issue unissued Units (including in different Classes) to any person, on any terms at any time and in any numbers and having attached thereto such preferred, deferred or other rights, restrictions and obligations as the Responsible Entity thinks fit in its absolute discretion and further with power to classify or reclassify or designate the same in any manner which the Responsible Entity thinks fit (including into Classes or into a different Class).

4.5 Issue of Financial Products

Subject to the law, this Constitution and the Listing Rules, the Responsible Entity may, in addition to Units, allot and issue any Financial Product to any person, on any terms at any time and in any number, in each case as the Responsible Entity thinks fit in its absolute discretion. The issue price for an option to acquire Units is nil.

4.6 Original Unit Holder

The Trust as originally constituted by the payment by the Settlor of the Initial Sum will be divided into the number of Original Units issued at the Issue Price per Unit that is set out in Schedule 2, and those Units will be held in the first instance by the Original Unit Holder set out in Schedule 2, and will be deemed to be registered on the Register as from the date of this deed as the holder of that number of Units.

5. Limitation on Unitholders Rights

5.1 Limitation on Unitholders rights

A Unitholder is not entitled to and waives any right it may otherwise have to:

- (a) require any Trust Assets to be transferred to the Unitholder (other than in accordance with clause 10.17);
- (b) interfere with any rights, trusts, powers, authorities or discretions of the Responsible Entity conferred upon it by this Constitution or by law (including in respect of the Trust Assets (or any part of it) or the Trust) or the exercise or non-exercise of any such rights, trusts, powers, authorities or discretions by or on behalf of the Responsible Entity; or
- (c) claim or exercise any right, trust, power, authority or discretion in respect of the Trust Assets (or any part of it). Without limitation a Unitholder must not lodge any caveat or other notice to protect or maintain in litigation or otherwise any proprietary, or other interest or claim in, or in relation to, the Trust Assets (or any part of it).

5.2 Joint Holders

Where more than one person is registered as the holder of any Unit then, for the purposes of the administration of the Trust:

- (a) they shall be deemed to hold the Unit as joint tenants unless the Responsible Entity determines otherwise;
- (b) they shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit;
- (c) they shall, subject to the Corporations Act, be counted as a single Unitholder for the purposes of calculating the number of Unitholders as referred in clause 18.7 relating to meetings of Unitholders;
- (d) clause 18.7(b) applies to determine which joint holder may exercise the voting rights of jointly held Units;
- (e) any payment to joint Unitholders shall be subject to clause 25.4;
- (f) on the death, legal disability, or bankruptcy of a joint Unitholder, the provisions of clause 27 shall apply; and
- (g) delivery of notices and all other communications by the Responsible Entity will be made pursuant to clause 28.

5.3 Rights attaching to Units

A Unitholder holds a Unit subject to the rights, obligations and restrictions attaching to that Unit.

6. Liability of Unitholders

6.1 Liability of a Unitholder is limited

Except as expressly provided for in this Constitution (such as clause 25.5) and subject to any contrary agreement with a Unitholder:

- (a) the liability of each Unitholder is limited to the liability to pay any unpaid part of the Issue Price of Units held by the Unitholder; and
- (b) no Unitholder in their capacity as a Unitholder is liable to, or is required to, indemnify the Responsible Entity or any creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust in any case whatsoever including if at any time the Liabilities of the Trust exceed the value of the Trust Assets,

in each case even in relation to things done by the Responsible Entity at the direction or request of a Unitholder which give rise to liabilities of the Responsible Entity in connection with the Trust.

6.2 Relationship of agency or partnership excluded

Any relationship of agency, or of partnership, between the Responsible Entity in that capacity and any Unitholder is expressly excluded.

7. Application for, creation and issue of Units

7.1 Applications for Units

A person intending to apply for Units must give the Responsible Entity a completed application which is in such form and which is delivered, sent or given in such a manner and to such place as the Responsible Entity may require from time to time. Payment in respect of an application in an amount which is not less than the Minimum Application Amount must be paid in favour of or to the Responsible Entity (or its nominee). The amount must be in such form as the Responsible Entity requires (which may include periodic debits to a bank account and cheques). Such payment must accompany the application or be received by the Responsible Entity within a time specified by the Responsible Entity or as the terms of issue of the Unit contemplate or comprise a reinvestment of a distribution in accordance with clause 17.11.

7.2 Payment of Issue Price other than by money

The Responsible Entity may accept payment in respect of an application for Units in the form of a transfer of property (of a kind acceptable to the Responsible Entity) rather than cash at a value or on any other terms as are agreed between the Responsible Entity and the applicant. In that case the applicant must transfer the title to the property to (or at the direction of) the Responsible Entity (and the title and the value of the property must be confirmed or verified in a manner acceptable to the Responsible Entity). Such transfer must accompany the application or be effected within a time specified by the Responsible Entity or as the terms of the issue of the security contemplate. The Responsible Entity may determine that some or all of the Expenses in respect of the valuation or transfer of the property, are payable or reimbursable out of Trust Assets or payable by the applicant concerned.

7.3 Responsible Entity may accept or reject applications

The Responsible Entity may, in its absolute discretion, accept or reject all or part of an application for Units (including an application to reinvest a distribution under clause 17.11) without giving any reason.

7.4 Application must be for Minimum Application Amount

The amount of application money or value of any property to be transferred in accordance with clause 7.2 must be no less than the Minimum Application Amount.

7.5 Time when Units are issued

- (a) Subject to clause 7.5(b), Units in any Class are taken to be created and issued at the time as at which the Issue Price is determined or such other time specified by the Responsible Entity.
- (b) Units which are to be issued on a reinvestment of distributions under clause 17.11 are taken to be issued at the time specified by the Responsible Entity for the purposes of that particular reinvestment of distributions.

7.6 Number of Units issued

When Units are taken to be created and issued under clause 7.5, the number of Units created and issued is that number calculated by the Responsible Entity by dividing the Net Investment by the Issue Price of a Unit and rounding down to the nearest whole number.

7.7 Issue Price while Units not Officially Quoted

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class and to clauses 7.8 and 7.10, a Unit or Class must only be issued at its Issue Price determined in accordance with the following provisions of this clause 7.7:

- (a) the Issue Price for each of the Units to be issued by the Responsible Entity under clause 3.1 is \$1.00;
- (b) in any other case, the Issue Price for a Unit is equal to:

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

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

For the purposes of the formulae in clause 7.7(b), "Net Asset Value of Trust Assets", "Acquisition Expenses" and "total number of Units on issue" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit (for which the application price is being calculated) belongs.

In determining the Issue Price of a Unit, the Responsible Entity may, to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:

- (c) any matter affecting the value of any factor included in the calculation of the Issue Price; and
- (d) any matter which is an aspect of the method of calculating the Issue Price.

7.8 Issue Price while Units Officially Quoted

While Units are Officially Quoted, subject to any rights, obligations and restrictions attaching to any particular Unit or Class and subject to clauses 7.9 and 7.10, a Unit must only be issued at a price in accordance with any requirements set out in the Corporations Act and the Listing Rules.

7.9 Issue of Units at a discount to the Issue Price

Subject to the Corporations Act, any ASIC Instrument and the Listing Rules, the Responsible Entity may issue Units at a price that is up to 20% less than the Issue Price:

- (a) on a proportionate offer of Units to Unitholders; and
- (b) upon reinvestment of distributions,

and for the purposes of clauses 6.1(a), 7.5 and 7.6, the price determined under this clause 7.9 will be taken to be the Issue Price for those Units.

7.10 Responsible Entity's discretion over Issue Price

Despite clauses 7.7 to 7.9, but subject to the Corporations Act and the Listing Rules, the Responsible Entity may issue Units at a price determined by the Responsible Entity (being a price other than the Issue Price calculated under any of clauses 7.7 to 7.9 and other than in accordance with an applicable ASIC Instrument.

For the purposes of this clause:

- (a) the Responsible Entity may amend this constitution by supplemental deed to provide for a specific Issue Price for those Units; and
- (b) it may issue those Units at the specified price.

7.11 Cancellation of issue of Units

If following receipt of an application for Units, any payment for the Units is not cleared, or the direct debit order is not accepted by a bank, or the transfer of property is not effective, or the property is not transferred free of encumbrances within such period from receipt of such application as the Responsible Entity determines, then any Units which have been created and issued in consideration therefore are void ab initio and are deemed for all purposes not to have been created or issued. The Responsible Entity may cause the Register to be rectified.

7.12 No Unit certificates

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

7.13 Entry Fee belongs to Responsible Entity

Once Units are taken to be created and issued, the applicable Entry Fee (if any) belongs to the Responsible Entity and may be paid to it and retained for its own purposes.

7.14 Designated Time

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when an application for Units is received by the Responsible Entity for the purposes of clauses 7.7 and 7.8. The Designated Time may be different for given methods of

communication or payment. Accordingly, subject to the Listing Rules and ASTC Settlement Rules, for the purposes of clauses 7.7 and or 7.8, if an application for Units is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it will be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the applicable Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

7.15 Application money part of Trust Assets

All income in respect of the payment received on an application for Units (which has been accepted by the Responsible Entity) prior to the issue of those Units forms part of the Trust Assets. If an application is not accepted by the Responsible Entity, then the payment received on an application for Units shall be repayable to the applicant, and no income in respect of that payment received shall be payable to the applicant. Any income in respect of the payment received on an unsuccessful application for Units forms part of the Trust Assets.

8. Calls

8.1 Making of calls

- (a) Subject to the law, the Listing Rules and the terms of issue of a Unit (and while Stapling applies, the terms of the Stapled Securities), the Responsible Entity may make calls on the registered holders of a Unit for any amount unpaid on that Unit which is not by the terms of issue of that Unit made payable at fixed times, on any terms and at any times as the Responsible Entity determines, including payment by instalments.
- (b) The Responsible Entity may when it issues Units make calls payable for one or more Unitholders for different amounts and at different times as the Responsible Entity determines.
- (c) Subject to the Listing Rules, the Responsible Entity may revoke or postpone a call or extend the time for payment of a call, at any time prior to the date on which payment of that call is due.
- (d) A call is made at the time specified in writing by the Responsible Entity when authorising the call.

8.2 Notice of calls

- (a) The Responsible Entity must give notice of a call to the Unitholder upon whom the call is made at least 10 Business Days (or any other period of notice required by the Listing Rules or required by any terms of issue of the relevant Units) before the due date for payment. The notice must specify the amount of the call, the time or times and place of payment and any other information as the Responsible Entity determines and the Listing Rules require.
- (b) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any Unitholder does not invalidate the call.

8.3 Payment of calls

- (a) Each Unitholder must pay to the Responsible Entity the amount of each call in the manner, at the time and at the place specified in the notice of the call.
- (b) The registered holders of a Jointly Held Unit are jointly and severally liable in respect of all payments which are required to be made in respect of that Unit.
- (c) If the terms of issue of a Unit require an amount to be paid in respect of a Unit on the date of issue or any other fixed date, the Unitholder of that Unit must pay that amount to the Responsible Entity at that time and that amount is treated for the purposes of this Constitution as if a call for that amount had been properly made by the Responsible Entity of which appropriate notice has been given.
- (d) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
 - (i) the name of the person is entered in the Register as a registered holder of the Unit on which the call was made;
 - (ii) there is a record in the minute books of the Responsible Entity making the call or the fixed amount payable by the terms of issue of the relevant Units; and
 - (iii) notice of the call was given or taken to be given to the person in accordance with this Constitution,is conclusive evidence of the obligation of that person to pay the call.
- (e) While Stapling applies, a call on an ordinary Unit will not be regarded as having been validly paid unless any amount payable at the same time in relation to the Attached Securities is also paid.

8.4 Prepayment of calls

The Responsible Entity may:

- (a) accept from a Unitholder the whole or part of the amount unpaid on a Unit even if no part of that amount has been called;
- (b) agree to pay interest on the whole or any part of the amount so accepted, from the date of acceptance to the date on which the amount becomes payable, at any rate agreed between the Responsible Entity and the Unitholder paying the amount; and
- (c) unless otherwise agreed between the Responsible Entity and the Unitholder, repay the whole or any part of the amount so accepted at any time.

