

Constitution

Sestante Growth Fund

ARSN To be issued

AZ Sestante Limited

ABN 94 106 888 662

Responsible Entity

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"Complaint" means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

"Compliance Committee" means the committee (if any) established by the Responsible Entity pursuant to section 601JA(1) of the *Corporations Act 2001* (Cth).

"Determined Member Component" has the meaning given to that term in section 276-205 of the AMIT Bill.

"Determined Member Component Choice" means a choice made by a Member under section 276-205 of the Proposed Attribution Managed investment Trust Rules.

"Determined Trust Component" has the meaning given to that term in section 276-255 of the AMIT Bill.

"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 7.11 or clause 8.11 (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 would be incurred by the Responsible Entity if all Scheme 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, unless the Responsible Entity determines otherwise prior to the end of the Income Distribution Period, the aggregate of:

- (a) the income and gains of the Scheme determined in accordance with applicable accounting principles and standards;
- (b) an additional amount which, if distributed in cash to Members for the period, would prevent the Responsible Entity being liable to Tax on the income of the Scheme under section 99 or section 99A of the Tax Act for the Financial Year as if the period is a year of income; and
- (c) any additional amount whether income or capital which the Responsible Entity determines prior to the end of the Income Distribution Period is appropriate for distribution for the period.

"Distribution Account" means the account referred to in clause 15.4.

"Entry Fee" means, in respect of an application for Units an amount up to 2% of the application money for Units or the market value of the property or any other lesser amount as agreed between the applicant and its adviser pursuant to or under the relevant disclosure document for the Scheme and notified to the Responsible Entity.

"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 2001 (Cth)* (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 Scheme 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 Scheme and ends on the date of that final distribution.

"Former Member" 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.

"Income Distribution Date" means the last day of each Financial Year or such other date or dates in a Financial Year 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 Scheme 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 Scheme.

"Income Entitlement" means an entitlement to the Distributable Income of a Member or Former Member in respect of a Unit calculated in accordance with clause 15. For the removal of doubt, the Income Entitlement of a Former Member in relation to an Income Distribution Period is as calculated in accordance with clause 8.16.

"Interim Distribution" means a distribution pursuant to clause 15 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 at any time, in respect of a Unit or Units in a Class, the amount calculated in accordance with clause 7.7. The Responsible Entity may calculate the Issue Price to the number of decimal places that the Responsible Entity determines.

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

- (a) all liabilities of every nature of or in respect of the Scheme 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 Scheme Assets or in relation to the Scheme, including (without limitation) any unpaid amounts due and payable to any Members 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 Members. Where more than one Class is on issue and the Net Asset Value of the Scheme 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 2001* (Cth).

"Member" means:

- (a) a person whose name is, for the time being, entered in the Register as the holder of a Unit (including persons jointly so registered); and
- (b) a person in respect of whom Units are taken to be issued under clause 7.5, even though that person's name has not yet been entered into the Register.

"Member Component" has the meaning given to that term in section 276-210 of the AMIT Bill.

"Minimum Application Amount" means \$20,000 or any other 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 \$20,000 or any other 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 \$1,000 or any other 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.

"Net Asset Value of the Scheme Assets" means, at any time, an amount equal to the total value of the Scheme Assets determined at that time in accordance with clause 9 and Australian accounting principles less the Liabilities of the Scheme at that time and adjusted for such provisions and incremental or decremental adjustments as the auditor of the Scheme considers appropriate.

"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 Scheme 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 Scheme Assets.

"Parliament" means the Parliament of the Commonwealth of Australia.

"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 Scheme.

"Proposed Attribution Managed Investment Trust Rules" means the rules in the proposed Division 276 of the *Income Tax Assessment Act 1997* (Cth) (or an equivalent division), together with the other relevant amendments to the *Income Tax Assessment Act 1997* (Cth), *Income Tax Assessment Act 1936* (Cth) and *Taxation Administration Act 1953* (Cth), contained in the AMIT Bill.

"Register" means the register of Members maintained by the Responsible Entity pursuant to Chapter 2C of the *Corporations Act 2001* (Cth).

"Registered" means registered as a managed investment scheme by ASIC under Chapter 5C of the *Corporations Act 2001* (Cth).

"Responsible Entity" means, AZ Sestante Limited (while the Scheme is not Registered), and (while the Scheme is Registered) the company named in clause 2.1 or otherwise named in ASIC's record of registration for the Scheme as the responsible entity or temporary responsible entity of the Scheme.

"Retail Client" has the same meaning as in the *Corporations Act 2001* (Cth).

"Scheme" means the managed investment scheme initially called Sestante Diversified Fund established by this Constitution.

"Scheme Assets" means all cash, property, rights and income of the Trust 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 Scheme Assets referable to a particular Class is being calculated, reference to "Scheme Assets" means that proportion of the Scheme Assets that the Responsible Entity considers are properly referable to each Class.

"Special Resolution" has the meaning given to that expression in the *Corporations Act 2001* (Cth).

"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 trust constituted by this Constitution in respect of the Scheme Assets.

"Trust Component" has the meaning given to that term in section 276-260 of the AMIT Bill.

"Unders and Overs Rules" means the provisions which are set out at Subdivision 276-F of the AMIT Bill which prescribe how underestimates and overestimates of amounts at the Trust

level are to be carried-forward and dealt with in future income years.

"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 Scheme Assets as provided in this Constitution.

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

"Withdrawal Fee" means in respect of a Withdrawal Request, an amount up to 2% of the Withdrawal Price.

"Withdrawal Offer" means a withdrawal offer made by the Responsible Entity in accordance with sections 601KB-601KE of the *Corporations Act 2001* (Cth).

"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 Scheme Assets at that time, dividing the resultant amount by the total number of Units on issue at that time. The Responsible Entity may calculate the Withdrawal Price to the number of decimal places that the Responsible Entity determines.

"Withdrawal Request" means a request which is in accordance with clause 8.2.

1.2 Interpretation

In this Constitution:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the recitals form part of this Constitution; and

unless the context indicates a contrary intention;

- (c) 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;
- (d) the expression "**person**" includes an individual, a corporation and an unincorporated association, an authority, a partnership and a trust;
- (e) 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;
- (f) words importing the singular include the plural (and vice versa) and words indicating a given gender include all other genders;
- (g) the word "includes," in any form, is not a word of limitation;
- (h) 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;
- (i) 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;
- (j) a reference to cash includes cheque and bank cheque;

a reference to a month or a quarter means a calendar month or calendar quarter respectively;
- (k) 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 2001 (Cth)*), varied or replaced from time to time;

- (l) terms defined in the *Corporations Act 2001 (Cth)* are used in this Constitution with their same defined meaning;
- (m) this Constitution makes reference to the AMIT Bill, a Bill of Parliament which at the time of making this Constitution has not passed into law as an Act of Parliament, and to the Proposed Attribution Managed Investment Trust Rules. For the purposes of this Constitution and its interpretation:
 - (i) if the AMIT Bill becomes an Act of Parliament, any reference in the Constitution to the AMIT Bill or to the Proposed Attribution Managed Investment Rules will be taken to mean the provisions as contained in that Act of Parliament; and
 - (ii) if the AMIT Bill does not become an Act of Parliament, any reference in this Constitution to the AMIT Bill or to the Proposed Attribution Managed Investment Rules is severable from this Constitution and does not affect the validity of this Constitution.

