

Supplemental deed

Msquared High Yield Mortgage Income Fund
Msquared Capital Pty Ltd ACN 622 507 297

Supplemental deed

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Supplemental deed

Date

Made by

Msquared Capital Pty Ltd ACN 622 507 297 in its capacity as trustee of the Msquared High Yield Mortgage Income Fund of Level 12, 88 Pitt Street, Sydney, New South Wales (**Trustee**)

Recitals

- A The Trustee is the trustee of the Trust.
- B The Trust was established pursuant to the Constitution.
- C Under clause 26.1 of the Constitution, the Trustee may amend the Constitution at its absolute discretion on such terms as it sees fit.
- D The Trustee wishes to amend the Constitution in order to introduce provisions to allow the Trust to comply with the AMIT regime and make other amendments in line with current market practice.
- E The modifications to the Constitution contained in this deed are intended to take effect on the date of this deed.

This deed poll witnesses as follows

1 Definitions and interpretation

1.1 Definitions

In this deed:

AMIT has the meaning given to that term in section 276-10 of the Tax Act.

ASIC means the Australian Securities and Investments Commission.

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

Constitution means the constitution of the Trust dated 8 June 2022 as amended from time to time.

Effective Date means the date of this deed.

Tax Act means the Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), Tax Administration Act 1953 (Cth) or any or all of the foregoing as appropriate.

Trust means the Msquared High Yield Mortgage Income Fund as constituted under the Constitution.

1.2 Interpretation

- (a) Unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.
- (b) Schedule 2 of the Constitution applies to this deed as though that clause was set out in full.

2 Modification of the Constitution

On and from the Effective Date, the Constitution is modified by deleting the words, letters, numbers and symbols that have a line through them and inserting the underlined words, letters, numbers and symbols, as set out in Annexure A. A clean copy of the modified Constitution is also included as Annexure B for record purposes only.

3 Operation of this deed

3.1 No re-declaration, etc

The Trustee confirms that it is not, by clause 2 of this deed:

- (a) declaring the Trust or any other trust;
- (b) re-declaring the Trust;
- (c) settling the Trust or any other trust;
- (d) resettling the Trust;
- (e) rescinding the Trust;
- (f) causing the transfer, vesting or accruing of property in any person; or
- (g) entering into a new constitution.

3.2 Remaining provisions unaffected

Except as amended by this deed, all terms and conditions of the Constitution remain in full force and effect. With effect from the Effective Date, the Constitution amended by this deed is to be read as a single integrated document incorporating the modifications effected by this deed.

3.3 Binding provisions

The provisions of this deed are binding on and are made for the benefit of the Trustee, each member of the Trust and all persons claiming through them.

3.4 Governing law and jurisdiction

This deed is governed by the laws of New South Wales. The Trustee irrevocably submits to the nonexclusive jurisdiction of the courts of New South Wales.

EXECUTED as a deed poll.

Signing page

This deed poll is made this day of 2025.

SIGNED, SEALED AND DELIVERED
by **MSQUARED CAPITAL PTY LTD**
ACN 622 507 297 in accordance with
section 127 of the *Corporations Act*
2001 (Cth) by:

Paul Miron

Secretary/Director

Name (please print)

Paul John Myliotis

Director

Name (please print)

Supplemental deed

Annexure A - Modification of the Constitution

MSQUARED CAPITAL PTY LTD

Msquared High Yield Mortgage Income Fund

Constitution

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Liability limited by a scheme approved under professional standards legislation.

Date	This Constitution is a deed poll made on the date noted on page 7456 of this document.
Trustee	Msquared Capital Pty Ltd ACN 622 507 297 of Level 12, 88 Pitt Street-, Sydney, New South Wales 2000 (Trustee)

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TERMS

1. Constitution of the Trust

1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on—:

- (a) all Unitholders (as they are constituted from time-to-time);
- (b) all Optionholders (as they are constituted from time-to-time); and
- (c) the Trustee.

1.2 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Holder.

2. Trust

2.1 *Appointment of Trustee*

The Trustee agrees to act as trustee of the Trust.

2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the Initial Units are issued. The Trust is a single trust and the creation and issue of Units of different Classes is not intended to create separate trusts or sub-trusts.

2.3 *Name of the Trust*

- (a) The Trust will be known as the Msquared High Yield Mortgage Income Fund. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If at any time the name of the Trust has or implies an association with Msquared Capital Pty Ltd in any way and Msquared Capital Pty Ltd retires or is removed, then its successor as Trustee must, unless otherwise approved by Msquared Capital Pty Ltd, change the name of the Trust to a name that does not imply an association with Msquared Capital Pty Ltd or its business.

2.4 Term of the Trust

The Trust will end on the earlier of—:

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution, in accordance with the Act or in accordance with the law.

2.5 No merger

For the avoidance of any doubt, if the Trustee (in its capacity as trustee of any other trust or trusts) is, or becomes, a Unitholder, or the sole Unitholder, then the estates or interests held by the Trustee in the Assets will not merge and the trust created under this Constitution will not cease to exist. The Trustee may be the trustee of the Trust and also at the same time a Unitholder, or the sole Unitholder, of the Trust, in a different capacity.

2.6 Relationship of agency or partnership excluded

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

3. Creation and issue of Units**3.1 Initial Units**

- (a) The first Units issued by the Trustee will be Initial Units.
- (b) The rights, obligations and restrictions attaching to Initial Units are as set out in this Constitution, except that the following special terms prevail over other provisions of this Constitution:
 - (i) The Application Price of a single Initial Unit will be \$1.00.
 - (ii) Holders of Initial Units will not have an interest in or be entitled to a share in any Distributable Amount.
 - (iii) The Withdrawal Price for a Unitholder's Initial Units will be the price paid by the Unitholder to acquire the Initial Units.
 - (iv) Holders of Initial Units are not entitled to receive notices of or attend general meetings of ~~holders of Ordinary Units or other Classes~~ Unitholders (whether of the Trust as a whole or of any Class). Additionally, Initial Units will have no voting rights.
 - (v) On winding up of the Trust, a holder of Initial Units is only entitled to payment of the price paid by the Unitholder to acquire the Initial Units.

3.2 Division of beneficial interest

The beneficial interest in the Assets as a whole will be divided into Units.

3.3 Interest in Assets

Unless the Terms of Issue of a Class otherwise provide, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the Liabilities, but no Unit confers an interest in a particular part of the Trust or in any particular Asset.

3.4 Rights attaching to Units

Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, Units will be held upon and subject to the provisions contained in this Constitution. To the extent the Terms of Issue relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

3.5 Consolidation, division and issue of Units

- (a) Subject to the Act, the Trustee may, at any time, determine to consolidate, divide or issue Units and create and issue Units of different Classes.
- (b) The Trustee may make the issue of Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may—:
 - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units; or
 - (ii) provide for conversion of Units from one Class to another Class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of each Class. To the extent the rights, obligations and restrictions relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out on in this Constitution.

3.6 Fractions of Units

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) Subject to the Terms of Issue, if fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.

3.7 Create Options

- (a) The Trustee may create and issue Options to subscribe for Units, on any terms and conditions it determines appropriate.

(b) On the exercise of an Option, the Optionholder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

3.7.3.8 Application Price

~~(a)~~ For all Units issued in a Class prior to the acquisition of the first non-cash Asset Referable to that Class, the Application Price of a single Unit is \$1.00. At all other times the Application Price for a Unit issued in that Class will be determined ~~as follows~~:

~~(i) If the Trust is not a Registered Scheme, then at a price determined by the Trustee in its absolute discretion.~~

~~(b)(a)~~ If the Trust is a Registered Scheme, then in accordance with clause 3.8(b)3.7(b), subject to the Trustee determining another Unit price in accordance with the remainder of this clause 3.7, or in accordance with clause 3.93.8.

~~(e)(b)~~ Subject to the other provisions of this clause 3.83.7 and clause 3.93.8, the Application Price of a single Unit in a Class is the price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} - \text{Accrued Distribution} + \text{Transaction Costs}}{\text{Units in Issue}}$$

~~(e)(c)~~ However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying the formula in clause 3.8(b)3.7(b) and therefore the words “—Accrued Distribution” in this formula will be deemed not to apply.

~~(e)(d)~~ Notwithstanding any other provision of this Constitution ~~where the Trust is a Registered Scheme~~, the Trustee may set the Application Price at an Application Price different from the fixed price in clause 3.8(a)3.7(a) or different from that determined in accordance with clause 3.8(b)3.7(b), in relation to some Units, a Class or all Units, to the extent it is permitted to do so under the terms of any ASIC Relief (and subject to the terms of that ASIC Relief), and where the Trust is not a Registered Scheme the ASIC Relief is to apply as if the Trust were a Registered Scheme. In particular, the Trustee may (subject to the terms of the ASIC Relief) exercise discretion in determining—:

- (i) any matter affecting the value of any factor included in the calculation of the Application Price~~;~~ and
- (ii) any matter which is an aspect of the method of calculating the Application Price.

~~(f)(e)~~ For the purpose of clause 3.8(b)3.7(b), each of the variables used in the calculation is that proportion of those variables that the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

3.83.9 Application Price on exercise of Option

Subject to the Act and the conditions of any ASIC Relief, the exercise price for Units to be issued in a Class on the exercise of an Option, unless the terms and conditions of the Option determined by the Trustee provide otherwise, will be the Application Price for Units in that Class determined on the Business Day immediately preceding the date the Options are offered.

3.93.10 Time to calculate Application Price

Subject to clauses ~~3.83.7~~ and ~~3.93.8~~, the time at which the Trustee must calculate the Application Price is the next Relevant Valuation Time after the later of the following to occur:

- (a) The time the Trustee receives the relevant application for Units.
- (b) The time the Trustee receives the relevant Application Money or the property against which Units are to be issued.

~~3.10~~3.11 Time to calculate Application Price—fixed capital raisings

The Trustee may calculate the Application Price at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

~~3.11~~3.12 Units issued against uncleared funds or promises to pay

- (a) For the purposes of this clause 3, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay, including without limitation a promissory note, uncleared cheque or bill of exchange or anything similar or analogous to the foregoing, as a receipt of Application Money.
- (b) If Units are issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property or Assets, then:
 - (i) such Units, are (at the election of the Trustee) void if the funds are not subsequently cleared or paid, or the property does not vest in the Trustee, or the property or Assets ~~are~~ not transferred free from encumbrance, within 10 Business Days after the Units are issued ~~the receipt of the relevant application for Units~~ (or such longer period as the Trustee determines); and
 - ~~(ii)~~ subject to this Constitution, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.

3.123.13 Net Asset Value

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 10. Nothing in this clause 3 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

3.133.14 Satisfaction of Application Money

The payment of Application Money may be satisfied in such a manner as the Trustee determines, including by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods.

3.143.15 Perpetuity Period and restriction on issue and redemption of Units

The Perpetuity Period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a Perpetuity Period in this clause 3.153.14 does not require that the Trust terminate on expiration of that period.

3.153.16 Referability

- (a) Unless otherwise determined by the Trustee, each Class shall be referable to the Assets, Liabilities, Expenses, Income and Distributable Amount of the Trust as a whole.
- (b) The Trustee may determine, and express in the relevant Terms of Issue, that Assets, Liabilities or variables relevant to the Application Price or Withdrawal Price will be referable to a particular Class (**Referable**), and if it so determines will establish a separate sub-account for that particular Class (**Pool**) which will have the following characteristics:
 - (i) Separate Pools must be established for each Class, and no more than one Pool may be Referable to a particular Class.
 - (ii) Assets, Liabilities, Expenses, Income and Distributable Amount or Dividend Amounts of the Trust Referable to a particular Class must be allocated to the appropriate Pool in a manner that is consistent with the Terms of Issue and unless the Terms of Issue provide otherwise will be allocated as follows:
 - A. Where attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Class;
 - B. Where it is not attributable to any Class or the Class to which it was attributable is no longer on issue, between all Classes on a

pro rata basis, provided the Trustee considers the allocation to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Classes; and

C. Any reallocation of Assets or Liabilities between Pools must be done on a fair and reasonable basis for holders of the class of Units Referable to those Pools.

(iii) Investment Amounts Referable to a particular Class must be accounted for in the Pool Referable to that Class.

(iv) Pools may be established pending the issue of Units in a Class, or the acquisition of Assets for that proposed Class.

(c) The decision of the Trustee in respect of the allocation of Assets, Liabilities, Expenses, Income and Distributable Amount or Dividend Amount among Classes or to a particular Pool is final and binding on all Unitholders.

(d) In making any determination or exercising a power or discretion under this clause 3.16, the Trustee is exercising an administrative power only and nothing contained in this clause 3.16 is intended to give the Trustee an unfettered power or discretion. The Trustee in making any determination or exercising any discretion must act honestly and according to law.

(e) Neither clause 3.16(a) nor 3.16(b) confers on the Unitholder a beneficial interest in a particular Asset. The outcome of clause 3.16(a) and 3.16(b) is to assist in a calculation of the Application Price and the Withdrawal Price for each Class and the quantum of income and capital distributions that can be distributed to Unitholders.

(f) More than one Unitholder may hold a Class of Units referable to a Class Asset (or Class Assets).

~~(a) An Asset will be Referable to a particular Class where the Trustee has identified the particular Asset as an appropriate investment opportunity for the Trust and has issued a Disclosure Document outlining that returns on a Class will be calculated with reference to the particular Asset.~~

~~(b) Clause 3.15(a) does not confer on the Unitholder a beneficial interest in a particular Asset. The outcome of clause 3.15(a) is to assist in a calculation of the Application Price and the Withdrawal Price for each Class and the quantum of Income and capital distributions that can be distributed to Unitholders.~~

3.17 No power to reclassify

Notwithstanding any term or condition to the contrary herein, the Trustee does not have a power to reclassify existing Units so that they do not all have equal rights to receive the income and capital of the Trust applicable to that Class of Unit.

3.18 No power to appoint

Notwithstanding any term or condition to the contrary herein, the Trustee does not have a power to appoint a Unitholder's interest in the income or capital of the Trust to another Unitholder.

3.19 Rights of Unitholders

Each Unitholder agrees not to:

- (a) interfere with any rights or powers of the Trustee under this Constitution;
- (b) purport to exercise a right in respect of an Asset or claim any interest in an Asset (including without limitation lodging a caveat affecting an Asset); or
- (c) require an Asset to be transferred to the Unitholder (or any other person).

3.163.20 Default

Unless an Asset is made Referable to another Class pursuant to clause ~~3.163.15~~, the Asset will be Referable to the Class known as Ordinary Units.

4. Application for Units**4.1 Form of application**

An application for Units must be in any form the Trustee may for the time being require or approve.

4.2 Application payment

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 16, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

4.3 Holding ~~Application Money~~ and dealing with the Investment Amount

(a) ~~All Application Money~~ The Investment Amount must be held by the Trustee (or its agent) on trust for the Applicants.

(b) Each Applicant authorises the Trustee to deduct from the Investment Amount any amount disclosed in the Disclosure Document as an amount that will be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.

4.4 Interest on ~~Application Money~~Investment Amount

~~Unless the Trustee decides otherwise, interest earned on Application Money will be retained by the Trustee and will not~~ Interest earned on Investment Amounts will form part of the Assets, ~~and for~~ For the avoidance of doubt, any interest earned on ~~Application Money~~Investment Amount is not available to a particular Applicant nor is it attributable to a particular Applicant.

4.5 Trustee may refuse application

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application for Units is refused, then—:
 - (i) the Trustee must refund to the Applicant any money paid by that Applicant; and
 - (ii) unless the Trustee determines otherwise, no interest shall be paid to the Applicant and any interest earned on the Applicant's Application Money ~~may be retained by the Trustee or~~will form part of the Assets ~~at the Trustee's election.~~

4.6 Investment of the ~~Application Money~~Investment Amount

The ~~Application Money~~Investment Amount may, pending its application in accordance with the terms of this Constitution, be invested by the Trustee in investments authorised by the law relating to the investment of trust funds.

4.7 Minimum application

The Trustee may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of a Class); and alter those amounts at any time.

4.8 Date Units issued

- (a) Units are taken to be issued on the date the Trustee records them in the Register having accepted the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units in that Class has been paid in accordance with clause 4.2. The date recorded in the Register must be no later than the date the Units were actually issued.
- (b) However, Units issued on a reinvestment pursuant to clause 16 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

4.9 Number of Units issued

- (a) Except in relation to Partly Paid Units, the number of Units issued to an Applicant is calculated as follows:

$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$
--

- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 4.9(a) assuming the full amount that the Applicant determines to invest in the Trust in its application for Units (or such lower amount as determined by the Trustee on acceptance of the application). ~~Application Price per Unit~~ was due and paid in full on the date of issue.

~~(c) At the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.~~

4.10 Unit certificates

The Trustee is not required to issue or provide certificates for Unit holdings.

4.11 Unitholder identification requirements

- (a) Without affecting clause 4.1, the Trustee may require any Applicant to provide to the Trustee information on or documentation to evidence the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), or any other matter the Trustee determines at its discretion, in such form as required by the Trustee in its absolute discretion.

(b) Without affecting clause 4.8, ~~the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion,~~ if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 4.11(a), or the evidence provided is not satisfactory to the Trustee, then:

(i) the Trustee may delay the acceptance or processing of any application for Units, or it may refuse any application for Units, in its absolute discretion; and

~~(ii)~~ subject to this Constitution, if the application for Units has already been accepted or processed, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.

~~(b)(c)~~ (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder) ~~is~~ is:

- (i) is a different person or entity from the person or entity originally represented to the Trustee ~~is~~ is or

- (ii) there is a defect or omission in the information provided under clause 4.11(a).

~~(e)~~(d) Nothing in this clause 4.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law, including any law in relation to the control or identification of money laundering or terrorism financing or tax compliance. This clause 4.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

5. Partly Paid Units

5.1 *Payment of Application Price by instalments*

The Application Price for Units may be payable by instalments as set out in this clause 5.

5.2 *Determination of amount and timing of instalments*

The Trustee may determine at any time that Units that are to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Trustee determines or, if the Trustee so determines, by a single instalment payable at such time as the Trustee determines.

5.3 *Variation or waiver of terms and conditions*

Subject to any applicable statutory duty requiring the Trustee to treat Unitholders of the same Class equally and those of different Classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 5.2, those terms and conditions may be varied or compliance therewith waived only with the consent of the Trustee. The Trustee may not waive an instalment which is due and payable.

5.4 *Notice of instalments*

The Trustee must give Unitholders at least one Business ~~Days'~~as Day's notice of the time and date each instalment is due to be paid (the first notice). The omission to give the first notice or the non-receipt of the first notice by the Unitholder does not affect the obligation of the Unitholder to pay the instalment.

5.5 *Interest on instalments and costs*

If a Unitholder does not pay an instalment on a Partly Paid Unit by the due time and date: ~~—~~

- (a) then interest is payable by the Unitholder on the amount due, calculated in accordance with clause 30.6(a)~~;~~ and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

5.6 Failure to pay instalments

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).
- (b) If a notice is served pursuant to clause 5.6(a), then it must contain the following:
 - (i) ~~The~~ the total amount due to be paid at the date of the notice, including the unpaid instalment, any interest owing at that date and any costs the Trustee is seeking to recover;
 - (ii) ~~The~~ the time and day by which payment must be made. This date must not be less than three Business Days from the date of the notice; ~~and~~
 - (iii) ~~If~~ if payment of the amount set out in the notice is not made by the due date specified in the notice, then the Partly Paid Units in respect of which the notice has been issued are liable to be forfeited. The Trustee may also specify that interest will continue to accrue and further costs are likely to be incurred.
- (c) Failure by the Trustee to comply with clause 5.6(b) or non-receipt of the second notice does not affect the obligation of the Unitholder to pay the instalment plus interest and costs.

5.7 Consequences of non-compliance

If the requirements of any notice issued under clause 5.6 are not complied with, then: ~~—~~

- (a) the Unitholder grants the Trustee an irrevocable power of attorney to execute a transfer of the Unitholder's Units and do all things reasonably required to give effect to a transfer (if required);
- (b) the Trustee may determine in its absolute discretion, that any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited; ~~—~~ and
- (c) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

5.8 Disposal of forfeited Units

- (a) Subject to the Act, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either: ~~—~~

- (i) at a price that is no less than a price calculated in accordance with clause ~~3.83-7~~; or
 - (ii) in accordance with any applicable ASIC Relief in relation to the sale of forfeited Units, if the Trustee complies with the conditions of the relief.
- (b) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
 - (c) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Trustee thinks fit.

5.9 **Holder of forfeited Units**

The holder of Partly Paid Units which have been forfeited ceases to be a Unitholder in respect of the forfeited Units but remains liable to pay to the Trustee all money which at the date of forfeiture was payable by the former Unitholder to the Trustee in respect of the forfeited Units (including interest owing under clause 5.5 and expenses) but the former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money.

5.10 **Evidence of forfeiture**

A statement signed by or on behalf of the Trustee that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.

5.11 **Consideration for forfeited Units**

Where a Partly Paid Unit is forfeited pursuant to this clause the following applies:

- (a) The Trustee may receive the consideration, if any, given for a forfeited Unit on the sale or disposal.
- (b) The Trustee must:—
 - (i) execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of (pursuant to the irrevocable power of attorney to do so granted to the Trustee under clause ~~5.7(a)~~, 5.7(a)); and
 - (ii) register that person as the holder of that Unit.
- (c) The person who becomes the registered holder is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit. Further, that person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

5.12 Deductions from consideration for forfeited Units

Where forfeited Units are sold or disposed of for cash, the Trustee must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture (including any interest payable and any expenses incurred on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Unitholder to recover the instalment or any part owing). The Trustee may retain in the Assets of the Class in which the Unit was forfeited the amounts so deducted, but the balance remaining (if any) must be paid to the Unitholder whose Units were forfeited.

5.13 Joint holders

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

5.14 Rights and obligations attaching to a Partly Paid Unit are proportionate

Subject to the Act and the provisions of this Constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

5.15 Termination of a Class or winding up of the Trust

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the Unpaid Amount is payable immediately:—

- (a) upon termination of the Class to which the Partly Paid Unit belongs; or
- (b) upon commencement of the winding up of the Trust.

6. Withdrawal Price**6.1 Withdrawal price**

~~(a) If the Trust is not a Registered Scheme, then Units may be redeemed at a Withdrawal Price determined by the Trustee in its absolute discretion.~~

~~(b)~~ (a) If the Trust is a Registered Scheme, then, ~~s~~ Subject to the Terms of Issue, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} - \text{Accrued Distribution} - \text{Transaction Costs}}{\text{Units in Issue}}$

~~(e)~~ (b) However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying the formula in clause 6.1(a) ~~6.1(b)~~ and therefore the portion “– Accrued Distribution” in this formula will be deemed not to apply.

~~(d)~~ (c) For the purposes of the calculation in clause 6.1(a) ~~6.1(b)~~ the following applies:

- (i) The Trustee may, ~~where the Trust is a Registered Scheme~~ (subject to the terms of any ASIC Relief, and where the Trust is not a Registered Scheme the ASIC Relief is to apply as if the Trust were a Registered Scheme) exercise discretion in determining—:
 - A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price^{1.7} and
 - B. any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) Each of the variables used in the calculation of Withdrawal Price are that proportion of those variables the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

6.2 Time to calculate Withdrawal Price

The Withdrawal Price must be calculated:—

- (a) while the Trust is Liquid, at the next Relevant Valuation Time after the withdrawal request is accepted or approved by the Trustee^{1.7} or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes or at such other time specified by the Trustee in the withdrawal offer.

7. Withdrawal procedures

7.1 Right to withdraw

- (a) Where the Trust is not a Registered Scheme, a Unitholder has no right to withdraw from the Trust other than as determined by the Trustee in its absolute discretion.
- (b) Where the Trust is a Registered Scheme, a Unitholder's right to withdraw from the Trust is governed by the remainder of this clause 7, the terms of which have effect on and from such registration (except as expressly provided).

7.2 Application of withdrawal provisions

- (a) Clauses 7.3 to 7.7 apply whether or not the Trust is Liquid.
- (b) Clauses 7.4 to 7.7 apply whether or not the Trust is a Registered Scheme.
- (c) Clauses 7.12 and 7.13 only apply while the Trust is Liquid.
- (d) Clause 7.14 only applies while the Trust is not Liquid.

7.3 Requests for withdrawal

A Unitholder may make a request for the withdrawal of some or all of their Units:—

- (a) if the Trust is Liquid, by providing notice to the Trustee in writing and the Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 7 (subject to clauses 7.12 and 7.13);¹ or
- (b) if the Trust is not Liquid, in response to a withdrawal offer made by the Trustee and in accordance with the Act.

7.4 Lock up

A Unit may not be redeemed during the Lock Up Period for that Unit unless otherwise consented by the Trustee (which consent may be withheld at the Trustee's absolute discretion).

7.5 Compulsory withdrawal

The Trustee may redeem the Units of any Unitholder without the need for a withdrawal request in any of the following circumstances:

- (a) The Trust is not a Registered Scheme.
- ~~(b)~~ ^(b) The redemption is permitted under the Terms of Issue which apply to those Units.
- ~~(b)(c)~~ ^(c) The redemption is permitted under ~~19~~ clause 30.8 ~~30.8~~ of this Constitution.
- ~~(e)~~ ^(d) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Trustee or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time-to-time by the Trustee.
- ~~(e)~~ ^(e) The redemption is required by operation of:—
 - (i) legislation where the mechanism for redemption is contained in that legislation;¹
 - (ii) a provision in this Constitution which has been included in mandatory compliance with Australian legislation;¹
 - (iii) the order of a court of competent jurisdiction;¹ or
 - (iv) a lien, the exercise of which results in a redemption.
- ~~(e)~~ ^(f) The Unitholder holds less than any minimum Unit holding amount set by the Trustee.
- ~~(f)~~ ^(g) In the opinion of the Trustee, the continued holding of Units by a Unitholder would be contrary to an applicable law.

~~(g)~~(h) The Trustee determines, in its absolute discretion, the continued holding of Units by a Unitholder would be to the material disadvantage of the Trust, Unitholders of a Class or to the interests of Unitholders as a whole.