8.5 Interest payable

- (a) If an amount called or otherwise payable to the Responsible Entity in respect of a Unit is not paid before or on the time for payment, the person who owes the amount must pay to the Responsible Entity:
 - (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate that the Responsible Entity determines; and

- (ii) all costs and expenses that the Responsible Entity incurs due to the failure to pay or the late payment.
- (b) Interest pursuant to Clause 8.5(a) accrues daily and may be capitalised at any interval that the Responsible Entity determines.
- (c) The Responsible Entity may waive payment of some or all of the interest, costs or expenses payable pursuant to Clause 8.5(a).

9. Forfeiture and liens

9.1 Forfeiture procedure

Subject to the law and the Listing Rules, the Responsible Entity forfeit a Unit of a Unitholder if:

- (a) that Unitholder does not pay a call or other amount payable in respect of that Unit on or before the date for its payment;
- (b) the Responsible Entity gives that Unitholder notice in writing:
 - (i) requiring the Unitholder to pay that call or other amount, any interest on it and all costs and expenses that the Responsible Entity has incurred due to the failure to pay; and
 - (ii) stating that the Unit is liable to be forfeited if that Unitholder does not pay to the Responsible Entity, at the place specified in the notice, the amount specified in the notice, within 10 Business Days (or any longer period specified) after the date of the notice; and
- (c) that Unitholder does not pay that amount in accordance with that notice.

If Stapling applies, the Responsible Entity must not forfeit a Unitholder's ordinary Unit unless the Attached Securities are also forfeited.

9.2 Effect of forfeiture

- (a) A person whose Units have been forfeited:
 - (i) ceases to be a Unitholder in respect of the forfeited Units and ceases to be a member of each Stapled Entity in respect of the Attached Securities;
 - (ii) has no claims or demands against the Responsible Entity in respect of those Units;
 - (iii) has no other rights or entitlements in respect of those Units, except the rights that are provided by the Corporations Act or saved by this Constitution;
 - (iv) remains liable to pay, and must immediately pay, to the Responsible Entity all amounts that at the date of forfeiture were payable by the person to the Responsible Entity in respect of those Units; and
 - (v) must pay to the Responsible Entity interest at the rate that the Responsible Entity determines on those amounts from the date of forfeiture until and including the date of payment of those amounts.

- (b) When a Unit has been forfeited, the Responsible Entity must give notice in writing of the forfeiture to the Unitholder registered as its holder before the forfeiture and record the forfeiture with the date of forfeiture in the Register. Failure by the Responsible Entity to comply with any requirement in this clause does not invalidate the forfeiture.
- (c) A statement in writing from the Responsible Entity that is signed by a director or secretary of the Responsible Entity that a Unit was forfeited on a specified date is sufficient evidence of the forfeiture of that Unit and the right and title of the Responsible Entity to sell, dispose of or reissue that Unit.
- (d) Subject to the law and the Listing Rules, the Responsible Entity may waive any or all of its rights pursuant to clause 9.1 or this clause 9.2 on any terms that the Responsible Entity determines, and at any time before a sale, disposition, reissue or cancellation of a forfeited Unit, cancel the forfeiture on any terms as the Responsible Entity determines,.

9.3 Liens on Units

- (a) Unless the terms of issue of a Unit provide otherwise, the Responsible Entity has a first ranking lien on a Unit, the proceeds of sale of that Unit, and all dividends and entitlements determined in respect of that Unit, for:
- (i) any amount due and unpaid in respect of that Unit or a Stapled Security which has been called or is payable on a fixed date;
 - (ii) any amount which remains outstanding under loans made by the Responsible Entity or a Stapled Entity to acquire that Unit under an employee incentive scheme, to the extent permitted by the Corporations Act;
 - (iii) all amounts that the Responsible Entity is required by law to pay, and has paid, in respect of that Unit or that a Stapled Entity is required by law to pay, and has paid, in respect of an Attached Security; and
 - (iv) all interest and expenses due and payable to the Responsible Entity in respect of the unpaid amounts, to the extent permitted by the Listing Rules.
- (b) The Responsible Entity may waive any or all of its rights pursuant to clause 9.3(a) on any terms that the Responsible Entity determines.
- (c) The Responsible Entity's lien on a Unit is released if a transfer of that Unit is registered by the Responsible Entity without the Responsible Entity giving written notice of the lien to the transferee of that Unit.

9.4 Responsible Entity payments

- (a) A Unitholder or the Personal Representative of a deceased Unitholder must pay to the Responsible Entity on written demand an amount equal to all payments that the Responsible Entity makes to a government or taxation authority in respect of the Unitholder, the death of the Unitholder, the Unitholder's Units or any distributions made in respect of the Unitholder's Units, where the Responsible Entity is either:
- (i) obliged by law to make the relevant payment; or

- (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Responsible Entity is obliged by law to make the relevant payment.
- (b) The Responsible Entity is not obliged to notify a Unitholder in advance of its intention to make a payment pursuant to clause 9.4(a).
- (c) An amount payable by a Unitholder to the Responsible Entity pursuant to clause 9.4(a) is treated for the purposes of this Constitution as if it is a call properly made by the Responsible Entity of which notice has been given on the date on which the written demand is given by the Responsible Entity to the Unitholder or the Personal Representative of a deceased Unitholder.
- (d) Subject to the law and Listing Rules, the Responsible Entity may refuse to register a transfer of any Unit by a Unitholder or that Unitholder's Personal Representative until all amounts paid or payable by the Responsible Entity in respect of that Unit pursuant to any law has been paid to the Responsible Entity by the Unitholder or the Unitholder's Personal Representative.
- (e) Nothing in this clause 9.4 affects any right or remedy which any law confers on the Responsible Entity.

9.5 Dealing with Units

- (a) Subject to the law and Listing Rules, the Responsible Entity may sell, otherwise dispose of or reissue, a Unit which has been forfeited to any person on any terms and in any manner as the Responsible Entity determines
- (b) Subject to the law and Listing Rules, the Responsible Entity may cancel a Unit which has been forfeited pursuant to the terms on which the Unit is on issue.
- (c) For the purposes of enforcing a lien (including a lien over Stapled Securities or Attached Securities), the Responsible Entity may sell the Units which are subject to the lien (or form part of Stapled Securities or are Stapled to Attached Securities which are the subject to the lien) in any manner the Responsible Entity determines and, subject to the law and Listing Rules, with or without giving any notice to the Unitholder of those Units.
- (d) The Responsible Entity may do anything necessary or desirable pursuant to the law and Listing Rules to protect or enforce a lien or other interest in Units to which the Responsible Entity is entitled by law or pursuant to this Constitution.
- (e) Nothing in this clause 9.5 affects any right or remedy which any law confers on the Responsible Entity.

9.6 Proceeds of sale

- (a) The Responsible Entity must apply the proceeds of any sale of any Units pursuant to clause 9.5(a) or 9.5(c) in the following order:
- (i) the expenses of the sale;
- (ii) the amounts due and unpaid in respect of those Units; and
- (iii) subject to the terms of issue of the Units and any lien pursuant to clause 9.3 for an amount unpaid in respect of the Units, the balance (if any) to or at the direction of the person entitled to the Units immediately prior to

the sale, on delivery by that person of any evidence of ownership of or entitlement to those Units as the Responsible Entity requires.

- (b) The Responsible Entity is not required to pay interest on any amount payable pursuant to clause 9.6(a)(iii).

9.7 Sale procedure

- (a) The Responsible Entity may:
 - (i) effect a transfer of Units sold pursuant to clause 9.5; and
 - (ii) receive the consideration (if any) given for Units sold pursuant to clause 9.5.
- (b) The validity of the sale of Units pursuant to clause 9.5 may not be called into question by any person after the transfer has been registered, and the buyer of the Units need not enquire as to the validity of the sale or the application of the sale proceeds by the Responsible Entity.
- (c) The title of the buyer of Units sold pursuant to clause 9.5 is not affected by any irregularity or invalidity in connection with the sale.
- (d) The sole remedy (if any) of any person aggrieved by a sale of Units pursuant to clause 9.5 is in damages only and against the Responsible Entity exclusively.
- (e) A certificate in writing from the Responsible Entity signed by a director or secretary of the Responsible Entity that a Unit was sold, disposed of or reissued in accordance with clause 9.5 is conclusive evidence of those matters.
- (f) While Stapling applies and the Unit is an ordinary Unit, a reference to a Unit in any of clauses 9.1 to 9.7 is taken to be a reference to the ordinary Unit and Attached Securities where applicable. Ordinary Units may be subject to forfeiture and sold pursuant to clause 9.5 even if they are fully paid in circumstances when there is a default in payment of a call on any Attached Security.

10. Withdrawal from Trust

10.1 No right to withdraw

- (a) Except as provided in this clause 8 and subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Unitholder has no right to withdraw from the Trust;
 - (i) clauses 10.2 to 10.19 apply when the Trust is Liquid, Registered and not Registered;
 - (ii) clause 10.20 applies when the Trust is not Liquid, Registered and not Registered.
- (b) Unless the Responsible Entity determines otherwise, while Units are Officially Quoted, none of the provisions of clauses 10.2 to 10.20 (inclusive) apply.

10.2 Withdrawal Offer

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the Unitholder's only right to redeem any of its Units or otherwise withdraw (wholly or partly) from the Trust is to do so in accordance with the terms of any current Withdrawal Offer.

10.3 No obligation to make Withdrawal Offer

Nothing in this Constitution imposes any obligation on the Responsible Entity to make a Withdrawal Offer at any time to all Unitholders or to all Unitholders who hold Units in a Class. However, if it decides to make a Withdrawal Offer it may do so by any means including by publishing it in a newspaper or on the internet.

10.4 Cancellation of Withdrawal Offer

Subject to the Corporations Act, the Responsible Entity may at any time before a Withdrawal Offer closes, decide to cancel the offer, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Responsible Entity will give notice of the cancellation to the Unitholders to whom the Withdrawal Offer was made by any means including by publishing it in a newspaper or on the internet. Any Withdrawal Request made in response to that Withdrawal Offer which has not been satisfied at the time of the Responsible Entity's decision to cancel the Withdrawal Offer will be taken to be withdrawn at that time.

10.5 Obligation to satisfy Withdrawals

- (a) Subject to clauses 10.5(b), 10.6, 10.7, 10.8, 10.9, 10.12, 10.16, 10.18, 10.19 and 23.2(b), to the Corporations Act and to any rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity must, within 12 months of receipt of a Withdrawal Request made in response to a Withdrawal Offer (or any longer time as is permitted by virtue of the operation of clause 10.7), redeem the number or value of Units specified in the Withdrawal Request by payment from the Trust Assets of the Withdrawal Price determined in accordance with clause 10.11.
- (b) The Responsible Entity may purchase or arrange for another person to purchase all or some of the Units the subject of the Withdrawal Request at the price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 10.5(a) in respect of that Withdrawal Request. In that scenario, the Withdrawal Request is deemed satisfied upon:
 - (i) the transfer of Units the subject of the Withdrawal Request being recorded in the Register; and
 - (ii) if the transfer is for less than all of the Units the subject of the Withdrawal Request then upon payment of the Withdrawal Price in respect of the remaining Units.

10.6 No obligation to satisfy out of own funds

Nothing in this Constitution imposes any obligation whatsoever on the Responsible Entity to satisfy a Withdrawal Request in whole or in part out of its own funds.