1.3 Governing Law

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

1.4 Corporations Act 2001 (Cth) and ASIC Instruments

If and for so long as the Scheme 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 2001 (Cth)*, 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 13/655 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.

2. The Scheme

2.1 Scheme's Constitution

AZ Sestante Limited is the Scheme's initial Responsible Entity and this Constitution is the constitution for the Scheme.

2.2 Constitution is legally binding

The Responsible Entity and each Member and Former Member from time to time (and each person claiming through the Member and Former Member) 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.

2.3 Application of the Constitution if the Trust is an AMIT

- (a) This Constitution contains specific provisions in Schedule 1 which will apply if the Responsible Entity makes an AMIT Election.
- (b) The Responsible Entity may make an AMIT Election.
- (c) If the Responsible Entity makes an AMIT Election, it must provide a notice in writing to the Members that the provisions in Schedule 1 are to apply on and from the time nominated in the notice, notwithstanding that the date may be prior to the enactment of the Proposed Attribution Managed Investment Trust Rules.
- (d) If the Trust ceases to be an AMIT for any reason, including but not limited to the Trust ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 1 will cease to apply to the extent that they are not permitted to operate or are not relevant to the Trust when it is not an AMIT; and
 - (ii) any provision of the AMIT Bill or the Proposed Attribution Managed Investment Trust Rules which applies to an entity that is a former AMIT will continue to apply to the Trust.
- (e) Nothing in this clause 2.4 imposes an obligation on the Responsible Entity to:
 - (i) enter into or facilitate the entry of the Trust into the Attribution Managed Investment Trust Regime;
 - (ii) make any changes to this Constitution; or
 - (iii) make an election under clause 2.3(b)(b).

3. Scheme Assets held on Trust

3.1 Commencement of Trust

The Trust commences when the Responsible Entity issues the first Units in accordance with clause 7.

3.2 Declaration of Trust

- (a) The Responsible Entity declares that it holds all of the Scheme Assets on trust for Members subject to the provisions of this Constitution. The Scheme Assets vest in the Responsible Entity.
- (b) If and to the extent the *Corporations Act 2001 (Cth)* requires, the Responsible Entity must ensure the Scheme 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 scheme.

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. Scheme Assets divided into Units

4.1 Nature of a Unit

- (a) The beneficial interest in the Scheme 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 Scheme Assets as a whole, subject to the Liabilities; and
 - (iii) a Unit does not confer any interest in any particular part of the Scheme Assets nor in any particular part of the Scheme.

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 Scheme Assets.

4.4 Issue of Units and Classes

- (a) Subject to this Constitution and the law, 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).
- (b) The Responsible Entity may make a determination that specific variables (including Scheme Assets, Liabilities and Expenses), are referable to a specific Class and that:
 - (i) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
 - (ii) any variable that relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units in issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at the most recent Valuation Time.

4.5 Issue of Financial Products

Subject to the law and this Constitution, 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.

5. Limitation on Members Rights

5.1 Limitation on Members rights

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

- (a) require any Scheme Assets to be transferred to the Member (other than in accordance with clause 8.12);
- (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 Scheme Assets (or any part of it) or the Scheme) 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 Scheme Assets (or any part of it). Without limitation a Member 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 Scheme 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 Scheme:

- (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 2001* (Cth), be counted as a single Member for the purposes of calculating the number of Members as referred in clause 16.7 relating to meetings of Members;
- (d) clause 16.7(b) applies to determine which joint holder may exercise the voting rights of jointly held Units;
- (e) any payment to joint Members shall be subject to clause 22.4;
- (f) on the death, legal disability, or bankruptcy of a joint Member, the provisions of clause 24 shall apply; and
- (g) delivery of notices and all other communications by the Responsible Entity will be made pursuant to clause 25.

5.3 Rights attaching to Units

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

6. Liability of Members

6.1 Liability of a Member is limited

Except as expressly provided for in this Constitution (such as clause 22.5) and subject to any contrary agreement with a Member:

- (a) the liability of each Member is limited to the liability to pay any unpaid part of the Issue Price of Units held by the Member; and
- (b) no Member in their capacity as a Member 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 Scheme in any case whatsoever including if at any time the Liabilities of the Scheme exceed the value of the Scheme Assets,

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

6.2 Relationship of agency or partnership excluded

Any relationship of agency, or of partnership, between the Responsible Entity in that capacity and any Member 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 15.12.

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 Unit 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 Scheme 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 15.12) 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 Valuation Time as at which the Issue Price is determined under clause 7.7(c).
- (b) Units which are to be issued on a reinvestment of distributions under clause 15.12 are taken to be issued at the time specified in that clause.

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.

7.7 Issue Price

A Unit or Units in a 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) after the issue of Units referred to in clause 7.7(a), where Units are issued on a reinvestment of distribution in accordance with clause 15.12, the Issue Price for a Unit is calculated as follows:

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

with all such variables calculated as at the time and in accordance with clause 15.12;

- (c) in any other case, the Issue Price for a Unit is equal to:

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

with all such variables calculated as at the first Valuation Time on a Business Day after the Designated Time when the Responsible Entity has received (or is taken to have received):

- (i) the application for Units or Units in a Class; and
- (ii) the application money against which the Units are to be created and issued, title to the property against which the Units are to be created and issued free of encumbrances.

For the purposes of the formulae in clauses 7.7(b) and 7.7(c), "Net Asset Value of Scheme Assets", "Acquisition Costs" 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.

7.8 Cancellation of issue of Units

If following receipt of an application for Units, the application is rejected by the Responsible Entity, or 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.

7.9 No Unit certificates

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

7.10 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 at that time.

7.11 Designated Time

The Responsible Entity may designate the Designated Time (or vary that Designated Time) for the purposes of determining when an application for Units is received by the Responsible Entity for the purposes of clause 7.7. The Designated Time may be different for given methods of communication or payment. Accordingly, for the purposes of clause 7.7, 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 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.

7.12 Application money part of Scheme 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 Scheme 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 Scheme Assets.

8. Withdrawal from Scheme

8.1 Clauses which apply when Scheme is Liquid or non Liquid

Except as provided in this clause 8, a Member has no right to withdraw from the Scheme. While the Scheme is Registered and is Liquid and at all times while the Scheme is not Registered, clauses 8.2 to 8.9(a) (inclusive) and clauses 8.10 to 8.13 (inclusive) apply. While the Scheme is Registered and is not Liquid, clauses 8.9(b), 8.14 and 8.15 apply. Clauses 8.16 to 8.18 apply while the Scheme is Liquid as well as while the Scheme is not Liquid.