7.6 Money owed

If a Unitholder owes any money to the Trust or the Trustee (including any Unpaid Amount of any Partly Paid Units held by the Unitholder), then the Trustee may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.

7.7 Transfer of Assets to satisfy withdrawal or distribution

The Trustee may, at its discretion, transfer Assets to a Unitholder rather than pay cash, in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets together with any cash paid must be of equal value to the total amount due to the Unitholder pursuant to the redemption request, withdrawal offer or distribution (based on a valuation prepared in accordance with clause 10). If the Trustee requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

7.8 Minimum application amount

The Trustee need not give effect to withdrawal requests (whether or not made in response to a withdrawal offer) in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.

7.9 Minimum Unit holding

If complying with a withdrawal request (whether or not made in response to a withdrawal offer) would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding.

7.10 Withdrawal request cannot be withdrawn

A withdrawal request (whether or not made in response to a withdrawal offer) cannot be withdrawn by a Unitholder, unless the Trustee otherwise agrees.

7.11 Satisfaction of withdrawal by sale of Units

The Trustee may, at its discretion, purchase or arrange for another person to purchase all or some of the Units the subject of a withdrawal request (whether or not made in response to a withdrawal offer) at a price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 6.1. In such case, the withdrawal request is deemed satisfied upon:—

- (a) the transfer of the Units the subject of the withdrawal request being recorded in the Register; and

- (b) if the transfer is for less than all of the Units the subject of the withdrawal request, then upon payment of the Withdrawal Price in respect of the remaining Units.

7.12 *Suspension of withdrawals*

- (a) The Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time:—
- (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up;
 - (ii) if it is not in the best interests of Unitholders for withdrawals to be made;
 - (iii) if it would prejudice the Trust's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust's or the Trustee's compliance with any applicable law, or the taxation or stamp duty status of the Trust;
 - (iv) it is, for any reason, impracticable for it to calculate the Net Asset Value, the Application Price or the Withdrawal Price, including because of 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 of the reasonable control of the Trustee, or because of the requirements of any law;
 - (v) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in the Trustee's opinion it is not in the interests of Unitholders for any Assets to be sold in order to satisfy a withdrawal request;
 - (vi) if it is not able to realise the relevant Assets at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside of the control of the Trustee needed to satisfy the withdrawal requests within the time required;
 - (vii) the Trustee reasonably estimates that it must sell five percent or more (by value) of all Assets to meet current unsatisfied withdrawal requests; or
 - (viii) there have been, or the Trustee anticipates there will be, withdrawal requests which involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all satisfied immediately, then Unitholders who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the disadvantage of existing Unitholders, including (but not limited to) a material diminution in the value of the Assets.

- (b) In cases where withdrawals are suspended for a period of time the Trustee may extend the period for so long as the circumstances which caused the suspension continue to apply.

7.13 Provisions which apply when the Trust is Liquid

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 365 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the Trustee must satisfy the withdrawal request within 21 days from the date on which it determines to give effect to the request—
- (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 7.7;
 - (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request; or
 - (iii) partially in the manner described in clause 7.13(a)(i) and partially in the manner described in clause 7.13(a)(ii).
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.
- (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as also relating to the remaining balance of the Unitholder's holding.
- (e) The Trustee may redeem some or all of the Units which are the subject of the request.
- (f) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceed the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in section 601KD of the Act (as if the Trust was not Liquid). The Trustee may, but is not obliged to, process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).

7.14 Provisions which apply when the Trust is not Liquid

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer, which complies with the Act, currently open for acceptance by Unitholders. The Trustee may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.
- (b) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion.
- (c) The withdrawal offer may be made by giving a copy to all Unitholders to whom the withdrawal offer is available.
- (d) The Trustee is not at any time obliged to make a withdrawal offer.
- (e) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (f) If the Trustee receives a withdrawal request before it makes a withdrawal offer, then it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (g) Subject to the Act, the Trustee may cancel any withdrawal offer it has made at any time before the withdrawal offer closes by giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made. The withdrawal offer will be automatically cancelled as at the time of the Trustee's decision. Any withdrawal request made in response to a withdrawal offer cancelled by the Trustee which has not been satisfied at the time of the Trustee's decision to cancel the withdrawal offer will be taken to be withdrawn at that time.

8. Register**8.1 Trustee must maintain the Register**

The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept in accordance with the Act or any declaration, exemption or ruling granted under the Act. The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.

8.2 Removing information from the Register

Information relating to a Holder (or any part of it) may be removed from the Register at any time after the first day of the Financial Year occurring seven years after the Financial Year in which the Holder ceased to be the holder of Units or Options as the context requires.

8.3 Register is evidence of who are Holders

Except in the case of manifest error, the Trustee may treat a registered Holder as the legal owner of Units or Options as the context requires registered in the Holder's name on the Register. The Trustee is not required to recognise any beneficial interest held in any Unit or Option as the context requires.

8.4 Change of details

A Holder must notify the Trustee of any change of name or address as soon as reasonably practicable after the change occurs. The Trustee must update the Register accordingly.

8.5 Limit to number of registered Holders

In no case will the Trustee be required to register more than two persons as holders of any one Unit or Option as the context requires.

8.6 Use of information

If a Holder inspects or is given a copy of the Register, then they will be taken to have agreed not to use any information obtained from the Register (or part thereof) 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 Holder. A Holder's obligation under this clause survives the transfer of all or any part of their Units or Options as the context requires.

9. Interests of ~~Unitholders~~ Holders**9.1 Joint ~~H~~holders**

Where more than one person is registered as the holder of any Unit or Option, then these ~~Unitholders~~ Holders hold them as joint tenants. Joint ~~H~~holders ~~of Units~~ shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit or Option.

9.2 Restrictions on ~~Unitholders~~ Holders

A ~~Unitholder~~ Holder has no right or entitlement to, and must not:—

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution;
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets;
- (c) require any Assets to be transferred to that ~~Unitholder~~ Holder; or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly

conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

10. Valuation of Assets

10.1 *Periodic valuations*

The Trustee may cause an Asset to be valued at any time, however (if applicable) the Trustee must do so as and when required by the Act (as varied by any ASIC Relief).

10.2 *Net Asset Value*

The Trustee may determine the Net Asset Value at any time, including more than once on each day.

10.3 *Valuation methodology*

The Trustee may determine, in its discretion, valuation methods and policies for each category of Assets and change them from time-to-time (subject to, where the Trust is a Registered Scheme, complying with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion). Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value determined in accordance with ordinary commercial practices for valuing assets of that kind. All valuations used must be reasonably current.

10.4 *Trustee not an expert*

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

11. Trustee's powers and duties

11.1 *General powers*

Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets acting in its personal capacity.

11.2 *Specific powers*

Without limiting clause 11.1, the Trustee's powers include the power to do the following:

- (a) **A**acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction, and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights, the provision of debt with or without security and acquiring Securities or financial products.

including those issued by a related party of the Trustee or Investment Manager:-

- (b) ~~dD~~To develop, improve or otherwise deal with any Assets (including where the Ttrustee disposes of an interest in an Asset, entering into a co-ownership arrangement in respect of that Asset), including to alter, subdivide or develop the Asset.
- (c) ~~dD~~Dispose of or otherwise deal with the Assets, including to exercise, enforce, dispose or otherwise deal with any property or right in connection with those Assets:-
- (d) ~~mM~~Manage and administer the Assets:-
- (e) ~~oO~~Open, close and operate bank accounts:-
- (f) provide or deal with financial accommodation or lend all or any money at any time forming part of the Assets to any person with or without the security, including the following:
 - (i) provide financial accommodation where the amount of any advance or accommodation is in excess to the value of the secured property;
 - (ii) participate in the provision of financial accommodation with one or more persons, including related persons of the Trustee or the Investment Manager;
 - (iii) purchase or otherwise acquire any loan or debt Security from any person including a loan or debt Security which is in default or otherwise in arrears;
 - (iv) sell or otherwise dispose of any loan or debt Security to any person, including a loan or debt Security which is in default or otherwise in arrears; and
 - (v) exercise any right, power or discretion as lender in relation to any financial accommodation provided from the Assets, or any right, power or discretion as holder in relation to any debt Security forming part of the Assets:-;
- ~~(f) — Do everything which, in the Trustee's reasonable opinion, is necessary or expedient to enable the exercise of a right as lender in relation to any Mortgage.~~
- ~~(g) — Complete any mortgage document and any other security document on behalf of a Borrower in connection with a Mortgage.~~
- ~~(h) — Purchase or otherwise acquire any loan from any person including a loan which is in default or otherwise in arrears.~~
- ~~(i) — Sell or otherwise dispose of any loan to any person, including a loan which is in default or otherwise in arrears.~~

~~(j) Exercise, enforce, dispose or otherwise deal with any property or right.~~

(g) a Accept and deal with any Security Interest provided by any Borrower or other security provider in respect of any financial accommodation provided or debt Security acquired under clause 11.2(f) including do everything which, in the Trustee's reasonable opinion, is necessary or expedient to do the following:

(i) c Complete and execute any document in respect of the Security Interest, including a Mortgage document and any document relating to the priority of a Security Interest.;

(ii) c Complete any document in respect of a Security Interest on behalf of a Borrower or other security provider.;

(iii) e Enable the exercise of any right, power or discretion as lender, mortgagee or secured party in relation to any Security Interest including:

A. giving notices to, or entering into arrangements or undertakings to, accelerate or delay, suspend or waive payment of any amount (including any principal, interest or other amount) payable under or in respect of any financial accommodation or debt Security;

B. entering into arrangements with any person to fund the costs and expenses of enforcement or attempted enforcement of any financial accommodation debt Security or Security Interest, including with the Investment Manager or a related party of the Investment Manager;

C. exercising a power of sale pursuant any Security Interest or the enactment of a State or Territory or the Commonwealth of Australia;

D. appointing a receiver or receiver and manager or otherwise exercising the rights of a receiver or receiver and manager;

E. in respect of any property subject to a Security Interest, executing any contract for sale, transfer, lease, easement or covenant document required to register any dealings in the property; and

F. taking any action to complete the sale of any property the subject of a Security Interest.; and

~~— e Enable any Security Interest to be exercised, enforced, discharged, assigned or otherwise dealt with by or on behalf of the Trustee.;~~

~~(i)(iv) Execute any mortgage and all other documents required to be given in respect of any Mortgage.~~

- ~~(k) Do everything which, in the Trustee's opinion, is necessary or expedient to enable the exercise of any right as lender in relation to any loan made from the Assets, including exercising a power of sale pursuant any Mortgage or the enactment of a State or Territory or the Commonwealth of Australia, to execute any contract for sale of real property offered as security, transfer, lease or easement document required to register any dealings and complete the sale of such real property offered as security under a Mortgage and the subject of the exercise of any power of sale.~~
- ~~(l) Do everything which, in the Trustee's opinion, is necessary or expedient, to enable a Mortgage (and any security held on behalf of the Trust) to be discharged at the end of the term of the Trust.~~
- (h) bBorrow or raise money (including but not limited to the issue of unsecured notes and other debt ~~Securities~~products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), and use such money borrowed or raised for any purpose, including to fund the payment of the Withdrawal Price and the payment of distributions to Unitholders; -
- (i) eEnter into derivatives and foreign exchange contracts whether to hedge exposures or as a speculative transaction and whether under an ISDA master agreement or otherwise (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities in respect of those transactions:-
- (j) gGrant a Security Interest in any form in respect of any obligation of the Trustee (in its capacity as trustee of the Trust) or any other person (including the Trustee in its personal capacity) or trust which may include but are not limited to:
- (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or Trustee of any other trust); and
- (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets:-
- ~~(m) grant security, enter into ISDA master agreements and derivative transactions (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to—~~
- ~~(n) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and~~

~~(e) — securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets;~~

(k) ~~w~~Without limiting the generality of clause 11.2(j)11.2(i), guarantee, indemnify or become surety with or without a Security Interest and with or without remuneration for the due payment of money or debts of any Unitholder and to guarantee, indemnify or become surety with or without security for the due performance of any contract, agreement, covenant or obligation of any Unitholder;:-

(l) ~~e~~Enter into contracts for the sale of Securities notwithstanding that the Trust does not, at the time of making the contract, own sufficient quantities of those Securities to satisfy the contract as long as the Trustee is satisfied that, before completion of the contract, the Trust will be able to acquire sufficient quantities of those Securities to satisfy the contract, whether borrowing or otherwise;:-

(m) ~~t~~To enter into Securities lending arrangements similar to or as defined in section 26BC of the *Income Tax Assessment Act 1936* (Cth) and to borrow and or lend Securities under that arrangement including in respect of arrangement contemplated by 11.2(l)11.2(l);:-

(n) ~~t~~To exercise the following powers in relation to Securities in addition to powers conferred by law:

(i) ~~t~~To pay or decline to pay calls on Securities or permit Securities to be forfeited and sold; :-

(ii) ~~t~~To purchase Securities and take up Securities of a new issue;:-

(iii) ~~t~~To requisition meetings, attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;:-

(iv) ~~t~~To vote on any resolution, whether at a meeting held in person, attended by proxy, or via alternative technology or by way of a written resolution, or any other means;:-

(v) ~~(t~~To sell Securities at a price and upon terms as the Trustee may decide;:-

(vi) ~~t~~To assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or enforcing or modifying any rights, privileges or interests in relation to Securities (whether alone or with others);:-

(vii) ~~t~~To agree to any scheme or arrangement for the increase or reduction of the value or amounts of any Securities or of the capital of any company in which any Securities form part of the Assets or by which any Securities are substituted or given in exchange, either wholly or partly for other Securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the Securities and to pay out of

the Assets any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any Securities as if the Trustee owned them beneficially; and:-

~~(i) —~~ tTo agree in respect of a winding up with the trustee of any trust or the liquidator of any company (including a trustee company) or any member or creditor of the company or trust, or in a voluntary administration, as the Trustee thinks fit:- ~~Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then —~~

(viii) —

~~(ii) —~~ it may do so on terms the Trustee thinks fit, and

~~(iii) —~~ the agent or delegate may be an Associate of the Trustee.

~~(p)(o) a~~ Act as underwriter for the offer of any securities or other interests in the Trust:-

~~(q)(p) c~~ Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time-to-time:-

~~(r)(q) h~~ Hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property:-

(r) e Enter into any option agreement relating to any Asset, Security or real property, lending or financing facility, agreement or transaction:-

(s) i f Units have been issued but the Trustee subsequently determines these Units are void pursuant to clause 3.12(b)(i) ~~3.12(b)(i)~~ or cancels these Units pursuant to clause 4.11(c) ~~4.11(c)~~ make all necessary and appropriate adjustments to the Net Asset Value, the Application Price and Withdrawal Price:-

(t) a Appropriate any Asset of the Trust in specie at its market value in partial or whole satisfaction of any Unitholder's entitlement to receipt of the whole or any part of the capital or income of the Trust without the consent of such Unitholder:-

(u) a Act as trustee of sub-trusts:-

(v) v Vary, transpose, postpone or otherwise deal with all or any of the investments of the Trust for or into other investments of any nature:-

(w) s Subject to the Trustee acting honestly and according to law, determine whether receipts and outgoings are of a capital or income nature and

generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the trusts and powers of this Constitution and all parties shall be bound by the determination of the Trustee so made:-

~~(s) Delegate (in writing) the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.~~

~~(t)(x)~~ s Subject to its obligations at law, waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Trustee in connection with the Trust:-

~~(u) Enter into any option agreement relating to any lending or financing facility, agreement or transaction.~~

~~(v)(y)~~ e Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust; and:-

~~(w)(z)~~ g Grant a lease, sub-lease or any other right of occupancy over the Assets for any period the Trustee determined, regardless of any limitation imposed by the Trustee Act (NSW) or similar legislation in other states and territories of Australia.

11.3 Discretion to exercise powers

Subject to the law, the Trustee 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.

11.4 Delegation

(a) Without limiting clause 11.144.1, the Trustee's powers include the power to authorise any person to act as its agent or delegate:

(i) to perform any act or exercise any power or discretion within the Trustee's powers or discretions;

(ii) to hold title to any Asset; and

(iii) to appoint in turn its own agent or delegate.

(b) If the Trustee does appoint an agent or delegate, then:

(i) it may do so on terms the Trustee thinks fit;

- (ii) the agent or delegate may be an Associate of the Trustee or the Investment Manager; and
- (iii) it may execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (c) Subject to its obligations at law, the Trustee may waive or excuse on any terms as it thinks fit any breach by any agent or delegate of their obligations to the Trustee in connection with the Trust.

11.411.5 Interested dealings by Trustee

- (a) Subject to the Act, the Trustee may~~;~~—
 - (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust~~;~~
 - (ii) act in the same or similar capacity in relation to any other managed investment scheme~~;~~
 - (iii) hold Units in, or other securities issued by, the Trust in any capacity~~;~~
 - (iv) hold or deal in or have any other interest in an Asset~~;~~ or
 - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause ~~11.5~~11.4, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause ~~11.5(a)~~11.4(a)~~;~~—
 - (i) it may retain and need not account for any benefit derived by it~~;~~ and
 - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.
- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity)~~;~~—
 - (i) the Trustee may be registered as a Unitholder in respect of the Units~~;~~
 - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties~~;~~ and
 - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.

11.511.6 Retirement benefit

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to—:
 - (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement; or
 - (ii) its retirement as Trustee.
- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

11.611.7 Investment powers

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the Trustee Act 1925 (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights and the provision of debt with or without security.

12. Reorganisation Proposals**12.1 Power to enter into Reorganisation Proposals**

- (a) Without limiting clause 11, the Trustee may, enter into or implement any of the following which is approved by Ordinary Resolution:
 - (i) a Realisation Transaction;
 - (ii) a Conversion Proposal;
 - (iii) a Stapling Proposal;
 - (iv) a Top Hat Proposal;
 - (v) an Exchange Proposal; or
 - (vi) any other Reorganisation Proposal.
- (b) It is a term of issue of each Unit that the Unit may be subject to a Reorganisation Proposal as provided in this clause 12.1. Each Unitholder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

12.2 Partly Paid Units

If any Unit is a Partly Paid Unit at the time of a Reorganisation Proposal, then the Unpaid Amount and any instalment payable will be amended in the same ratio.

12.3 Power to give effect to Reorganisation Proposals

If the Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 12.1, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

12.4 Specific Powers

Without limiting clause 12.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1, the Trustee has power to—:

- (a) make distributions and other payments out of the Assets and (subject to the Act) to redeem Units, and to apply the payment or redemption proceeds on behalf of Unitholders;
- (b) apply for or purchase fully paid securities on behalf of the Unitholder and to consent on behalf of Unitholders to become a unitholder of a company or other body;
- (c) issue Units;
- (d) transfer Assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

12.5 Appointment of Trustee as agent and attorney

Without limiting clause 12.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1 the Trustee is irrevocably appointed the agent and attorney of each Unitholder to—:

- (a) apply any proceeds referred to in clause 12.4(a) on behalf of the Unitholder;
- (b) execute any withdrawal request on behalf of the Unitholder, or any application for, or transfer of, any securities in favour of the Unitholder
- (c) execute a transfer of Assets to a Unitholder; and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the relevant transaction or proposal.

The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from Unitholders.

12.6 Liability of Trustee

The Trustee has no liability of any nature whatsoever beyond the Assets to Unitholders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document or acting as the agent of any Unitholder) pursuant to or in connection with the implementation of any Reorganisation Proposal.

13. Financial reports and tax returns**13.1 Accounts, audit and other reports**

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 13.1(a), the Trustee—~~;~~
 - (i) must keep, or cause to be kept, proper books of account in relation to each Class—~~;~~ and
 - (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

13.2 Tax returns

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completing the relevant part of the Unitholder's tax return for the Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than four months after the last day of the Financial Year.

13.3 Electronic annual financial report to Unitholders

While the Trust is a Registered Scheme, each Unitholder agrees and nominates pursuant to the Act to receive notification and access by electronic means of and to financial reports prepared for the Trust [in accordance with the Act](#).

14. Fees and expenses**~~14.1 Interpretation~~**

~~The amount of any fee calculated under this clause 14 by reference to an asset that is or was acquired, purchased, held, disposed, sold, or otherwise, by, for or through a Sub Entity, or the total value of the assets of a Sub Entity, must be adjusted, as appropriate, based on the proportional direct or indirect ownership of the Trust in the Sub Entity.~~

14.214.1 Trustee Fee

- (a) The Trustee is entitled to a trustee fee of up to 1.00 percent per annum of the gross value of the Assets, subject to a minimum fee of \$5,500 per month.
- (b) The minimum fee in clause 14.114.2 is subject to an annual increase on 1 July each year from the commencement of the Trust by the greater of—
 - (i) the relevant fee after being Indexed₁ or
 - (ii) the relevant fee multiplied by 3 percent.
- (c) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.

14.314.2 Fee on retirement or removal

If Msquared Capital Pty Ltd retires or is removed as the trustee of the Trust, then the following applies:

- (a) In consideration for work done in establishing the Trust and facilitating the orderly replacement of Msquared Capital Pty Ltd as trustee of the Trust, Msquared Capital Pty Ltd is entitled to a retirement or removal fee.
- (b) The retirement or removal fee is only payable in the following circumstances:
 - (i) ~~if~~ Msquared Capital Pty Ltd is removed as the trustee of the Trust before the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document and provided that Msquared Capital Pty Ltd is not removed because of its gross negligence in the management of the Trust or for a material fiduciary breach. In this clause 14.2(b)14.3(b) a "material fiduciary breach" is a breach by Msquared Capital Pty Ltd of a fiduciary duty to Unitholders which causes them substantial loss₁
~~or~~
 - (ii) ~~if~~ Msquared Capital Pty Ltd retires as the trustee of Trust before the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document, following a request by the Investment Manager under the terms of the Investment Management Agreement.
- (c) The amount of the retirement or removal fee referred to in clause 14.2(a)14.3(a) is the total amount of the trustee fee payable under clause 14.114.2 that Msquared Capital Pty Ltd would have received if it had been the trustee of the Trust until the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document, with

such amount being determined on the basis that any future trustee fee and (if applicable) custody fee payable to Msquared Capital Pty Ltd at the time of calculation of the retirement or removal fee are determined on the basis of the gross value of the Assets as at the time of calculation of the retirement or removal fee.

- (d) The fee in clause 14.2(a)~~14.3(a)~~ becomes due and payable on the day (as applicable) ~~—~~:
- (i) a meeting of Unitholders is called, requisitioned or convened to ~~—~~:
- A. propose removing Msquared Capital Pty Ltd as trustee of the Trust (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document) ~~—~~; or
- B. propose modifying, repealing or replacing this Constitution by modifying, repealing or replacing this clause 14.2~~14.3~~ or any part of this clause 14.2~~14.3~~ (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document) ~~—~~; or
- (ii) the Investment Manager requests that Msquared Capital Pty Ltd retires as trustee of the Trust under the terms of the Investment Management Agreement.
- (e) Any trustee of the Trust that succeeds Msquared Capital Pty Ltd is not entitled to any benefit under this clause at any time.

~~14.4~~14.3 **Waiver and deferral of fees and expenses**

The Trustee may at any time and for any period ~~—~~:

- (a) accept lower fees and expenses than it is entitled to receive under this Constitution ~~—~~ ~~or~~
- (b) defer payment of any fees and expenses it is entitled to receive under this Constitution; or
- ~~(b)~~(c) waive entirely its entitlement to receive any fees and expenses under this Constitution.

14.4 Differential fees

Subject to the Corporations Act and any ASIC Relief, the Trustee may make separate arrangements from time to time in relation to any Class or with any Unitholder or the Investment Manager concerning the payment by a Unitholder of fees to the Trustee or the amount or level of management fees or other expenses applicable to a Unitholder's Units or Referrable to the Class, whether on a uniform or differential basis.

14.5 Fees can be applied to acquire Units

Subject to the Act, where an amount of money is payable from the Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own capacity, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with the provisions of clause 3.

14.6 Other fees or different fees

While the Trust is not a Registered Scheme—:

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document—; and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 14, provided they are disclosed in a Disclosure Document.