10.7 Suspension of obligation to satisfy Withdrawal Request

If in the opinion of the Responsible Entity:

- For personal use only
- (a) it would prejudice the Trust's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust's or the Responsible Entity's compliance with any applicable law, the interests of any Unitholder or the taxation or stamp duty status of the Trust;
 - (b) it is, for any reason, impracticable for it to calculate the Net Asset Value of the Trust Assets including because of the closure of a securities or other exchange or trading restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state of affairs or because of an event outside the reasonable control of the Responsible Entity, or because of the requirements of any law;
 - (c) there would be insufficient cash retained in the Trust Assets after complying with a Withdrawal Request to meet other Liabilities and in the Responsible Entity's opinion it is not in the interests of Unitholders for any Trust Assets to be sold in order to satisfy a Withdrawal Request;
 - (d) sufficient Trust Assets cannot be realised at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside the control of the Responsible Entity;
 - (e) the Responsible Entity reasonably estimates that it must sell 5% or more (by value) of all Trust Assets to meet current unsatisfied Withdrawal Requests;
 - (f) there have been, or the Responsible Entity anticipates that there will be, Withdrawal Requests which will involve realising a significant amount of the Trust Assets and the Responsible Entity considers that if those Withdrawal Requests are all satisfied immediately, Unitholders who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those Withdrawal Requests would otherwise be to the existing Unitholders' disadvantage including (but not limited to) a material diminution in the value of the Trust Assets;
 - (g) it is in the interests of the Unitholders to invoke this clause 10.7 and extend the period referred to in clause 10.5; or
 - (h) the law otherwise permits,

then, in each case, the period referred to in clause 10.5 by which a Withdrawal Request must be satisfied may, (in respect of all or any part of the Units the subject of the Withdrawal Request), be extended by the Responsible Entity by the number of days during which it considers these circumstances still prevail.

An unsatisfied Withdrawal Request received by the Responsible Entity before or during any period of suspension is taken to be received by the Responsible Entity on the first Business Day after the end of that period of suspension.

10.8 Minimum Withdrawal Amount

Without limiting the circumstances in which the Responsible Entity may refuse to satisfy a Withdrawal Request (in whole or in part):

- (a) If the application money for the Units to be redeemed has been paid by cheque or direct debit order or by transfer of property, the Responsible Entity may refuse to act on a Withdrawal Request relating to those Units until that cheque or direct debit order is honoured by the bank on which it is drawn and the proceeds received, or

until unencumbered title to that property has been transferred to or at the direction of the Responsible Entity; and

- (b) The Responsible Entity may refuse a Withdrawal Request if it relates to Units which would have an aggregate Withdrawal Price which is less than the Minimum Withdrawal Amount unless the Withdrawal Request relates to all Units held by that Unitholder.

10.9 Minimum Balance

- (a) If to comply with a Withdrawal Request would leave the Unitholder holding Units worth, at the Withdrawal Price, less than the Minimum Balance, then the Responsible Entity may treat the request as relating to all Units held by that Unitholder.
- (b) If at any time a Unitholder ceases for any reason to hold Units with an aggregate worth, at the Withdrawal Price at that time, at least equal to an amount equal to the Minimum Balance, then the Responsible Entity may after giving 30 days notice to the Unitholder of its intention to do so, redeem that Unitholder's holding without the need for a Withdrawal Request at the Withdrawal Price prevailing on the day the redemption takes place.

10.10 Withdrawal Request cannot be withdrawn

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

10.11 Withdrawal Price

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Unit must only be redeemed at its Withdrawal Price determined when a Withdrawal Request is received or such other time specified by the Responsible Entity in a Withdrawal Offer.

10.12 Withdrawal Fee belongs to Responsible Entity

Without prejudice to the rights of the Responsible Entity under clause 25.5, the applicable Withdrawal Fee (if any) must be paid by the Unitholder to the Responsible Entity. The Responsible Entity may deduct that fee from the proceeds of redemption and retain the deducted amount for its own benefit.

10.13 Designated Time

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when a Withdrawal Request is received by the Responsible Entity for the purposes of clause 10.5. The Designated Time may be different for different methods of communication or payment. Accordingly, for the purposes of clause 10.5, if a Withdrawal Request is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it shall be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

10.14 Withdrawal Price may represent Distributable Income

The extent to which the whole or any part of an amount paid as Withdrawal Price represents a distribution of Distributable Income for an Income Distribution Period to which a Unitholder is presently entitled will be calculated by the Responsible Entity. That amount will be that Unitholder's Income Entitlement as a Former Unitholder in relation to the Income Distribution Period in which the redemption occurs.

10.15 Calculation

In calculating the extent to which an amount paid as Withdrawal Price represents a distribution of Distributable Income for an Income Distribution Period for the purposes of clause 10.14, the Responsible Entity may have regard to:

- (a) the amount and category of any Distributable Income attributable to that part of the Income Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 10.11;
- (b) the amount and category of any Distributable Income attributable to the realisation of Trust Assets to satisfy the redemption request or the source of funds used to satisfy the redemption request; and
- (c) the amount of any Tax Loss or category of Distributable Income that is attributable to that part of the Income Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 10.11.

10.16 Costs

On any redemption of Units, the Responsible Entity will deduct from any amount to be paid to the Unitholder any unpaid amounts due by the Unitholder to the Responsible Entity.

10.17 Transfer of Trust Assets

If agreed to by a Unitholder and the Responsible Entity, the Responsible Entity may transfer Trust Assets to the Unitholder in satisfaction in whole or in part of a Withdrawal Request. The value of the Trust Assets must be equal to the amount which would have been the Withdrawal Price (or part thereof) if paid in cash to that Unitholder, less such part (if any) of the Expenses associated with that transfer as the Responsible Entity considers should be payable by the Unitholder.

10.18 Time of Redemption and Cancellation of Units upon redemption

- (a) Units redeemed under clause 10.5(a) are taken to be redeemed at the time the Unitholder's name is removed from the Register, and from that time until payment of the Withdrawal Price the former holder of the redeemed Units ceases to be a Unitholder in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.
- (b) Units are automatically cancelled upon their redemption.

10.19 Discretionary redemption

Subject to the law, the Responsible Entity may in its absolute discretion at any time redeem some or all of the Units or Units in a Class of any Unitholder regardless of whether or not the Responsible Entity has received a Withdrawal Request in respect of those Units.

10.20 Withdrawal when Trust is not Liquid

Subject to any rights, obligations and restrictions attaching to any Unit or Class, the Unitholder's only right to withdraw (wholly or partly) from the Trust is to do so in accordance with Part 5C.6 of the Corporations Act.

10.21 Buy back of Units and cancellation

Subject to the Listing Rules, the Corporations Act and any applicable ASIC Instrument, the Responsible Entity may effect a buy back of Units by purchasing Units (whether on market or not) on any terms and at any time it determines.

10.22 Small Holdings

- (a) Subject to the provisions of this clause the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Unitholder which comprise less than a Marketable Parcel as notified by the Responsible Entity to Unitholders from time to time without request by the Unitholder.
- (b) The Responsible Entity may only sell or redeem Units pursuant to this clause on one occasion in any 12 month period. The Responsible Entity must notify the Unitholder in writing of its intention to sell or redeem Units under this clause.
- (c) The Responsible Entity will not sell or redeem the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under this clause; or
 - (ii) if, within the 6 weeks allowed under paragraph (i), the Unitholder advises the Responsible Entity that the Unitholder wishes to retain the Units.
- (d) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides. The proceeds of the sale or redemption will not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.
- (e) The Responsible Entity's power to sell or redeem the Units under this clause lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity is appointed as the attorney of and is authorised to execute on behalf of any Unitholder a transfer of their Units under this clause and do any other things the Responsible Entity considers necessary or desirable to effect such transfer.

11. Valuation of Trust Assets

11.1 Valuation and calculation of Net Asset Value of Trust property

The Responsible Entity may cause any of the Trust Assets to be valued at any time (not limited to once a day) and the Responsible Entity may calculate the Net Asset Value of the Trust Assets as at any time (not limited to once a day), in each case, in its absolute discretion.

11.2 Responsible Entity is not an expert

The Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

11.3 Method of Valuation

The valuation method or policy for any type of Trust Asset is to be determined by the Responsible Entity and the Responsible Entity may vary it whenever it so decides. Where the Responsible Entity values any Trust Asset at other than its market value then a description of the valuation method or policy applied by the Responsible Entity must be given to the auditor for the time being of the Trust prior to its implementation.

11.4 Currency conversion

If the Responsible Entity considers it should convert one currency to another it may do so at any time and at any conversion rate as is quoted to the Responsible Entity by any financial institution the Responsible Entity determines.

12. Register of Unitholders

12.1 Unitholder is absolute owner

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

12.2 Inspection of Register

If a Unitholder inspects or is given a copy of the Register (or part of the Register) pursuant to section 173(3) of the Corporations Act then they will be taken to have agreed not to use any information obtained from the Register (or part) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars of the Unitholding of that Unitholder. A Unitholder's obligation under this clause survives the transfer of all or any part of their Units.

12.3 Notify change of name or address of Unitholder

A Unitholder must promptly notify the Responsible Entity of a change of name or address.

12.4 Closure of Register

The Responsible Entity may close the Register at any time.

13. Transfers of Units

13.1 Transferability

- (a) Subject to paragraph (b) and the rules applicable while the Trust is admitted to an uncertificated trading system and to their terms of issue, a Unitholder may transfer all or any of their Units by whatever written transfer form the Responsible Entity may require from time to time.

- (b) Except as permitted by the Listing Rules, a Unitholder must not dispose of Restricted Securities during the applicable escrow period.
- (c) The Responsible Entity may assume, as against a Unitholder, that a power of attorney granted by that Unitholder that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may rely on it, until the Responsible Entity receives express notice in writing at its registered office of:
- (i) the revocation of the power of attorney; or
 - (ii) the death, dissolution or insolvency of the Unitholder.

13.2 Registration of a Transfer

- (a) Subject to paragraph (b), a transfer must be delivered to the Responsible Entity (or as it directs), duly stamped and executed by the transferor and transferee and be accompanied by any evidence of title required by the Responsible Entity.
- (b) If Units are to be transferred in a manner permitted by an uncertificated trading system to which the Trust is admitted, then the Responsible Entity may require before registration of any such transfer that it be provided with any documents which the rules of that system require or permit the Responsible Entity to require be provided to it to authorise registration.

13.3 Refusal of Registration

Subject to the Listing Rules, and the rules of any applicable uncertificated trading system and to their terms of issue, the Responsible Entity may, in its absolute discretion:

- (a) refuse to register any transfer of Units and must refuse to acknowledge a disposal (including registering a transfer) in breach of clause 13.1(b) or if the Listing Rules require it to do so. The Responsible Entity may give the Holder who lodged the transfer notice of the decision to decline the registration but it is not obliged to provide reasons for the decision; and
- (b) apply a holding lock (or ask that a holding lock be applied) including to prevent a transfer.

13.4 Transferor remains Holder

Subject to the rules applicable while the Trust is admitted to an uncertificated trading system and to their terms of issue, a transferor of a Unit remains the Holder until it has been entered in the Register.

14. Powers of Responsible Entity as Trustee of Trust Assets

14.1 General Powers of Responsible Entity

In addition to its powers arising under other provisions of this Constitution and by law, the Responsible Entity has all the powers in respect of the Trust and the Trust Assets that it is possible to confer on a natural person or corporation by law and as though it were the absolute and beneficial owner of the entirety of the Trust Assets acting in its personal capacity. Without limitation, the Responsible Entity in its capacity as responsible entity and trustee of the Trust has full and complete power to:

- (a) operate the Trust including the management of Trust Assets and Liabilities;

- (b) issue, acquire, dispose of, redeem, and/or cancel Units;
- (c) borrow or raise money or procure or grant any financial accommodation including the giving of guarantees for the purposes of the Trust in any manner whatsoever including whether or not on a secured basis and including the giving of security over Trust Assets;
- (d) issue debentures (including a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
- (e) grant a security interest over the Trust Assets;
- (f) incur obligations and liabilities of any kind, including to guarantee the obligations and liabilities of any person or provide indemnities in respect of such obligations and liabilities;
- (g) apply and invest all money at any time forming part of the Trust Assets in property and rights of any kind;
- (h) exercise, enforce, dispose or otherwise deal with any property or right;
- (i) enter into any agreement with any person (including an Associate of the Responsible Entity) to underwrite the subscription or purchase of Units;
- (j) enter into Derivatives for any purpose; and
- (k) fetter its own powers or discretions,

in each case on any terms and conditions as the Responsible Entity thinks fit **provided** that no action shall be taken which would constitute a 'prescribed arrangement' as defined in s102E of the Tax Act, and shall only undertake 'eligible investment business' as defined in s102M of the Tax Act for so long as those provisions (or any successor provisions having the same effect) are in force.