8.2 Withdrawal Request when Scheme is Liquid

While the Scheme is Registered and is Liquid and at all times while the Scheme is not Registered, a Member may request the Responsible Entity to redeem some or all of their Units. The request must:

- (a) specify the number or total value of Units to be redeemed;
- (b) be in the form then notified to the Members by the Responsible Entity (or the investment manager on its behalf) on the website for the Scheme or otherwise in writing (detailing the number or total value of Units to be redeemed, the Member's name and account number and the name of the Scheme);
- (c) be delivered, sent or given by facsimile or mail or such other approved manner to the person nominated by the Responsible Entity to maintain the Register on its behalf as the Responsible Entity may advise Members from time to time; and
- (d) be received by the Responsible Entity at or before the Designated Time on a Business Day in order for the Units to be redeemed at the Withdrawal Price calculated on that Business Day in accordance with clauses 8.9(a) and 8.11.

8.3 Obligation to satisfy Withdrawal Request when Scheme is Liquid

Subject to clauses 8.4, 8.5, 8.6, 8.7, 8.10, 8.13, 8.18 and 20.2(b), where the Responsible Entity receives a Withdrawal Request at or before the Designated Time on a Business Day, upon acceptance the Responsible Entity must, within 21 days of that Business Day (or any longer time as is permitted by virtue of the operation of clause 8.5), redeem the number or value of Units specified in the Withdrawal Request by payment from the Scheme Assets of the Withdrawal Price determined in accordance with clause 8.9.

8.4 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.

8.5 Suspension of obligation to satisfy Withdrawal Request

If in the opinion of the Responsible Entity:

- (a) it is, for any reason, impracticable for it to calculate the Net Asset Value of the Scheme Assets including but not limited to 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; or
- (b) there would be insufficient cash retained in the Scheme 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 Members for any Scheme Assets to be sold in order to satisfy a Withdrawal Request; or
- (c) sufficient Scheme 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; or
- (d) the Responsible Entity reasonably estimates that it must sell 5% or more (by value) of all Scheme Assets to meet current unsatisfied Withdrawal Requests; or
- (e) there have been, or the Responsible Entity anticipates that there will be, Withdrawal Requests which will involve realising a significant amount of the Scheme Assets and the Responsible Entity considers that if those Withdrawal Requests are all satisfied immediately, Members who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those Withdrawal Requests would otherwise be to the existing Members' disadvantage including (but not limited to) a material diminution in the value of the Scheme Assets; or
- (f) it is in the interests of the Members to invoke this clause 8.5 and extend the period referred to in clause 8.3 to the number of days which such circumstances apply; or
- (g) the law otherwise permits;

then, in each case, the period referred to in clause 8.3 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.

8.6 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 Member.

8.7 Minimum Balance

- (a) If to comply with a Withdrawal Request would leave the Member 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 Member.
- (b) If at any time a Member 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 Member of its intention to do so, redeem that Member's holding without the need for a Withdrawal Request at the Withdrawal Price prevailing on the day the redemption takes place.

8.8 Withdrawal Request cannot be withdrawn

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

8.9 Withdrawal Price

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class:

- (a) while the Scheme is Registered and is Liquid and at all times while the Scheme is not Registered, where a Withdrawal Request is received at or before a Designated Time on a Business Day, a Unit must only be redeemed at its Withdrawal Price determined as at the first Valuation Time on the Business Day that the Responsible Entity received the Withdrawal Request; and
- (b) while the Scheme is Registered and is not Liquid, a Unit must only be redeemed at the Withdrawal Price at the time the Withdrawal Offer closes.

8.10 Withdrawal Fee belongs to Responsible Entity

Without prejudice to the rights of the Responsible Entity under clause 22.5, the applicable Withdrawal Fee (if any) must be paid by the Member to the Responsible Entity at the time specified by the Responsible Entity. The Responsible Entity may deduct that fee from the proceeds of redemption and retain the deducted amount for its own benefit.

8.11 Designated Time

The Responsible Entity may designate the Designated Time (or vary that Designated Time) by which a Withdrawal Request must be received for the purposes of determining when a Withdrawal Request is received by the Responsible Entity in accordance with clause 8.9(a).

The Designated Time may be different for different methods of communication or payment. Accordingly, for the purposes of clause 8.9(a), if a Withdrawal Request is received:

- (a) on a Business Day, but prior to the applicable Designated Time on that 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.

8.12 Transfer of Scheme Assets

If agreed to by a Member and the Responsible Entity, the Responsible Entity may transfer Scheme Assets to the Member in satisfaction in whole or in part of a Withdrawal Request. The value of the Scheme Assets must be calculated in accordance with clause 9 and must be equal to the amount which would have been the Withdrawal Price (or part thereof) if paid in cash to that Member, less such part (if any) of the Expenses associated with that transfer as the Responsible Entity considers should be payable by the Member.

8.13 Time of Redemption and Cancellation of Units upon redemption

- (a) Units redeemed under clause 8.3 are taken to be redeemed at the Valuation Time as at which the Withdrawal Price is determined under clause 8.9, and from that time until payment of the Withdrawal Price the former holder of the redeemed Units ceases to be a Member 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.

8.14 When Scheme is not Liquid

While the Scheme is Registered and is not Liquid:

- (a) the Member's only right to redeem any of its Units or otherwise withdraw (wholly or partly) from the Scheme is to do so in accordance with the terms of any current Withdrawal Offer;.
- (b) in relation to a Withdrawal Offer to which section 601KD of the *Corporations Act 2001*(Cth) applies, the Responsible Entity must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the Withdrawal Offer closes; and
- (c) nothing in this Constitution imposes any obligation on the Responsible Entity to make a Withdrawal Offer at any time to all Members or to all Members who hold Units in a Class. However, if it decides to make (or cancel) a Withdrawal Offer it may do so by any means including by publishing it in a newspaper or on the internet.

8.15 Cancellation of Withdrawal Offer

The Responsible Entity may, without notice to any of the Members, at any time before a Withdrawal Offer closes, decide to cancel the offer pursuant to section 601KE of the *Corporations Act 2001* (Cth), whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Responsible Entity will give notice of the cancellation to the Members to whom the Withdrawal Offer was made. 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.

8.16 Withdrawal Price may represent Distributable Income

The extent to which the whole or any part of an amount paid as Withdrawal Price (whether it is paid whilst the Scheme is Liquid or whilst the Scheme is not Liquid) represents a distribution of Distributable Income for an Income Distribution Period to which a Member is presently entitled will be calculated by the Responsible Entity. That amount will be that Member's Income Entitlement as a Former Member in relation to the Income Distribution Period in which the redemption occurs.

8.17 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 8.16, the Responsible Entity must 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 8.9;
- (b) the amount and category of any Distributable Income attributable to the realisation of Scheme 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 8.9.

8.18 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 Member regardless of whether or not the Responsible Entity has received a Withdrawal Request in respect of those Units.