14.7 Expenses

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, in relation to the proper performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.
- (b) Without limiting clause ~~14.7(a)~~14.7(a), this includes Expenses connected with the following:
 - (i) ~~t~~The identification, acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities—
 - (ii) ~~c~~Calculating the Application Price, Withdrawal Price, Distributable Amount, Dividend Amount and Distributable Proportion plus undertaking any financial modelling or fee or other calculations in relation to the Trust—
 - (iii) ~~t~~The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities—
 - (iv) ~~r~~Raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses—
 - (v) ~~t~~The appointment of any professional adviser, auditor, consultant, contractor, agent, broker, underwriter, valuer or delegate by the Trustee, including a custodian, administrator, registry services provider or investment manager—

- ~~(v)~~(vi) aAmounts payable to the Investment Manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, registry service providers, underwriters, auditor, valuers or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or Investment Manager:-
- ~~(vi)~~(vii) tThe administration or management of the Trust or its Assets and Liabilities:-
- ~~(vii)~~(viii) bBank charges on the operation of bank accounts:-
- ~~(viii)~~(ix) bBorrowing money, raising finance or granting security over the Assets:-
- ~~(ix)~~(x) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity:-
- ~~(x)~~(xi) fFees and charges of any regulatory or statutory authority, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting:-
- ~~(xi)~~(xii) cConvening and holding meetings of Unitholders, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting:-
- ~~(xii)~~(xiii) pPrinting and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters:-
- ~~(xiii)~~(xiv) pPreparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust:-
- ~~(xiv)~~(xv) kKeeping and maintaining of the accounting records and registers of the Trust:-
- ~~(xv)~~(xvi) rRetirement and the appointment of a substitute trustee or any custodian:-
- ~~(xvi)~~(xvii) tThe initiation, conduct, defence and settlement of any court proceedings (including through alternative dispute resolution) or complaints resolution (including through the Australian Financial Complaints Authority) —:-
- A. to enforce any provisions of this Constitution, the Investment Management Agreement or any other agreement or document:
or

B. in relation to the Trust or any of its Assets or Liabilities~~:-~~

~~(xvii)~~(xviii) ~~p~~P Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required)~~:-~~

~~(xviii)~~(xix) ~~a~~A Acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust~~:-~~

~~(xix)~~(xx) ~~r~~R Reasonable travelling and accommodation expenses of the Trustee~~:-~~

~~(xx)~~(xxi) ~~p~~P Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans~~:-~~

~~(xxi)~~(xxii) ~~c~~C Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy~~:-~~

~~(xxii)~~(xxiii) ~~t~~T The establishment, management and maintenance of any~~:-~~

A. listing on any exchange or secondary market of the Trust or any Units~~:-~~ and

B. any rating of the Trust, a Class or any Units~~:-~~

~~(xxiii)~~(xxiv) ~~t~~T The performance of the functions and duties of the Trustee under the Constitution~~:-~~

~~(xxiv)~~(xxv) ~~c~~C Costs, charges and expenses related to~~:-~~

A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members~~:-~~

B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act~~:-~~ and

C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust~~:-~~

~~(xxv)~~(xxvi) ~~e~~E Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure

Documents and the preparation, registration, distribution, due diligence and promotion of the Trust~~:-~~

~~(xxvi)~~(xxvii) ~~c~~Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities~~:-~~

~~(xxvii)~~(xxviii) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act)~~:-~~

~~(xxviii)~~(xxix) ~~f~~Foreign exchange transactions~~:-~~

~~(xxix)~~(xxx) ~~f~~Foreign exchange hedging transactions~~:-~~

~~(xxx)~~(xxxi) ~~a~~Amounts payable to the investment manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, underwriters or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or investment manager~~:-~~

~~(xxxi)~~(xxxii) ~~e~~Entering the Trust in a survey~~:-~~

~~(xxxii)~~(xxxiii) ~~f~~Fees payable to a ratings organisation; ~~and~~-

~~(xxxiii)~~(xxxiv) ~~d~~Dealing with applications and redemptions of Units or other interests, in determining the Application Price and Withdrawal Price~~:-~~

- (c) ~~n~~No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee; ~~and~~-
- (d) ~~t~~The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

14.8 *Performance of duties*

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause ~~14.8(a)~~~~14.8(a)~~ only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause ~~14.8~~~~14.8~~ means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

14.9 Goods and Services Tax

If any supply made by the Trustee under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act, then the following will apply:

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made—:
 - (i) on a progressive or periodic basis;
 - (ii) such that the consideration is to be provided on a progressive or periodic basis; and
 - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST ~~Referable~~ referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

14.10 Fees or amounts payable by Trust or Sub Entities

Notwithstanding any other provision of this Constitution, fees payable under this Constitution, and costs, charges and expenses payable or to be reimbursed under this Constitution, may be charged to or reimbursed from the Trust or to or from any Sub Entity, as determined by the Trustee. In addition, services to be provided may be provided by an Associate of the Trustee who may charge the fees set out directly to the Trust or to any Sub Entity as determined by the Trustee.

15. Distributions from the Trust**15.1 Provisions which apply when Trust is not an AMIT**

Clauses 15.2 to 15.12 (inclusive) apply for each Distribution Period where the Trust or a Class of Units is not an AMIT.

15. —**15.1 15.2 Trustee will collect in all money**

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and ~~pay these into accounts in the name of the Trustee (or if a custodian is appointed into an account in the name of the custodian) on behalf of the Trust. The Trustee will make all payments relating to the Trust from these accounts~~ all other money, rights and property which are paid, due or receivable in all respect of the Trust.
- ~~(a)~~ (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities to Classes in accordance with clause 3.16.
- ~~(b) — Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities to Classes as follows:~~
- ~~(i) — Where a cost is attributable to a Class, to that Class.~~
- ~~(ii) — Where a cost is attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the relevant Class Assets.~~
- ~~(iii) — Where a cost is not attributable to any Class, between all Classes on a pro rata basis, provided the Trustee considers such allocation to be fair having regard to the interests of all Unitholders and the Assets Referable to the relevant Class Assets.~~

15.3 Determination of Income and Reserves

- (a) The Trustee must determine before the end of the relevant Financial Year the classification of an item as being Income or capital and the extent to which the income of the Trust is to be adjusted by allocating such amount as it considers proper in accordance with the Accounting Standards to a provision or any reserve account for the purpose of meeting anticipated expenses or obligations of the Trust.
- (b) If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee. However, the exercise of such power is an administrative power only and is not an unfettered discretion. The Trustee must in exercising this power act honestly and according to law.
- (c) The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution

Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period.

15.4 Distributable Amount

On or before 11.59pm on the last day of the Distribution Period, the Trustee must determine the Distributable Amount for that Distribution Period.

15.5 Distributions

The following apply, except in any income year in which the Trust is taxed as a Corporate Tax Entity (refer to clause 15.12):

- (a) Before and after termination of the Trust, the Trustee at any time may elect that, for a Distribution Period, an amount (capital or income) be distributed from the Trust to Unitholders. A distribution made by the Trustee to a Unitholder will be taken to be a distribution of Distributable Amount of a Distribution Period to the extent the Trustee determines the distribution constitutes a distribution of Distributable Amount of that Distribution Period.
- (b) Except as otherwise provided by this Constitution, the distribution (whether of Distributable Amount or otherwise) Referable to a Class for each Distribution Period must be distributed to Unitholders in that Class pro rata to the number of Units they hold in that Class at the end of the Distribution Period (refer at clause 15.28).

15.6 Distributable Amount entitlement calculation

- (a) A Unitholder's (or person who was a Unitholder during the Distribution Period) Distributable Proportion for each Class it holds for a Distribution Period is calculated as the aggregate result of the following calculation for each Unit the Unitholder holds or held in that Class during the Distribution Period (subject to any payments or adjustments required as a result of clause 15.31):

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

Where:

A = The number of days during the Distribution Period that the Unitholder was recorded on the Register as the holder of that Unit (including the date of acquisition but excluding the date of disposal).

B = The Distributable Amount allocated to that Class (as determined by the Trustee pursuant to clauses 15.4 and 15.28) for the Distribution Period.

C = Is determined by calculating the total number of Units in Issue in that Class on each day of the Distribution Period and adding these amounts together.

- (b) The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to all persons who were recorded on the

Register as the holder of the Units to which the Distributable Proportion relates, at any time during the Distribution Period to which the distribution relates.

~~15.2 Situation if Trust taxed as a company~~

~~If the Trustee considers the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 15.2 applies in respect of that Financial Year and the following applies:~~

- ~~(a) As soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine—~~
 - ~~(i) if there is to be any Dividend Amount for each Class for the Distribution Period, and~~
 - ~~(ii) if so, then the amount of the Dividend Amount for each Class and the amount of any franking credits (if any) to be attached to the Dividend Amount for each Class.~~
- ~~(b) The Trustee may determine the extent to which the Dividend Amount for a Class (if any) comprises profits, retained profits, capital, returned capital or income of a particular character.~~
- ~~(c) In respect of a Distribution Period the Trustee may, in its discretion from time to time, determine to pay Unitholders holding Units in a Class on any date determined by the Trustee a Dividend Entitlement for each Class held, calculated as follows:~~

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

~~Where:~~

 - ~~A = The aggregate of the Paid-up Proportion of each relevant Unit holding of the Unitholder in the Class as at the end of the Distribution Period.~~
 - ~~B = The Total Paid-up Proportion for that Class held by all Unitholders at the end of the Distribution Period.~~
 - ~~C = The Dividend Amount (if any) for the Distribution Period Referable to that Class.~~
- ~~(d) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.~~

~~15.3 Situation if Trust not taxed similar to a company~~

~~Clauses 15.4 to 15.13 apply if clause 15.2 does not apply.~~

~~15.4 Calculation of Distributable Amount~~

~~The Distributable Amount for a Distribution Period will be the amount determined, by the Trustee, pursuant to the definition in Schedule 1—Dictionary. If for a period~~

~~ending on the last day of a Financial Year the Trustee has not made a determination for the purpose of this clause 15.4 before the end of that Financial Year, then the Distributable Amount will be the amount mentioned in sub-paragraph (a) of that definition.~~

~~15.5~~ **~~Persons who will receive Distributable Amount~~**

~~(a) A Unitholder's Distributable Proportion for a Distribution Period in respect of each Unit they hold or held during the Distribution Period is the amount worked out by the Trustee calculated in accordance with the following formula (subject to any payments or adjustments required as a result of clause 15.14):~~

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

~~Where:~~

~~A = The number of days during the Distribution Period that the relevant person was recorded on the Register as the holder of that Unit (including the date of disposal, but excluding the date of acquisition).~~

~~B = The Distributable Amount (as determined by the Trustee pursuant to clause 15.9) for the Distribution Period.~~

~~C = Is determined by calculating the total number of Units in Issue on each day of the Distribution Period and adding these amounts together.~~

~~(b) The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to all persons who were recorded on the Register as the holder of a Unit at any time during the Distribution Period to which the distribution relates.~~

~~15.6~~ **15.7 Unitholders presently entitled to Distributable Amount**

(a) Except in any income year in which the Trust is taxed as a Corporate Tax Entity, on the last day of the Distribution Period, any person who is a Unitholder and any person who was a Unitholder at any time during the Distribution Period to which the distribution relates—:

(i) is presently entitled to its Distributable Proportion for the Financial Year in which the end of the Distribution Period falls; and

(ii) has a vested and indefeasible interest in its Distributable Proportion for that Financial Year.

~~**15.7** To the extent that Distributable Amount for that Financial Year has not been distributed on or before the end of the Financial Year an amount equal to the shortfall must be distributed by the Trustee to each entitled Unitholder as soon as reasonably practicable after the end of the Financial Year. Any person who is a Unitholder or was a Unitholder at any time during the Financial Year will, on the last day of the Financial Year, be presently entitled (within the meaning of the Tax Act) to all of the Distributable Amount payable to them in respect of the relevant Financial Year in the proportion~~

~~that the Distributable Amount payable to them in respect of the Financial Year bears to the sum of the Distributable Amount payable to all persons who have been Unitholders at any time during the Financial Year.~~

(b)

15.8 *Special distribution amounts*

(a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Amount (in this clause **“Special Distribution Amount”**).

(b) Where the Trustee determines under clause 15.8(a)~~15.7(a)~~ that there is a Special Distribution Amount at a particular time, then this Constitution is to be applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Amount for a Distribution Period.

15.9 *Changes in the law*

If the law changes in respect of Taxes so that the Trust or the Trustee becomes subject to Taxes on Income and gains derived by the Trust even where all available Income is distributed to Unitholders, or regardless of the present entitlement of the Unitholders, then the Trustee:

(a) does not have to make distributions in accordance with this clause 15; and

(b) at its discretion, may choose when to make distributions of profits, Income, capital or any taxation or imputation credits that have become available in relation to the Trust.

15.10 *Income categories*

The Trustee may keep accounts of different categories and sources of Income and allocate the Income from any category or source to any Unitholder.

~~15.9 *Reserves*~~

~~The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period.~~

~~15.10 *Classes*~~

~~(a) The quantum of the Distributable Amount allocated to a Class is to be based on the Assets Referable to the Class and any other provisions and requirements of this clause 15.~~

~~(b) If there is more than one Class—~~

- ~~(i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly Referable to a Class (Class Capital or Income)~~
- ~~(ii) subject to the Trustee's obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders, and~~
- ~~(iii) the provisions of this clause 15.9 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.~~
- ~~(e) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.~~

15.11 Time for distribution of Distributable Amount

The Distributable Amount for a Distribution Period must be paid by the Trustee to those entitled to receive them within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to all of the Distributable ~~Proportions~~ Amount payable to them from the ~~Assets-Trust~~ is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

15.12 Trust taxed like a company

Where in any income year the Trust is taxed as a Corporate Tax Entity, the following apply:

- (a) Each Holder registered at midnight on the last day of each Distribution Period does not have a vested and indefeasible interest in a share of the Distributable Amount for that Distribution Period;
- (b) The Trustee may, at its discretion, choose to make distributions of after tax profits, Income or capital provided that all Distributable Amount is distributed at the final termination of the Trust.
- (c) If the Trustee considers the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 15.12(c) applies in respect of that Financial Year and as soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine:
 - (i) if there is to be any Dividend Amount for each Class for the Distribution Period; and
 - (ii) if so, then the amount of the Dividend Amount for each Class and the amount of any franking credits (if any) to be attached to the Dividend Amount for each Class.
- (d) The Trustee may determine the extent to which the Dividend Amount for a Class (if any) comprises profits, retained profits, capital, returned capital or Income of a particular character.

(e) In respect of a Distribution Period the Trustee may, in its discretion from time-to-time, determine to pay Unitholders holding Units in a Class on any date determined by the Trustee a Dividend Entitlement for each Class held, calculated as follows:

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

Where:

A = The aggregate of the Paid-up Amount of each relevant Unit holding of the Unitholder in the Class as at the end of the Distribution Period.

B = The Total Paid-up Amount for that Class held by all Unitholders at the end of the Distribution Period.

C = The Dividend Amount (if any) for the Distribution Period Referable to that Class.

(f) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.

15.13 Provisions which apply if Trust is an AMIT

(a) This clause 15.13 and clauses 15.15 to 15.26 (inclusive) apply only if the Trust is an AMIT in any Financial Year.

(b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT for the purposes of the AMIT laws and clauses 15.13 to 15.26 (inclusive) must be applied as relevant and accordingly.

15.14 AMIT Election

(a) The Trustee may elect that the AMIT laws apply to the Trust in respect of a Distribution Period.

(b) An election made pursuant to clause 15.14(a):

(i) is not revocable in a subsequent Distribution Period once made; and

(ii) must be notified to Unitholders in a timely manner.

15.15 Fixed Trust

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the Trust is a fixed trust for the relevant Distribution Period.

15.16 Indefeasibility

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the nature of the interest that Unitholders have in the Income and capital of the Trust through the Distribution Period is indefeasible.

15.17 Calculation

For the purposes of AMIT, the Trustee must, consistent with the Tax Act, work out the total net amount of all the characters of the Trust for income tax purposes at the Trust level (Attribution Amount). The net amounts so determined are called the Trust Components (refer to clause 15.20).

15.18 Crystallisation

When the Trustee prepares a document that meets certain requirements of the AMIT laws, it crystallises these calculations into the determined trust components (refer to clause 15.20).

15.19 Tax loss

In circumstances where deductions exceed total assessable income, the Trust makes a tax loss and the trust component of each assessable income character for the Distribution Period is nil.

15.20 AMIT fair and reasonable

The amounts of a character attributed to one Unitholder must be fair and reasonable. However, the Trustee may allocate a capital gain to a redeeming Unitholder in accordance with the Tax Act.

15.21 Trust Components

- (a) For each Financial Year, the Trustee must determine the Trust Component of each Amount of a Particular Character in accordance with the AMIT laws and clause 15.21(b)(i).
- (b) Where the Trust has more than one class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT, then:
 - (i) the Trustee must determine the Trust Component of each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 15.13(b); and
 - (ii) a reference to Trust in clause 15.21(b)(i) is a reference to each such separate AMIT.
- (c) For each Financial Year, the Trustee must determine the Trust's Trust Component of each Amount of a Particular Character as follows:
 - (i) determine the total Amounts of Particular Characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Offsets for the Trust; and
 - (ii) apply any Unders, Overs and Trust Component Deficits of the Trust to the amounts in clause 15.21(b)(i) in accordance with AMIT laws.
- (d) The Trustee must record the Trust's Trust Components determined under 15.21(b) in a document that meets the requirements of the AMIT laws.

15.22 AMIT determined Member Components

- (a) For each Financial Year, the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character in accordance with the AMIT laws and the following apply:
- (i) the Trustee must, for income tax purposes, attribute amounts relating to the Trust of a particular character to the Unitholders in the Trust for each Distribution Period;
 - (ii) when the Trustee prepares an AMMA Statement, it crystallises these calculations into the determined Member Components; and
 - (iii) if a Unitholder challenges the Trustee's determinations as the AMIT laws contemplate, then the Trustee must manage that in a way consistent with the AMIT laws. Such Unitholder shall indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.
- (b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each class will be treated as a separate AMIT, then the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 15.13(b), and a reference to Trust in clause 15.22(d) is a reference to each such separate AMIT.
- (c) Where the Trust has more than one Class of Unit and clause 15.21(b) does not apply, then the Trustee must determine the Distributable Amount properly referable to each Class separately and a reference to Trust in clause 15.21(b) is a reference to each such separate Class.
- (d) Unless the Trustee determines otherwise (and any such other determination must be in accordance with the AMIT laws), each Unitholder's Member Component for an Amount of a Particular Character for each Financial Year for the Trust is to be determined in accordance with the following method:

Step 1: For each Distribution Period during the Financial Year, calculate each Unitholder's Member Component for an Amount of a Particular Character for the Trust for that Distribution Period in accordance with the following formula:

$$MC = TC \times \frac{MD}{DA}$$

where:

MC = the Member Component for an Amount of a Particular Character for the Trust for the Distribution Period.

TC = the Trust Component for that Amount of a Particular Character for the Trust calculated for that Distribution Period as if it was a Financial Year.

MD = the entitlement of the Unitholder (including a withdrawing Unitholder) to the Distributable Amount of the Trust for that Distribution Period.

DA = the Distributable Amount of the Trust for that Distribution Period.

Step 2: For each Unitholder, add up the MCs calculated under Step 1 for an Amount of a Particular Character for of the Trust all of the Distribution Periods during the Financial Year (**Total MCs**).

Step 3: If the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust determined under Step 2 exceeds the Trust Component for the relevant Amount of a Particular Character for the Trust for the Financial Year, each Unitholder's Total MC for an Amount of a Particular Character determined under Step 2 is proportionately reduced such that the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust is equal to the Trust Component for the relevant Amount of a Particular Character for the Trust for that Financial Year (**Adjusted Total MC**).

A Unitholder's Adjusted Total MC for an Amount of a Particular Character for the Financial Year is the Unitholder's Member Component for an Amount of a Particular Character for the Financial Year.

15.23 AMIT Unders and Overs

- (a) If the Trustee in a particular Distribution Period (a **Discovery Year**) becomes aware of an Under or an Over in respect of a determined trust amount for the purposes of the AMIT laws, then it may, in accordance with the AMIT laws:
 - (i) issue amended AMMA Statements for the year of income for the Trust to which the Under or Over relates; or
 - (ii) treat the amount as an Under or Over of a particular character for the Trust and adjust the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount.
- (b) The choice made by the Trustee in clause 15.22(a) may result in greater Amounts of a Particular Character relating to the assessable income or lesser Amounts of a Particular Character relating to tax offsets being attributed to a Unitholder or to a unitholder in an earlier income year than if the Trustee did not make a choice under clause 15.22(a)(i) or 15.22(a)(ii) or made a different choice. For the avoidance of doubt, in accordance with AMIT laws, account to the ATO from the Assets for any necessary payments arising from adjustments made under this clause 15.22.

15.24 Separate AMITs for each Class

- (a) Subject to the AMIT laws, the Trustee may determine that each Class of Units is to be treated as a separate AMIT.
- (b) If the Trustee determines that each Class of Units is to be treated as a separate AMIT, then it must do the following:

- (i) as part of the process of identifying the initial tax position of each Class, allocate tax items being carried forward at the whole of trust level (such as tax losses and net capital losses) across the Classes (and this must be done in a fair and reasonable manner);
- (ii) calculate the taxable income for each Distribution Period separately for each Class;
- (iii) on an ongoing basis, work out determined Trust Components for each Class as if it was a separate AMIT and allocate them amongst any Classes on a fair and reasonable basis;
- (iv) to the extent that assets or expenditure relate solely to a particular Class, identify the assessable income and deductions by reference to the assets supporting that Class (including recognising for tax purposes the transactions and events supporting those assets (including intra entity dealings within the actual managed investment trust involving deemed separate AMITs) as though the Class was in fact a separate entity); and
- (v) apply the Unders and Overs provisions of the AMIT laws to each Class.

15.25 Ceasing to be an AMIT

- (a) If the following apply, then the Trustee must act in accordance with clause 15.25(b):
 - (i) the Trust was an AMIT for a Distribution Period;
 - (ii) the Trust was not an AMIT for a later Distribution Period (the Discovery Year); and
 - (iii) the Trust has an Under or Over of a character in the Discovery Year for an earlier Distribution Period when the Trust was an AMIT.
- (b) If the criteria in clause 15.24(a) apply, then the Trustee must, in accordance with the AMIT laws:
 - (i) work out the extent to which the Under or Over increases or decreases the amount of the AMIT's Trust Component of that character for the Discovery Year;
 - (ii) make the appropriate adjustments for the Discovery Year; and
 - (iii) account to the ATO from the Assets for any necessary payments (excluding any penalties payable).

15.26 Compliance with obligations applying in respects of AMITs under the Tax Act

The Trustee must comply, and must ensure the AMIT complies, with any obligations imposed under the Tax Act in respect of AMITs.

15.27 Notification of AMIT status

The Trustee must notify each of the Unitholders if the Trust commences or ceases to be an AMIT as soon as reasonably practicable after the Trustee becomes aware of such commencement or cessation.

15.28 Classes

- (a) In the absence of the Trustee making a determination under clause 15.28(b), the Distributable Amount will be allocated between each Class based on the proportion of Units in that Class to total Units on issue.
- (b) Where the Trustee determines, the quantum of the Distributable Amount allocated to a Class is to be based on the Assets Referable to the Class and any other provisions and requirements of this clause 15.
- (c) If there is more than one Class:
 - (i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly Referable to a Class (Class Capital or Income);
 - (ii) subject to the Trustee's obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders; and
 - (iii) the provisions of this clause 15.28 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (d) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.
- (e) In making any determination under this clause 15.28, the Trustee shall be taken to exercising an administrative power only and does not have an unfettered discretion. The Trustee must act honestly and in accordance with the law.

~~15.12 Nature of receipts and nature of distributions to Unitholders~~

~~The Trustee may determine whether, and the extent to which, any receipt or amount (or any part thereof) is capital or Income. If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee.~~

15.1315.29 Other distributions

Subject to the rights and obligations attaching to any Class, the Trustee may at any time distribute any amount of capital or Income attributable to Unitholder or a class of Unitholders:

(a) pro rata according to the number of Units in a particular Class or a series held as at a time decided by the Trustee (for example, to avoid the Trustee (as trustee) becoming assessable to pay Taxes); or

(b) on such other basis as the Trustee decides (for example, the Trustee may distribute realised gains to Unitholders who are withdrawing in priority to Unitholders who are not).

~~The Trustee may at any time determine that capital or Income be distributed to the Unitholders. The distribution may be by way of cash or additional Units.~~

15.1415.30 Preparation of accounts

Notwithstanding that the Distributable Amount of the Trust may be calculated in accordance with clause 15.415.4 and clause 15.6, the accounts of the Trust may be prepared in accordance with all relevant Accounting Standards. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount pursuant to clause 15.415.4 and clause 15.6. Without limiting clauses 15.1215.11, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

15.1515.31 Rights in respect of Partly Paid Units

- (a) The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Trustee and provided in the Terms of Issue of the relevant Units. The Trustee may determine any one of the following applies:
- (i) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the Distributable Amount for that Distribution Period, subject to the Terms of Issue of the Unit according to—:
 - A. the proportion or different proportions of the Application Price paid upon the Unit; and
 - B. the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Assets, then that Unit may be eligible for increased participation in the Distributable Amount at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.

- (ii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as if it were fully paid.
- (iii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as the terms of its issue provide.

- (b) However, if the Trustee does not make such a determination, then clause ~~15.31(a)(i)~~ ~~15.14(a)(i)~~ will apply.

~~15.16~~ **15.32 Initial distribution entitlements**

For the removal of doubt and despite anything in this clause 15, the Trustee may in its discretion issue Units on terms that such Units—:

- (a) participate fully for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued;
- (b) do not entitle the Unitholder to participate in the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued;
- (c) participate for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued on a pro rata basis in accordance with the number of days the Units were held; or
- (d) receive a fixed distribution rate entitlement, out of the Distributable Amount, either for the full Distribution Period in which they are issued or on a pro rata basis in accordance with the number of days the Units were held.

~~15.17 Unitholder's rights~~

~~For the removal of doubt and despite anything in this clause 15, the rights of a Unitholder under this clause 15 are subject to the rights, obligations and restrictions attaching to the Units which they hold. For example, the Trustee may issue a class of Units having rights to receive a distribution in preference to other classes of Units.~~

16. Distribution reinvestment

16.1 Reinvestment

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units in the same Class as the Units to which the Distributable Amount relates and the amount of the Distributable Amount payable to them must be applied on behalf of the Unitholder to acquire those additional Units at the Application Price determined in accordance with clause ~~3.83.7.~~

16.2 Compulsory reinvestment

The Trustee may require Unitholders, or Unitholders of a particular Class or Classes, to reinvest some or all of the Distributable Amount payable to them and, if so, those Unitholders are deemed, for the purposes of any relevant ASIC Relief, to have elected to reinvest some or all of the Distributable Amount payable to them.

16.3 Notice to Unitholders

If the Trustee permits or requires reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. Subject to clause 16.1, the Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

17. Deductions from Distributions**17.1 Deduction of Taxes**

- (a) The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted—:
 - (i) any amount of Tax (or an estimate of it) including in respect of any amount attributed to a Unitholder under the AMIT laws; and
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) The Trustee may recover from a Unitholder as a debt an amount that the Trustee has paid as Tax (including a withholding tax) on behalf of, attributable to or in respect of a Unitholder (including in respect of a distribution or an amount attributed to a Unitholder under the Tax Act).
- (c) The Trustee may set off all amounts that the Trustee may recover from a Unitholder pursuant to this clause 17 against any debts due by the Trustee to that Unitholder including any distribution payable to the Unitholder or amounts payable to the Unitholder on redemption.

17.2 Payment of Taxes

- (a) The Trustee may pay on behalf of a person (including amounts paid or attributed in respect of a person that result from the operation of the AMIT laws) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid:
 - (i) any amount of Tax (or an estimate of it), including in respect of any amount attributed to a Unitholder under the AMIT laws; or
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.

Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 17.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

~~17.2~~ 17.3 Indemnity

The Trustee is indemnified from the Assets in respect of any Tax paid by the Trustee from its own funds in order to pay Tax incurred on behalf of any Unitholders or in relation to any Unitholders. This indemnity applies even though the Tax may not have been paid in respect of each Unitholder, but only one or more Unitholders.

18. Transfer of Unitholder's Units

18.1 Right to transfer Units

A Unitholder may transfer its Units only in accordance with this clause 18.

18.2 Form of transfer

Any transfer must be—i

- (a) made by way of a form approved by the Trustee_i
- (b) delivered to the Trustee or as it directs_i and
- (c) executed by the transferor and transferee.

18.3 Trustee's discretion to enter transfer

The Trustee may refuse to enter a transfer in the Register.

18.4 No power to refuse to register transfers in certain circumstances

Despite anything to the contrary in this Constitution, the Trustee must not refuse to enter a transfer of Units in the Register where such transfer is:

- (a) in favour of a bank, financial institution or other lender or any nominee thereof and the transfer is as contemplated by, or pursuant to, any pledge, mortgage or charge of, or other security interest over, any Units granted in favour of the relevant bank, financial institution or lender_i or
- (b) by or on behalf of a bank, financial institution or other lender or any nominee thereof (whether by a receiver, any delegate or sub-delegate of the party to whom security has been granted or otherwise) in favour of any third party upon disposal or realisation of the Units following the bank, financial institution, lender or any nominee thereof having become entitled to exercise or enforce its rights over the relevant Units under any such pledge, mortgage, charge or other security interest.

18.5 Transfer effective when registered

The transferor Unitholder remains the owner of the Unitholder's Units until the name of the transferee is entered in the Register.

18.6 Suspension prior to end of year

The Trustee may decline to register any transfer of a Unitholder's Units during the 14 days immediately preceding 1 July in any Financial Year.

18.7 Listing on a secondary market or exchange

The Trustee may list the Units on a secondary market or an exchange designed to facilitate the trading of Units. If the Trustee does this, then any costs associated with the listing may be paid out of the Assets.

19. Transmission of Unitholder's Units**19.1 Death or legal disability—sole Unitholder**

Upon the death, bankruptcy, mental incapacity or other legal disability of a sole Unitholder, the Legal Personal Representative will be the only person recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

19.2 Death or legal disability—joint Unitholder

Upon the death, bankruptcy, mental incapacity or other legal disability of any one of the joint holders of Units, the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

20. Winding up of the Trust**20.1 Events which cause a winding up**

The Trustee must wind up the Trust or cause the Trust to be wound up in any one of the following circumstances:

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) If the Trust is a Registered Scheme, then where—
 - (i) a court orders the Trust be wound up pursuant to section 601ND of the Act;
 - (ii) the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in section 601NC of the Act; or
 - (iii) any of the circumstances set out in section 601NE of the Act apply such that the Trustee is required to wind up the Trust.

20.2 Termination of a Class

- (a) The Trustee may terminate and wind up a Class if the Trustee issues a notice to Unitholders in the Class notifying Unitholders in that Class of the date of termination.
- (b) The provisions of clauses 20.3 to 20.5 apply to the winding up of a Class with such modification as necessary, as determined by the Trustee, to reflect their application to a Class rather than the Trust.

20.3 Process of winding up

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must identify the Assets immediately prior to commencing winding up and all Liabilities (whether actual, contingent or prospective) immediately prior to commencing winding up, of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust.
- (c) Subject to clause 20.3(f), the Trustee must convert the Assets to money, deduct all proper costs and Liabilities of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust and then divide the balance amongst the Unitholders in each Class in proportion to the number of Units held by them at the date of the distribution in accordance with the following formula:

$$\frac{(A + B) \times C}{D} - E$$

Where—

A = the amount remaining in the Trust after deduction of the costs referred to in this clause 20.3(c);

B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any);

C = the aggregate of the number of Units held by the Unitholder as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units;

D = the aggregate of the total number of Units in issue as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units; and

E = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder (if any) as at the commencement of winding up.

- (d) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in clause 20.3(c) results in a negative dollar amount, then that Unitholder must pay to the Trustee

within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

- (e) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain Classes in preference to the holders of other Classes, as required by the Terms of Issue of each Class. If any such Terms of Issue do not provide any preference, then any interim distributions will be paid to all Unitholders in proportion to the number of Units held.
- (f) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (g) Despite clause 20.3(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust. The Trustee must ensure the Assets are valued in accordance with clause 10.3 before distributing any Assets in specie in accordance with this clause 20.3(g).
- (h) The cost of winding up the Trust will be paid out of the Assets.

20.4 Trustee may withhold proceeds of realisation

The Trustee may retain money from the proceeds of realisation of the Assets—:

- (a) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Unitholders pursuant to this Constitution; and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

20.5 Auditor's certificate

Where the Trust is a Registered Scheme, once the Trustee believes the winding up is complete, the Trustee must engage an Auditor to conduct an independent audit of the final accounts of the Trust. The Trustee must send a copy of any report made by the Auditor to the Unitholders within 30 days after the Trustee receives the report from the Auditor.

20.6 Cancellation of Units

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

20.7 Provisions continue to apply

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until—:
 - (i) the date of final distribution under clause 20.3¹⁷ or
 - (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 20.7(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

21. Unvested interests

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.
- (b) Nothing in this clause 21 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

22. Indemnity and liability**22.1 Liability of the Trustee**

Except to the extent the Act imposes liability—:

- (a) the Trustee is not liable for any loss suffered by Unitholders in respect of the Trust, whether in contract, tort or otherwise¹⁷ and
- (b) the Trustee is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

22.2 Indemnity from the Trust

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of—:
 - (i) any liability incurred by the Trustee in the performance of its duties in respect of the Trust¹⁷
 - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution¹⁷ and

- (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.

(b) For the avoidance of doubt, and without limiting clause 22.2(a), the Trustee is indemnified out of the Assets for any liability that:

(i) is incurred by the Trustee in relation to the proper performance of its duties; and

(ii) either:

A. is an Attribution Income Tax Liability of the Trustee; or

B. results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.

~~(b)~~(c) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or with wilful default.

22.3 Payment of taxes

- (a) Subject to the Act, the Trustee is not liable to account to any Unitholder for any payments made by the Trustee (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory, or any foreign government or authority, for Tax or other charges.
- (b) The Trustee is not obliged (or liable) to account to, or pay to, or allocate to, any Unitholder any amount in relation to any Tax-related benefit or credit attributable to (or alleged to be attributable to) the Unitholder, or earned or accrued or made available because of the Unitholder.

22.4 Reliance on others

The Trustee may take and may act upon the following, and if the Trustee does so, then it will not be liable for anything done, suffered or admitted by and in good faith and reliance upon anything listed below:

- (a) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust~~:-~~
- (b) ~~a~~Advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted~~:-~~
- (c) ~~a~~Any document which the Trustee believes in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust~~:- or~~

- (d) [Any](#) document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely.

22.5 Trustee not liable for good faith error

If for any reason beyond the control of the Trustee it becomes impossible or impractical to carry out the provisions of this Constitution, then subject to the Act, the Trustee is not under any liability for anything done by it in good faith.

22.6 Limitation of liability of Unitholders

The liability of Unitholders is limited to their Units and the Assets. Neither the Trustee, nor any creditor or agent of the Trustee, has any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

22.7 Indemnity unaffected by unrelated breach of trust

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Trustee (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

23. Meetings of Unitholders

23.1 Trustee calling or postponing a Unitholders' meeting

The Trustee may call a meeting of the Unitholders ([including a meeting only of Unitholders holding a Class](#)) at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders, at any time prior to the commencement of the meeting.

23.2 Unitholders calling a Unitholders' meeting

- (a) While the Trust is not a Registered Scheme—:
- (i) the Trustee must call and arrange to hold a meeting of Unitholders to consider and vote on a proposed resolution on the request of at least 35 percent of Unitholders (by number);¹ and
 - (ii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 23.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.

23.3 Notice

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Unitholders, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notices of meetings are governed by the Act.

23.4 Trustee may determine

Subject to this clause 23 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

23.5 Quorum

- (a) The quorum for a meeting is 30 percent of -Unitholders (by number) present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum. If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person.
- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then—:
 - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved; or
 - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things, then the meeting is adjourned to—:
 - A. if the date is not specified—the same day in the next week;
 - B. if the time is not specified—the same time; and
 - C. if the place is not specified—the same place.
- (d) If the meeting is adjourned pursuant to clause 23.5(c)(ii), then the Unitholders present in person or by proxy constitute a quorum.

23.6 Chairing meetings of Unitholders

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.

- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

23.7 Proxies

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.

23.8 Adjournment

The chairperson has power to adjourn a meeting for any reason to such place and time as the chairperson thinks fit.

23.9 Demand for a poll

A poll may be demanded by the chairperson, or by Unitholders present in person or by proxy holding five percent of Units.

23.10 Voting

- (a) On a show of hands at a meeting of Unitholders of a Class, each Unitholder has one vote.
- (b) On a poll at a meeting of Unitholders of a Class, each Unitholder has one vote for each dollar of their Paid-Up Amount of that Class.
- (c) The Trustee may determine that at any meeting of Unitholders, a Unitholder who is entitled to attend that meeting is entitled to a direct vote. A "direct vote" includes a vote delivered to the Trustee by post or email or by any other means approved by the Trustee. The Trustee may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

23.11 Resolutions binding

A resolution binds all Unitholders, whether or not they were present at the meeting.

23.12 Objection at meeting

No objection may be made to any vote cast unless the objection is made at the meeting.

23.13 Non-receipt

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

23.14 Optionholders and Classes

The provisions of this clause 23 relating to meetings of Unitholders also apply to meetings of Optionholders or of holders of a Class with any necessary modifications.

23.15 Voting when not a Registered Scheme

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by the following means:

- (a) ~~t~~The Trustee sending a document to all Unitholders stating the decision to be made or the resolution to be passed; ~~and~~—
- (b) ~~t~~The required number of Unitholders signing the document provided by the Trustee recording the making of the decision or passing of the resolution.

23.16 Other decisions

Subject to the Act (but without affecting clause 23.15), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

23.17 Use of technology

A meeting of Unitholders convened in accordance with this clause 23 may be held using virtual meeting technology, or at two or more venues contemporaneously using any virtual meeting technology that gives Unitholders as a whole a reasonable opportunity to participate.

~~(b) —~~

24. Retirement or removal of Trustee**24.1 Situation if Trust is a Registered Scheme**

If the Trust is a Registered Scheme, then clauses 24.2 and 24.3 do not apply and instead the provisions of the Act regulating the retirement or removal of the Trustee will apply.

24.2 Retirement of the Trustee

If the Trustee wishes to retire as trustee of the Trust, then it may do so and appoint a replacement trustee.

24.3 Removal of the Trustee by Unitholders

If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 23.2 to consider and vote on—:

- (a) an Extraordinary Resolution that the current Trustee should be removed; and
- (b) an Extraordinary Resolution choosing a replacement trustee.

25. Complaints handling**25.1 Complaints handling while the Trust is a Registered Scheme**

This clause 25 applies only while the Trust is a Registered Scheme.

25.2 Complaints handling officer

- (a) The Trustee must appoint a person to fulfil the role of complaints handling officer.
- (b) If there is a vacancy in the role of complaints handling officer at any time then the secretary of the Trustee is deemed to be the complaints handling officer until a further appointment is made.
- (c) The complaints handling officer does not need to be a director or secretary of the Trustee.

25.3 A Unitholder may make a complaint

- (a) Any Unitholder may make a complaint about any aspect of the Trust, or the complaints handling process itself, by contacting the Trustee. For the purposes of this clause 25, a complaint is any expression of dissatisfaction made to the Trustee, related to the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) The complaint must specify—:
 - (i) the name and contact details of the Complainant making the complaint; and
 - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 25.
- (c) If the complaint does not meet the requirement in clause 25.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder—:

- (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint; or
- (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (e.g. because of a physical disability).

25.4 Acknowledgment of a complaint

- (a) If any Unitholder makes a complaint, then the Trustee must acknowledge the complaint immediately, or if this is not possible, then as soon as practicable, after receiving the complaint.
- (b) If possible, the Trustee will attempt to respond fully to or resolve the complaint as part of the first response.
- (c) The following information must be provided when acknowledging a complaint:
 - (i) The procedure used by the Trustee upon receiving a complaint;
 - (ii) The name, title and contact details of the present complaints handling officer; and
 - (iii) If the complaint is not fully dealt with, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the complaint.

25.5 Consideration of complaints

- (a) The Trustee must treat all complaints seriously and deal with them in a timely manner, having regard to the nature and urgency of the complaint.
- (b) If the complaint is not able to be resolved as part of the first response, then the Trustee (through the complaints handling officer or their appointee) must keep the Complainant informed of the progress of their complaint.

25.6 Resolving a complaint

- (a) The Trustee must act reasonably in attempting to resolve a complaint; however, nothing in this clause 25 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) The Trustee must provide a "final response" to a complaint within 45 days from the date of receipt of the complaint. However, the Trustee will endeavour to provide a final response to complaints in less than 45 days wherever possible.
- (c) A "final response" to a Complainant must be in writing (unless the complaint is resolved by the end of the next Business Day after receipt of the complaint), and include the following:
 - (i) A statement of acceptance of the complaint;

- (ii) ~~t~~The outcome of the complaint, including setting out clear and concise reasons for any decision made and references to any applicable provisions in legislation, codes, standards or procedures~~;~~
 - (iii) ~~a~~An offer of redress (if appropriate); ~~and~~
 - (iv) ~~t~~The Complainant's right to take their complaint to the external complaints resolution body of which the Trustee is a member, and its contact details.
- (d) If a "final response" cannot be provided to the Complainant within 45 days, then the Trustee must~~—~~:
- (i) inform the Complainant of the status of the complaint and the reasons for delay~~;~~ and
 - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

25.7 Further avenues open to Unitholders

If a complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may~~—~~:

- (a) if the Complainant is a "retail client" (as that term is defined in the Act), lodge a complaint with an external complaints resolution body of which the Trustee is a member~~;~~ or
- (b) take whatever other action is open to the Complainant under the general law, including~~—~~:
 - (i) requesting an apology from the Trustee~~;~~ or
 - (ii) seeking compensation for loss incurred by the Complainant as a direct result of the breach (if any).

25.8 Recording complaints

- (a) The Trustee must make a record of complaints.
- (b) However, if a complaint is resolved by the end of the next Business Day from when the complaint was received, then the Trustee is not required to apply the full dispute resolution process in terms of capturing and recording details of the complaint.

25.9 Disclosure of existence of complaints handling procedure

The Trustee must disclose the existence of the complaints handling procedure in all Disclosure Documents prepared by the Trustee.

26. Changing this Constitution

26.1 Power to amend

~~(a) While the Trust is not a Registered Scheme, the Trustee may amend this Constitution at its absolute discretion on such terms as it sees fit.~~

~~While the Trust is a Registered Scheme, then~~ The Constitution may be modified, or repealed and replaced with a new constitution—:

~~(b)~~ (a) by Special Resolution of the Unitholders; or

~~(c)~~ (b) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

26.2 Lodgement of amendment

If the Trust is a Registered Scheme, then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

27. Statutory requirements

27.1 The Act and ASIC Relief

- (a) If the Act requires that this Constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief to apply ("Required Provisions"), then to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) If any part of this Constitution (a "Required Part") is included to comply with the requirements of the Act or ASIC ("Regulatory Requirement") and that Regulatory Requirement ceases or changes, then, to the extent the Act allows, this Constitution is automatically amended so that the Required Part is deleted or amended to reflect the altered Regulatory Requirement.
- (c) The Unitholders—:
 - (i) authorise the Trustee to make the amendments referred to in this clause 27.1 in a deed made for that purpose and, if required, to lodge it with ASIC; and
 - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 27.1.

- (d) Where this clause 27.1 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

27.2 Application of Act

- (a) In this Constitution, except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme.
- (b) If there is an inconsistency between the Act and this Constitution, then the Act prevails.

27.3 ASIC Class Orders

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 27.1 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 27.3 applies are made pursuant to the power in clause 26 but in respect of such changes, the requirements of clause 26 are to be read subject to this clause 27.3.

28. Compliance plan and compliance committee

28.1 Compliance plan

- (a) While the Trust is a Registered Scheme, the Trustee must have a compliance plan for the Trust which is lodged with ASIC.
- (b) The compliance plan will deal with the measures the Trustee will adopt to comply with the Act and this Constitution.
- (c) Subject to the Act and the approval of ASIC (if required), the compliance plan may be amended by the Trustee from time-to-time as it sees fit.

28.2 Compliance committee

- (a) This clause 28.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

29. Notices

29.1 *Form of notice*

Any notice, document or other communication required to be given to the Trustee or Unitholders is deemed to have been duly given if given in writing by letter, electronic mail or other method as the Trustee determines.

29.2 *Address for service*

- (a) The address for the Trustee will be the address set out below or the address most recently given to the Unitholders:

Trustee : Msquared Capital Pty Ltd

Address : Level 12, 88 Pitt Street , Sydney NSW 2000

- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

29.3 *Deemed date of receipt*

- (a) A notice given to the Trustee is effective when it is received by the Trustee.
- (b) A notice, cheque or other communication sent by post is taken to be received by Unitholders on the Business Day after it is posted. Subject to the Act, the Trustee may determine the time in which other forms of communication may be taken to be received. For any communications sent to Unitholders, proof of receipt is not required.

29.4 *Notice to joint Unitholders*

In the case of joint Unitholders, the physical or electronic address of the Unitholder means the physical or electronic address of the Unitholder first named in the Register.

30. General provisions

30.1 *Payments*

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by—:

- (a) cheque and sent by post to the address shown in the Register; or
- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Unitholder in writing to the Trustee.

30.2 *Discharge of Trustee*

The Trustee will receive a good discharge on—:

- (a) payment of every cheque if duly presented and paid; or

- (b) in the case of money credited to any account with a financial institution, the receipt by the financial institution of the amount paid.

30.3 *Retention of documents*

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or by a like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

30.4 *Relationship between Trustee and Unitholders*

Each and every Unitholder and the Trustee agree—:

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and this Constitution are in every case several and not joint or joint and several;
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other;
- (c) no Unitholder has authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder; and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

30.5 *Rounding*

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.
- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the Trustee determines. The amount of rounding must not be more than one percent of the Application Price or Withdrawal Price.

30.6 *Interest payable*

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is

payable monthly. The rate of interest will be the BBSW plus 500 basis points. The Trustee may waive payment of that interest in whole or in part.

- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

30.7 Non-payment of money

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following (subject to the application of clause 5 in relation to any failure to pay an instalment or instalments with respect to Partly Paid Units):

- (a) ~~t~~The Trustee may deduct money from distributions which would otherwise be paid to the Unitholder who owes the Trustee money until such time as interest and the amount which the Trustee is entitled to be paid has been paid to the Trustee; ~~or~~
- (b) ~~s~~Send a notice to the relevant Unitholder demanding the amount for which the Trustee is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than seven days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unitholder's Units will be liable to be sold or redeemed to recover the unpaid amount.

30.8 Sale or redemption of Unitholder's Units to pay debt owing by Unitholder

- (a) For notices sent under clause 30.7(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:
 - (i) ~~s~~Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale; ~~or~~
 - (ii) ~~r~~Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 30.7(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

30.9 Trustee may require information from Unitholders

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.

- (b) If any particular information given to the Trustee under clause 30.9(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 30.9(a) or 30.9(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 30.9(a) or 30.9(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

30.10 Duties or like imposts payable by Unitholder

- (a) Without limiting the other provisions of this Constitution, where any ~~duty or stamp duty~~ Duty is payable on or in relation to any issue, redemption, cancellation or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed or cancelled (as the case may be), must pay the ~~duty~~ Duty and indemnifies the Trustee in relation to the amount of the ~~duty~~ Duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 30.6, 30.7 and 30.8 apply in relation to any amounts payable by a Unitholder under clause 30.10(a).
- ~~(b)~~ (c) For the purposes of clause 30.10(a), 'Duty' means any stamp, transaction or registration duty, or similar charge, imposed by any State or Territory Revenue Office, and includes but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of these.

30.11 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.

30.12 Schedules

Schedule 1—Dictionary and Schedule 2—Rules for interpretation to this Constitution are operative parts of the Constitution.

30.13 Applicable law

This Constitution is governed by and to be interpreted in accordance with the laws of New South Wales. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

Executed as a deed

This Constitution is made this day of 2025.

SIGNED, SEALED AND DELIVERED
by **MSQUARED CAPITAL PTY LTD**
ACN 622 507 297 in accordance with
section 127 of the Corporations Act
2001 (Cth) by

Secretary/Director

Director

Name (please print)

Name (please print)

Schedule 1—Dictionary

Accounting Standards	<p>If the Trustee is required to comply with the financial reporting obligations contained in Part 2M of the Act in relation to the Trust it has the meaning given to the term “accounting standard” in section 9 of the Act.</p> <p>If the Trustee is not required to comply with the financial reporting obligations contained in Part 2M of the Act in relation to the Trust it means a generally accepted accounting principle.</p>
Accrued Distribution	For a Distribution Period, the amount the Trustee calculates as the Distributable Amount for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Trust Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Act	The Corporations Act 2001 (Cth) for the time being in force, together with the regulations.
Adjustments	The sum of any Acquisition Costs Adjustments and Indirect Acquisition Costs Adjustments.
<u>AMIT or Attribution Managed Investment Trust</u>	<u>Has the meaning given to that term in section 276-10 of the Tax Act.</u>
<u>AMMA Statement</u>	<u>Has the meaning given to this term in section 276-460 of the Tax Act.</u>
<u>Amount of a Particular Character</u>	<u>Each of the amounts determined after the application of clause 15.21(b)(ii).</u>
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
ASIC	The Australian Securities and Investments Commission.

ASIC Relief	An exemption or declaration granted by ASIC which gives relief from certain requirements of the Act.
<u>Assessable Income</u>	<u>Has the meaning given to that term in section 995-1(1) of the Tax Act.</u>
Assets	<p>This includes all <u>property, rights and income or capital of the Trust and any accretions to the</u> property, rights and income or capital of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes—:</p> <ul style="list-style-type: none"> (a) Application Money or property paid in respect of which Units have not been issued; (b) proceeds from withdrawals which have not yet been paid; and (c) any Distributable Amount awaiting payment to Unitholders. <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly Referable to each Class.</p>
Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
<u>Attribution Amount</u>	<p><u>For a Period, any amount attributed to a Holder for the purposes of Division 276 of the Tax Act (calculated by the Trustee), and may include or be adjusted by:</u></p> <ul style="list-style-type: none"> <u>(a) components of Assessable Income character;</u> <u>(b) components of Tax Offset character;</u> <u>(c) components of Exempt Income character;</u> <u>(d) components of Non-assessable, Non-exempt Income;</u> <u>(e) any amount the Trustee determines to be fair and reasonable; and</u> <u>(f) Unders or Overs.</u>
<u>Attribution Income Tax Liability</u>	<u>An income tax liability of a person under the Tax Act that results from the Trust being operated as a MIT.</u>

BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Borrower	A person who the Trustee approves to borrow funds from the Trust.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.
Class	A class of Unit in the Trust.
Complainant	A Unitholder who has complained to the Trustee pursuant to clause 25.
Constitution	This document (including its schedules) as it may from time-to-time be amended and in force.
Conversion Proposal	<p>A proposal by the Trustee to covert Units in a Class—:</p> <p>(a) to Units in another Class in a ratio determined by the Trustee, and where a conversion would result in a fraction of one Unit, then the Trustee may determine to issue fractions of a Unit or round the fraction down or up to a whole Unit or such number of decimal places as the Trustee determines—; or</p> <p>(b) to another type of interest in the Trust, such as a debt interest.</p>
Corporate Tax Entity	Has the meaning given to this term in the Tax Act.
Disclosure Document	A document by which Units are offered for subscription (including an information memorandum, product disclosure statement or terms of issue), and it includes any supplementary or replacement document issued in respect of the disclosure document.

Distributable Amount	<p>Unless the Trustee determines otherwise, Distributable Amount means—:</p> <p>(a) the Net Income of the Trust, reduced by any amount which would be included in the assessable income of the Trust in accordance with Division 207 of the Tax Act and reduced by any amount which would be included in the assessable income of any sub-trust in accordance with Division 207 of the Tax Act to the extent that that amount would subsequently be included in the assessable income of the Trust under section 97 of the Tax Act, plus</p> <p>(b) any further amounts determined by the Trustee from time-to-time to be distributed to Unitholders, which are not included in the Net Income of the Trust but are included in the other Income of the Trust, plus</p> <p>(c) any amount of capital of the Trust, determined by the Trustee from time-to-time to be distributed to Unitholders.</p>
Distributable Proportion	In respect of a Unit holder , the amount determined in accordance with clause 15.6 15.5 .
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<p>(a) For the first distribution period of a Class, the period from the commencement of the Class to the next Distribution Calculation Date.</p> <p>(b) For the last distribution period of a Class, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust or of a Class.</p> <p>(c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</p>
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 15.12 15.2 .
Dividend Entitlement	Amounts determined under clause 15.12 15.2(e) .
<u>Discovery Year</u>	<u>Has the meaning given to this term in the Tax Act.</u>
<u>Exempt Income</u>	<u>Has the meaning given to that term in section 995-1(1) of the Tax Act.</u>

Exchange Proposal	<p>A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of—:</p> <p>(a) the issue or transfer of units in another, or interests of whatever nature in or in relation to another entity;</p> <p>(b) a cash payment; and</p> <p>(c) a transfer of Assets.</p>
Expenses	<p>Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them. Examples of Expenses include those listed in clause 14.714.7.</p>
Extraordinary Resolution	<p>A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent (by value) of the total votes that may be cast by Unitholders entitled to vote on the resolution and at least 75 percent of Unitholders (by number) entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).</p>
Financial Year	<p>The period of 12 months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.</p>
Fully Paid Unit	<p>A Unit on which the Application Price has been paid (or deemed to have been paid if the context requires) in full.</p>
GST	<p>A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.</p>
GST Act	<p>A New Tax System (Goods & Services Tax) Act 1999.</p>
Holder	<p>A Unitholder or an Optionholder, as the context requires.</p>

Income

Means—:

- (a) all receipts or amounts which are, or would be recognised as, income by the application of generally accepted accounting principles; and
- (b) any other receipts or amounts which the Trustee determines to be income (whether or not those receipts or amounts are, or would be recognised as, income by the application of generally accepted accounting principles).