14.2 Discretion to exercise powers

Subject to the law, the Responsible Entity may determine whether to exercise and, if so, the manner, mode and time of exercise of its duties, powers and discretions in its absolute discretion.

14.3 Power to change name of Trust

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

14.4 Power to seek information

At any time, the Responsible Entity may request from Unitholders, and Unitholders must promptly provide to the Responsible Entity, any information (including personal information and details) reasonably required by the Responsible Entity for the purposes of administering the Trust or complying with any relevant laws.

14.5 Power to appoint agents and delegates

Subject to the Corporations Act, the Responsible Entity may appoint, engage or replace any person (including an Associate of the Responsible Entity) as its agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage any person (alone, jointly or

jointly and severally with other persons), to hold title to any Trust Asset, or to exercise or perform any of its duties, powers, discretions and obligations in connection with the Trust (and may include the power to appoint their own agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage another person for that purpose). Any such appointment or engagement may be on any terms that the Responsible Entity determines in its absolute discretion. An agent, delegate or other person appointed by the Responsible Entity pursuant to this clause 14.5 may be an Associate or related body corporate of the Responsible Entity.

14.6 Waiver of breach

Subject to its obligations at law, the Responsible Entity may waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Responsible Entity in connection with the Trust.

15. Remuneration of Responsible Entity and Trust Expenses

15.1 Expenses

In addition to any other rights to indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Trust Assets for, or pay from the Trust Assets, all Expenses incurred in relation to the proper performance of its duties or exercise of its powers. Without limitation this includes all Expenses of or in connection with:

- (a) the establishment, registration, operation, administration and management of the Trust, the Trust Assets and Trust Liabilities including without limitation complying with any law, the Listing Rules and any of the requirements of the ASIC;
- (b) preparation, approval, execution and enforcement of this Constitution (and any amendment of this Constitution);
- (c) the admission of the Trust to the Official List of the ASX and compliance with the Listing Rules;
- (d) the retirement or removal of the Responsible Entity and the appointment of a successor in its place;
- (e) the initiation, prosecution, defence and compromise of any court, arbitration or other dispute resolution action, claim or proceedings relating to the Trust (including any action, claim or proceeding brought by or against the Responsible Entity). However, if the Responsible Entity is found by a Court to be personally liable for any loss or damage to the Trust Assets then the Responsible Entity must repay any Expenses which have been reimbursed out of or paid from Trust Assets under this clause 15.1(e);
- (f) convening and holding meetings of Unitholders and giving effect to resolutions of any meeting and sending other communications to Unitholders;
- (g) the Register and all other registers in respect of any aspect of the Trust;
- (h) the identification, acquisition, realisation, insurance, valuation, custody, management, supervision, repair, maintenance, receipt, collection, or distribution of or other dealing with any Trust Assets (or any proposal to do any of those things). Without limitation, this includes the due diligence costs associated with an acquisition of a Trust Asset (including time spent by executives as approved by the

Responsible Entity), at a reasonable hourly rate having regard to the work being undertaken;

- (i) obtaining and servicing of financial accommodation (including bank fees, interest, expenses, charges and borrowing costs);
- (j) appointing or otherwise engaging any agent, delegate, advisor, developer, development manager, development advisor, real estate agent, marketing agent, administrator or other person (including an Associate) for any purpose in connection with the Trust. Without limitation, this includes persons who supply services to or on behalf of or at the request of the Responsible Entity and persons whose professional advice has been sought in respect of any matter concerning the operation, administration or management of the Trust (including any brokerage or commission payable to those persons);
- (k) underwriting of any subscriptions for or purchase of Units including fees and indemnity amounts and amounts which may become payable because of a breach (except for negligence, fraud or breach of trust) of the underwriting contract by the Responsible Entity;
- (l) the preparation, review, printing and distribution of any product disclosure statement, supplementary product disclosure statement, information memorandum or other disclosure document in respect of the Trust or other promotion of the Trust;
- (m) keeping the financial records relating to the Trust, and keeping, preparing, distributing and/or lodging the accounts relating to the Trust and complying with any obligations with respect to the accounts relating to the Trust and any audit of those accounts;
- (n) the termination of the Trust and winding up of the Trust;
- (o) the establishment and operation of the Compliance Committee (including any costs incurred in the selection and appointment of CC Members). Without limitation this includes indemnities, fees, costs and insurance premiums given, paid or otherwise made available in respect of CC Members and any fees of professional advisors in respect of advice or assistance obtained by the Compliance Committee;
- (p) (while there is no compliance committee in respect of the Trust) the board of directors of the Responsible Entity carrying out the functions which a compliance committee in respect of the Trust would be required by law to perform. Without limitation, this includes the fees and insurance premiums paid or otherwise made available to directors of the board who are external directors for the purposes of Chapter 5C of the Corporations Act;
- (q) the remuneration of, and reimbursement of expenditures by, committees that the Responsible Entity establishes for the purposes of promoting good corporate governance in relation to the Trust, including the audit committee or remuneration committee (if applicable);
- (r) the preparation, operation, amendment and audit of the compliance plan;
- (s) custodian fees;
- (t) compliance with all obligations and requirements under Taxation laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the Trust, any taxation audit, and the management of the Tax affairs of the Trust;

- For personal use only
- (u) the establishment and administration of the complaints handling procedures referred to in clause 19 and obtaining and maintaining membership of an external dispute resolution body;
 - (v) Taxes and bank fees and charges incurred by the Responsible Entity in connection with the Trust;
 - (w) complying with any law and any request or requirement of ASIC or other regulatory authority;
 - (x) travel expenses incurred in connection with the Trust;
 - (y) entering the Trust in any survey;
 - (z) any fees payable to any ratings organisation;
 - (aa) computer hardware, software and other equipment (including development and maintenance of internet facilities); and
 - (bb) the implementation of any Proposal or any restructuring or listing of the Trust.

15.2 Class Expenses

The Responsibility Entity may determine that an Expense, or a proportion of an Expense, is to be a Class Expense in relation to a particular Class. Unless and until the Responsible Entity makes that determination, any Expense under clause 15.1 is to be referable to all Units on an equal basis.

15.3 Fees

To the extent permitted by the Corporations Act, the Responsible Entity is entitled to be paid (but for any client or clients within a particular Class may elect to receive less than or waive part or all of) the following fees:

- (a) while the Trust is not Listed, the applicable Entry Fee (if any) in respect of an application for Units or Classes which has been accepted;
- (b) a management fee of up to 2% per annum of the Gross Asset Value of the Trust Assets provided that where Stapling applies and the Responsible Entity is ultimately controlled by the Unitholders, only that portion of the management fee equal to the expenses the Responsible Entity incurs that are not reimbursable from the Trust;
- (c) a performance fee equivalent up to 10% of any positive Excess Returns provided that:
 - (i) such performance fee will only be payable where Stapling no longer applies or the Responsible Entity is no longer ultimately controlled by Unitholders; and
 - (ii) the NAV Accumulation is at least equal to the Index Accumulation.
- (d) while the Trust is not Listed, the applicable Withdrawal Fee (if any) in respect of a Withdrawal Request which has been met in whole or in part. That Withdrawal Fee shall be payable in the manner described in clause 10.12.

15.4 Waiver of fees and expenses and differential fees

Subject to the law, the Responsible Entity has an absolute discretion to (in respect of a particular Class or generally):

- (a) accept lower fees than it is entitled to under this Constitution; or
- (b) otherwise waive or defer (in the case of a deferral the fee accrues on a daily basis until paid) for any period it considers appropriate:
 - (i) the amount of any fees (or any part of a fee) payable to it under this Constitution in respect of all or any Units; and
 - (ii) reimbursement of any or all Expenses under clause 15.1; or
- (c) agree with any Unitholder fee arrangements in respect of that Unitholder which are different to those that would otherwise apply under this Constitution.

15.5 Issue of Units to Responsible Entity

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may elect that it is to be issued Units in such Class determined by the Responsible Entity instead of cash in payment of any of its fees or payment or reimbursement of its Expenses under this Constitution.

15.6 GST

- (a) The fees and any other amounts which are payable to the Responsible Entity under this Constitution are exclusive of GST.
- (b) Any payment or reimbursement required to be made under this Constitution for an Expense or other amount paid or incurred by the Responsible Entity will be limited to the total Expense or amount less the amount of any input tax credit to which the Responsible Entity is entitled for the acquisition or transaction to which the Expense or amount relates.
- (c) If the Responsible Entity becomes liable to remit GST in respect of any supplies made under or in connection with this Constitution then:
 - (i) in addition to any fees or other amount to which the Responsible Entity is entitled, the Responsible Entity is entitled to recover or be paid from the Trust Assets (by way of increased fee or otherwise), at the same time as the fees or other amount, an amount equal to the amount of the GST liability; and
 - (ii) the Responsible Entity will issue a tax invoice for such supplies no later than the time at which the Responsible Entity recovers or is paid the additional amount referred to in clause 13.6(c)(i) from the Trust Assets.
- (d) If the GST payable in relation to a supply made under or in connection with this Constitution varies from the additional amount recovered or paid from the Trust Assets under clause 13.6(c)(i) in respect of that supply, then the Responsible Entity will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Trust Assets (as appropriate).
- (e) Except where the context suggests otherwise, terms used in this clause 13.6 have the meanings given to those terms in the *A New Tax System (Goods and Services*

Tax) Act 1999. A reference to Responsible Entity in this clause includes the representative Unitholder of any GST group to which the Responsible Entity belongs.

16. Responsible Entity's Indemnity out of Trust Assets

16.1 Responsible Entity's indemnity

In addition to any other rights of indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Trust Assets for, or pay from the Trust Assets, all liabilities and losses incurred by it in relation to the proper performance of its duties and exercise of its powers in relation to the operation, administration and management of the Trust or otherwise in connection with the Trust. The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it in incurring a liability (actual or contingent) for which it does not (or for which it considers it does not) have full rights of indemnity and reimbursement out of the Trust Assets, or which it cannot fully pay from the Trust Assets and unless its own liability is limited in a manner satisfactory to it in its absolute discretion. The rights of indemnity and reimbursement provided by this clause 16.1 shall continue in favour of the Responsible Entity after it has ceased to be Responsible Entity to the Trust.

16.2 Indemnity extends to cover acts of agents or delegates

To the extent permitted by the Corporations Act, if for any reason (including because of the operation of section 601FB(2) of the Corporations Act), the Responsible Entity is liable for the direct or indirect acts or omissions of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity), then the indemnity in clause 16.1 extends to also include that liability.

16.3 No obligation to commence litigation

The Responsible Entity is not under any obligation to commence, prosecute, defend or compromise any court, arbitration or other dispute resolution action, claim or proceeding unless it is satisfied the Trust Assets has and will at all times have sufficient net assets to adequately indemnify it against all Expenses, liabilities or losses it may incur in connection with that action, claim or proceeding.

16.4 Right of indemnity applies even if liabilities exceed Trust Assets

The Responsible Entity's rights to indemnity and reimbursement under this Constitution and at law apply even if at any time the liabilities of the Trust exceed the value of the Trust Assets.

16.5 Right of indemnity applies even if unrelated breach of trust

The Responsible Entity's right of indemnity and reimbursement in respect of a matter (an "**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether it arises before or after the Indemnified Matter) in respect of which those rights of indemnity do not apply.

16.6 Indemnity for CC Member

If any CC Member incurs a liability as such in good faith, the Responsible Entity may indemnify the CC Member out of Trust Assets in respect of that liability to the extent permitted by the Corporations Act.

17. Distributions

17.1 Determination of Distributable Income

The Responsible Entity may determine the Distributable Income of the Trust in respect of Interim Distributions at any time during a Financial Year and the Distributable Income for a Financial Year as at the last day of the subject Financial Year.