9. Valuation of Scheme Assets

9.1 Valuation and calculation of Net Asset Value of Scheme property

The Responsible Entity may cause any of the Scheme 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 Scheme Assets as at any time (not limited to once a day), in each case, in its absolute discretion. While the Scheme is Registered, the value used to calculate the application amount or the Withdrawal Price of a Unit must be reasonably current.

9.2 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.

9.3 Method of Valuation

The valuation method or policy for any type of Scheme Asset is to be determined by the Responsible Entity and the Responsible Entity may vary it whenever it so decides. While the Scheme is Registered, the Responsible Entity's policy for the valuation of Scheme Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset. Where the Responsible Entity values any Scheme 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 Scheme prior to its implementation.

9.4 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.

10. Register of Members

10.1 Member is absolute owner

The Responsible Entity may treat a Member 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.

10.2 Inspection of Register

If a Member inspects or is given a copy of the Register (or part of the Register) pursuant to section 173(3) of the *Corporations Act 2001* (Cth) 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 Member. A Member's obligation under this clause survives the transfer of all or any part of their Units.

10.3 Notify change of name or address of Member

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

10.4 Closure of Register

The Responsible Entity may close the Register at any time.

11. Transfers of Units

- (a) A Member may transfer all or any of their Units by whatever transfer form the Responsible Entity may require from time to time.
- (b) The 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.
- (c) The Responsible Entity may, in its absolute discretion, refuse to register any transfer of Units. The Responsible Entity may give the Member who lodged the transfer notice of the decision to decline the registration but shall not be obliged to provide reasons for the decision.
- (d) The Responsible Entity need not concern itself with the consideration for a transfer of a Unit.
- (e) Any transfer is not effective until it has been entered in the Register.

12. Powers of Responsible Entity as Trustee of Scheme Assets

12.1 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 Scheme and the Scheme 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 Scheme 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 Scheme including the management of Scheme 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 Scheme in any manner whatsoever including whether or not on a secured basis and including the giving of security over Scheme 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 floating charge over the Scheme 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 Scheme Assets in property and rights of any kind that the Scheme Assets may be invested in accordance with law (including under the Responsible Entity's Australian Financial Services Licence);
- (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 in its absolute discretion.

12.2 Discretion to exercise powers

Subject to the law and this Constitution, 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. In exercising its powers and carrying out its duties, the Responsible Entity must treat the Members who hold interests of the same Class equally and Members who hold interests of different classes fairly.

12.3 Power to change name of Scheme

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

12.4 Power to seek information

At any time, the Responsible Entity may request from Members, and Members 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 Scheme or complying with any relevant laws.

12.5 Power to appoint agents and delegates

Subject to the *Corporations Act 2001* (Cth), 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 Scheme Asset, or to exercise or perform any of its duties, powers, discretions and obligations in connection with the Scheme (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.

12.6 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 Scheme.

13. Remuneration of Responsible Entity and Scheme Expenses

13.1 Expenses

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

- (a) the establishment, registration, operation, administration and management of the Scheme, the Scheme Assets and Scheme Liabilities including without limitation complying with any law 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 retirement or removal of the Responsible Entity and the appointment of a successor in its place;
- (d) the initiation, prosecution, defence and compromise of any court, arbitration or other dispute resolution action, claim or proceedings relating to the Scheme (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 Scheme Assets then the Responsible Entity must repay any Expenses which have been reimbursed out of or paid from Scheme Assets under this clause 13.1(d);
- (e) convening and holding meetings of Members and giving effect to resolutions of any meeting and sending other communications to Members;
- (f) the Register and all other registers in respect of any aspect of the Scheme;
- (g) the acquisition, realisation, insurance, valuation, custody, management, administration, registration, supervision, repair, maintenance, receipt, collection, or distribution of or other dealing with any Scheme Assets (or any proposal to do any of those things);

- (h) obtaining and servicing of financial accommodation (including bank fees, interest, expenses, charges and borrowing costs);
- (i) appointing or otherwise engaging any agent or other person (including an Associate) for any purpose in connection with the Scheme. 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 Scheme (including any brokerage or commission payable to those persons);
- (j) 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 Scheme or other promotion of the Scheme;
- (k) keeping the financial records relating to the Scheme, and keeping, preparing, distributing and/or lodging the accounts relating to the Scheme and complying with any obligations with respect to the accounts relating to the Scheme and any audit of those accounts;
- (l) the termination of the Trust and winding up of the Scheme;
- (m) 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;
- (n) while there is no compliance committee in respect of the Scheme the board of directors of the Responsible Entity carrying out the functions which a compliance committee in respect of the Scheme 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 2001* (Cth);
- (o) the preparation, operation, amendment and audit of the compliance plan;
- (p) 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 Scheme, any taxation audit, and the management of the Tax affairs of the Scheme;
- (q) the establishment and administration of the Complaints handling procedures referred to in clause 17 and obtaining and maintaining membership of an external dispute resolution scheme;
- (r) Taxes and bank fees and charges incurred by the Responsible Entity in connection with the Scheme;
- (s) complying with any law and any request or requirement of ASIC or other regulatory authority;
- (t) travel expenses incurred in connection with the Scheme;
- (u) entering the Scheme in any survey;
- (v) any fees payable to any ratings organisation;
- (w) computer hardware, software and other equipment (including development and maintenance of internet facilities); and
- (x) any restructuring or listing of the Scheme.

13.2 Class Expenses

The Responsible 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 13.1 is to be referable to all Units on an equal basis.

13.3 Fees

To the extent permitted by the *Corporations Act 2001* (Cth), 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 subject to the proper performance of its duties:

- (a) the applicable Entry Fee (if any) in respect of an application for Units or Classes which has been accepted. The Entry Fee is payable in the manner described in clause 7.10;
- (b) until the Scheme is finally wound up, a management fee of up to 3% per annum of the Net Asset Value of the Scheme Assets calculated on a daily basis. The management fee:
 - (i) accrues on a daily basis; and
 - (ii) is payable within 10 Business Days of the end of each month out of Scheme Assets (to the extent of income) and if that is not sufficient, out of capital which forms part of Scheme Assets; and
- (c) the applicable Withdrawal Fee (if any) in respect of a Withdrawal Request which has been met in whole or in part. That Withdrawal Fee is payable in the manner described in clause 8.10.

13.4 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 13.1; or
- (c) agree with any Member fee arrangements in respect of that Member which are different to those that would otherwise apply under this Constitution.

13.5 Issue of Units to Responsible Entity

The Responsible Entity may elect that for any period it considers appropriate 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.

13.6 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 Scheme 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 Scheme 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 Scheme 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 Scheme 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 member of any GST group to which the Responsible Entity belongs.

14. Responsible Entity's Indemnity out of Scheme Assets

14.1 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 Scheme Assets for, or pay from the Scheme Assets, all liabilities and losses incurred by it in relation to the proper performance of its duties in relation to the operation, administration and management of the Scheme or otherwise in connection with the Scheme. The Responsible Entity is not required to do anything (including enter into any contract or commitment which involves it in incurring a liability) for which it does not (or for which it considers it does not) have full rights of indemnity and reimbursement out of the Scheme Assets, or which it cannot fully pay from the Scheme 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 14.1 shall continue in favour of the Responsible Entity after it has ceased to be Responsible Entity to the Scheme.