Indirect Acquisition Costs Adjustment

Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Sub Entity Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Indirect Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.

Index NumberMeans:

(a) the Consumer Price Index (All Groups) for the city of Sydney, published from time-to-time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for the city of Sydney, a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician; or

(b) if the Consumer Price Index (All Groups) is discontinued or suspended, then a replacement index determined by the Trustee which reflects fluctuations in the cost of living in the city of Sydney.

Indexed

Means adjusted on 1 July, by the aggregate percentage change in the Index Number for the previous four quarters most recently published prior to 1 July in the relevant year. However, if the Index Number is negative, then the aggregate percentage change in the Index Number will be zero.

Initial Units

Units in the Trust issued pursuant to clause 3.1.

Investment Amount

The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Unit).

Investment Management Agreement	The investment management agreement between the Trustee and the Investment Manager.
Investment Manager	The investment manager of the Trust appointed under the Investment Management Agreement.
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Holder, or the trustee of the estate of an Applicant or Holder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Holder.
Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly Referable to each Class.</p>
Liquid	Has the same meaning as in section 601KA of the Act.
Lock Up Period	In respect of a Unit, period specified in the Disclosure Document for the relevant Unit . the 12-month period from the date of issue of that Unit.
Managed Investment Trust	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).
Member Component	Has the meaning given to this term in section 276-210 of the Tax Act.
MIT	Includes a Trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust, or a Withholding MIT.

Mortgage

Means—

- (a) any instrument registered or registrable as a legal mortgage in respect of land and improvements, securing a secondary obligation of any person to pay any sum or sums;
- (b) any security (whether by way of mortgage or otherwise) over real property that secures repayment of a loan, financial liability or any other obligation;
- (c) the purchase of any mortgage security complying with the requirements of paragraph (a) or (b) of this definition where a valuation of the mortgage security and where the right, title and interest of the mortgagee in the loan, the security and any insurance contracts or policies relating to the secured property are assigned or transferred by the mortgagee to the Trustee; and
- (d) (any instrument or documents of title held under a mortgage that comes within the meaning of a mortgage asset under ASIC policy, class order relief, the Act or the Trustee's Australian financial services licence.

Msquared Capital Pty Ltd

Msquared Capital Pty Ltd ACN 622 507 297 or any related body corporate of it which replaces it as trustee of the Trust.

Net Asset Value

The total value of the Assets calculated in accordance with clause 10, less the Liabilities, adjusted for such provisions and incremental or decremental adjustments as the Trustee determines are appropriate. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class ~~other than Ordinary Units~~, the Trustee may (where permitted under the Terms of Issue) exercise discretions and decide on matters that may affect the determination of the Net Asset Value figure which may result in an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.

Net Income	<p><u>Means, for a Financial Year, the net income for the Trust for the purpose of section 95 of the Tax Act (calculated by the Trustee) less amounts attributable to:</u></p> <p><u>(a) imputation credits;</u></p> <p><u>(b) foreign tax credits;</u></p> <p><u>(c) other notional or deemed amounts; and</u></p> <p><u>(d) any other amount that has not been received and is not available for distribution,</u></p> <p><u>determined as if the Period is a year of income, less amounts that are not Cash Amounts. If the definition of net income in the Tax Act is repealed or replaced, any concept enacted to replace that definition.</u>The net income determined in accordance with the Tax Act as calculated each Financial Year, or where the Distribution Period does not end on the last day of a Financial Year, as calculated under the Tax Act as if the Distribution Period were a year of income.</p>
<u>Non-assessable, Non-exempt Income</u>	<u>Has the meaning given to that term in subsection 995-1(1) of the Tax Act.</u>
Option	An option to subscribe for a Unit.
Optionholder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Resolution	A resolution that has been passed by more than 50 percent of the votes (by value) cast by Unitholders entitled to vote on the resolution and more than 66 2/3 percent of all Unitholders (by number) who cast a vote on the resolution.
Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class of Units issued by the Trustee from time-to-time, as set out in the Terms of Issue of that other Class.
<u>Over</u>	<u>Has the meaning given to that term in subsection 995-1(1) of the Tax Act.</u>

Paid-up Amount	<p>In relation to a Unit means the number obtained by applying the following formula:</p> $\text{Paid-up Amount} = \frac{\text{PA}}{\text{AP}}$ <p>Where—</p> <p>(a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation; and</p> <p>(b) AP means the Application Price of the Unit.</p>
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
Perpetuity Period	The period specified in clause 3.15 3.14.
Realisation Transaction	<p>A transaction which enables all Unitholders to realise all or more than 50 percent of their investment in the Trust, including—</p> <p>(a) an initial public offer;</p> <p>(b) a sell down of more than 50 percent of the units where all Unitholders have the opportunity to participate in the sell down;</p> <p>(c) a sale of substantial Assets where all Unitholders have an opportunity to have their Units redeemed or transferred; or</p> <p>(d) any other arrangement which has substantially the same economic effect as a transaction referred to paragraph (a), (b) or (c).</p>
Referable	Has the meaning given to it in clause 3.16 3.15.
Register	The register of Holders required to be kept according to clause 8.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.

Reorganisation Proposal	<p>Means—:</p> <ul style="list-style-type: none"> (a) any Realisation Transaction; (b) a Conversion Proposal; (c) a Stapling Proposal; (d) a Top Hat Proposal; (e) an Exchange Proposal; or (f) any other proposal to reorganise or restructure the capital of the Trust in any way.
<u>Securities</u>	<u>Any shares, stocks, debentures, bonds, convertible notes or other securities or any interests in any managed investment schemes or trusts and includes any option over a Security.</u>
<u>Security Interest</u>	<p>Means:</p> <ul style="list-style-type: none"> (a) a Mortgage; (b) a security interest as defined in the <i>Personal Property Securities Act 2009 (Cth.)</i>; (c) security for payment of money, performance of obligations or protection against default (including any mortgage, bill of sale, pledge, trust, power, deposit, lien, encumbrance, hypothecation or charge, title retention arrangement, easement, restrictive covenant, caveat or similar restriction over property); and (d) any other arrangement (including any preferential trust or set off arrangement) having a similar commercial effect as a grant of security, <p><u>granted to or for the benefit of the Trustee.</u></p>
<u>Special Distribution Amount</u>	<u>Has the meaning given to it in clause 15.8.</u>
Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
<u>Stapling</u>	<u>The linking together of all of the rights and obligations which attach to a Stapled Security.</u>
Stapling Proposal	A proposal to cause the Stapling of any other securities or financial products to the Units.

Sub Entity	A trust, company or other entity which was established by or is managed by or controlled by, the Trustee or by an Associate or related body corporate of the Trustee and in which the Trust has a direct or indirect interest, or a trust, company or other entity of which the Trustee (in its capacity as trustee of the Trust) is a unitholder, shareholder or beneficiary.
Sub Entity Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of—:</p> <ul style="list-style-type: none"> (a) the Expenses associated with the establishment of any Sub Entity and the raising of capital for any Sub Entity; and (b) Expenses associated with the acquisition of any asset or assets by any Sub Entity, <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
Tax	<p>This term includes, but is not limited to—:</p> <ul style="list-style-type: none"> (a) stamp duty Duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Assets or Liabilities or the Trust itself; (b) taxes, excises and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution; (c) taxes imposed or assessed upon—: <ul style="list-style-type: none"> (i) (any Application Money or property; (ii) the Assets, any Dividend Amount, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself; or (iii) the Trustee in respect of its capacity as trustee of the Trust; (d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust; and (e) every kind of tax, excise, duty, rate, levy, deduction and charge including any GST.

Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), Tax Administration Act 1953 (Cth) or any or all of the foregoing all as appropriate.
Tax Offset	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time-to-time.
Top Hat Proposal	A proposal that each Unitholder should exchange their Units for an equivalent value of units in the Top Trust.
Top Trust	A trust of which the Trustee is also the trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Total Paid-up Amount	The aggregate Paid-up Amount of all Units in Issue.
Total Unpaid Amount	The total Unpaid Amount of all Units in Issue (if any).

Transaction Costs

(a) When calculating the Application Price, an amount equal to an estimate by the Trustee of ~~—~~ —:

- (i) the total Expenses the Trust would incur to acquire afresh the Assets —
- (ii) if appropriate, the total Expenses the Trust will incur to acquire any proposed Assets ~~—~~ — or
- (iii) if appropriate, having regard to the actual Expenses which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total Expenses, which may be zero.

If the Trustee makes no estimate, then the Transaction Costs are zero.

(b) When calculating the Withdrawal Price, an amount equal to an estimate by the Trustee of ~~—~~ —:

- (i) the total Expenses the Trustee would incur wind to up the Trust and sell the Assets (including provision for any performance fees (if any) not yet paid to the Trustee) ~~—~~ — or
- (ii) if appropriate, having regard to the actual Expenses which would be incurred because of any withdrawals, a portion of the total Expenses, which may be zero.

If the Trustee makes no estimate, then the Transaction Costs are zero.

For the avoidance of doubt, the Trustee may take account of any policy it has established regarding the amortisation of Trust establishment, Trust winding up and Asset acquisition and disposal costs in estimating the total Expenses, relevant to Transaction Costs. However, the Trust must not include any amounts already taken into account in calculating the Net Asset Value.

Trust

The trust constituted by this Constitution.

Trust Component

Has the meaning given to this term in section 276-260 of the Tax Act.

Trust Component Deficit

Has the meaning given to that term in subsection 995-1(1) of the Tax Act.

Trust Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of—:</p> <p>(a) the Expenses associated with the establishment of the Trust and the raising of capital for the Trust; and</p> <p>(b) the Expenses associated with the acquisition of any Asset or Assets,</p> <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
<u>Trust Income</u>	<u>In respect of a Financial Year or an Accrual Period will be equal to the Net Income of the Trust.</u>
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
<u>Under</u>	<u>Has the meaning given to this term in section 276-345 of the Tax Act.</u>
Unit	An undivided interest in the Trust as provided in this Constitution document.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.
Unpaid Amount	<p>The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:</p> <p>Unpaid Amount = AP – PA</p> <p>Where—:</p> <p>(a) AP means the Application Price of the Partly Paid Unit; and</p> <p>(b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.</p>
Valuation Time	The time at which the Trustee calculates the Net Asset Value.

Vesting Day	<p>The day which is the later of—:</p> <p>(a) the day immediately prior to the 80th anniversary of the date of commencement of the Trust; or</p> <p>(b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.</p>
Wholesale Client	A Unitholder who is a “wholesale client” within the meaning of section 761G of the Act by virtue of section 761G(7)(a) or section 761G(7)(c) applying to the financial product or financial service provided to the person.
Withdrawal Price	<p>The price at which a Unit is redeemed and calculated in accordance with clause 6.16.4.</p>
<u>Withholding MIT</u>	<u>Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).</u>

Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention—:

- (a) words denoting any gender include both genders;
- (b) words importing the singular include the plural and vice versa;
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation;
- (d) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, the Constitution and a reference to this Constitution includes any schedule;
- (e) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns;
- (f) a person includes companies and corporations and vice versa;
- (g) except in the dictionary, headings do not affect the interpretation of this Constitution;
- (h) general words must not be given a restrictive meaning, by reason of the fact they are followed by particular examples intended to be embraced by the general words (in this regard, the word “including” is not a word of limitation);
- (i) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause;
- (j) amounts of money are expressed in Australian dollars unless otherwise expressly stated;
- (k) a reference to a document includes any variation, novation or replacement of it;
- (l) a reference to any thing includes the whole or each part of it;
- (m) words defined in the Act have the same meaning when used in this Constitution except where the context otherwise requires;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day;
- (o) where time is to be calculated by reference to a day or event, then that day or event is excluded; and
- (p) the defined terms in Schedule 1 have the meaning given to them in that schedule except where the context otherwise requires.

3472-0419-7402, v. 9

Annexure B - Clean modified Constitution

MSQUARED CAPITAL PTY LTD

Msquared High Yield Mortgage Income Fund

Constitution

Brisbane Level 7, 100 Creek Street Brisbane Qld 4000 GPO Box 1279 Brisbane Qld 4001 **T** 61 7 3239 2900

Melbourne Level 2, 696 Bourke Street Melbourne Vic 3000 **T** 61 3 9909 1400 mcmahonclarke.com

Liability limited by a scheme approved under professional standards legislation.

Date	This Constitution is a deed poll made on the date noted on page 69 of this document.
Trustee	Msquared Capital Pty Ltd ACN 622 507 297 of Level 12, 88 Pitt Street, Sydney, New South Wales 2000 (Trustee)

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TERMS

1. Constitution of the Trust

1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on:

- (a) all Unitholders (as they are constituted from time-to-time);
- (b) all Optionholders (as they are constituted from time-to-time); and
- (c) the Trustee.

1.2 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Holder.

2. Trust

2.1 *Appointment of Trustee*

The Trustee agrees to act as trustee of the Trust.

2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the Initial Units are issued. The Trust is a single trust and the creation and issue of Units of different Classes is not intended to create separate trusts or sub-trusts.

2.3 *Name of the Trust*

- (a) The Trust will be known as the Msquared High Yield Mortgage Income Fund. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If at any time the name of the Trust has or implies an association with Msquared Capital Pty Ltd in any way and Msquared Capital Pty Ltd retires or is removed, then its successor as Trustee must, unless otherwise approved by Msquared Capital Pty Ltd, change the name of the Trust to a name that does not imply an association with Msquared Capital Pty Ltd or its business.

2.4 Term of the Trust

The Trust will end on the earlier of:

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution, in accordance with the Act or in accordance with the law.

2.5 No merger

For the avoidance of any doubt, if the Trustee (in its capacity as trustee of any other trust or trusts) is, or becomes, a Unitholder, or the sole Unitholder, then the estates or interests held by the Trustee in the Assets will not merge and the trust created under this Constitution will not cease to exist. The Trustee may be the trustee of the Trust and also at the same time a Unitholder, or the sole Unitholder, of the Trust, in a different capacity.

2.6 Relationship of agency or partnership excluded

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

3. Creation and issue of Units**3.1 Initial Units**

- (a) The first Units issued by the Trustee will be Initial Units.
- (b) The rights, obligations and restrictions attaching to Initial Units are as set out in this Constitution, except that the following special terms prevail over other provisions of this Constitution:
 - (i) The Application Price of a single Initial Unit will be \$1.00.
 - (ii) Holders of Initial Units will not have an interest in or be entitled to a share in any Distributable Amount.
 - (iii) The Withdrawal Price for a Unitholder's Initial Units will be the price paid by the Unitholder to acquire the Initial Units.
 - (iv) Holders of Initial Units are not entitled to receive notices of or attend general meetings of Unitholders (whether of the Trust as a whole or of any Class). Additionally, Initial Units will have no voting rights.
 - (v) On winding up of the Trust, a holder of Initial Units is only entitled to payment of the price paid by the Unitholder to acquire the Initial Units.

3.2 Division of beneficial interest

The beneficial interest in the Assets as a whole will be divided into Units.

3.3 Interest in Assets

Unless the Terms of Issue of a Class otherwise provide, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the Liabilities, but no Unit confers an interest in a particular part of the Trust or in any particular Asset.

3.4 Rights attaching to Units

Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, Units will be held upon and subject to the provisions contained in this Constitution. To the extent the Terms of Issue relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

3.5 Consolidation, division and issue of Units

- (a) Subject to the Act, the Trustee may, at any time, determine to consolidate, divide or issue Units and create and issue Units of different Classes.
- (b) The Trustee may make the issue of Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may:
 - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units; or
 - (ii) provide for conversion of Units from one Class to another Class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of each Class. To the extent the rights, obligations and restrictions relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out on in this Constitution.

3.6 Fractions of Units

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) Subject to the Terms of Issue, if fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.

3.7 Create Options

- (a) The Trustee may create and issue Options to subscribe for Units, on any terms and conditions it determines appropriate.
- (b) On the exercise of an Option, the Optionholder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

3.8 *Application Price*

- (a) For all Units issued in a Class prior to the acquisition of the first non-cash Asset Referable to that Class, the Application Price of a single Unit is \$1.00. At all other times the Application Price for a Unit issued in that Class will be determined in accordance with clause 3.8(b), subject to the Trustee determining another Unit price in accordance with the remainder of this clause 3.7, or in accordance with clause 3.9.
- (b) Subject to the other provisions of this clause 3.8 and clause 3.9, the Application Price of a single Unit in a Class is the price calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} - \text{Accrued Distribution} + \text{Transaction Costs}}{\text{Units in Issue}}$$

- (c) However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying the formula in clause 3.8(b) and therefore the words “— Accrued Distribution” in this formula will be deemed not to apply.
- (d) Notwithstanding any other provision of this Constitution, the Trustee may set the Application Price at an Application Price different from the fixed price in clause 3.8(a) or different from that determined in accordance with clause 3.8(b), in relation to some Units, a Class or all Units, to the extent it is permitted to do so under the terms of any ASIC Relief (and subject to the terms of that ASIC Relief), and where the Trust is not a Registered Scheme the ASIC Relief is to apply as if the Trust were a Registered Scheme. In particular, the Trustee may (subject to the terms of the ASIC Relief) exercise discretion in determining:
- (i) any matter affecting the value of any factor included in the calculation of the Application Price; and
 - (ii) any matter which is an aspect of the method of calculating the Application Price.
- (e) For the purpose of clause 3.8(b), each of the variables used in the calculation is that proportion of those variables that the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

3.9 *Application Price on exercise of Option*

Subject to the Act and the conditions of any ASIC Relief, the exercise price for Units to be issued in a Class on the exercise of an Option, unless the terms and conditions of the Option determined by the Trustee provide otherwise, will be the Application Price for Units in that Class determined on the Business Day immediately preceding the date the Options are offered.

3.10 Time to calculate Application Price

Subject to clauses 3.8 and 3.9, the time at which the Trustee must calculate the Application Price is the next Relevant Valuation Time after the later of the following to occur:

- (a) The time the Trustee receives the relevant application for Units.
- (b) The time the Trustee receives the relevant Application Money or the property against which Units are to be issued.

3.11 Time to calculate Application Price—fixed capital raisings

The Trustee may calculate the Application Price at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

3.12 Units issued against uncleared funds or promises to pay

- (a) For the purposes of this clause 3, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay, including without limitation a promissory note, uncleared cheque or bill of exchange or anything similar or analogous to the foregoing, as a receipt of Application Money.
- (b) If Units are issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property or Assets, then:
 - (i) such Units are (at the election of the Trustee) void if the funds are not subsequently cleared or paid, or the property does not vest in the Trustee, or the property or Assets are not transferred free from encumbrance, within 10 Business Days after the Units are issued (or such longer period as the Trustee determines); and
 - (ii) subject to this Constitution, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.

3.13 Net Asset Value

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 10. Nothing in this clause 3 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

3.14 Satisfaction of Application Money

The payment of Application Money may be satisfied in such a manner as the Trustee determines, including by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods.

3.15 Perpetuity Period and restriction on issue and redemption of Units

The Perpetuity Period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a Perpetuity Period in this clause 3.15 does not require that the Trust terminate on expiration of that period.

3.16 Referability

- (a) Unless otherwise determined by the Trustee, each Class shall be referable to the Assets, Liabilities, Expenses, Income and Distributable Amount of the Trust as a whole.
- (b) The Trustee may determine, and express in the relevant Terms of Issue, that Assets, Liabilities or variables relevant to the Application Price or Withdrawal Price will be referable to a particular Class (**Referable**), and if it so determines will establish a separate sub-account for that particular Class (**Pool**) which will have the following characteristics:
 - (i) Separate Pools must be established for each Class, and no more than one Pool may be Referable to a particular Class.
 - (ii) Assets, Liabilities, Expenses, Income and Distributable Amount or Dividend Amounts of the Trust Referable to a particular Class must be allocated to the appropriate Pool in a manner that is consistent with the Terms of Issue and unless the Terms of Issue provide otherwise will be allocated as follows:
 - A. Where attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Class;
 - B. Where it is not attributable to any Class or the Class to which it was attributable is no longer on issue, between all Classes on a pro rata basis, provided the Trustee considers the allocation to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Classes; and
 - C. Any reallocation of Assets or Liabilities between Pools must be done on a fair and reasonable basis for holders of the class of Units Referable to those Pools.

- (iii) Investment Amounts Referable to a particular Class must be accounted for in the Pool Referable to that Class.
- (iv) Pools may be established pending the issue of Units in a Class, or the acquisition of Assets for that proposed Class.
- (c) The decision of the Trustee in respect of the allocation of Assets, Liabilities, Expenses, Income and Distributable Amount or Dividend Amount among Classes or to a particular Pool is final and binding on all Unitholders.
- (d) In making any determination or exercising a power or discretion under this clause 3.16, the Trustee is exercising an administrative power only and nothing contained in this clause 3.16 is intended to give the Trustee an unfettered power or discretion. The Trustee in making any determination or exercising any discretion must act honestly and according to law.
- (e) Neither clause 3.16(a) nor 3.16(b) confers on the Unitholder a beneficial interest in a particular Asset. The outcome of clause 3.16(a) and 3.16(b) is to assist in a calculation of the Application Price and the Withdrawal Price for each Class and the quantum of income and capital distributions that can be distributed to Unitholders.
- (f) More than one Unitholder may hold a Class of Units referable to a Class Asset (or Class Assets).

3.17 No power to reclassify

Notwithstanding any term or condition to the contrary herein, the Trustee does not have a power to reclassify existing Units so that they do not all have equal rights to receive the income and capital of the Trust applicable to that Class of Unit.

3.18 No power to appoint

Notwithstanding any term or condition to the contrary herein, the Trustee does not have a power to appoint a Unitholder's interest in the income or capital of the Trust to another Unitholder.

3.19 Rights of Unitholders

Each Unitholder agrees not to:

- (a) interfere with any rights or powers of the Trustee under this Constitution;
- (b) purport to exercise a right in respect of an Asset or claim any interest in an Asset (including without limitation lodging a caveat affecting an Asset); or
- (c) require an Asset to be transferred to the Unitholder (or any other person).

3.20 Default

Unless an Asset is made Referable to another Class pursuant to clause 3.16, the Asset will be Referable to the Class known as Ordinary Units.

4. Application for Units

4.1 Form of application

An application for Units must be in any form the Trustee may for the time being require or approve.

4.2 Application payment

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 16, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

4.3 Holding and dealing with the Investment Amount

- (a) The Investment Amount must be held by the Trustee (or its agent) on trust for the Applicants.
- (b) Each Applicant authorises the Trustee to deduct from the Investment Amount any amount disclosed in the Disclosure Document as an amount that will be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.

4.4 Interest on Investment Amount

Interest earned on Investment Amounts will form part of the Assets. For the avoidance of doubt, any interest earned on Investment Amount is not available to a particular Applicant nor is it attributable to a particular Applicant.

4.5 Trustee may refuse application

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application for Units is refused, then:
 - (i) the Trustee must refund to the Applicant any money paid by that Applicant; and
 - (ii) unless the Trustee determines otherwise, no interest shall be paid to the Applicant and any interest earned on the Applicant's Application Money will form part of the Assets.

4.6 Investment of the Investment Amount

The Investment Amount may, pending its application in accordance with the terms of this Constitution, be invested by the Trustee in investments authorised by the law relating to the investment of trust funds.

4.7 Minimum application

The Trustee may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of a Class) and alter those amounts at any time.

4.8 Date Units issued

- (a) Units are taken to be issued on the date the Trustee records them in the Register having accepted the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units in that Class has been paid in accordance with clause 4.2. The date recorded in the Register must be no later than the date the Units were actually issued.
- (b) However, Units issued on a reinvestment pursuant to clause 16 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

4.9 Number of Units issued

- (a) Except in relation to Partly Paid Units, the number of Units issued to an Applicant is calculated as follows:

$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$
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- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 4.9(a) assuming the full amount that the Applicant determines to invest in the Trust in its application for Units (or such lower amount as determined by the Trustee on acceptance of the application) was due and paid in full on the date of issue.

4.10 Unit certificates

The Trustee is not required to issue or provide certificates for Unit holdings.

4.11 Unitholder identification requirements

- (a) Without affecting clause 4.1, the Trustee may require any Applicant to provide to the Trustee information on or documentation to evidence the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), or any other matter the Trustee determines at its discretion, in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 4.8, if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 4.11(a), or the evidence provided is not satisfactory to the Trustee, then:

- (i) the Trustee may delay the acceptance or processing of any application for Units, or it may refuse any application for Units, in its absolute discretion; and
 - (ii) subject to this Constitution, if the application for Units has already been accepted or processed, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.
- (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder)::
 - (i) is a different person or entity from the person or entity originally represented to the Trustee; or
 - (ii) there is a defect or omission in the information provided under clause 4.11(a).
- (d) Nothing in this clause 4.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law, including any law in relation to the control or identification of money laundering or terrorism financing or tax compliance. This clause 4.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

5. Partly Paid Units

5.1 *Payment of Application Price by instalments*

The Application Price for Units may be payable by instalments as set out in this clause 5.

5.2 *Determination of amount and timing of instalments*

The Trustee may determine at any time that Units that are to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Trustee determines or, if the Trustee so determines, by a single instalment payable at such time as the Trustee determines.

5.3 *Variation or waiver of terms and conditions*

Subject to any applicable statutory duty requiring the Trustee to treat Unitholders of the same Class equally and those of different Classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 5.2, those terms and conditions may be varied or

compliance therewith waived only with the consent of the Trustee. The Trustee may not waive an instalment which is due and payable.

5.4 Notice of instalments

The Trustee must give Unitholders at least one Business Day's notice of the time and date each instalment is due to be paid (the first notice). The omission to give the first notice or the non-receipt of the first notice by the Unitholder does not affect the obligation of the Unitholder to pay the instalment.