17.2 Classification of Distributable Income

The Responsible Entity may classify into categories all or any part of the Distributable Income and any items constituting or relating to the Trust Assets, and may account separately for each category, such categories may include the following without limitation:

- (a) amounts of income or ordinary income or statutory income (whether or not assessable or exempt income), and amounts deductible on income account, or amounts deductible as capital allowances or otherwise as capital expenditure;
- (b) any capital gains, and capital losses or items otherwise deductible or dealt with on capital account;
- (c) any distribution which is franked or unfranked for the purposes of the Tax Act and the amount of any franking credit;
- (d) any tax offset, any refundable tax offset and/or refund of a tax offset; and
- (e) any other items identified for the purposes of the Tax Act.

17.3 Present Entitlement

Each of the Unitholders on the Register at the close of business on the last day of the Financial Year is presently entitled to and has a vested and indefeasible interest in the Distributable Income in respect of that Financial Year on the last day of that Financial Year (taking into account any part of the Distributable Income previously distributed by way of an Interim Distribution or otherwise before the last day of that Financial Year) in proportions in accordance with clause 17.5. The Responsible Entity may record, for accounting purposes, in a Distribution Account, the amount of Distributable Income to which each Unitholder is presently entitled with respect to each Financial Year, including any amounts distributed during the Financial Year with respect to any Interim Distributions or otherwise.

17.4 Interim Distributions

The Responsible Entity may determine to make an Interim Distribution out of the Distributable Income during or with respect to one or more Interim Distribution Periods in a Financial Year.

17.5 Income Entitlement

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

- (a) if the Responsible Entity has determined to make an Interim Distribution out of the Distributable Income for an Income Distribution Period ending on any Income Distribution Date other than the last day of a Financial Year, an amount calculated for that Income Distribution Period as follows:

$$A = \left[\frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;
 - B is the number of Units held by the Unitholder at the end of the Income Distribution Period;
 - C is the number of Units held by all Unitholders at the end of the Income Distribution Period;
 - D is the amount of the Distributable Income for the Income Distribution Period; and
- (b) in respect of an Income Distribution Period ending on the last day of a Financial Year, an amount calculated as follows:

$$A = \left[\frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;
- B is the number of Units held by the Unitholder at the end of the Income Distribution Period;
- C is the number of Units held by all Unitholders at the end of the Income Distribution Period;
- D is the amount of the Distributable Income for the Financial Year as at the last day of the subject Financial Year minus the amount of the Distributable Income calculated for the purposes of variable D in clause 17.5(a) above in respect of all other Income Distribution Periods during the subject Financial Year.

17.6 Satisfaction of present entitlements to Distributable Income

The present entitlement of a Unitholder or Former Unitholder to Distributable Income of the Trust for the Financial Year is satisfied by the distribution to the Unitholder or Former Unitholder of the Income Entitlement of the Unitholder in respect of the Financial Year.

17.7 Payment of Distributions

- (a) The Responsible Entity shall pay or apply to or for the Unitholders eligible to receive an amount of Distributable Income for a Financial Year the amount of their respective entitlements to Distributable Income pursuant to clause 17.3 (excluding any amounts previously distributed by way of Interim Distributions or otherwise in respect of the Financial Year) on or before the day that is 2 months after the last day of that Financial Year.
- (b) Where the Responsible Entity determines to make an Interim Distribution, the Responsible Entity must within 2 months after the last Business Day of the Interim Distribution Period pay or apply to or for the Unitholders eligible to receive an Interim Distribution the amount of their respective entitlements to the Interim

Distributions determined in accordance with clause 17.5 as if all occurrences of the phrase 'Income Distribution Period' were replaced with 'Interim Distribution Period'.

17.8 Other Distributions

The Responsible Entity may at any time distribute from the Trust Assets any amount of capital to Unitholders pro rata according to the numbers of Units held as at a time decided by the Responsible Entity or distribute income to Unitholders in accordance with the proportions in clause 17.5. Distributions by the Responsible Entity to Unitholders may be made by means of cash, cheque, direct deposit or property, including without limitation, the issue of additional Units. The provisions of this clause 17 apply to such distributions so far as they are capable of doing so.

17.9 Tax

The Responsible Entity may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of Unitholders) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the Distributable Income of an Income Distribution Period is borne by the Unitholders in proportions that correspond with the shares of Distributable Income to which they are presently entitled, and that the Responsible Entity incurs no liability to pay Tax under the Tax Act as trustee of the Trust Assets.

17.10 Excess distribution

If the total amount of the distributions actually made to Unitholders during or in respect of an Income Distribution Period that ended in a Financial Year exceeds the Distributable Income for that Financial Year, the excess distribution should be regarded as a distribution of capital.

17.11 Distribution Reinvestment Arrangements

- (a) The Responsible Entity may in its discretion from time to time by notice to all Unitholders confer upon Unitholders of the Trust the right of reinvestment of income in further Units during such period as the Responsible Entity may determine. If conferred by the Responsible Entity, this right may be exercised by the Unitholder by giving notice in writing to the Responsible Entity (in the form determined by the Responsible Entity from time to time) to request that the Responsible Entity retain and reinvest in units the money or part of the money to be distributed to the member under clauses 17.4, 17.5, 17.7, 17.8, 17.9 and 17.10.
- (b) A Unitholder may by notice in writing to the Responsible Entity (in the form determined by the Responsible Entity from time to time) received not later than the last day of the relevant Income Distribution Period cancel any notice given under clause 17.11(a). The Unitholder is entitled to give a further notice under clause 17.11(a) at any time in respect of any subsequent Income Distribution Period.
- (c) In the event that a notice under clause 17.11(a) has been given to the Responsible Entity by a Unitholder no later than the last day of the relevant Income Distribution Period and has not been cancelled under clause 17.11(b), the Responsible Entity is entitled, but not obliged, out of any money to be distributed to the relevant Unitholders at the date of distribution, to retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Unitholder in additional Units.
- (d) If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on

behalf of the relevant Unitholder unless the Unitholder has cancelled any previous notice in accordance with clause 17.11(b) in which case the money representing the fraction is to be paid to the Unitholder as part of the Unitholder's distribution in respect of the current Income Distribution Period.

- (e) Whenever under this constitution or by law money is held on behalf of a Unitholder for future reinvestment, the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Issue Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Unitholder.

17.12 Classes

The rights of a Unitholder under this clause 17 are subject to the rights, restrictions and obligations attaching to any particular Unit or the Class which they hold and issued under clause 4.4.

17.13 Restricted Securities

A Unitholder who holds Restricted Securities is not entitled to any cash distributions in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing Rules or ASX.

18. Meetings of Unitholders

18.1 Corporations Act and Listing Rules to apply

- (a) While the Trust is not Registered, meetings of Unitholders or of Unitholders of a Class will be called and conducted as if Part 2G.4 applied (as modified by clauses 18.2 to 18.19 inclusive) with any necessary modifications except that at least 7 days' notice of a meeting must be given to Unitholders or Unitholders of a Class, or such shorter notice as they agree.
- (b) While the Trust is Registered, except as provided for in clauses 16.2 to 16.14 inclusive, the provisions of Part 2G.4 of the Corporations Act and the Listing Rules (while they apply) apply to meetings of Unitholders or Unitholders of a Class.

18.2 Convening of Meetings

The Responsible Entity may convene a Meeting of Unitholders or Unitholders of a Class at any time and may determine the time and place and the manner in which the meeting will be conducted.

18.3 Omission to give notice

Accidental omission to give notice to, or the non-receipt of notice of meeting by, a Unitholder will not invalidate the meeting.

18.4 Chair

Subject to the Corporations Act:

- (a) the Responsible Entity may appoint a person to chair a Meeting of Unitholders or a Class of Unitholders;
- (b) the chair of a meeting of Unitholders or a Class of Unitholders need not be a Unitholder or a Unitholder of a Class and, if there is an equality of votes either on a

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show of hands or on a poll, the chair has a casting vote in addition to the votes to which they may be entitled as a Unitholder or a Unitholder of a Class; and

- (c) the decision of the Chair on any matter relating to the conduct of a meeting is final.

18.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Corporations Act and the Listing Rules.

18.6 Acceptance of proxy appointment

The Responsible Entity may in its absolute discretion accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act. An appointment of proxy may be a standing one.

18.7 Joint Holders

Where more than one person is registered as the holder of any Unit, then:

- (a) all such registered holders shall be counted as a single registered holder for the purposes of calculating the number of Unitholders who have:
 - (i) requested a meeting under section 252B(1) of the Corporations Act;
 - (ii) given the Responsible Entity notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
 - (iii) requested that a statement be distributed to Unitholders under section 252N of the Corporations Act; or
 - (iv) demanded a poll under section 253L of the Corporations Act;
- (b) the joint holder first named in the Register (or if that person does not vote, the next named joint holder, and so forth) may exercise the voting rights of jointly held Units.

18.8 Quorum requirements

The quorum for a meeting of Unitholders or Unitholders of a Class is 2 Attending Unitholders entitled to vote on a resolution at the meeting. If, however, there are less than 2 Unitholders who are entitled to vote at the meeting, the quorum for that meeting is the number of Unitholders or Unitholders of a Class who are entitled to vote at the meeting.

18.9 Proxies and Representations

- (a) If an individual is attending a meeting both as a Unitholder or a Unitholder of a Class and as a proxy or body corporate representative, then the Responsible Entity may, for the purposes of determining whether a quorum is present, count the individual in respect of each such capacity.
- (b) Notwithstanding section 252W(2), a proxy is entitled to vote on a show of hands.
- (c) For the purposes of section 252Z of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, to reduce the period

of 48 hours referred to in sections 252Z(2) and (3) for receipt of proxy documents before the time appointed for the meeting.

- (d) Section 253A(1) applies to determine the validity of proxy votes. That section also applies to determine the validity of a vote of a body corporate representative as if the reference to 'proxy' in that section was a reference to body corporate representative.

18.10 Quorum presence

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

18.11 Absence of quorum - Dissolution or adjournment of meeting

If the quorum is not present within 30 minutes after the scheduled time for the start of the meeting set out in the notice of meeting, the meeting is:

- (a) if called under sections 252B, 252C, 252D or 252E - dissolved. This is not so if the meeting is called under section 252E and the court has directed otherwise; or
- (b) if called under section 252A - adjourned to a place and time that the Responsible Entity decides.

The quorum for any adjourned meeting is the number of Unitholders or Unitholders of a Class who are present in person or by proxy or by body corporate representative. If the quorum is not present within 30 minutes after the scheduled time for the start of the adjourned meeting, the meeting is dissolved.

18.12 Power of chair to cancel or postpone meetings

The chair may cancel or postpone a meeting for any reason to any place and time as it thinks fit unless the meeting has been called under section 252E and the court has directed otherwise.

18.13 Resolution binding

A resolution duly passed at a meeting of Unitholders or Unitholders of a Class duly convened and held in accordance with the Corporations Act and this Constitution or by postal ballot under clause 18.16 binds all Unitholders or all Unitholders of the Class (in that capacity) and the Responsible Entity and each Unitholder is bound to give effect to the resolution. This is so whether or not a Unitholder was present at the meeting.

18.14 Poll

A poll may be demanded and if demanded will be conducted as directed by the chair. The result of the poll is the resolution of the meeting at which the poll was demanded.

18.15 Notice of meeting

- (a) Notwithstanding section 252G(4) of the Corporations Act, a notice of meeting sent by post or by email or other electronic means is taken to be received by the Unitholder or Unitholder of a Class at the time specified in clause 28.2(c)(ii).
- (b) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Unitholders or Unitholders of a Class is not invalid if either or both:
 - (i) a person does not receive notice of the meeting; and/or

- (ii) the Responsible Entity accidentally does not give notice of the meeting to the person.

18.16 Resolution by Postal Ballot

- (a) Subject to the Corporations Act, a resolution of Unitholders may be passed by the Unitholders completing, signing and returning to the Responsible Entity, within such period as specified by the Responsible Entity, copies of a written resolution.
- (b) The resolution may consist of several documents in the same form, each signed by one or more Unitholders and is effective at the time specified by the Responsible Entity.
- (c) A Unitholder has, in relation to the resolution, the number of votes determined in accordance with section 253C(2) of the Corporations Act and the value of the Unitholder's total interests must be determined at such time as the Responsible Entity specifies.