14.2 Indemnity extends to cover acts of agents or delegates

To the extent permitted by the *Corporations Act 2001 (Cth)*, if for any reason (including because of the operation of section 601FB(2) of the *Corporations Act 2001 (Cth)*), 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 14.1 extends to also include that liability.

14.3 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 Scheme 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.

14.4 Right of indemnity applies even if liabilities exceed Scheme 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 Scheme exceed the value of the Scheme Assets.

14.5 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.

14.6 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 Scheme Assets in respect of that liability to the extent permitted by the *Corporations Act 2001* (Cth).

15. Distributions

15.1 Determination of Distributable Income

A Member or Former Member is presently entitled to the Distributable Income of the Scheme for a Financial Year in the proportion that the sum of the Income Entitlements for that Member or Former Member for all Income Distribution Periods in that Financial Year bears to the sum of the Income Entitlements for all Members and Former Members for all Income Distribution Periods in that Financial Year.

15.2 Classification of Distributable Income

- (a) The Responsible Entity must classify into categories all or any part of the Distributable Income and any items constituting or relating to the Scheme Assets, and may account separately for each category, such categories may include the following without limitation:
- (i) 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;
 - (ii) any capital gains, and capital losses or items otherwise deductible or dealt with on capital account;
 - (iii) any distribution which is franked or unfranked for the purposes of the Tax Act and the amount of any franking credit;
 - (iv) any tax offset, any refundable tax offset and/or refund of a tax offset; and
 - (v) any other items identified for the purposes of the Tax Act.
- (b) The Responsible Entity may allocate to a Member all or part of the Distributable Income to which the Member is entitled from a particular category or source and the Responsible Entity may advise the Member of the extent to which the amount allocated to the Member consists of an amount from a particular category or source.
- (c) The Responsible Entity and each Member agree that any extra capital gain arising under section 115-215 of the Tax Act (or any replacement or other provision having the same effect as section 115-215 of the Tax Act) in respect of the income of the Scheme attributable to the Scheme's capital gains for an income year:
- (i) will arise only for those Members who have had allocated to them an

- amount of Distributable Income consisting of those capital gains; and
- (ii) will not arise for those Members who have had allocated to them an amount of Distributable Income that does not consist of those capital gains.

15.3 Reserves

The Responsible Entity may make any provisions or reserves of amounts that the Responsible Entity determines proper for the purposes of the Scheme and, if the Responsible Entity so determines, an item of income received or receivable in an Income Distribution Period may be treated as having been received in the next Income Distribution Period.

15.4 Present Entitlement

Each of the Members on the Register at the close of business on the Income Distribution Date with respect to an Income Distribution Period is presently entitled to the Distributable Income in respect of that Income Distribution Period (taking into account any part of the Distributable Income previously distributed by way of Interim Distribution or otherwise before the Income Distribution Date for the Income Distribution Period) in proportions in accordance with clause 15.6. The Responsible Entity may record, for accounting purposes, in a Distribution Account, the amount of Distributable Income to which each Member is presently entitled with respect to each Income Distribution Period, including any amounts distributed during the Income Distribution Period with respect to any Interim Distributions or otherwise, as well as the balance available for distribution at the close of business on each Income Distribution Date.

15.5 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 an Income Distribution Period. Each of the Members on the Register at the close of business on the last Business Day of the Interim Distribution Period is presently entitled to a share of the Interim Distribution in respect of the relevant Income Distribution Period in proportions in accordance with clause 15.6.

15.6 Income Entitlement

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

- (a) in respect of an Income Distribution Period ending on any Income Distribution Date other than 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 Member at the end of the Income Distribution Period;
- C is the number of Units held by all Members at the end of the Income Distribution Period;
- D is the amount (if any) by which an estimate of the Distributable Income for the Income Distribution Period (calculated as if the Income Distribution Period were a year of income) exceeds the aggregate of any Income Entitlements of Former Members for the Income Distribution Period; and

- (b) in respect of a 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 Member at the end of the Income Distribution Period;
- C is the number of Units held by all Members at the end of the Income Distribution Period;
- D is the amount (if any) by which the Distributable Income for the Financial Year exceeds the sum of:
- (i) the aggregate of any Income Entitlements of Former Members for the Income Distribution Period; and
 - (ii) the aggregate of the estimates of Distributable Income calculated for the purposes of variable D in clause 15.6(a) above in respect of the previous Income Distribution Periods of the Financial Year.

15.7 Satisfaction of present entitlements to Distributable Income

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

15.8 Payment of Distributions

- (a) 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 Members on the Register at the close of business on the last Business Day of the Interim Distribution Period the amount of their respective entitlements to the Interim Distributions in the proportions determined in accordance with clause 15.6.
- (b) The Responsible Entity shall pay or apply to or for the Members on the Register at the close of business on the Income Distribution Date for an Income Distribution Period the amount of their respective entitlements to Distributable Income pursuant to clause 15.4 (excluding any amounts previously distributed by way of Interim Distributions or otherwise in respect of the Income Distribution Period) within 2 months after the Income Distribution Date for the Income Distribution Period.

15.9 Other Distributions

The Responsible Entity may at any time distribute from the Scheme Assets any amount of capital to Members pro rata according to the numbers of Units held (in the Trust or a Class, as relevant) as at a time decided by the Responsible Entity or distribute income to Members in accordance with the proportions in clause 15.6. Distributions by the Responsible Entity to Members 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 15 apply to such distributions so far as they are capable of doing so.

15.10 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 Members) 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 Members 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 Scheme Assets.

15.11 Excess distribution

If the Responsible Entity determines that the total amount of the distributions actually made to Members (in one of the forms mentioned in clause 15.8) during or with respect to an Income Distribution Period exceeds the Distributable Income for the Income Distribution Period, the Responsible Entity may treat the excess as a distribution of capital.

15.12 Distribution Reinvestment Arrangements

Subject to the approval of the Responsible Entity, a Member may elect to reinvest some or all of any distribution payable to a Member by acquiring additional Units in accordance with this Constitution. In this event, the Responsible Entity will be treated as having received and accepted an application to reinvest distributions immediately before the last Valuation Time before the end of the relevant Income Distribution Period. Units issued in respect of such application are to be issued at an Issue Price determined immediately after the end of the relevant Income Distribution Period but calculated as if the Acquisition Expenses are nil. The procedure for reinvestment of distributions (and any changes in the procedure) shall be determined by the Responsible Entity and notified to Members from time to time.

15.13 Classes

The rights of a Member under this clause 15 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.

16. Meetings of Members

16.1 Corporations Act 2001 (Cth) to apply

- (a) While the Scheme is not Registered, meetings of Members or of Members of a Class will be called and conducted as if Part 2G.4 applied (as modified by clauses 16.2 to 16.14 inclusive) with any necessary modifications except that at least 7 days' notice of a meeting must be given to Members or Members of a Class, or such shorter notice as they agree.
- (b) While the Scheme is Registered, except as provided for in clauses 16.2 to 16.14 inclusive, the provisions of Part 2G.4 of the *Corporations Act 2001* (Cth) apply to meetings of Members or Members of a Class.