5.5 Interest on instalments and costs

If a Unitholder does not pay an instalment on a Partly Paid Unit by the due time and date:

- (a) then interest is payable by the Unitholder on the amount due, calculated in accordance with clause 30.6(a); and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

5.6 Failure to pay instalments

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).
- (b) If a notice is served pursuant to clause 5.6(a), then it must contain the following:
 - (i) the total amount due to be paid at the date of the notice, including the unpaid instalment, any interest owing at that date and any costs the Trustee is seeking to recover;
 - (ii) the time and day by which payment must be made. This date must not be less than three Business Days from the date of the notice; and
 - (iii) if payment of the amount set out in the notice is not made by the due date specified in the notice, then the Partly Paid Units in respect of which the notice has been issued are liable to be forfeited. The Trustee may also specify that interest will continue to accrue and further costs are likely to be incurred.
- (c) Failure by the Trustee to comply with clause 5.6(b) or non-receipt of the second notice does not affect the obligation of the Unitholder to pay the instalment plus interest and costs.

5.7 Consequences of non-compliance

If the requirements of any notice issued under clause 5.6 are not complied with, then:

- (a) the Unitholder grants the Trustee an irrevocable power of attorney to execute a transfer of the Unitholder's Units and do all things reasonably required to give effect to a transfer (if required);
- (b) the Trustee may determine in its absolute discretion, that any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited; and
- (c) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

5.8 Disposal of forfeited Units

- (a) Subject to the Act, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:
 - (i) at a price that is no less than a price calculated in accordance with clause 3.8; or
 - (ii) in accordance with any applicable ASIC Relief in relation to the sale of forfeited Units, if the Trustee complies with the conditions of the relief.
- (b) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (c) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Trustee thinks fit.

5.9 Holder of forfeited Units

The holder of Partly Paid Units which have been forfeited ceases to be a Unitholder in respect of the forfeited Units but remains liable to pay to the Trustee all money which at the date of forfeiture was payable by the former Unitholder to the Trustee in respect of the forfeited Units (including interest owing under clause 5.5 and expenses) but the former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money.

5.10 Evidence of forfeiture

A statement signed by or on behalf of the Trustee that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.

5.11 Consideration for forfeited Units

Where a Partly Paid Unit is forfeited pursuant to this clause the following applies:

- (a) The Trustee may receive the consideration, if any, given for a forfeited Unit on the sale or disposal.
- (b) The Trustee must:
 - (i) execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of (pursuant to the irrevocable power of attorney to do so granted to the Trustee under clause 5.7(a)); and
 - (ii) register that person as the holder of that Unit.
- (c) The person who becomes the registered holder is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit. Further, that person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

5.12 Deductions from consideration for forfeited Units

Where forfeited Units are sold or disposed of for cash, the Trustee must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture (including any interest payable and any expenses incurred on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Unitholder to recover the instalment or any part owing). The Trustee may retain in the Assets of the Class in which the Unit was forfeited the amounts so deducted, but the balance remaining (if any) must be paid to the Unitholder whose Units were forfeited.

5.13 Joint holders

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

5.14 Rights and obligations attaching to a Partly Paid Unit are proportionate

Subject to the Act and the provisions of this Constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

5.15 Termination of a Class or winding up of the Trust

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the Unpaid Amount is payable immediately:

- (a) upon termination of the Class to which the Partly Paid Unit belongs; or
- (b) upon commencement of the winding up of the Trust.

6. Withdrawal Price

6.1 Withdrawal price

- (a) Subject to the Terms of Issue, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} - \text{Accrued Distribution} - \text{Transaction Costs}}{\text{Units in Issue}}$

- (b) However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying the formula in clause 6.1(a) and therefore the portion “– Accrued Distribution” in this formula will be deemed not to apply.
- (c) For the purposes of the calculation in clause 6.1(a) the following applies:
- (i) The Trustee may (subject to the terms of any ASIC Relief, and where the Trust is not a Registered Scheme the ASIC Relief is to apply as if the Trust were a Registered Scheme) exercise discretion in determining:
- A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price; and
- B. any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) Each of the variables used in the calculation of Withdrawal Price are that proportion of those variables the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

6.2 Time to calculate Withdrawal Price

The Withdrawal Price must be calculated:

- (a) while the Trust is Liquid, at the next Relevant Valuation Time after the withdrawal request is accepted or approved by the Trustee; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes or at such other time specified by the Trustee in the withdrawal offer.

7. Withdrawal procedures

7.1 Right to withdraw

- (a) Where the Trust is not a Registered Scheme, a Unitholder has no right to withdraw from the Trust other than as determined by the Trustee in its absolute discretion.
- (b) Where the Trust is a Registered Scheme, a Unitholder's right to withdraw from the Trust is governed by the remainder of this clause 7, the terms of

which have effect on and from such registration (except as expressly provided).

7.2 Application of withdrawal provisions

- (a) Clauses 7.3 to 7.7 apply whether or not the Trust is Liquid.
- (b) Clauses 7.4 to 7.7 apply whether or not the Trust is a Registered Scheme.
- (c) Clauses 7.12 and 7.13 only apply while the Trust is Liquid.
- (d) Clause 7.14 only applies while the Trust is not Liquid.

7.3 Requests for withdrawal

A Unitholder may make a request for the withdrawal of some or all of their Units:

- (a) if the Trust is Liquid, by providing notice to the Trustee in writing and the Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 7 (subject to clauses 7.12 and 7.13); or
- (b) if the Trust is not Liquid, in response to a withdrawal offer made by the Trustee and in accordance with the Act.

7.4 Lock up

A Unit may not be redeemed during the Lock Up Period for that Unit unless otherwise consented by the Trustee (which consent may be withheld at the Trustee's absolute discretion).

7.5 Compulsory withdrawal

The Trustee may redeem the Units of any Unitholder without the need for a withdrawal request in any of the following circumstances:

- (a) The Trust is not a Registered Scheme.
- (b) The redemption is permitted under the Terms of Issue which apply to those Units.
- (c) The redemption is permitted under clause 30.8 of this Constitution.
- (d) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Trustee or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time-to-time by the Trustee.
- (e) The redemption is required by operation of:
 - (i) legislation where the mechanism for redemption is contained in that legislation;

- (ii) a provision in this Constitution which has been included in mandatory compliance with Australian legislation;
 - (iii) the order of a court of competent jurisdiction; or
 - (iv) a lien, the exercise of which results in a redemption.
- (f) The Unitholder holds less than any minimum Unit holding amount set by the Trustee.
- (g) In the opinion of the Trustee, the continued holding of Units by a Unitholder would be contrary to an applicable law.
- (h) The Trustee determines, in its absolute discretion, the continued holding of Units by a Unitholder would be to the material disadvantage of the Trust, Unitholders of a Class or to the interests of Unitholders as a whole.

7.6 Money owed

If a Unitholder owes any money to the Trust or the Trustee (including any Unpaid Amount of any Partly Paid Units held by the Unitholder), then the Trustee may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.

7.7 Transfer of Assets to satisfy withdrawal or distribution

The Trustee may, at its discretion, transfer Assets to a Unitholder rather than pay cash, in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets together with any cash paid must be of equal value to the total amount due to the Unitholder pursuant to the redemption request, withdrawal offer or distribution (based on a valuation prepared in accordance with clause 10). If the Trustee requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

7.8 Minimum application amount

The Trustee need not give effect to withdrawal requests (whether or not made in response to a withdrawal offer) in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.

7.9 Minimum Unit holding

If complying with a withdrawal request (whether or not made in response to a withdrawal offer) would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding.

7.10 *Withdrawal request cannot be withdrawn*

A withdrawal request (whether or not made in response to a withdrawal offer) cannot be withdrawn by a Unitholder, unless the Trustee otherwise agrees.

7.11 *Satisfaction of withdrawal by sale of Units*

The Trustee may, at its discretion, purchase or arrange for another person to purchase all or some of the Units the subject of a withdrawal request (whether or not made in response to a withdrawal offer) at a price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 6.1. In such case, the withdrawal request is deemed satisfied upon:

- (a) the transfer of the Units the subject of the withdrawal request being recorded in the Register; and
- (b) if the transfer is for less than all of the Units the subject of the withdrawal request, then upon payment of the Withdrawal Price in respect of the remaining Units.

7.12 *Suspension of withdrawals*

- (a) The Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time:
 - (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up;
 - (ii) if it is not in the best interests of Unitholders for withdrawals to be made;
 - (iii) if it would prejudice the Trust's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust's or the Trustee's compliance with any applicable law, or the taxation or stamp duty status of the Trust;
 - (iv) it is, for any reason, impracticable for it to calculate the Net Asset Value, the Application Price or the Withdrawal Price, including because of 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 of the reasonable control of the Trustee, or because of the requirements of any law;
 - (v) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in the Trustee's opinion it is not in the interests of Unitholders for any Assets to be sold in order to satisfy a withdrawal request;
 - (vi) if it is not able to realise the relevant Assets at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside of the control of the Trustee needed to satisfy the withdrawal requests within the time required;

- (vii) the Trustee reasonably estimates that it must sell five percent or more (by value) of all Assets to meet current unsatisfied withdrawal requests; or
 - (viii) there have been, or the Trustee anticipates there will be, withdrawal requests which involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all satisfied immediately, then Unitholders who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the disadvantage of existing Unitholders, including (but not limited to) a material diminution in the value of the Assets.
- (b) In cases where withdrawals are suspended for a period of time the Trustee may extend the period for so long as the circumstances which caused the suspension continue to apply.

7.13 Provisions which apply when the Trust is Liquid

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 365 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the Trustee must satisfy the withdrawal request within 21 days from the date on which it determines to give effect to the request;
 - (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 7.7;
 - (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request; or
 - (iii) partially in the manner described in clause 7.13(a)(i) and partially in the manner described in clause 7.13(a)(ii).
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.
- (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as also relating to the remaining balance of the Unitholder's holding.
- (e) The Trustee may redeem some or all of the Units which are the subject of the request.

- (f) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceed the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in section 601KD of the Act (as if the Trust was not Liquid). The Trustee may, but is not obliged to, process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).

7.14 Provisions which apply when the Trust is not Liquid

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer, which complies with the Act, currently open for acceptance by Unitholders. The Trustee may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.
- (b) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion.
- (c) The withdrawal offer may be made by giving a copy to all Unitholders to whom the withdrawal offer is available.
- (d) The Trustee is not at any time obliged to make a withdrawal offer.
- (e) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (f) If the Trustee receives a withdrawal request before it makes a withdrawal offer, then it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (g) Subject to the Act, the Trustee may cancel any withdrawal offer it has made at any time before the withdrawal offer closes by giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made. The withdrawal offer will be automatically cancelled as at the time of the Trustee's decision. Any withdrawal request made in response to a withdrawal offer cancelled by the Trustee which has not been satisfied at the time of the Trustee's decision to cancel the withdrawal offer will be taken to be withdrawn at that time.

8. Register

8.1 Trustee must maintain the Register

The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept in accordance with the Act or any

declaration, exemption or ruling granted under the Act. The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.

8.2 *Removing information from the Register*

Information relating to a Holder (or any part of it) may be removed from the Register at any time after the first day of the Financial Year occurring seven years after the Financial Year in which the Holder ceased to be the holder of Units or Options as the context requires.

8.3 *Register is evidence of who are Holders*

Except in the case of manifest error, the Trustee may treat a registered Holder as the legal owner of Units or Options as the context requires registered in the Holder's name on the Register. The Trustee is not required to recognise any beneficial interest held in any Unit or Option as the context requires.

8.4 *Change of details*

A Holder must notify the Trustee of any change of name or address as soon as reasonably practicable after the change occurs. The Trustee must update the Register accordingly.

8.5 *Limit to number of registered Holders*

In no case will the Trustee be required to register more than two persons as holders of any one Unit or Option as the context requires.

8.6 *Use of information*

If a Holder inspects or is given a copy of the Register, then they will be taken to have agreed not to use any information obtained from the Register (or part thereof) 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 Holder. A Holder's obligation under this clause survives the transfer of all or any part of their Units or Options as the context requires.

9. *Interests of Holders*

9.1 *Joint Holders*

Where more than one person is registered as the holder of any Unit or Option, then these Holders hold them as joint tenants. Joint Holders shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit or Option.

9.2 *Restrictions on Holders*

A Holder has no right or entitlement to, and must not:

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution;

- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets;
- (c) require any Assets to be transferred to that Holder; or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

10. Valuation of Assets

10.1 Periodic valuations

The Trustee may cause an Asset to be valued at any time, however (if applicable) the Trustee must do so as and when required by the Act (as varied by any ASIC Relief).

10.2 Net Asset Value

The Trustee may determine the Net Asset Value at any time, including more than once on each day.

10.3 Valuation methodology

The Trustee may determine, in its discretion, valuation methods and policies for each category of Assets and change them from time-to-time (subject to, where the Trust is a Registered Scheme, complying with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion). Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value determined in accordance with ordinary commercial practices for valuing assets of that kind. All valuations used must be reasonably current.

10.4 Trustee not an expert

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

11. Trustee's powers and duties

11.1 General powers

Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets acting in its personal capacity.

11.2 *Specific powers*

Without limiting clause 11.1, the Trustee's powers include the power to do the following:

- (a) acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction, and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights, the provision of debt with or without security and acquiring Securities or financial products, including those issued by a related party of the Trustee or Investment Manager;
- (b) develop, improve or otherwise deal with any Assets (including where the Trustee disposes of an interest in an Asset, entering into a co-ownership arrangement in respect of that Asset), including to alter, subdivide or develop the Asset.
- (c) dispose of or otherwise deal with the Assets, including to exercise, enforce, dispose or otherwise deal with any property or right in connection with those Assets;
- (d) manage and administer the Assets;
- (e) open, close and operate bank accounts;
- (f) provide or deal with financial accommodation or lend all or any money at any time forming part of the Assets to any person with or without the security, including the following:
 - (i) provide financial accommodation where the amount of any advance or accommodation is in excess to the value of the secured property;
 - (ii) participate in the provision of financial accommodation with one or more persons, including related persons of the Trustee or the Investment Manager;
 - (iii) purchase or otherwise acquire any loan or debt Security from any person including a loan or debt Security which is in default or otherwise in arrears;
 - (iv) sell or otherwise dispose of any loan or debt Security to any person, including a loan or debt Security which is in default or otherwise in arrears; and
 - (v) exercise any right, power or discretion as lender in relation to any financial accommodation provided from the Assets, or any right, power or discretion as holder in relation to any debt Security forming part of the Assets;
- (g) accept and deal with any Security Interest provided by any Borrower or other security provider in respect of any financial accommodation provided or debt

Security acquired under clause 11.2(f) including do everything which, in the Trustee's reasonable opinion, is necessary or expedient to do the following:

- (i) complete and execute any document in respect of the Security Interest, including a Mortgage document and any document relating to the priority of a Security Interest;
- (ii) complete any document in respect of a Security Interest on behalf of a Borrower or other security provider;
- (iii) enable the exercise of any right, power or discretion as lender, mortgagee or secured party in relation to any Security Interest including:
 - A. giving notices to, or entering into arrangements or undertakings to, accelerate or delay, suspend or waive payment of any amount (including any principal, interest or other amount) payable under or in respect of any financial accommodation or debt Security;
 - B. entering into arrangements with any person to fund the costs and expenses of enforcement or attempted enforcement of any financial accommodation debt Security or Security Interest, including with the Investment Manager or a related party of the Investment Manager;
 - C. exercising a power of sale pursuant any Security Interest or the enactment of a State or Territory or the Commonwealth of Australia;
 - D. appointing a receiver or receiver and manager or otherwise exercising the rights of a receiver or receiver and manager;
 - E. in respect of any property subject to a Security Interest, executing any contract for sale, transfer, lease, easement or covenant document required to register any dealings in the property; and
 - F. taking any action to complete the sale of any property the subject of a Security Interest; and
- (iv) enable any Security Interest to be exercised, enforced, discharged, assigned or otherwise dealt with by or on behalf of the Trustee;
- (h) borrow or raise money (including but not limited to the issue of unsecured notes and other debt Securities, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), and use such money borrowed or raised for any purpose, including to fund the payment of the Withdrawal Price and the payment of distributions to Unitholders;

- (i) enter into derivatives and foreign exchange contracts whether to hedge exposures or as a speculative transaction and whether under an ISDA master agreement or otherwise (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities in respect of those transactions;
- (j) grant a Security Interest in any form in respect of any obligation of the Trustee (in its capacity as trustee of the Trust) or any other person (including the Trustee in its personal capacity) or trust which may include but are not limited to:
 - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or Trustee of any other trust); and
 - (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets;
- (k) without limiting the generality of clause 11.2(j), guarantee, indemnify or become surety with or without a Security Interest and with or without remuneration for the due payment of money or debts of any Unitholder and to guarantee, indemnify or become surety with or without security for the due performance of any contract, agreement, covenant or obligation of any Unitholder;
- (l) enter into contracts for the sale of Securities notwithstanding that the Trust does not, at the time of making the contract, own sufficient quantities of those Securities to satisfy the contract as long as the Trustee is satisfied that, before completion of the contract, the Trust will be able to acquire sufficient quantities of those Securities to satisfy the contract, whether borrowing or otherwise;
- (m) to enter into Securities lending arrangements similar to or as defined in section 26BC of the *Income Tax Assessment Act 1936* (Cth) and to borrow and or lend Securities under that arrangement including in respect of arrangement contemplated by 11.2(l);
- (n) to exercise the following powers in relation to Securities in addition to powers conferred by law:
 - (i) to pay or decline to pay calls on Securities or permit Securities to be forfeited and sold;
 - (ii) to purchase Securities and take up Securities of a new issue;
 - (iii) to requisition meetings, attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;

- (iv) to vote on any resolution, whether at a meeting held in person, attended by proxy, or via alternative technology or by way of a written resolution, or any other means;
- (v) to sell Securities at a price and upon terms as the Trustee may decide;
- (vi) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or enforcing or modifying any rights, privileges or interests in relation to Securities (whether alone or with others);
- (vii) to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any Securities or of the capital of any company in which any Securities form part of the Assets or by which any Securities are substituted or given in exchange, either wholly or partly for other Securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the Securities and to pay out of the Assets any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any Securities as if the Trustee owned them beneficially; and
- (viii) to agree in respect of a winding up with the trustee of any trust or the liquidator of any company (including a trustee company) or any member or creditor of the company or trust, or in a voluntary administration, as the Trustee thinks fit;
- (o) act as underwriter for the offer of any securities or other interests in the Trust;
- (p) carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time-to-time;
- (q) hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property;
- (r) enter into any option agreement relating to any Asset, Security or real property, lending or financing facility, agreement or transaction;
- (s) if Units have been issued but the Trustee subsequently determines these Units are void pursuant to clause 3.12(b)(i) or cancels these Units pursuant to clause 4.11(c) make all necessary and appropriate adjustments to the Net Asset Value, the Application Price and Withdrawal Price;
- (t) appropriate any Asset of the Trust in specie at its market value in partial or whole satisfaction of any Unitholder's entitlement to receipt of the whole or any part of the capital or income of the Trust without the consent of such Unitholder;

- (u) act as trustee of sub-trusts;
- (v) vary, transpose, postpone or otherwise deal with all or any of the investments of the Trust for or into other investments of any nature;
- (w) subject to the Trustee acting honestly and according to law, determine whether receipts and outgoings are of a capital or income nature and generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the trusts and powers of this Constitution and all parties shall be bound by the determination of the Trustee so made;
- (x) subject to its obligations at law, waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Trustee in connection with the Trust;
- (y) exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust; and
- (z) grant a lease, sub-lease or any other right of occupancy over the Assets for any period the Trustee determined, regardless of any limitation imposed by the Trustee Act (NSW) or similar legislation in other states and territories of Australia.

11.3 Discretion to exercise powers

Subject to the law, the Trustee 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.

11.4 Delegation

- (a) Without limiting clause 11.1, the Trustee's powers include the power to authorise any person to act as its agent or delegate:
 - (i) to perform any act or exercise any power or discretion within the Trustee's powers or discretions;
 - (ii) to hold title to any Asset; and
 - (iii) to appoint in turn its own agent or delegate.
- (b) If the Trustee does appoint an agent or delegate, then:
 - (i) it may do so on terms the Trustee thinks fit;

- (ii) the agent or delegate may be an Associate of the Trustee or the Investment Manager; and
 - (iii) it may execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (c) Subject to its obligations at law, the Trustee may waive or excuse on any terms as it thinks fit any breach by any agent or delegate of their obligations to the Trustee in connection with the Trust.

11.5 Interested dealings by Trustee

- (a) Subject to the Act, the Trustee may:
- (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust;
 - (ii) act in the same or similar capacity in relation to any other managed investment scheme;
 - (iii) hold Units in, or other securities issued by, the Trust in any capacity;
 - (iv) hold or deal in or have any other interest in an Asset; or
 - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause 11.5, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 11.5(a):
- (i) it may retain and need not account for any benefit derived by it; and
 - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.
- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity):
- (i) the Trustee may be registered as a Unitholder in respect of the Units;
 - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties; and
 - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.

11.6 Retirement benefit

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to:
 - (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement; or
 - (ii) its retirement as Trustee.
- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

11.7 Investment powers

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the Trustee Act 1925 (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights and the provision of debt with or without security.

12. Reorganisation Proposals**12.1 Power to enter into Reorganisation Proposals**

- (a) Without limiting clause 11, the Trustee may, enter into or implement any of the following which is approved by Ordinary Resolution:
 - (i) a Realisation Transaction;
 - (ii) a Conversion Proposal;
 - (iii) a Stapling Proposal;
 - (iv) a Top Hat Proposal;
 - (v) an Exchange Proposal; or
 - (vi) any other Reorganisation Proposal.
- (b) It is a term of issue of each Unit that the Unit may be subject to a Reorganisation Proposal as provided in this clause 12.1. Each Unitholder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

12.2 Partly Paid Units

If any Unit is a Partly Paid Unit at the time of a Reorganisation Proposal, then the Unpaid Amount and any instalment payable will be amended in the same ratio.

12.3 Power to give effect to Reorganisation Proposals

If the Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 12.1, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

12.4 Specific Powers

Without limiting clause 12.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1, the Trustee has power to:

- (a) make distributions and other payments out of the Assets and (subject to the Act) to redeem Units, and to apply the payment or redemption proceeds on behalf of Unitholders;
- (b) apply for or purchase fully paid securities on behalf of the Unitholder and to consent on behalf of Unitholders to become a unitholder of a company or other body;
- (c) issue Units;
- (d) transfer Assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

12.5 Appointment of Trustee as agent and attorney

Without limiting clause 12.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1 the Trustee is irrevocably appointed the agent and attorney of each Unitholder to:

- (a) apply any proceeds referred to in clause 12.4(a) on behalf of the Unitholder;
- (b) execute any withdrawal request on behalf of the Unitholder, or any application for, or transfer of, any securities in favour of the Unitholder
- (c) execute a transfer of Assets to a Unitholder; and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the relevant transaction or proposal.

The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from Unitholders.

12.6 Liability of Trustee

The Trustee has no liability of any nature whatsoever beyond the Assets to Unitholders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document or acting as the agent of any Unitholder) pursuant to or in connection with the implementation of any Reorganisation Proposal.

13. Financial reports and tax returns

13.1 Accounts, audit and other reports

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 13.1(a), the Trustee:
 - (i) must keep, or cause to be kept, proper books of account in relation to each Class; and
 - (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

13.2 Tax returns

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completing the relevant part of the Unitholder's tax return for the Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than four months after the last day of the Financial Year.

13.3 Electronic annual financial report to Unitholders

While the Trust is a Registered Scheme, each Unitholder agrees and nominates pursuant to the Act to receive notification and access by electronic means of and to financial reports prepared for the Trust in accordance with the Act.

14. Fees and expenses

14.1 Trustee Fee

- (a) The Trustee is entitled to a trustee fee of up to 1.00 percent per annum of the gross value of the Assets, subject to a minimum fee of \$5,500 per month.

- (b) The minimum fee in clause 14.1 is subject to an annual increase on 1 July each year from the commencement of the Trust by the greater of:
 - (i) the relevant fee after being Indexed; or
 - (ii) the relevant fee multiplied by 3 percent.
- (c) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.

14.2 Fee on retirement or removal

If Msquared Capital Pty Ltd retires or is removed as the trustee of the Trust, then the following applies:

- (a) In consideration for work done in establishing the Trust and facilitating the orderly replacement of Msquared Capital Pty Ltd as trustee of the Trust, Msquared Capital Pty Ltd is entitled to a retirement or removal fee.
- (b) The retirement or removal fee is only payable in the following circumstances:
 - (i) if Msquared Capital Pty Ltd is removed as the trustee of the Trust before the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document and provided that Msquared Capital Pty Ltd is not removed because of its gross negligence in the management of the Trust or for a material fiduciary breach. In this clause 14.2(b) a "material fiduciary breach" is a breach by Msquared Capital Pty Ltd of a fiduciary duty to Unitholders which causes them substantial loss; or
 - (ii) if Msquared Capital Pty Ltd retires as the trustee of Trust before the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document, following a request by the Investment Manager under the terms of the Investment Management Agreement.
- (c) The amount of the retirement or removal fee referred to in clause 14.2(a) is the total amount of the trustee fee payable under clause 14.1 that Msquared Capital Pty Ltd would have received if it had been the trustee of the Trust until the fourth anniversary of the date the first Unit in the Trust is issued pursuant to the Trust's first Disclosure Document, with such amount being determined on the basis that any future trustee fee and (if applicable) custody fee payable to Msquared Capital Pty Ltd at the time of calculation of the retirement or removal fee are determined on the basis of the gross value of the Assets as at the time of calculation of the retirement or removal fee.
- (d) The fee in clause 14.2(a) becomes due and payable on the day (as applicable):

- (i) a meeting of Unitholders is called, requisitioned or convened to:
 - A. propose removing Msquared Capital Pty Ltd as trustee of the Trust (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document); or
 - B. propose modifying, repealing or replacing this Constitution by modifying, repealing or replacing this clause 14.2 or any part of this clause 14.2 (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document); or
- (ii) the Investment Manager requests that Msquared Capital Pty Ltd retires as trustee of the Trust under the terms of the Investment Management Agreement.
- (e) Any trustee of the Trust that succeeds Msquared Capital Pty Ltd is not entitled to any benefit under this clause at any time.