18.17 Meeting of Class Unitholders

This clause 18 applies to meetings of Unitholders of a Class with any necessary modifications.

18.18 Restrictions on voting rights

A Unitholder is not entitled to vote on a resolution at a meeting of Unitholders where that vote is prohibited by law or an order of a court of competent jurisdiction.

18.19 Restricted Securities

A Unitholder who holds Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities during a breach of the Listing Rules or a breach of a Restriction Agreement relating to those Restricted Securities, except as permitted by the Restriction Agreement, the Listing rules or ASX.

19. Complaints

While the Trust is Registered, if a Unitholder makes or submits a complaint to the Responsible Entity in relation to the Trust, then the Unitholder must provide all further information and assistance that the Responsible Entity requires to enable the Responsible Entity to understand the nature and substance of the complaint. The Responsible Entity must:

- (a) acknowledge the complaint in writing as soon as reasonably practicable and in any event within 7 days from receipt;
- (b) use reasonable endeavours to deal with the complaint appropriately and within a reasonable timeframe having regard to the nature of the complaint; and
- (c) as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint communicate to the Unitholder in writing:
 - (i) the remedies which the Responsible Entity may make available to the Unitholder which may include compensation, an apology or information; and
 - (ii) the decision of the Responsible Entity and any further avenue for complaint.

- (d) provide a Unitholder with all reasonable assistance and information that the Unitholder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Responsible Entity.

20. Dealings with Trust and Trust Unitholders

20.1 Dealings by Responsible Entity and Associates

Subject to the law and the Listing Rules, the Responsible Entity and any one or more of its Associates may at any time:

- (a) in any capacity subscribe for, purchase, hold or otherwise deal with Units;
- (b) be a responsible entity, trustee or manager in relation to any other managed investment trust or trusts;
- (c) act in any representative, fiduciary or professional capacity on its own behalf or on behalf of itself or with any other of them in any capacity or with any Unitholder; and
- (d) invest in and maintain as Trust Assets interests in other managed investment trusts managed or promoted by the Responsible Entity or any of its Associates; and
- (e) be interested in or enter into any contract or transaction with itself in any capacity or with any other of them in any capacity or with any Unitholder or with any company or other entity any part of whose securities, or shares or other issued capital forms part of the Trust Assets.

20.2 Responsible Entity and Associates not liable to account

The Responsible Entity and its Associates may retain for their own benefit and are not liable to account to the Trust, the Unitholders or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 20.1.

20.3 Responsible Entity as a Unitholder

Subject to the Corporations Act, where the Responsible Entity acquires Units (on its own account or in some other capacity):

- (a) the Responsible Entity may be registered as a Unitholder in respect of the Units;
- (b) the Units acquired by the Responsible Entity are not cancelled or redeemed by reason of their acquisition by the Responsible Entity or the registration of the Responsible Entity as a Unitholder in respect of them and the Responsible Entity may dispose of the Units to other Unitholders or to third parties; and
- (c) Units held by the Responsible Entity confer on the Responsible Entity all of the benefits and rights of any other Unitholder under this Constitution and the law.

21. Protection and limitation of liability of Responsible Entity

21.1 No limitation on other statutory protection for the Responsible Entity

Nothing in this constitution limits, prejudices or otherwise affects the operation of the provisions of any statute under which the Responsible Entity may obtain relief from a breach of trust or other duty in respect of the Trust.

21.2 Responsible Entity may obtain and rely on advice etc.

In respect of the operation and administration of the Trust or otherwise in connection with the Trust, the Responsible Entity may obtain and rely on:

- (a) the Register;
- (b) the opinion, advice, statements or information obtained from solicitors or barristers (whether or not they are instructed by the Responsible Entity), bankers, accountants, auditors, valuers, brokers, underwriters, advisers or consultants and any other person who is an expert appointed or otherwise engaged by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to have the relevant expertise in relation to the matters upon which they are consulted;
- (c) any document believed by the Responsible Entity in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for the purposes of or in connection with the Trust; and
- (d) any other document or information from any Unitholder or other person (whether or not the person is appointed or otherwise engaged by the Responsible Entity) believed by the Responsible Entity in good faith to be the original or a copy thereof.

21.3 No liability for Responsible Entity

Subject to clause 21.4 and except to the extent the Corporations Act or other relevant law provides otherwise, the Responsible Entity is not liable in contract, tort, under statute or otherwise to any Unitholder for any loss or damage (including loss or damage) to the Trust Assets (or any part of it) regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts or omissions:

- (a) the Responsible Entity obtaining or relying on (in accordance with clause 21.2) any of the opinions, advice, statements, documents or information referred to in clause 21.2;
- (b) the Responsible Entity performing or not performing its duties or exercising or not exercising any of its powers;
- (c) the Responsible Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Responsible Entity;
- (d) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity). This includes fraudulent or unauthorised acts or omissions;
- (e) the Responsible Entity making any payment to any fiscal authority on any basis even if the payment need not have been made;
- (f) the Responsible Entity doing or omitting to do any act which by reason of:
 - (i) any present or future law; or
 - (ii) any decree, order or judgment of any Court,

the Responsible Entity is hindered, prevented or forbidden from doing or required to do; or

- (g) the Responsible Entity doing or omitting to do any act at the request of a Unitholder, including making a payment to a person other than the Unitholder.

21.4 Fraud, gross negligence or wilful default of the Responsible Entity

Clause 21.3 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Responsible Entity.

21.5 Liability limited to third parties

The Responsible Entity is not liable to any person who is not a Unitholder and nor will that person be entitled to enforce any rights against the Responsible Entity to any greater extent than the Responsible Entity is entitled to recover through its right of indemnity from and is in fact indemnified from the Trust Assets.

22. Stapling

22.1 When Stapling applies

The Responsible Entity may by written notice declare that some or all Units or other securities in the Trust are Stapled to equivalent securities in one or more other managed investment trusts, companies or entities. From the date of that declaration (or from a date specified by that declaration) Stapling pursuant to this clause 22 applies despite any other provision of this Constitution. The date specified by the Responsible Entity may be earlier than the date of that declaration, and if so:

- (a) all Units or other securities covered by that declaration are to be treated as if Stapling had occurred on the specified date; and
- (b) all Units or other securities covered by that declaration are to rank equally in all respects from the specified date (even if the specified date precedes their date of issue).

The provisions of this clause 22 apply to securities other than Units to the extent they are applicable if necessary changes are made.

22.2 Stapling continues despite changes in Stapled Entities

Stapling pursuant to this clause 22 continues to apply while any Unit remains Stapled to an Attached Security, even if:

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

22.3 Units and securities of each other Stapled Entity are Stapled

While Stapling pursuant to this clause 22 applies:

- (a) **(Stapling)** each Unit is Stapled to an Attached Security;
- (b) **(dealings)** there must be no dealing or disposition of any kind in relation to a Unit

unless there is also an identical dealing or disposition by the same parties with each category of Attached Security;

- (c) **(offers of Units)** the Responsible Entity must not offer Units for subscription or sale unless:
- (i) it also offers, at the same time and to the same person, the same number of corresponding Attached Securities; and
 - (ii) the offer is on condition that the offeree may not accept the offer unless the offeree also accepts the offer for Attached Securities.
- (d) **(Unit issues, sales)** the Responsible Entity must not issue or sell any Units to a person unless it at the same time issues or sells to that person the same number of corresponding Attached Securities;
- (e) **(options)** the Responsible Entity must not issue options to acquire Units unless it at the same time issues options to acquire corresponding Attached Securities. An option to acquire Units may only be exercised by a person if at the same time the person exercises an option to acquire the corresponding Attached Securities.
- (f) **(issue of partly paid Units)** the Responsible Entity must not issue a partly paid Unit on terms as to the time for payment of the balance of the Issue Price unless it at the same time issues a partly paid corresponding Attached Security on similar terms as to time for payment of the balance of the issue price;
- (g) **(calls on partly paid Units)** the Responsible Entity must not make a call on a Unitholder for money unpaid on a partly paid Unit unless it at the same time makes a call on that Unitholder for the same proportion of money unpaid on a partly paid Attached Security (and the same notice may be used for the calls for each Attached Security);
- (h) **(payment on partly paid Unit)** the Responsible Entity must not credit payment of a Called Amount or of an instalment on a partly paid Unit unless it has received any call amount or instalment due upon each corresponding partly paid Attached Security;
- (i) **(treating as fully paid)** the Responsible Entity must not treat a partly paid Unit as being a fully paid Unit unless it at the same time treats each corresponding partly paid Attached Security as being a fully paid security;
- (j) **(forfeiture)** a partly paid Unit cannot be forfeited unless each corresponding partly paid Attached Security is also forfeited at the same time;
- (k) **(reorganisations)** the Responsible Entity must not consolidate, subdivide, cancel, reorganise, reduce, alter or buy-back Units unless at the same time there is a corresponding consolidation, subdivision, cancellation, reorganisation, reduction, alteration or buy-back of the corresponding Attached Securities;
- (l) **(holding lock)** the Responsible Entity must not apply a holding lock or ask ASTC to apply a holding lock to prevent transfer of a Unit of a Unitholder unless it also applies or asks for a holding lock to apply to an equivalent number of Attached Securities;
- (m) **(transfers)** a Unitholder must not transfer a Unit to a person (and the Responsible Entity must not Register a transfer) unless at the same time the Unitholder transfers to that person the corresponding Attached Securities;

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- (n) **(Unit transmission)** Units registered in the name of a Unitholder are not capable of being transmitted to any person unless at the same time the same number of corresponding Attached Securities are transmitted to that person;
 - (o) **(price for issue or redemption of a Stapled Security)** a Stapled Security may be issued or redeemed for a price calculated by aggregating the price for the issue or redemption of a Unit in the particular circumstances fixed by this Constitution with the price for issue or redemption of the corresponding Attached Security in those circumstances fixed by their constitutions, or otherwise as agreed between the Responsible Entity and each relevant Stapled Entity;
 - (p) **(allocation of proceeds of issue among Stapled Entities)** the Responsible Entity may apply money received for the issue of Stapled Securities to the Stapled Entities or pay money for the redemption of Stapled Securities from the Stapled Entities in proportion to the Net Trust Value of the Trust and the net trust values of the other Stapled Entities worked out under their constitutions, or may apportion the receipts or payments between the Stapled Entities as the Responsible Entity thinks fit;
 - (q) **(alternative calculation of prices)** subject to the Corporations Act, the Responsible Entity may keep valuation records and financial records for the Stapled Entities as an economic entity and may use the net trust value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of aggregating the security values of the securities comprising a Stapled Security;
 - (r) **(regard to interests of holders in Stapled Entities)** in exercising its powers or discretions or performing its functions under this document or in relation to the Trust, the Responsible Entity may as it sees fit:
 - (i) take into account the interests of holders of securities in Stapled Entities other than the Trust; and
 - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Unitholders;
 - (s) **(discretion may be fettered)** the Responsible Entity may in connection with the Stapling fetter its discretions under this Constitution or in relation to the Trust, as it thinks fit, including by agreeing to consult with, or obtain the consent of, a person administering another Stapled Entity;
 - (t) **(indemnity and remuneration)** if the responsible entity of a Stapled Entity is entitled to an indemnity, reimbursement or payment of remuneration under the constitution of that Stapled Entity, the Responsible Entity may provide indemnity, reimbursement or payment to the responsible entity of that Stapled Entity out of the Trust Property;
 - (u) **(compromises)** the Responsible Entity may with the responsible entity of any other Stapled Entity compromise:
 - (i) any allocation of assets, property, liabilities, expenses or remuneration between the Trust and any Stapled Entity;
 - (ii) any allocation of application money for Units and securities in any other Stapled Entity; or
 - (iii) any other matter between the Trust and a Stapled Entity that the Responsible Entity considers to be necessary or appropriate in connection

with the Stapling or the relationship created by the Stapling;

- (v) (**guarantees**) the Responsible Entity may in connection with the Stapling or the relationship created by the Stapling give any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including the responsible entity of any other Stapled Entity;
- (w) (**security for guarantees**) the Responsible Entity may if it thinks fit give security for any such guarantee or indemnity or other liability over all or any part of the Trust Assets;
- (x) (**consideration**) the Responsible Entity may if it thinks fit in connection with the Stapling or the relationship created by the Stapling exercise all or any of its powers whether or not there is consideration or benefit for the Trust and either alone or jointly with any person including the responsible entity of any other Stapled Entity or as responsible entity of any other Stapled Entity, and may assume joint and several or several liability in respect of any joint exercise of these powers;
- (y) (**cooperative operation**) the Responsible Entity may cooperate with any other Stapled Entity to facilitate the operation of the Stapled Entities as an economic entity for the benefit of Unitholders and of holders of securities in each Stapled Entity;
- (z) (**Register**) a Unitholder must provide to the Responsible Entity the same personal information for the Register and for the register of each other Stapled Entity. The Responsible Entity must maintain or cause to be maintained a Register of Stapled Securities and must issue holding statements jointly with each other Stapled Entity;
- (aa) (**proxy forms**) a Unitholder must, if the Responsible Entity so determines, use a form of proxy to appoint the same proxy to vote on their behalf in respect of both a Unit and an Attached Security;
- (bb) (**resolutions at meetings**) the Responsible Entity may arrange for meetings of Unitholders and meetings of Unitholders of each other Stapled Entity to be held concurrently and may determine that a vote cast on a resolution by or on behalf of a Unitholder is to be treated also as a vote cast for an equivalent number of that Unitholder's securities in each other Stapled Entity; and
- (cc) (**amendment**) an amendment of this Constitution that directly affects the terms on which a Unit is held or removes any restriction on the transfer of a Stapled Security is of no effect unless the consent of the relevant Stapled Entity is obtained and the terms of the Attached Security are affected in the same way.