16.2 Convening of Meetings

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

While the Scheme is not Registered, Members are not entitled to call a Meeting of Members without the Responsible Entity's consent to do so.

16.3 Omission to give notice

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

16.4 Chair

Subject to the *Corporations Act 2001* (Cth):

- (a) the Responsible Entity may appoint a person to chair a Meeting of Members or a Class of Members;
- (b) the chair of a meeting of Members or a Class of Members need not be a Member or a Member of a Class and, if there is an equality of votes either on a show of hands or on a poll, the chair does not have a casting vote in addition to the votes to which they may be entitled as a Member or a Member of a Class; and
- (c) the decision of the Chair on any matter relating to the conduct of a meeting is final.

16.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the *Corporations Act 2001* (Cth).

16.6 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 2001* (Cth). An appointment of proxy may be a standing one.

16.7 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 Members who have:
 - (i) requested a meeting under section 252B(1) of the *Corporations Act 2001* (Cth);
 - (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 2001* (Cth);
 - (iii) requested that a statement be distributed to Members under section 252N of the *Corporations Act 2001* (Cth); or
 - (iv) demanded a poll under section 253L of the *Corporations Act 2001* (Cth);
- (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.

16.8 Quorum requirements

The quorum for a meeting of Members or Members of a Class is 2 Members present in person holding or represented by proxy or represented by body corporate representative, between them not less than 5% of all issued Units or Units of a Class (as the case may be). If, however, there are less than 2 Members who are entitled to vote at the meeting, the quorum for that meeting is the number of Members or Members of a Class who are entitled to vote at the meeting.

16.9 Proxies and Representatives

- (a) If an individual is attending a meeting both as a Member or a Member 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 2001* (Cth), 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.

16.10 Quorum presence

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

16.11 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 Members or Members 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.

16.12 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.

16.13 Resolution binding

A resolution duly passed at a meeting of Members or Members of a Class duly convened and held in accordance with the *Corporations Act 2001* (Cth) and this Constitution or by postal ballot under clause 16.16 binds all Members or all Members of the Class (in that capacity) and the Responsible Entity and each Member is bound to give effect to the resolution. This is so whether or not a Member was present at the meeting.

16.14 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.

16.15 Notice of meeting

- (a) Notwithstanding section 252G(4) of the *Corporations Act 2001* (Cth), a notice of meeting sent by post is taken to be received by the Member or Member of a Class at the time specified in clause 25.2(c)(ii).
- (b) Subject to the *Corporations Act 2001* (Cth), anything done (including the passing of a resolution) at a meeting of Members or Members of a Class is not invalid if either or both a person does not receive notice of the meeting or the Responsible Entity accidentally does not give notice of the meeting to the person.

16.16 Resolution by Postal Ballot

- (a) Subject to the *Corporations Act 2001* (Cth), a resolution of Members may be passed by the Members 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 Members and is effective at the time specified by the Responsible Entity.
- (c) A Member has, in relation to the resolution, the number of votes determined in accordance with section 253C(2) of the *Corporations Act 2001* (Cth) and the value of the Member's total interests must be determined at such time as the Responsible Entity specifies.

16.17 Meeting of Class Members

This clause 16 applies to meetings of Members of a Class with any necessary modifications.

17. Complaints

While the Scheme is Registered, if a Member makes or submits a Complaint to the Responsible Entity in relation to the Scheme, the Responsible Entity must:

- (a) if the Member is a Retail Client, comply with the requirements of section 912A(2) of the *Corporations Act 2001* (Cth) applicable to the Complaint; and
- (b) in respect of a Complaint from a Member who is not a Retail Client:
 - (i) acknowledge the Complaint in writing as soon as reasonably practicable and in any event within 14 days from receipt;
 - (ii) use reasonable endeavours to deal with the Complaint appropriately and within a reasonable timeframe having regard to the nature of the Complaint; and
 - (iii) 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 Member in writing:
 - A. the remedies which the Responsible Entity may make available to the Member which may include compensation, an apology or information; and
 - B. the decision of the Responsible Entity and any further avenue for Complaint; and
 - (iv) provide a Member with all reasonable assistance and information that the Member may require for the purpose of making a Complaint and understanding the Complaints handling procedures adopted by the Responsible Entity.

18. Dealings with Scheme and Scheme Members

18.1 Dealings by Responsible Entity and Associates

Subject to the law, 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 schemes 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 Member;
- (d) invest in and maintain as Scheme Assets interests in other managed investment schemes 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 Member or with any company or other entity any part of whose units, or shares or other issued capital forms part of the Scheme Assets.

18.2 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 Scheme, the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 18.1.

18.3 Responsible Entity as a Member

Subject to the *Corporations Act 2001* (Cth), where the Responsible Entity acquires Units (on its own account or in some other capacity):

- (a) the Responsible Entity may be registered as a Member 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 Member in respect of them and the Responsible Entity may dispose of the Units to other Members 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 Member under this Constitution and the law.

19. Protection and limitation of liability of Responsible Entity

19.1 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 Scheme.

19.2 Responsible Entity may obtain and rely on advice etc.

In respect of the operation and administration of the Scheme or otherwise in connection with the Scheme, 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 Member of a person to act as their agent for the purposes of or in connection with the Scheme; and

- (d) any other document or information from any Member 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.

19.3 No liability for Responsible Entity

Subject to clause 19.4 and except to the extent the *Corporations Act 2001* (Cth) or other relevant law provides otherwise, the Responsible Entity is not liable in contract, tort, under statute or otherwise to any Member for any loss or damage, including loss or damage to the Scheme 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 19.2) any of the opinions, advice, statements, documents or information referred to in clause 19.2;
- (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 Member, including making a payment to a person other than the Member.

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

Clause 19.3 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.

19.5 Liability limited to third parties

The Responsible Entity is not liable to any person who is not a Member 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 Scheme Assets.

20. Winding up of the Scheme

20.1 Circumstances where the Trust terminates

The Trust terminates on the earliest of:

- (a) 80 years (less one day) after the date of commencement of the Trust under clause 3.1; or
- (b) the date specified by the Responsible Entity as the date that the Trust is to terminate in a notice given to Members; or
- (c) the date on which the Trust terminates by law.

20.2 Procedure on termination

If under clause 20.1 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 Member notice of the termination and of its intention to wind up the Scheme;
- (b) no Units may be issued or redeemed;
- (c) subject to clause 20.2(e), the Responsible Entity will as soon as reasonably practicable after giving the notice under clause 20.2(a) realise all of the Scheme 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 Scheme including those anticipated in connection with the winding up of the Scheme;
- (d) the net proceeds of realisation and all other cash forming part of the Scheme Assets will be distributed to the Members 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 Scheme Assets for the time that it thinks is desirable so to do in the interests of the Members, 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 19.4; and
- (f) the Responsible Entity may make partial distributions in accordance with this clause.