14.3 *Waiver and deferral of fees and expenses*

The Trustee may at any time and for any period:

- (a) accept lower fees and expenses than it is entitled to receive under this Constitution;
- (b) defer payment of any fees and expenses it is entitled to receive under this Constitution; or
- (c) waive entirely its entitlement to receive any fees and expenses under this Constitution.

14.4 *Differential fees*

Subject to the Corporations Act and any ASIC Relief, the Trustee may make separate arrangements from time to time in relation to any Class or with any Unitholder or the Investment Manager concerning the payment by a Unitholder of fees to the Trustee or the amount or level of management fees or other expenses applicable to a Unitholder's Units or Referrable to the Class, whether on a uniform or differential basis.

14.5 *Fees can be applied to acquire Units*

Subject to the Act, where an amount of money is payable from the Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own capacity, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with the provisions of clause 3.

14.6 Other fees or different fees

While the Trust is not a Registered Scheme:

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document; and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 14, provided they are disclosed in a Disclosure Document.

14.7 Expenses

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, in relation to the proper performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.
- (b) Without limiting clause 14.7(a), this includes Expenses connected with the following:
 - (i) the identification, acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities
 - (ii) calculating the Application Price, Withdrawal Price, Distributable Amount, Dividend Amount and Distributable Proportion plus undertaking any financial modelling or fee or other calculations in relation to the Trust;
 - (iii) the proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities;
 - (iv) raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses;
 - (v) the appointment of any professional adviser, auditor, consultant, contractor, agent, broker, underwriter, valuer or delegate by the Trustee, including a custodian, administrator, registry services provider or investment manager;
 - (vi) amounts payable to the Investment Manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, registry service providers, underwriters, auditor, valuers or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related

- body corporate or an Associate of the Trustee or Investment Manager;
- (vii) the administration or management of the Trust or its Assets and Liabilities;
 - (viii) bank charges on the operation of bank accounts;
 - (ix) borrowing money, raising finance or granting security over the Assets;
 - (x) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity;
 - (xi) fees and charges of any regulatory or statutory authority, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting;
 - (xii) convening and holding meetings of Unitholders, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting;
 - (xiii) printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters;
 - (xiv) preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust;
 - (xv) keeping and maintaining of the accounting records and registers of the Trust;
 - (xvi) retirement and the appointment of a substitute trustee or any custodian;
 - (xvii) the initiation, conduct, defence and settlement of any court proceedings (including through alternative dispute resolution) or complaints resolution (including through the Australian Financial Complaints Authority):
 - A. to enforce any provisions of this Constitution, the Investment Management Agreement or any other agreement or document; or
 - B. in relation to the Trust or any of its Assets or Liabilities;
 - (xviii) preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required);

- (xix) acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust;
- (xx) reasonable travelling and accommodation expenses of the Trustee;
- (xxi) preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans;
- (xxii) conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy;
- (xxiii) the establishment, management and maintenance of any:
 - A. listing on any exchange or secondary market of the Trust or any Units; and
 - B. any rating of the Trust, a Class or any Units;
- (xxiv) the performance of the functions and duties of the Trustee under the Constitution;
- (xxv) costs, charges and expenses related to:
 - A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members;
 - B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act; and
 - C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust;
- (xxvi) establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust;
- (xxvii) complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities;

- (xxviii) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act);
- (xxix) foreign exchange transactions;
- (xxx) foreign exchange hedging transactions;
- (xxxi) amounts payable to the investment manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, underwriters or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or investment manager;
- (xxxii) entering the Trust in a survey;
- (xxxiii) fees payable to a ratings organisation; and
- (xxxiv) dealing with applications and redemptions of Units or other interests, in determining the Application Price and Withdrawal Price;
- (c) no person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee; and
- (d) the Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

14.8 Performance of duties

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 14.8(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 14.8 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

14.9 Goods and Services Tax

If any supply made by the Trustee under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act, then the following will apply:

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This

additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.

- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made:
 - (i) on a progressive or periodic basis;
 - (ii) such that the consideration is to be provided on a progressive or periodic basis; and
 - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

14.10 Fees or amounts payable by Trust or Sub Entities

Notwithstanding any other provision of this Constitution, fees payable under this Constitution, and costs, charges and expenses payable or to be reimbursed under this Constitution, may be charged to or reimbursed from the Trust or to or from any Sub Entity, as determined by the Trustee. In addition, services to be provided may be provided by an Associate of the Trustee who may charge the fees set out directly to the Trust or to any Sub Entity as determined by the Trustee.

15. Distributions from the Trust

15.1 Provisions which apply when Trust is not an AMIT

Clauses 15.2 to 15.12 (inclusive) apply for each Distribution Period where the Trust or a Class of Units is not an AMIT.

15.2 Trustee will collect in all money

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and all other money, rights and property which are paid, due or receivable in all respect of the Trust.
- (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities to Classes in accordance with clause 3.16.

15.3 Determination of Income and Reserves

- (a) The Trustee must determine before the end of the relevant Financial Year the classification of an item as being Income or capital and the extent to which the income of the Trust is to be adjusted by allocating such amount as it considers proper in accordance with the Accounting Standards to a provision or any reserve account for the purpose of meeting anticipated expenses or obligations of the Trust.
- (b) If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee. However, the exercise of such power is an administrative power only and is not an unfettered discretion. The Trustee must in exercising this power act honestly and according to law.
- (c) The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period.

15.4 Distributable Amount

On or before 11.59pm on the last day of the Distribution Period, the Trustee must determine the Distributable Amount for that Distribution Period.

15.5 Distributions

The following apply, except in any income year in which the Trust is taxed as a Corporate Tax Entity (refer to clause 15.12):

- (a) Before and after termination of the Trust, the Trustee at any time may elect that, for a Distribution Period, an amount (capital or income) be distributed from the Trust to Unitholders. A distribution made by the Trustee to a Unitholder will be taken to be a distribution of Distributable Amount of a Distribution Period to the extent the Trustee determines the distribution constitutes a distribution of Distributable Amount of that Distribution Period.
- (b) Except as otherwise provided by this Constitution, the distribution (whether of Distributable Amount or otherwise) Referable to a Class for each Distribution Period must be distributed to Unitholders in that Class pro rata to the number of Units they hold in that Class at the end of the Distribution Period (refer at clause 15.28).

15.6 Distributable Amount entitlement calculation

- (a) A Unitholder's (or person who was a Unitholder during the Distribution Period) Distributable Proportion for each Class it holds for a Distribution Period is calculated as the aggregate result of the following calculation for each Unit the Unitholder holds or held in that Class during the Distribution

Period (subject to any payments or adjustments required as a result of clause 15.31):

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

Where:

- A = The number of days during the Distribution Period that the Unitholder was recorded on the Register as the holder of that Unit (including the date of acquisition but excluding the date of disposal).
- B = The Distributable Amount allocated to that Class (as determined by the Trustee pursuant to clauses 15.4 and 15.28) for the Distribution Period.
- C = Is determined by calculating the total number of Units in Issue in that Class on each day of the Distribution Period and adding these amounts together.
- (b) The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to all persons who were recorded on the Register as the holder of the Units to which the Distributable Proportion relates, at any time during the Distribution Period to which the distribution relates.

15.7 Unitholders presently entitled to Distributable Amount

- (a) Except in any income year in which the Trust is taxed as a Corporate Tax Entity, on the last day of the Distribution Period, any person who is a Unitholder and any person who was a Unitholder at any time during the Distribution Period to which the distribution relates:
- (i) is presently entitled to its Distributable Proportion for the Financial Year in which the end of the Distribution Period falls; and
 - (ii) has a vested and indefeasible interest in its Distributable Proportion for that Financial Year.
- (b) To the extent that Distributable Amount for that Financial Year has not been distributed on or before the end of the Financial Year an amount equal to the shortfall must be distributed by the Trustee to each entitled Unitholder as soon as reasonably practicable after the end of the Financial Year.

15.8 Special distribution amounts

- (a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Amount (in this clause **Special Distribution Amount**).
- (b) Where the Trustee determines under clause 15.8(a) that there is a Special Distribution Amount at a particular time, then this Constitution is to be

applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Amount for a Distribution Period.

15.9 *Changes in the law*

If the law changes in respect of Taxes so that the Trust or the Trustee becomes subject to Taxes on Income and gains derived by the Trust even where all available Income is distributed to Unitholders, or regardless of the present entitlement of the Unitholders, then the Trustee:

- (a) does not have to make distributions in accordance with this clause 15; and
- (b) at its discretion, may choose when to make distributions of profits, Income, capital or any taxation or imputation credits that have become available in relation to the Trust.

15.10 *Income categories*

The Trustee may keep accounts of different categories and sources of Income and allocate the Income from any category or source to any Unitholder.

15.11 *Time for distribution of Distributable Amount*

The Distributable Amount for a Distribution Period must be paid by the Trustee to those entitled to receive them within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to all of the Distributable Amount payable to them from the Trust is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

15.12 *Trust taxed like a company*

Where in any income year the Trust is taxed as a Corporate Tax Entity, the following apply:

- (a) Each Holder registered at midnight on the last day of each Distribution Period does not have a vested and indefeasible interest in a share of the Distributable Amount for that Distribution Period;
- (b) The Trustee may, at its discretion, choose to make distributions of after tax profits, Income or capital provided that all Distributable Amount is distributed at the final termination of the Trust.
- (c) If the Trustee considers the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 15.12(c) applies in respect of that Financial Year and as soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine:
 - (i) if there is to be any Dividend Amount for each Class for the Distribution Period; and
 - (ii) if so, then the amount of the Dividend Amount for each Class and the amount of any franking credits (if any) to be attached to the Dividend Amount for each Class.

- (d) The Trustee may determine the extent to which the Dividend Amount for a Class (if any) comprises profits, retained profits, capital, returned capital or Income of a particular character.
- (e) In respect of a Distribution Period the Trustee may, in its discretion from time-to-time, determine to pay Unitholders holding Units in a Class on any date determined by the Trustee a Dividend Entitlement for each Class held, calculated as follows:

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

Where:

A = The aggregate of the Paid-up Amount of each relevant Unit holding of the Unitholder in the Class as at the end of the Distribution Period.

B = The Total Paid-up Amount for that Class held by all Unitholders at the end of the Distribution Period.

C = The Dividend Amount (if any) for the Distribution Period Referable to that Class.

- (f) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.

15.13 Provisions which apply if Trust is an AMIT

- (a) This clause 15.13 and clauses 15.15 to 15.26 (inclusive) apply only if the Trust is an AMIT in any Financial Year.
- (b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT for the purposes of the AMIT laws and clauses 15.13 to 15.26 (inclusive) must be applied as relevant and accordingly.

15.14 AMIT Election

- (a) The Trustee may elect that the AMIT laws apply to the Trust in respect of a Distribution Period.
- (b) An election made pursuant to clause 15.14(a):
 - (i) is not revocable in a subsequent Distribution Period once made; and
 - (ii) must be notified to Unitholders in a timely manner.

15.15 Fixed Trust

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the Trust is a fixed trust for the relevant Distribution Period.

15.16 Indefeasibility

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the nature of the interest that Unitholders have in the Income and capital of the Trust through the Distribution Period is indefeasible.

15.17 Calculation

For the purposes of AMIT, the Trustee must, consistent with the Tax Act, work out the total net amount of all the characters of the Trust for income tax purposes at the Trust level (Attribution Amount). The net amounts so determined are called the Trust Components (refer to clause 15.20).

15.18 Crystallisation

When the Trustee prepares a document that meets certain requirements of the AMIT laws, it crystallises these calculations into the determined trust components (refer to clause 15.20).

15.19 Tax loss

In circumstances where deductions exceed total assessable income, the Trust makes a tax loss and the trust component of each assessable income character for the Distribution Period is nil.

15.20 AMIT fair and reasonable

The amounts of a character attributed to one Unitholder must be fair and reasonable. However, the Trustee may allocate a capital gain to a redeeming Unitholder in accordance with the Tax Act.

15.21 Trust Components

- (a) For each Financial Year, the Trustee must determine the Trust Component of each Amount of a Particular Character in accordance with the AMIT laws and clause 15.21(b)(i).
- (b) Where the Trust has more than one class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT, then:
 - (i) the Trustee must determine the Trust Component of each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 15.13(b); and
 - (ii) a reference to Trust in clause 15.21(b)(i) is a reference to each such separate AMIT.
- (c) For each Financial Year, the Trustee must determine the Trust's Trust Component of each Amount of a Particular Character as follows:
 - (i) determine the total Amounts of Particular Characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Offsets for the Trust; and

- (ii) apply any Unders, Overs and Trust Component Deficits of the Trust to the amounts in clause 15.21(b)(i) in accordance with AMIT laws.
- (d) The Trustee must record the Trust's Trust Components determined under 15.21(b) in a document that meets the requirements of the AMIT laws.

15.22 AMIT determined Member Components

- (a) For each Financial Year, the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character in accordance with the AMIT laws and the following apply:
 - (i) the Trustee must, for income tax purposes, attribute amounts relating to the Trust of a particular character to the Unitholders in the Trust for each Distribution Period;
 - (ii) when the Trustee prepares an AMMA Statement, it crystallises these calculations into the determined Member Components; and
 - (iii) if a Unitholder challenges the Trustee's determinations as the AMIT laws contemplate, then the Trustee must manage that in a way consistent with the AMIT laws. Such Unitholder shall indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.
- (b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each class will be treated as a separate AMIT, then the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 15.13(b), and a reference to Trust in clause 15.22(d) is a reference to each such separate AMIT.
- (c) Where the Trust has more than one Class of Unit and clause 15.21(b) does not apply, then the Trustee must determine the Distributable Amount properly referable to each Class separately and a reference to Trust in clause 15.21(b) is a reference to each such separate Class.
- (d) Unless the Trustee determines otherwise (and any such other determination must be in accordance with the AMIT laws), each Unitholder's Member Component for an Amount of a Particular Character for each Financial Year for the Trust is to be determined in accordance with the following method:

Step 1: For each Distribution Period during the Financial Year, calculate each Unitholder's Member Component for an Amount of a Particular Character for the Trust for that Distribution Period in accordance with the following formula:

$$MC = TC \times \frac{MD}{DA}$$

where:

MC = the Member Component for an Amount of a Particular Character for the Trust for the Distribution Period.

TC = the Trust Component for that Amount of a Particular Character for the Trust calculated for that Distribution Period as if it was a Financial Year.

MD = the entitlement of the Unitholder (including a withdrawing Unitholder) to the Distributable Amount of the Trust for that Distribution Period.

DA = the Distributable Amount of the Trust for that Distribution Period.

Step 2: For each Unitholder, add up the MCs calculated under Step 1 for an Amount of a Particular Character for of the Trust all of the Distribution Periods during the Financial Year (**Total MCs**).

Step 3: If the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust determined under Step 2 exceeds the Trust Component for the relevant Amount of a Particular Character for the Trust for the Financial Year, each Unitholder's Total MC for an Amount of a Particular Character determined under Step 2 is proportionately reduced such that the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust is equal to the Trust Component for the relevant Amount of a Particular Character for the Trust for that Financial Year (**Adjusted Total MC**).

A Unitholder's Adjusted Total MC for an Amount of a Particular Character for the Financial Year is the Unitholder's Member Component for an Amount of a Particular Character for the Financial Year.

15.23 AMIT Unders and Overs

- (a) If the Trustee in a particular Distribution Period (a **Discovery Year**) becomes aware of an Under or an Over in respect of a determined trust amount for the purposes of the AMIT laws, then it may, in accordance with the AMIT laws:
 - (i) issue amended AMMA Statements for the year of income for the Trust to which the Under or Over relates; or
 - (ii) treat the amount as an Under or Over of a particular character for the Trust and adjust the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount.
- (b) The choice made by the Trustee in clause 15.22(a) may result in greater Amounts of a Particular Character relating to the assessable income or lesser Amounts of a Particular Character relating to tax offsets being attributed to a Unitholder or to a unitholder in an earlier income year than if the Trustee did not make a choice under clause 15.22(a)(i) or 15.22(a)(ii) or made a different choice. For the avoidance of doubt, in accordance with AMIT laws, account to the ATO from the Assets for any necessary payments arising from adjustments made under this clause 15.22.

15.24 Separate AMITs for each Class

- (a) Subject to the AMIT laws, the Trustee may determine that each Class of Units is to be treated as a separate AMIT.
- (b) If the Trustee determines that each Class of Units is to be treated as a separate AMIT, then it must do the following:
 - (i) as part of the process of identifying the initial tax position of each Class, allocate tax items being carried forward at the whole of trust level (such as tax losses and net capital losses) across the Classes (and this must be done in a fair and reasonable manner);
 - (ii) calculate the taxable income for each Distribution Period separately for each Class;
 - (iii) on an ongoing basis, work out determined Trust Components for each Class as if it was a separate AMIT and allocate them amongst any Classes on a fair and reasonable basis;
 - (iv) to the extent that assets or expenditure relate solely to a particular Class, identify the assessable income and deductions by reference to the assets supporting that Class (including recognising for tax purposes the transactions and events supporting those assets (including intra entity dealings within the actual managed investment trust involving deemed separate AMITs) as though the Class was in fact a separate entity); and
 - (v) apply the Unders and Overs provisions of the AMIT laws to each Class.

15.25 Ceasing to be an AMIT

- (a) If the following apply, then the Trustee must act in accordance with clause 15.25(b):
 - (i) the Trust was an AMIT for a Distribution Period;
 - (ii) the Trust was not an AMIT for a later Distribution Period (the Discovery Year); and
 - (iii) the Trust has an Under or Over of a character in the Discovery Year for an earlier Distribution Period when the Trust was an AMIT.
- (b) If the criteria in clause 15.24(a) apply, then the Trustee must, in accordance with the AMIT laws:
 - (i) work out the extent to which the Under or Over increases or decreases the amount of the AMIT's Trust Component of that character for the Discovery Year;
 - (ii) make the appropriate adjustments for the Discovery Year; and

- (iii) account to the ATO from the Assets for any necessary payments (excluding any penalties payable).

15.26 Compliance with obligations applying in respects of AMITs under the Tax Act

The Trustee must comply, and must ensure the AMIT complies, with any obligations imposed under the Tax Act in respect of AMITs.

15.27 Notification of AMIT status

The Trustee must notify each of the Unitholders if the Trust commences or ceases to be an AMIT as soon as reasonably practicable after the Trustee becomes aware of such commencement or cessation.

15.28 Classes

- (a) In the absence of the Trustee making a determination under clause 15.28(b), the Distributable Amount will be allocated between each Class based on the proportion of Units in that Class to total Units on issue.
- (b) Where the Trustee determines, the quantum of the Distributable Amount allocated to a Class is to be based on the Assets Referable to the Class and any other provisions and requirements of this clause 15.
- (c) If there is more than one Class:
 - (i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly Referable to a Class (Class Capital or Income);
 - (ii) subject to the Trustee's obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders; and
 - (iii) the provisions of this clause 15.28 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (d) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.
- (e) In making any determination under this clause 15.28, the Trustee shall be taken to exercising an administrative power only and does not have an unfettered discretion. The Trustee must act honestly and in accordance with the law.

15.29 Other distributions

Subject to the rights and obligations attaching to any Class, the Trustee may at any time distribute any amount of capital or Income attributable to Unitholder or a class of Unitholders:

- (a) pro rata according to the number of Units in a particular Class or a series held as at a time decided by the Trustee (for example, to avoid the Trustee (as trustee) becoming assessable to pay Taxes); or
- (b) on such other basis as the Trustee decides (for example, the Trustee may distribute realised gains to Unitholders who are withdrawing in priority to Unitholders who are not).

15.30 Preparation of accounts

Notwithstanding that the Distributable Amount of the Trust may be calculated in accordance with clause 15.4 and clause 15.6, the accounts of the Trust may be prepared in accordance with all relevant Accounting Standards. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount pursuant to clause 15.4 and clause 15.6. Without limiting clauses 15.12, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

15.31 Rights in respect of Partly Paid Units

- (a) The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Trustee and provided in the Terms of Issue of the relevant Units. The Trustee may determine any one of the following applies:
 - (i) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the Distributable Amount for that Distribution Period, subject to the Terms of Issue of the Unit according to:
 - A. the proportion or different proportions of the Application Price paid upon the Unit; and
 - B. the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Assets, then that Unit may be eligible for increased participation in the Distributable Amount at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.

- (ii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as if it were fully paid.
 - (iii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as the terms of its issue provide.
- (b) However, if the Trustee does not make such a determination, then clause 15.31(a)(i) will apply.

15.32 Initial distribution entitlements

For the removal of doubt and despite anything in this clause 15, the Trustee may in its discretion issue Units on terms that such Units:

- (a) participate fully for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued;
- (b) do not entitle the Unitholder to participate in the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued;
- (c) participate for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued on a pro rata basis in accordance with the number of days the Units were held; or
- (d) receive a fixed distribution rate entitlement, out of the Distributable Amount, either for the full Distribution Period in which they are issued or on a pro rata basis in accordance with the number of days the Units were held.

16. Distribution reinvestment

16.1 Reinvestment

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units in the same Class as the Units to which the Distributable Amount relates and the amount of the Distributable Amount payable to them must be applied on behalf of the Unitholder to acquire those additional Units at the Application Price determined in accordance with clause 3.8.

16.2 Compulsory reinvestment

The Trustee may require Unitholders, or Unitholders of a particular Class or Classes, to reinvest some or all of the Distributable Amount payable to them and, if so, those Unitholders are deemed, for the purposes of any relevant ASIC Relief, to have elected to reinvest some or all of the Distributable Amount payable to them.

16.3 Notice to Unitholders

If the Trustee permits or requires reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. Subject to clause 16.1, the Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

17. Deductions from Distributions

17.1 Deduction of Taxes

- (a) The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted:
 - (i) any amount of Tax (or an estimate of it) including in respect of any amount attributed to a Unitholder under the AMIT laws; and
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) The Trustee may recover from a Unitholder as a debt an amount that the Trustee has paid as Tax (including a withholding tax) on behalf of, attributable to or in respect of a Unitholder (including in respect of a distribution or an amount attributed to a Unitholder under the Tax Act).
- (c) The Trustee may set off all amounts that the Trustee may recover from a Unitholder pursuant to this clause 17 against any debts due by the Trustee to that Unitholder including any distribution payable to the Unitholder or amounts payable to the Unitholder on redemption.

17.2 Payment of Taxes

- (a) The Trustee may pay on behalf of a person (including amounts paid or attributed in respect of a person that result from the operation of the AMIT laws) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid:
 - (i) any amount of Tax (or an estimate of it), including in respect of any amount attributed to a Unitholder under the AMIT laws; or
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.

Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 17.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

17.3 Indemnity

The Trustee is indemnified from the Assets in respect of any Tax paid by the Trustee from its own funds in order to pay Tax incurred on behalf of any Unitholders or in relation to any Unitholders. This indemnity applies even though the Tax may not have been paid in respect of each Unitholder, but only one or more Unitholders.

18. Transfer of Unitholder's Units

18.1 *Right to transfer Units*

A Unitholder may transfer its Units only in accordance with this clause 18.

18.2 *Form of transfer*

Any transfer must be:

- (a) made by way of a form approved by the Trustee;
- (b) delivered to the Trustee or as it directs; and
- (c) executed by the transferor and transferee.

18.3 *Trustee's discretion to enter transfer*

The Trustee may refuse to enter a transfer in the Register.

18.4 *No power to refuse to register transfers in certain circumstances*

Despite anything to the contrary in this Constitution, the Trustee must not refuse to enter a transfer of Units in the Register where such transfer is:

- (a) in favour of a bank, financial institution or other lender or any nominee thereof and the transfer is as contemplated by, or pursuant to, any pledge, mortgage or charge of, or other security interest over, any Units granted in favour of the relevant bank, financial institution or lender; or
- (b) by or on behalf of a bank, financial institution or other lender or any nominee thereof (whether by a receiver, any delegate or sub-delegate of the party to whom security has been granted or otherwise) in favour of any third party upon disposal or realisation of the Units following the bank, financial institution, lender or any nominee thereof having become entitled to exercise or enforce its rights over the relevant Units under any such pledge, mortgage, charge or other security interest.

18.5 *Transfer effective when registered*

The transferor Unitholder remains the owner of the Unitholder's Units until the name of the transferee is entered in the Register.

18.6 *Suspension prior to end of year*

The Trustee may decline to register any transfer of a Unitholder's Units during the 14 days immediately preceding 1 July in any Financial Year.

18.7 *Listing on a secondary market or exchange*

The Trustee may list the Units on a secondary market or an exchange designed to facilitate the trading of Units. If the Trustee does this, then any costs associated with the listing may be paid out of the Assets.

19. Transmission of Unitholder's Units

19.1 *Death or legal disability—sole Unitholder*

Upon the death, bankruptcy, mental incapacity or other legal disability of a sole Unitholder, the Legal Personal Representative will be the only person recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

19.2 *Death or legal disability—joint Unitholder*

Upon the death, bankruptcy, mental incapacity or other legal disability of any one of the joint holders of Units, the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

20. Winding up of the Trust

20.1 *Events which cause a winding up*

The Trustee must wind up the Trust or cause the Trust to be wound up in any one of the following circumstances:

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) If the Trust is a Registered Scheme, then where:
 - (i) a court orders the Trust be wound up pursuant to section 601ND of the Act;
 - (ii) the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in section 601NC of the Act; or
 - (iii) any of the circumstances set out in section 601NE of the Act apply such that the Trustee is required to wind up the Trust.

20.2 *Termination of a Class*

- (a) The Trustee may terminate and wind up a Class if the Trustee issues a notice to Unitholders in the Class notifying Unitholders in that Class of the date of termination.
- (b) The provisions of clauses 20.3 to 20.5 apply to the winding up of a Class with such modification as necessary, as determined by the Trustee, to reflect their application to a Class rather than the Trust.