22.4 Issue Price of a Unit in a Stapled Security

The allocation of the Issue Price of a Stapled Security between the Unit and each corresponding Attached Security must be determined as follows:

- (a) the Responsible Entity and each other Stapled Entity may determine what part of the Issue Price of the Stapled Security is to be allocated to the Unit and to the corresponding Attached Security;
- (b) unless otherwise determined by the Responsible Entity and each of the Stapled Entities, the Issue Price must be allocated in proportion to the net assets (adjusted for the net market value of its investments) of the Trust and each other Stapled Entity at the relevant date; and

- (c) the Issue Price of a Stapled Security to be issued under an offer document issued by the Responsible Entity and Asia Pacific Data Centre Holdings Limited on or about 30 November 2012 is \$1.00.

22.5 Conduct of Stapled Entities

To the extent permitted by law, the Responsible Entity must cooperate with each other Stapled Entity in everything relating to the Stapled Securities. Without limitation, the Responsible Entity must do everything needed on its part to ensure that the Trust and the other Stapled Entities:

- (a) **(compliance with Listing Rules)** comply with their obligations under the Listing Rules;
- (b) **(disclosures)** co-ordinate their disclosures to the ASX and to holders of Stapled Securities;
- (c) **(accounting policies)** adopt consistent accounting policies;
- (d) **(valuation policies)** adopt consistent valuation policies;
- (e) **(proposed investments)** take a consistent approach on proposed investments;
- (f) **(meetings)** hold Unitholders' meetings concurrently or, where necessary, consecutively;
- (g) **(new issues, redemptions)** agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs;
- (h) **(value)** consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (i) **(distribution)** co-ordinate the announcement and payment of distributions;
- (j) **(reinvestments)** co-ordinate any distribution re-investment plan;
- (k) **(partly paid)** co-ordinate all actions connected with partly paid Stapled Securities; and
- (l) **(reports)** report to Unitholders and Attached Security Holders consistently and at the same times.

22.6 Unstapling

The following provisions apply for cessation of Stapling:

- (a) The Responsible Entity may by written notice (which may be in a document given to ASX) declare that Stapling ceases to apply to some or all Units in the Trust immediately, or upon a stated day. If any Stapled Security is Officially Quoted, the Responsible Entity may only do so with the approval of Unitholders by special resolution.
- (b) Subject to the Corporations Act and the Listing Rules, Stapling will automatically cease to apply to all Units in the Trust if:
 - (i) the Trust terminates in accordance with clause 23.1;
 - (ii) any Attached Security ceases for any reason to be transferable only with

Units; or

- (iii) the law prohibits the Stapling.
- (c) The Unitholders may, by special resolution, determine that Stapling ceases to apply to some or all Units in the Trust.
- (d) If Stapling ceases to apply to a Unit, the preceding provisions of this clause 22 then cease to apply to that Unit.
- (e) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 22.6, this does not prevent the Responsible Entity from subsequently determining that the Stapling provisions should recommence or from Stapling an Unstapled Unit to a financial product that is not Stapled.
- (f) If Stapling ceases to apply to all Units in the Trust, the Responsible Entity must do everything reasonably necessary to give effect to the cessation of Stapling, including:
 - (i) amending any records of the Trust;
 - (ii) transferring any property or paying any Tax; and
 - (iii) giving directions or consents to any Stapled Entity to which Stapling will cease to apply, or to the custodian or responsible entity that holds the assets or property of such a Stapled Entity.

22.7 Stapling mechanics and implementation

The following provisions apply for implementing a Proposal:

- (a) The Responsible Entity may do everything it reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit or un-Staple a Unit.
- (b) The Responsible Entity:
 - (i) is appointed irrevocably as agent and attorney of each Unitholder to sign any document or do anything the Responsible Entity reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit or Unstaple a Unit; and
 - (ii) may (as agent or attorney of the Unitholder) on behalf of the Unitholder:
 - A. receive and apply returned capital or redemption proceeds (including in kind and including to apply for a Unit or other security of the Trust);
 - B. apply for a security in another Stapled Entity (including copying or deriving an application form from a product disclosure statement or offer document given to the Unitholder); and
 - C. consent to be bound by the constitution of a Stapled Entity.
- (c) The Responsible Entity may enter into a deed or agreement (including with the responsible entity of another trust or with a company or other entity) for implementing a Proposal for or for the conduct of Stapled Entities.

22.8 Limitation of liability of and indemnity for Responsible Entity

Subject to the Corporations Act, each provision of this deed limiting the liability of the Responsible Entity and each provision of this deed indemnifying the Responsible Entity, apply in connection with a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling.

22.9 Expenses of Proposal

The indemnity for expenses and liabilities in clause 15.1 includes all expenses and liabilities in connection with a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling, such as due diligence, retaining experts or advisers, and preparing information for Unitholders.

22.10 Stapling provisions paramount

This clause 22 has effect despite any other provision of this constitution (except clause 1.4) and a provision of this Constitution that is inconsistent with this clause 22 does not have effect to the extent of the inconsistency.

23. Winding up of the Trust

23.1 Circumstances where the Trust terminates

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date that the Trust is to terminate in a notice given to Unitholders at least 10 Business Days before the proposed termination date;
- (b) the Unitholders fix a date of termination, or resolve to terminate the Trust, by a resolution that has been passed at a meeting on a poll by a special resolution; and
- (c) the occurrence of an event requiring the winding up of the Trust under a provision of the Corporations Act or of any other applicable law.

23.2 Procedure on termination

If under clause 23.1 the Trust has terminated then, subject to any court orders or directions to the Responsible Entity, the following provisions will apply:

- (a) the Responsible Entity must give to each Unitholder notice of the termination and of its intention to wind up the Trust;
- (b) no Units may be issued or redeemed;
- (c) subject to clause 23.2(e), the Responsible Entity will as soon as reasonably practicable after giving the notice under clause 23.2(a) realise all of the Trust Assets in such manner as the Responsible Entity considers appropriate and pay, discharge or provide for (which provision may be made for such period of time as the Responsible Entity thinks fit) all liabilities (whether actual, contingent or prospective) and all Expenses of or in connection with the Trust including those anticipated in connection with the winding up of the Trust;
- (d) subject to any special rights, obligations or restrictions attaching to any particular Unit or Class, the net proceeds of realisation and all other cash forming part of the Trust Assets will be distributed to the Unitholders in proportion to the number of

Units held by them at the date of the distribution. For this purpose, the Responsible Entity may rely exclusively on the evidence of the Register;

- (e) the Responsible Entity is entitled to postpone the realisation of any of the Trust Assets for the time that it thinks is desirable so to do in the interests of the Unitholders, 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 21.4; and
- (f) the Responsible Entity may make partial distributions in accordance with this clause.

23.3 Retention of proceeds of realisation

If the Responsible Entity decides to make a provision under clause 23.2(c), then it may retain such part of the proceeds of realisation as it thinks fit for as long as it thinks fit to meet all the liabilities and Expenses referred to in clause 23.2(c). Any proceeds so retained which are ultimately found not to be required will be distributed in accordance with clause 23.2.

23.4 Distribution to Unitholders

The Responsible Entity must make a distribution under this clause 23 only if the Unitholder delivers to it any form of receipt and discharge required by the Responsible Entity.

23.5 In specie distributions

The Responsible Entity may distribute any Trust Asset to a Unitholder in specie. The value of the asset is to be determined by the Responsible Entity and clause 11 will apply for this purpose. Expenses payable in respect of an in specie distribution are to be paid for by the Unitholder unless the Responsible Entity determines any such Expenses are payable or reimbursable out of Trust Assets.

23.6 Audit of Accounts

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

23.7 Amounts to which Unitholder is Presently Entitled

Prior to the winding up of the Trust, the Responsible Entity must pay to Unitholders any undistributed amounts to which they are presently entitled to respectively by virtue of clause 23.

23.8 Continuation of Constitution

This Constitution (including all rights of indemnity), continues to apply until the Trust is finally wound up but only to the extent the Constitution is not inconsistent with this clause 23.

23.9 Cancellation of Units

Unless the Responsible Entity determines otherwise, Units in respect of which a final distribution is made are cancelled from the date of that distribution.

24. Removal and retirement of Responsible Entity

24.1 Retirement of Responsible Entity

- (a) Subject to the Corporations Act, while the Trust is Registered the Responsible Entity may retire at such time as it thinks fit.
- (b) While the Trust is not Registered, the Responsible Entity must retire when required by law and otherwise may retire on not less than 14 days notice to the sole Unitholder or to the Unitholders (or by such shorter period as they agree). The Responsible Entity may appoint in writing the replacement responsible entity from retirement.

24.2 Consequences of change of Responsible Entity

If and when the Responsible Entity retires or is removed as the Responsible Entity then, with effect from and including the time of that retirement or removal:

- (a) the former responsible entity is released from all obligations and liabilities in relation to the Trust arising after that time; and
- (b) the new responsible entity will be taken to have agreed:
 - (i) to indemnify the former responsible entity for all its costs and expenses incurred (after that time) in connection with discharging its obligations under section 601FR of the Corporations Act; and
 - (ii) if it is not an Associate of the former responsible entity or it has not obtained the written consent of the former responsible entity, to promptly take whatever action is necessary to change the name of the Trust and remove any words, letters or expressions from this Constitution and any other documents which might express or imply an association with the former responsible entity or any of its Associates and agrees not to use any such words, letters or expressions in any connection with the Trust and this Constitution.

24.3 Covenant of proposed new Responsible Entity

Whether or not the Trust is Registered, any proposed new responsible entity of the Trust must agree to be bound by this Constitution as if it had been an original party to it by executing a deed to that effect. While the Trust is not Registered, the Responsible entity must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of Responsible Entity.

24.4 Retirement Benefit

Subject to the Listing Rules, the Responsible Entity may at any time agree with any person (including the proposed replacement responsible entity) that the Responsible Entity will be paid by or provided with such remuneration (including any form of benefit) from that person for:

- (a) agreeing to submit a proposal to Unitholders for the retirement of the Responsible Entity and the nomination to the Unitholders of the replacement responsible entity as its replacement; or
- (b) retiring as Responsible Entity,

and the Responsible Entity is not liable to account to Unitholders or any other person for any such payment or benefit.