20.3 Retention of proceeds of realisation

If the Responsible Entity decides to make a provision under clause 20.2(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 20.2(c). Any proceeds so retained which are ultimately found not to be required will be distributed in accordance with clause 20.2.

20.4 Distribution to Members

The Responsible Entity must make a distribution under this clause 20 only if the Member delivers to it any form of receipt and discharge required by the Responsible Entity.

20.5 In specie distributions

The Responsible Entity may distribute any Scheme Asset to a Member in specie. The value of the asset is to be determined by the Responsible Entity and clause 9 will apply for this purpose. Expenses payable in respect of an in specie distribution are to be paid for by the

Member unless the Responsible Entity determines any such Expenses are payable or reimbursable out of Scheme Assets.

20.6 Audit of Accounts

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

20.7 Amounts to which Member is Presently Entitled

Prior to the winding up of the Scheme, the Responsible Entity must pay to Members any undistributed amounts to which they are presently entitled to respectively by virtue of clause 20.

20.8 Continuation of Constitution

This Constitution (including all rights of indemnity), continues to apply until the Scheme is finally wound up but only to the extent the Constitution is not inconsistent with this clause 20.

20.9 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.

21. Removal and retirement of Responsible Entity

21.1 Retirement of Responsible Entity

- (a) Subject to the *Corporations Act 2001* (Cth), while the Scheme is Registered the Responsible Entity may retire at such time as it thinks fit.
- (b) While the Scheme 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 Member or to the Members (or by such shorter period as they agree). The Responsible Entity may appoint in writing the replacement responsible entity from retirement.

21.2 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 Scheme 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 2001* (Cth); 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 Scheme 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 Scheme and this Constitution.

21.3 Covenant of proposed new Responsible Entity

Whether or not the Scheme is Registered, any proposed new responsible entity of the Scheme 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 Scheme 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.

21.4 Retirement Benefit

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 Members for the retirement of the Responsible Entity and the nomination to the Members of the replacement responsible entity as its replacement; or
- (b) retiring as Responsible Entity,

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

22. Payments and recoveries

22.1 Payments to a Member

Any money payable by the Responsible Entity to a Member 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 Scheme Assets.

22.2 Member direction for payment to third parties

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

22.3 Payments by cheque

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

- (a) if such cheque is issued to the Member and is presented and paid or the payment is made to a person at the direction of the Member or to an account with a financial institution nominated by the Member 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 that:
 - (i) any cheque issued which is made payable to the Member or to a person at the Member's direction and which is not presented within 3 months; or
 - (ii) any payment unsuccessfully attempted to be made 3 times to a Member by electronic transfer of funds at the discretion of the Responsible Entity,

may be cancelled and the money reinvested in Units in the name of the Member at the Issue Price which applies as at the Valuation Time on a Business Day occurring after the cancellation of the cheque or after the third unsuccessful attempt at payment by electronic transfer, or dealt with by the Responsible Entity in accordance with the requirements of any

applicable unclaimed monies laws.

22.4 Payments to joint Members

For persons registered jointly as Members, 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.

22.5 Member indemnification of Responsible Entity

Notwithstanding any other provision in this Constitution (whether express or implied) each Member and Former Member indemnifies the Responsible Entity (both on its own account and on account of the Scheme) for, and the Responsible Entity may deduct from any money (including distribution entitlements) payable to a Member or Former Member or received from a Member or Former Member or otherwise recover from a Member or Former Member (including by redeeming any Units of a Member):

- (a) any unpaid amounts due by the Member or Former Member on any basis (under this Constitution, pursuant to the Scheme disclosure document, or pursuant to the *Corporations Act 2001* (Cth)) to the Responsible Entity (either on its own account or on account of the Scheme). 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 Member 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 Member or Former Member 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; and
- (c) any Tax or Expense in relation to a Member or Former Member (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 Member or Former Member.

22.6 Responsible Entity's lien

The Responsible Entity has a first and paramount lien over all of a Member's Units in respect of any monies payable to the Responsible Entity on any basis under this Constitution or the *Corporations Act 2001* (Cth) 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.

23. 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 Scheme 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 Scheme 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 2001 (Cth)*.
- (c) To the extent permitted by law, the Responsible Entity may pay, or agree to pay, from the Scheme 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 2001 (Cth)*; or
 - (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

24. Death and insolvency of a Member

24.1 Death of a Member

If a Member dies, then only the legal personal representative or, if the Member 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 Member. The Responsible Entity may require such information as it thinks fit to establish a person's entitlement to claim a Member's Units.

24.2 Legal disability, bankruptcy etc. of a Member

If a Member 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 Member'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 Member.

24.3 Discharge to Responsible Entity

A person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Member 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 Members until they are entered in the Register as the holder in respect of the Units.

25. Notices

25.1 Form of notice by Member

Subject to the *Corporations Act 2001 (Cth)*, any notice, consent or other communication by a Member 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 Member or, of a duly authorised officer or

representative of the Member 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.

25.2 Form of Notice by the Responsible Entity

Subject to the *Corporations Act 2001* (Cth), any notice or other communication by the Responsible Entity to a Member:

- (a) must be given in writing (or in such other manner as the Responsible Entity determines);
- (b) sent to the Member at their physical or electronic address specified in the Register;
- (c) is taken to be received by the Member;
 - (i) (in the case of delivery by hand), on delivery at the physical address of the Member 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.

25.3 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 25.1 and 25.2 respectively will be taken to be validly given to or by all the joint Members.

26. 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 Constitution which remain in full force and effect.

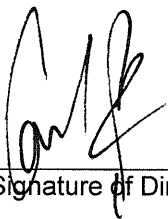
27. Amendment

- (a) Subject to clause 27(b), while the Scheme is Registered, this Constitution may be modified, repealed or replaced in accordance with the *Corporations Act 2001* (Cth). While the Scheme is not Registered, the Responsible Entity may amend this Constitution by supplemental deed.
- (b) Such modification, repeal or replacement may be effected by:
 - (i) Special Resolution of the Members; or
 - (ii) by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Members' rights.
- (c) Without in any way limiting the Responsible Entity's powers in clause 27(a), the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (i) facilitate compliance with the preconditions for the operation of the Attribution Managed investment Trust Regime in relation to the Trust, including, without limitation, any changes to accommodate any differences between different versions of the AMIT Bill; or
- (ii) ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the Attribution Managed Investment Trust Regime.

Executed as a deed.

SIGNED SEALED and DELIVERED by AZ SESTANTE LIMITED (ABN 94 106 888 662)
by two Directors or a Director and Secretary in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

CHRIS LARSEN

Print Full Name



Signature of Director/Secretary*

CLAUDIA NAUG.