25. Payments and recoveries

25.1 Payments to a Unitholder

Any money payable by the Responsible Entity to a Unitholder may be paid or applied in any manner (including by cheque or directly into a designated account with a financial institution) that the Responsible Entity determines from time to time. Only whole cents are to be paid (after rounding up or down as determined by the Responsible Entity) and any remaining fraction of a cent becomes Trust Assets.

25.2 Unitholder direction for payment to third parties

If any Unitholder (including any person registered jointly as a Unitholder) directs the Responsible Entity to pay to any person any money which would otherwise be payable under this Constitution to the Unitholder, then the Responsible Entity may accept or reject that direction in its absolute discretion.

25.3 Payments by cheque

If the Responsible Entity decides to pay money by cheque then:

- (a) if such cheque is issued to the Unitholder and is presented and paid or the payment is made to a person at the direction of the Unitholder or to an account with a financial institution nominated by the Unitholder then, in each such case, that payment is in full satisfaction of the Responsible Entity's obligation to pay and a good discharge to the Responsible Entity; and
- (b) the Responsible Entity may determine in its discretion the further treatment of:
 - (i) any cheque issued which is made payable to the Unitholder or to a person at the Unitholder's direction and which is not presented within 3 months; or
 - (ii) any payment unsuccessfully attempted to be made 3 times to a Unitholder by electronic transfer of funds at the discretion of the Responsible Entity,

which treatment may include, but is not limited to, cancelling the payment and reinvesting the payment in Units in the name of the Unitholder or dealing with the payment in accordance with the requirements of any applicable unclaimed moneys laws.

25.4 Payments to joint Unitholders

For persons registered jointly as Unitholders, payment to any one of those joint holders will be a good discharge to the Responsible Entity in respect of that payment. Any one joint holder may give an effective discharge to the Responsible Entity in respect of any payment.

25.5 Unitholder indemnification of Responsible Entity

Notwithstanding any other provision in this Constitution (whether express or implied) each Unitholder and Former Unitholder indemnifies the Responsible Entity (both on its own account and on account of the Trust) for, and the Responsible Entity may deduct from any money (including distribution entitlements) payable to a Unitholder or Former Unitholder or

received from a Unitholder or Former Unitholder or otherwise recover from a Unitholder or Former Unitholder (including by redeeming any Units of a Unitholder):

- (a) any unpaid amounts due by the Unitholder or Former Unitholder on any basis (under this Constitution, pursuant to the Trust disclosure document, or pursuant to the Corporations Act) to the Responsible Entity (either on its own account or on account of the Trust). If those amounts represent fees payable to the Responsible Entity, it may retain the amounts deducted or recovered for its own purposes;
- (b) any amount of Tax (or the Responsible Entity's estimate of Tax) owed by the Unitholder which the Responsible Entity reasonably believes it must or should deduct from the payment or receipt and any Expenses in respect of the entitlement of the Unitholder or Former Unitholder to, or payment of income or capital or the issue and allotment of Units, and the Responsible Entity may apply all these amounts so deducted or recovered in payment or reimbursement of the relevant Taxes or Expenses;
- (c) any Tax or Expense in relation to a Unitholder or Former Unitholder (or the Responsible Entity's estimate of it) that is incurred by the Responsible Entity as a consequence of an action or omission of, or which is requested by, the Unitholder or Former Unitholder; and
- (d) any Tax which is paid or anticipated to be payable by the Responsible Entity on account of or in respect of the Unitholder or Former Unitholder on an amount distributed to that Unitholder or Former Unitholder.

25.6 Responsible Entity's lien

The Responsible Entity has a first and paramount lien over all of a Unitholder's Units in respect of any monies payable to the Responsible Entity on any basis under this Constitution or the Corporations Act in respect of any of those Units. This lien extends to distributions from time to time declared in respect of any such Units. The registration by the Responsible Entity of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

26. Indemnification and insurance of Compliance Committee Members

- (a) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Trust Assets, a person who is, or has been, a CC Member against a liability incurred by that person, in his or her capacity as a CC Member, to another person (other than the Responsible Entity or a related body corporate of the Responsible Entity) provided that the liability does not arise out of conduct involving a lack of good faith.
- (b) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Trust Assets, a person who is, or has been, a CC Member against a liability for costs and expenses incurred by that person:
 - (i) in defending any proceedings in which judgment is given in that person's favour, or in which that person is acquitted; or
 - (ii) in connection with an application in relation to such Proceedings in which the Court grants relief to that person under the Corporations Act.

(c) To the extent permitted by law, the Responsible Entity may pay, or agree to pay, from the Trust Assets a premium in respect of a contract insuring a person who is, or has been, a CC Member against a liability:

(i) incurred by that person:

A. in his or her capacity as a CC Member;

B. in the course of acting in connection with the Compliance Committee; or

C. otherwise arising out of the person holding office as a CC Member,

provided that the liability does not arise out of conduct involving a wilful breach of a duty referred to in section 601JD of the Corporations Act; or

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

27. Death and insolvency of a Unitholder

27.1 Death of a Unitholder

If a Unitholder dies, then only the legal personal representative or, if the Unitholder is registered jointly as a holder of Units only the survivor or survivors, will be recognised as having any claim to Units registered in the name of that Unitholder. The Responsible Entity may require such information as it thinks fit to establish a person's entitlement to claim a Unitholder's Units.

27.2 Legal disability, bankruptcy etc. of a Unitholder

If a Unitholder becomes subject to a legal disability, becomes bankrupt or is placed in liquidation, then the survivor (or survivors in the case of a joint holding of Units) or any person who gives the Responsible Entity all the information the Responsible Entity requires to establish their entitlement to be registered as the holder of the Units registered in the Unitholder's name as a result of the legal disability, bankruptcy or liquidation, will be recognised as having any claim to the Units registered in the name of that Unitholder.

27.3 Discharge to Responsible Entity

A person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Unitholder may give a good discharge for any money payable or property transferable in respect of Units. Such person is not entitled to receive notices of or attend or vote at any meetings of Unitholders until they are entered in the Register as the holder in respect of the Units.

28. Notices

28.1 Form of notice by Unitholder

Subject to the Corporations Act, any notice, consent or other communication by a Unitholder to the Responsible Entity:

(a) must be in writing (or in any other manner determined by the Responsible Entity) and in English unless the Responsible Entity determines otherwise;

- (b) must be signed personally or bear the facsimile or electronic signature or other electronic identification of the Unitholder or, of a duly authorised officer or representative of the Unitholder unless the Responsible Entity determines otherwise;
- (c) must be addressed to the registered office of the Responsible Entity or to the fax number or any other address (including electronic address) that the Responsible Entity notifies from time to time; and
- (d) is taken to be duly given by the sender and received by the Responsible Entity only at the time of actual receipt by the Responsible Entity.

28.2 Form of Notice by the Responsible Entity

Subject to the Corporations Act, any notice or other communication by the Responsible Entity to a Unitholder:

- (a) must be given in writing (or in such other manner as the Responsible Entity determines);
- (b) sent to the Unitholder at their physical or electronic address specified in the Register;
- (c) is taken to be received by the Unitholder;
- (i) (in the case of delivery by hand), on delivery at the physical address of the Unitholder or on delivery personally to them;
- (ii) (in the case of pre-paid post) on the next Business Day after the date of posting;
- (iii) (in the case of fax transmission) on receipt of a transmission report confirming successful transmission;
- (iv) (if sent by any other manner) at the time the Responsible Entity determines.

28.3 Joint Holders of Units

For persons registered jointly as the holders of a Unit, notices or other communications given to or by the holder named first in the Register as provided in clauses 28.1 and 28.2 respectively will be taken to be validly given to or by all the joint Unitholders.

29. Severability

Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Deed which remain in full force and effect.

30. Amendment

While the Trust is Registered, this Constitution may be modified, repealed or replaced in accordance with the Corporations Act. While the Trust is not Registered, the Responsible Entity may amend this Constitution by supplemental deed.

31. Application of accounting principles

Despite any other provision of this Constitution, the Responsible Entity must apply the generally accepted accounting principles as at 1 July 2012 and accounting standards in force as at 1 July 2012 (or as at or on such other date determined from time to time by the Responsible Entity in consultation with the Trust auditor) to the financial affairs of the Trust to the extent needed for any relevant calculation under this Constitution.

32. Perpetuity period

32.1 Actions by Responsible Entity after 80 years

If to exercise a power under this Constitution after the expiry of the perpetuity period would, or to exercise a power in a particular way after the expiry of the perpetuity period, would offend against any rule of law or equity such as the rule against perpetuities, then the Responsible Entity ceases to have power to exercise that power (or to exercise that power in that way) at the expiry of the perpetuity period.

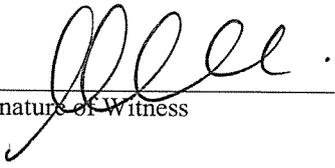
32.2 Perpetuity period

The perpetuity period applicable to any disposition made by this Constitution is the period of 80 years from the date the Trust is established.

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Executed as a deed.

Signed, sealed and delivered by **Timothy Colin Reid** in the presence of:



Signature of Witness

 Tonyo Mangold
Name of Witness in full

Executed by **Asia Pacific Data Centre Limited ACN 159 624 585** in accordance with section 127 of the Corporations Act by or in the presence of:



Signature of Director

 CROW SINGH
Name of Director in full



Signature



Signature of Director or Secretary

 GREGORY A. J. BAYNTON
Name of Director or Secretary in full

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Schedule - Explanatory Note for Trust Constitution

Compliance table - matters required by section 601GA and section 601GB

The following table illustrates the manner in which the Constitution deals with the matters prescribed in sections 601GA and 601GB of the *Corporations Act 2001* (Cth) (as required in ASIC Policy Statement 134 at paragraph 3 and s601EB(1) of the *Corporations Act 2001* (Cth)).

Section of the <i>Corporations Act 2001</i> (Cth) and Description of Prescribed Content of Constitution	Corresponding clause in the Constitution
Section 601GA(1)(a) - the consideration that is to be paid to acquire an interest in the Trust.	Clause 1.1 - definition of "Issue Price" Clause 7 - Application for, creation and issue of Units Clause 11 - Valuation of Trust Assets Clause 17.11 - Distribution Reinvestment Arrangements
Section 601GA(1)(b) - the powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, Trust Assets.	Clause 14 - Powers of Responsible Entity as Trustee of Trust Assets
Section 601GA(1)(c) - the method by which complaints made by Unitholders in relation to the Trust are to be dealt with.	Clause 19 - Complaints
Section 601GA(1)(d) - winding up of the Trust.	Clause 23 - Winding up of the Trust
Section 601GA(2) - any rights the Responsible Entity has to be paid fees out of Trust Assets, or be indemnified out of Trust Assets for liabilities and expenses incurred in performing its duties. These rights must be available only in relation to the proper performance of the Responsible Entity's duties.	Clause 15- Remuneration of Responsible Entity and Trust Expenses Clause 16- Responsible Entity's Indemnity out of Trust Assets Clauses 15.1 and 16.1 limit these rights to the proper performance by Responsible Entity of its duties and exercise of its powers.
Section 601GA(3) - any powers the Responsible Entity has to borrow or raise money for the purposes of the Trust.	Clause 14.1(c) - Powers of the Responsible Entity to borrow or raise money or procure or grant any financial accommodation in any manner whatsoever including whether or not on a secured basis.
Section 601GA(4) - rights of Unitholders to withdraw from the Trust, and the procedures for making and dealing with withdrawal requests.	Clause 1.1 definition of "Withdrawal Price" Clause 8 - Withdrawal from Trust Clause 11 - Valuation of Trust Assets
Section 601GB - the Constitution of a registered trust must be contained in a document that is legally enforceable as between the Unitholders and the Responsible Entity.	Clause 1.4 - <i>Corporations Act 2001</i> (Commonwealth) Clause 2.2 - Constitution is legally binding.

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Schedule 2 - Initial Sum and Original Unitholder

Initial Sum:	\$61.00
Number of Original Units:	100
Issue Price of Original Units:	\$1
Paid portion of the Original Units at the time of issue:	\$0.61
Unpaid portion of the Original Units at the time of issue:	\$0.39
Original Unitholder and their Units:	NEXTDC Limited ACN 143 582 521 - 100 Units

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