Print Full Name

* Delete whichever does not apply

Schedule 1 - Attribution Managed Investment Trust Provisions

Schedule 1

1 Members' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital a Member has in the Trust held are 'clearly defined' at all times within a Financial Year for the purposes of the Proposed Attribution Managed Investment Trust Rules, as required by the terms of those rules (including, without limitation, under the proposed sections 276-10 and 276-15 set out in the AMIT Bill).
- (b) While the Trust is not a Registered Scheme, to the extent required by the Proposed Attribution Managed Investment Trust Rules:
- (i) the Responsible Entity may only attribute to a Member:
 - A. an entitlement to the income and/or capital of the Trust; and/or
 - B. a Member Component,
which has been determined objectively and on a fair and reasonable basis with reference to the terms of this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution);
 - (ii) the Responsible Entity may not exercise any right, whether it is one provided to the Responsible Entity under this Constitution or under any statutory or general law rights or powers of a trustee, which would materially diminish or expand the entitlement of a Member to the income and/or capital of the Trust;
 - (iii) the Responsible Entity must treat Members who hold Units of the same class equally and Members who hold Units of a different class fairly; and
 - (iv) in addition to the requirements of clause 27, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Responsible Entity's powers in relation to Proposed Attribution Managed Investment Trust Rules

- (a) The Responsible Entity may, if it meets the qualification requirements set out in the AMIT Bill, make an AMIT Election.
- (b) The Responsible Entity has all of the powers and rights which are necessary and expedient to enable the Trust to comply with and effectively operate as an AMIT for the purposes of the Proposed Attribution Managed Investment Trust Rules.
- (c) Without limiting the Responsible Entity's other powers or seeking to be exhaustive, for the purposes of the Proposed Attribution Managed Investment Trust Rules, the Responsible Entity has the power to:

- (i) work out a Member Component;
 - (ii) work out and attribute to a Member a Determined Member Component;
 - (iii) work out a Trust Component;
 - (iv) work out a Determined Trust Component;
 - (v) issue (or reissue as the case may be) an AMMA Statement;
 - (vi) where the Trust has Units of a different Class carrying different rights on issue, treat each Class of Units as a separate AMIT and to the extent necessary or appropriate reflect this treatment in the Trust's accounting and trust records as required under the Proposed Attribution Managed Investment Trust Rules (see also clause 3 of this Schedule);
 - (vii) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the Proposed Attribution Managed Investment Trust Rules;
 - (viii) work out and make any necessary adjustments to any Trust Component required for the Responsible Entity to apply the Unders and Overs Rules under the Proposed Attribution Managed Investment Trust Rules;
 - (ix) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the Proposed Attribution Managed Investment Trust Rules; and
 - (x) require a Member to provide the Responsible Entity with an indemnity in respect of any cost or expenses incurred by the Responsible Entity as a result of the Member making a Determined Member Component Choice.
- (d) Where the Responsible Entity exercises its power to make a reasonable attribution of a Determined Trust Component for the purposes of the Proposed Attribution Managed Investment Trust Rules:
- (i) it is not intended the Responsible Entity make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing income allocation provisions or amount payable to a Member under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements contemplated in the existing income allocation provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution) and should not be materially different from those rights and entitlements;
 - (iii) the Responsible Entity must not attribute a Determined Trust Component which is prohibited by the Proposed Attribution Managed Investment Trust Rules or which would prevent the Responsible Entity from making a reasonable attribution of a Determined Trust Component for the purposes of the Proposed Attribution Managed Investment Trust Rules.

3 Separate AMIT status

- (a) The terms of any Class of Units referred to in clause 4.4 may include any terms which are necessary or desirable to ensure that the Class of Units will be treated as a separate AMIT and that the transition of a Class into a separate AMIT is appropriate and equitable between Members and Classes of Members.
- (b) If the Responsible Entity determines that a particular Class is to be treated as a separate AMIT for the purposes of the Proposed Attribution Managed Investment Trust Rules, then the Responsible Entity may determine that a particular Scheme Asset (and the income related to such Scheme Asset) or Liability (and the expense related to such Liability) is referable to the particular Class of Units.
- (c) For any Scheme Asset (and the income related to such Scheme Asset) or Liability (and the expense related to such Liability) which has not been designated as referable to a particular Class of Units, the Responsible Entity may designate the relevant Scheme Asset or Liability as being referable to and allocable between the various Classes of Units on such basis as it is determined to be equitable and appropriate having regard to the rights associated to the relevant Members.
- (d) The Responsible Entity may create such rules as is appropriate to individually identify particular Scheme Assets or Liabilities as being referable to a particular Class of Units.
- (e) If the Responsible Entity determines that a particular Class of Units is to be treated as a separate AMIT then the Responsible Entity must determine the extent to which any current Scheme Assets and Liabilities of the Trust are properly referable to the particular Class.

4 Ceasing to be an AMIT

If the Trust ceases to be an AMIT in respect of any Financial Year then, in determining the Distributable Income of the Trust for any subsequent period, an appropriate adjustment must be made to take into account any over or under distributions of any tax component from any prior period.

5 Determined Member Component Choice

- (a) If a Member makes or intends to make a Determined Member Component Choice for the purposes of the Proposed Attribution Managed Investment Trust Rules, the Member must:
 - (i) before providing notice of such choice to the Commissioner of Taxation, provide the Responsible Entity not less than seven days' notice of its intention to do so and a summary of the reasons why the Member considers the attribution to be inappropriate;
 - (ii) provide to the Responsible Entity all information the Responsible Entity reasonably requests in relation to any act, matter or thing relating to any Determined Member Component Choice;
 - (iii) be responsible for all costs and liabilities incurred by the Responsible Entity as a result of any choice under section 276-205 of the Proposed Attribution Managed Investment Trust Rules in relation to the basis of the attribution.
- (b) The Member acknowledges that if a Member makes a Determined Member Component Choice it may be necessary or desirable for the Responsible Entity to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Members for the purposes of the Proposed Attribution Managed Investment Trust Rules.
- (c) The Responsible Entity shall have no liability in respect of any act, matter or thing done or

omitted to be done by a Member in relation to a Determined Member Component Choice.

- (d) The Responsible Entity has the right to issue or reissue any AMMA Statement to the Member or other Members if a Member makes a Determined Member Component Choice.
- (e) The Responsible Entity may make it a condition of any Member making a Determined Member Component Choice to be provided with the right to assume the conduct of making such a choice and any proceedings arising out of that choice on terms the Responsible Entity nominates.

6 Debt-like AMIT instruments

The Members and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the Proposed Attribution Managed Investment Trust Rules that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.

7 Custodian notices

- (a) The Responsible Entity may prescribe particular terms and conditions which apply in the event that a custodian provides the Responsible Entity a custodian notice, which results in the AMIT having an obligation to pay or remit any monies to the Commissioner of Taxation.
- (b) The Responsible Entity may deduct an amount in respect of any monies which the Responsible Entity is required to remit to the Commissioner of Taxation as a result of a custodian providing the Responsible Entity with a custodian notice which results in the AMIT having an obligation to pay or remit any monies to the Commissioner of Taxation from any amount which is payable directly or indirectly to a person whom the Responsible Entity reasonably determines is responsible for the obligation to remit the additional amount to the Commissioner of Taxation.