20.3 *Process of winding up*

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must identify the Assets immediately prior to commencing winding up and all Liabilities (whether actual, contingent or prospective)

immediately prior to commencing winding up, of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust.

- (c) Subject to clause 20.3(f), the Trustee must convert the Assets to money, deduct all proper costs and Liabilities of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust and then divide the balance amongst the Unitholders in each Class in proportion to the number of Units held by them at the date of the distribution in accordance with the following formula:

$$\frac{(A + B) \times C}{D} - E$$

Where:

A = the amount remaining in the Trust after deduction of the costs referred to in this clause 20.3(c);

B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any);

C = the aggregate of the number of Units held by the Unitholder as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units;

D = the aggregate of the total number of Units in issue as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units; and

E = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder (if any) as at the commencement of winding up.

- (d) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in clause 20.3(c) results in a negative dollar amount, then that Unitholder must pay to the Trustee within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.
- (e) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain Classes in preference to the holders of other Classes, as required by the Terms of Issue of each Class. If any such Terms of Issue do not provide any preference, then any interim distributions will be paid to all Unitholders in proportion to the number of Units held.
- (f) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.

- (g) Despite clause 20.3(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust. The Trustee must ensure the Assets are valued in accordance with clause 10.3 before distributing any Assets in specie in accordance with this clause 20.3(g).
- (h) The cost of winding up the Trust will be paid out of the Assets.

20.4 *Trustee may withhold proceeds of realisation*

The Trustee may retain money from the proceeds of realisation of the Assets:

- (a) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Unitholders pursuant to this Constitution; and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

20.5 *Auditor's certificate*

Where the Trust is a Registered Scheme, once the Trustee believes the winding up is complete, the Trustee must engage an Auditor to conduct an independent audit of the final accounts of the Trust. The Trustee must send a copy of any report made by the Auditor to the Unitholders within 30 days after the Trustee receives the report from the Auditor.

20.6 *Cancellation of Units*

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

20.7 *Provisions continue to apply*

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until:
 - (i) the date of final distribution under clause 20.3; or
 - (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 20.7(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

21. *Unvested interests*

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of

the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.

- (b) Nothing in this clause 21 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

22. Indemnity and liability

22.1 Liability of the Trustee

Except to the extent the Act imposes liability:

- (a) the Trustee is not liable for any loss suffered by Unitholders in respect of the Trust, whether in contract, tort or otherwise; and
- (b) the Trustee is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

22.2 Indemnity from the Trust

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of:
 - (i) any liability incurred by the Trustee in the performance of its duties in respect of the Trust;
 - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution; and
 - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) For the avoidance of doubt, and without limiting clause 22.2(a), the Trustee is indemnified out of the Assets for any liability that:
 - (i) is incurred by the Trustee in relation to the proper performance of its duties; and
 - (ii) either:
 - A. is an Attribution Income Tax Liability of the Trustee; or
 - B. results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.

- (c) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or with wilful default.

22.3 *Payment of taxes*

- (a) Subject to the Act, the Trustee is not liable to account to any Unitholder for any payments made by the Trustee (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory, or any foreign government or authority, for Tax or other charges.
- (b) The Trustee is not obliged (or liable) to account to, or pay to, or allocate to, any Unitholder any amount in relation to any Tax-related benefit or credit attributable to (or alleged to be attributable to) the Unitholder, or earned or accrued or made available because of the Unitholder.

22.4 *Reliance on others*

The Trustee may take and may act upon the following, and if the Trustee does so, then it will not be liable for anything done, suffered or admitted by and in good faith and reliance upon anything listed below:

- (a) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) any document which the Trustee believes in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust; or
- (d) any document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely.

22.5 *Trustee not liable for good faith error*

If for any reason beyond the control of the Trustee it becomes impossible or impractical to carry out the provisions of this Constitution, then subject to the Act, the Trustee is not under any liability for anything done by it in good faith.

22.6 *Limitation of liability of Unitholders*

The liability of Unitholders is limited to their Units and the Assets. Neither the Trustee, nor any creditor or agent of the Trustee, has any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

22.7 Indemnity unaffected by unrelated breach of trust

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Trustee (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

23. Meetings of Unitholders**23.1 Trustee calling or postponing a Unitholders' meeting**

The Trustee may call a meeting of the Unitholders (including a meeting only of Unitholders holding a Class) at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders, at any time prior to the commencement of the meeting.

23.2 Unitholders calling a Unitholders' meeting

- (a) While the Trust is not a Registered Scheme:
 - (i) the Trustee must call and arrange to hold a meeting of Unitholders to consider and vote on a proposed resolution on the request of at least 35 percent of Unitholders (by number); and
 - (ii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 23.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.

23.3 Notice

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Unitholders, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notices of meetings are governed by the Act.

23.4 Trustee may determine

Subject to this clause 23 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

23.5 Quorum

- (a) The quorum for a meeting is 30 percent of Unitholders (by number) present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum. If one or more

Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.

- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person.
- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then:
 - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved; or
 - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things, then the meeting is adjourned to:
 - A. if the date is not specified—the same day in the next week;
 - B. if the time is not specified—the same time; and
 - C. if the place is not specified—the same place.
- (d) If the meeting is adjourned pursuant to clause 23.5(c)(ii), then the Unitholders present in person or by proxy constitute a quorum.

23.6 Chairing meetings of Unitholders

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

23.7 Proxies

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.

23.8 Adjournment

The chairperson has power to adjourn a meeting for any reason to such place and time as the chairperson thinks fit.

23.9 Demand for a poll

A poll may be demanded by the chairperson, or by Unitholders present in person or by proxy holding five percent of Units.

23.10 Voting

- (a) On a show of hands at a meeting of Unitholders of a Class, each Unitholder has one vote.
- (b) On a poll at a meeting of Unitholders of a Class, each Unitholder has one vote for each dollar of their Paid-Up Amount of that Class.
- (c) The Trustee may determine that at any meeting of Unitholders, a Unitholder who is entitled to attend that meeting is entitled to a direct vote. A “direct vote” includes a vote delivered to the Trustee by post or email or by any other means approved by the Trustee. The Trustee may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

23.11 Resolutions binding

A resolution binds all Unitholders, whether or not they were present at the meeting.

23.12 Objection at meeting

No objection may be made to any vote cast unless the objection is made at the meeting.

23.13 Non-receipt

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

23.14 Optionholders and Classes

The provisions of this clause 23 relating to meetings of Unitholders also apply to meetings of Optionholders or of holders of a Class with any necessary modifications.

23.15 Voting when not a Registered Scheme

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by the following means:

- (a) the Trustee sending a document to all Unitholders stating the decision to be made or the resolution to be passed; and
- (b) the required number of Unitholders signing the document provided by the Trustee recording the making of the decision or passing of the resolution.

23.16 Other decisions

Subject to the Act (but without affecting clause 23.15), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

23.17 Use of technology

A meeting of Unitholders convened in accordance with this clause 23 may be held using virtual meeting technology, or at two or more venues contemporaneously using any virtual meeting technology that gives Unitholders as a whole a reasonable opportunity to participate.

24. Retirement or removal of Trustee

24.1 Situation if Trust is a Registered Scheme

If the Trust is a Registered Scheme, then clauses 24.2 and 24.3 do not apply and instead the provisions of the Act regulating the retirement or removal of the Trustee will apply.

24.2 Retirement of the Trustee

If the Trustee wishes to retire as trustee of the Trust, then it may do so and appoint a replacement trustee.

24.3 Removal of the Trustee by Unitholders

If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 23.2 to consider and vote on:

- (a) an Extraordinary Resolution that the current Trustee should be removed; and
- (b) an Extraordinary Resolution choosing a replacement trustee.

25. Complaints handling

25.1 Complaints handling while the Trust is a Registered Scheme

This clause 25 applies only while the Trust is a Registered Scheme.

25.2 Complaints handling officer

- (a) The Trustee must appoint a person to fulfil the role of complaints handling officer.
- (b) If there is a vacancy in the role of complaints handling officer at any time then the secretary of the Trustee is deemed to be the complaints handling officer until a further appointment is made.

- (c) The complaints handling officer does not need to be a director or secretary of the Trustee.

25.3 A Unitholder may make a complaint

- (a) Any Unitholder may make a complaint about any aspect of the Trust, or the complaints handling process itself, by contacting the Trustee. For the purposes of this clause 25, a complaint is any expression of dissatisfaction made to the Trustee, related to the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) The complaint must specify:
 - (i) the name and contact details of the Complainant making the complaint; and
 - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 25.
- (c) If the complaint does not meet the requirement in clause 25.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder:
 - (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint; or
 - (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (e.g. because of a physical disability).

25.4 Acknowledgment of a complaint

- (a) If any Unitholder makes a complaint, then the Trustee must acknowledge the complaint immediately, or if this is not possible, then as soon as practicable, after receiving the complaint.
- (b) If possible, the Trustee will attempt to respond fully to or resolve the complaint as part of the first response.
- (c) The following information must be provided when acknowledging a complaint:
 - (i) the procedure used by the Trustee upon receiving a complaint;
 - (ii) the name, title and contact details of the present complaints handling officer; and
 - (iii) if the complaint is not fully dealt with, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the complaint.

25.5 Consideration of complaints

- (a) The Trustee must treat all complaints seriously and deal with them in a timely manner, having regard to the nature and urgency of the complaint.
- (b) If the complaint is not able to be resolved as part of the first response, then the Trustee (through the complaints handling officer or their appointee) must keep the Complainant informed of the progress of their complaint.

25.6 Resolving a complaint

- (a) The Trustee must act reasonably in attempting to resolve a complaint; however, nothing in this clause 25 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) The Trustee must provide a "final response" to a complaint within 45 days from the date of receipt of the complaint. However, the Trustee will endeavour to provide a final response to complaints in less than 45 days wherever possible.
- (c) A "final response" to a Complainant must be in writing (unless the complaint is resolved by the end of the next Business Day after receipt of the complaint), and include the following:
 - (i) a statement of acceptance of the complaint;
 - (ii) the outcome of the complaint, including setting out clear and concise reasons for any decision made and references to any applicable provisions in legislation, codes, standards or procedures;
 - (iii) an offer of redress (if appropriate); and
 - (iv) the Complainant's right to take their complaint to the external complaints resolution body of which the Trustee is a member, and its contact details.
- (d) If a "final response" cannot be provided to the Complainant within 45 days, then the Trustee must:
 - (i) inform the Complainant of the status of the complaint and the reasons for delay; and
 - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

25.7 Further avenues open to Unitholders

If a complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may:

- (a) if the Complainant is a "retail client" (as that term is defined in the Act), lodge a complaint with an external complaints resolution body of which the Trustee is a member; or

- (b) take whatever other action is open to the Complainant under the general law, including:
 - (i) requesting an apology from the Trustee; or
 - (ii) seeking compensation for loss incurred by the Complainant as a direct result of the breach (if any).

25.8 Recording complaints

- (a) The Trustee must make a record of complaints.
- (b) However, if a complaint is resolved by the end of the next Business Day from when the complaint was received, then the Trustee is not required to apply the full dispute resolution process in terms of capturing and recording details of the complaint.

25.9 Disclosure of existence of complaints handling procedure

The Trustee must disclose the existence of the complaints handling procedure in all Disclosure Documents prepared by the Trustee.

26. Changing this Constitution

26.1 Power to amend

The Constitution may be modified, or repealed and replaced with a new constitution:

- (a) by Special Resolution of the Unitholders; or
- (b) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

26.2 Lodgement of amendment

If the Trust is a Registered Scheme, then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

27. Statutory requirements

27.1 The Act and ASIC Relief

- (a) If the Act requires that this Constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief to apply ("Required Provisions"), then to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.

- (b) If any part of this Constitution (a "Required Part") is included to comply with the requirements of the Act or ASIC ("Regulatory Requirement") and that Regulatory Requirement ceases or changes, then, to the extent the Act allows, this Constitution is automatically amended so that the Required Part is deleted or amended to reflect the altered Regulatory Requirement.
- (c) The Unitholders:
 - (i) authorise the Trustee to make the amendments referred to in this clause 27.1 in a deed made for that purpose and, if required, to lodge it with ASIC; and
 - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 27.1.
- (d) Where this clause 27.1 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

27.2 Application of Act

- (a) In this Constitution, except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme.
- (b) If there is an inconsistency between the Act and this Constitution, then the Act prevails.

27.3 ASIC Class Orders

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 27.1 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 27.3 applies are made pursuant to the power in clause 26 but in respect of such changes, the requirements of clause 26 are to be read subject to this clause 27.3.

28. Compliance plan and compliance committee

28.1 Compliance plan

- (a) While the Trust is a Registered Scheme, the Trustee must have a compliance plan for the Trust which is lodged with ASIC.
- (b) The compliance plan will deal with the measures the Trustee will adopt to comply with the Act and this Constitution.

- (c) Subject to the Act and the approval of ASIC (if required), the compliance plan may be amended by the Trustee from time-to-time as it sees fit.

28.2 Compliance committee

- (a) This clause 28.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

29. Notices

29.1 Form of notice

Any notice, document or other communication required to be given to the Trustee or Unitholders is deemed to have been duly given if given in writing by letter, electronic mail or other method as the Trustee determines.

29.2 Address for service

- (a) The address for the Trustee will be the address set out below or the address most recently given to the Unitholders:

Trustee : Msquared Capital Pty Ltd

Address : Level 12, 88 Pitt Street , Sydney NSW 2000

- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

29.3 Deemed date of receipt

- (a) A notice given to the Trustee is effective when it is received by the Trustee.
- (b) A notice, cheque or other communication sent by post is taken to be received by Unitholders on the Business Day after it is posted. Subject to the Act, the Trustee may determine the time in which other forms of communication may be taken to be received. For any communications sent to Unitholders, proof of receipt is not required.

29.4 Notice to joint Unitholders

In the case of joint Unitholders, the physical or electronic address of the Unitholder means the physical or electronic address of the Unitholder first named in the Register.

30. General provisions

30.1 Payments

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by:

- (a) cheque and sent by post to the address shown in the Register; or
- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Unitholder in writing to the Trustee.

30.2 Discharge of Trustee

The Trustee will receive a good discharge on:

- (a) payment of every cheque if duly presented and paid; or
- (b) in the case of money credited to any account with a financial institution, the receipt by the financial institution of the amount paid.

30.3 Retention of documents

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or by a like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

30.4 Relationship between Trustee and Unitholders

Each and every Unitholder and the Trustee agree:

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and this Constitution are in every case several and not joint or joint and several;
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other;
- (c) no Unitholder has authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder; and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

30.5 Rounding

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.
- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the Trustee determines. The amount of rounding must not be more than one percent of the Application Price or Withdrawal Price.

30.6 Interest payable

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the BBSW plus 500 basis points. The Trustee may waive payment of that interest in whole or in part.
- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

30.7 Non-payment of money

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following (subject to the application of clause 5 in relation to any failure to pay an instalment or instalments with respect to Partly Paid Units):

- (a) the Trustee may deduct money from distributions which would otherwise be paid to the Unitholder who owes the Trustee money until such time as interest and the amount which the Trustee is entitled to be paid has been paid to the Trustee; or
- (b) send a notice to the relevant Unitholder demanding the amount for which the Trustee is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than seven days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unitholder's Units will be liable to be sold or redeemed to recover the unpaid amount.

30.8 Sale or redemption of Unitholder's Units to pay debt owing by Unitholder

- (a) For notices sent under clause 30.7(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:

- (i) sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale; or
 - (ii) redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 30.7(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

30.9 Trustee may require information from Unitholders

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 30.9(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 30.9(a) or 30.9(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 30.9(a) or 30.9(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

30.10 Duties or like imposts payable by Unitholder

- (a) Without limiting the other provisions of this Constitution, where any Duty is payable on or in relation to any issue, redemption, cancellation or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed or cancelled (as the case may be), must pay the Duty and indemnifies the Trustee in relation to the amount of the Duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 30.6, 30.7 and 30.8 apply in relation to any amounts payable by a Unitholder under clause 30.10(a).
- (c) For the purposes of clause 30.10(a), 'Duty' means any stamp, transaction or registration duty, or similar charge, imposed by any State or Territory

Revenue Office, and includes but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of these.

30.11 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.

30.12 Schedules

Schedule 1—Dictionary and Schedule 2—Rules for interpretation to this Constitution are operative parts of the Constitution.

30.13 Applicable law

This Constitution is governed by and to be interpreted in accordance with the laws of New South Wales. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

Executed as a deed

This Constitution is made this day of 2025.

SIGNED, SEALED AND DELIVERED
by **MSQUARED CAPITAL PTY LTD**
ACN 622 507 297 in accordance with
section 127 of the Corporations Act
2001 (Cth) by

Secretary/Director

Director

Name (please print)

Name (please print)

Schedule 1—Dictionary

Accounting Standards	<p>If the Trustee is required to comply with the financial reporting obligations contained in Part 2M of the Act in relation to the Trust it has the meaning given to the term “accounting standard” in section 9 of the Act.</p> <p>If the Trustee is not required to comply with the financial reporting obligations contained in Part 2M of the Act in relation to the Trust it means a generally accepted accounting principle.</p>
Accrued Distribution	For a Distribution Period, the amount the Trustee calculates as the Distributable Amount for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Trust Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Act	The Corporations Act 2001 (Cth) for the time being in force, together with the regulations.
Adjustments	The sum of any Acquisition Costs Adjustments and Indirect Acquisition Costs Adjustments.
AMIT or Attribution Managed Investment Trust	Has the meaning given to that term in section 276-10 of the Tax Act.
AMMA Statement	Has the meaning given to this term in section 276-460 of the Tax Act.
Amount of a Particular Character	Each of the amounts determined after the application of clause 15.21(b)(ii).
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
ASIC	The Australian Securities and Investments Commission.

ASIC Relief	An exemption or declaration granted by ASIC which gives relief from certain requirements of the Act.
Assessable Income	Has the meaning given to that term in section 995-1(1) of the Tax Act.
Assets	<p>This includes all property, rights and income or capital of the Trust and any accretions to the property, rights and income or capital of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes:</p> <ul style="list-style-type: none"> (a) Application Money or property paid in respect of which Units have not been issued; (b) proceeds from withdrawals which have not yet been paid; and (c) any Distributable Amount awaiting payment to Unitholders. <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly Referable to each Class.</p>
Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
Attribution Amount	<p>For a Period, any amount attributed to a Holder for the purposes of Division 276 of the Tax Act (calculated by the Trustee), and may include or be adjusted by:</p> <ul style="list-style-type: none"> (a) components of Assessable Income character; (b) components of Tax Offset character; (c) components of Exempt Income character; (d) components of Non-assessable, Non-exempt Income; (e) any amount the Trustee determines to be fair and reasonable; and (f) Unders or Overs.
Attribution Income Tax Liability	An income tax liability of a person under the Tax Act that results from the Trust being operated as a MIT.

BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Borrower	A person who the Trustee approves to borrow funds from the Trust.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.
Class	A class of Unit in the Trust.
Complainant	A Unitholder who has complained to the Trustee pursuant to clause 25.
Constitution	This document (including its schedules) as it may from time-to-time be amended and in force.
Conversion Proposal	<p>A proposal by the Trustee to covert Units in a Class:</p> <ul style="list-style-type: none"> (a) to Units in another Class in a ratio determined by the Trustee, and where a conversion would result in a fraction of one Unit, then the Trustee may determine to issue fractions of a Unit or round the fraction down or up to a whole Unit or such number of decimal places as the Trustee determines; or (b) to another type of interest in the Trust, such as a debt interest.
Corporate Tax Entity	Has the meaning given to this term in the Tax Act.
Disclosure Document	A document by which Units are offered for subscription (including an information memorandum, product disclosure statement or terms of issue), and it includes any supplementary or replacement document issued in respect of the disclosure document.
Distributable Amount	<p>Unless the Trustee determines otherwise, Distributable Amount means:</p> <ul style="list-style-type: none"> (a) the Net Income of the Trust, plus (b) any further amounts determined by the Trustee from time-to-time to be distributed to Unitholders, which are not included in the Net Income of the Trust but are included in the other Income of the Trust, plus (c) any amount of capital of the Trust, determined by the Trustee from time-to-time to be distributed to Unitholders.

Distributable Proportion	In respect of a Unitholder, the amount determined in accordance with clause 15.6.
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<p>(a) For the first distribution period of a Class, the period from the commencement of the Class to the next Distribution Calculation Date.</p> <p>(b) For the last distribution period of a Class, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust or of a Class.</p> <p>(c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</p>
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 15.12.
Dividend Entitlement	Amounts determined under clause 15.12.
Discovery Year	Has the meaning given to this term in the Tax Act.
Exempt Income	Has the meaning given to that term in section 995-1(1) of the Tax Act.
Exchange Proposal	<p>A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of:</p> <p>(a) the issue or transfer of units in another, or interests of whatever nature in or in relation to another entity;</p> <p>(b) a cash payment; and</p> <p>(c) a transfer of Assets.</p>
Expenses	Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them. Examples of Expenses include those listed in clause 14.7.

Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent (by value) of the total votes that may be cast by Unitholders entitled to vote on the resolution and at least 75 percent of Unitholders (by number) entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).
Financial Year	The period of 12 months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
Fully Paid Unit	A Unit on which the Application Price has been paid (or deemed to have been paid if the context requires) in full.
GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Holder	A Unitholder or an Optionholder, as the context requires.
Income	Means: <ul style="list-style-type: none"> (a) all receipts or amounts which are, or would be recognised as, income by the application of generally accepted accounting principles; and (b) any other receipts or amounts which the Trustee determines to be income (whether or not those receipts or amounts are, or would be recognised as, income by the application of generally accepted accounting principles).
Indirect Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Sub Entity Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Indirect Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.

Index Number	<p>Means:</p> <p>(a) the Consumer Price Index (All Groups) for the city of Sydney, published from time-to-time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for the city of Sydney, a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician; or</p> <p>(b) if the Consumer Price Index (All Groups) is discontinued or suspended, then a replacement index determined by the Trustee which reflects fluctuations in the cost of living in the city of Sydney.</p>
Indexed	Means adjusted on 1 July, by the aggregate percentage change in the Index Number for the previous four quarters most recently published prior to 1 July in the relevant year. However, if the Index Number is negative, then the aggregate percentage change in the Index Number will be zero.
Initial Units	Units in the Trust issued pursuant to clause 3.1.
Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Unit).
Investment Management Agreement	The investment management agreement between the Trustee and the Investment Manager.
Investment Manager	The investment manager of the Trust appointed under the Investment Management Agreement.
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Holder, or the trustee of the estate of an Applicant or Holder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Holder.

Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly Referable to each Class.</p>
Liquid	Has the same meaning as in section 601KA of the Act.
Lock Up Period	In respect of a Unit, period specified in the Disclosure Document for the relevant Unit.
Managed Investment Trust	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).
Member Component	Has the meaning given to this term in section 276-210 of the Tax Act.
MIT	Includes a Trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust, or a Withholding MIT.
Mortgage	<p>Means:</p> <ul style="list-style-type: none"> (a) any instrument registered or registrable as a legal mortgage in respect of land and improvements, securing a secondary obligation of any person to pay any sum or sums; (b) any security (whether by way of mortgage or otherwise) over real property that secures repayment of a loan, financial liability or any other obligation; (c) the purchase of any mortgage security complying with the requirements of paragraph (a) or (b) of this definition where a valuation of the mortgage security and where the right, title and interest of the mortgagee in the loan, the security and any insurance contracts or policies relating to the secured property are assigned or transferred by the mortgagee to the Trustee; and (d) (any instrument or documents of title held under a mortgage that comes within the meaning of a mortgage asset under ASIC policy, class order relief, the Act or the Trustee's Australian financial services licence.

Msquared Capital Pty Ltd	Msquared Capital Pty Ltd ACN 622 507 297 or any related body corporate of it which replaces it as trustee of the Trust.
Net Asset Value	The total value of the Assets calculated in accordance with clause 10, less the Liabilities, adjusted for such provisions and incremental or decremental adjustments as the Trustee determines are appropriate. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class, the Trustee may (where permitted under the Terms of Issue) exercise discretions and decide on matters that may affect the determination of the Net Asset Value figure which may result in an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.
Net Income	<p>Means, for a Financial Year, the net income for the Trust for the purpose of section 95 of the Tax Act (calculated by the Trustee) less amounts attributable to:</p> <ul style="list-style-type: none"> (a) imputation credits; (b) foreign tax credits; (c) other notional or deemed amounts; and (d) any other amount that has not been received and is not available for distribution, <p>determined as if the Period is a year of income, less amounts that are not Cash Amounts. If the definition of net income in the Tax Act is repealed or replaced, any concept enacted to replace that definition.</p>
Non-assessable, Non-exempt Income	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Option	An option to subscribe for a Unit.
Optionholder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Resolution	A resolution that has been passed by more than 50 percent of the votes (by value) cast by Unitholders entitled to vote on the resolution and more than 66 2/3 percent of all Unitholders (by number) who cast a vote on the resolution.

Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class of Units issued by the Trustee from time-to-time, as set out in the Terms of Issue of that other Class.
Over	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Paid-up Amount	<p>In relation to a Unit means the number obtained by applying the following formula:</p> $\text{Paid-up Amount} = \frac{\text{PA}}{\text{AP}}$ <p>Where:</p> <ul style="list-style-type: none"> (a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation; and (b) AP means the Application Price of the Unit.
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
Perpetuity Period	The period specified in clause 3.15.
Realisation Transaction	<p>A transaction which enables all Unitholders to realise all or more than 50 percent of their investment in the Trust, including:</p> <ul style="list-style-type: none"> (a) an initial public offer; (b) a sell down of more than 50 percent of the units where all Unitholders have the opportunity to participate in the sell down; (c) a sale of substantial Assets where all Unitholders have an opportunity to have their Units redeemed or transferred; or (d) any other arrangement which has substantially the same economic effect as a transaction referred to paragraph (a), (b) or (c).
Referable	Has the meaning given to it in clause 3.16.
Register	The register of Holders required to be kept according to clause 8.
Registered Scheme	A managed investment scheme registered under the Act.

Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Reorganisation Proposal	Means: <ul style="list-style-type: none"> (a) any Realisation Transaction; (b) a Conversion Proposal; (c) a Stapling Proposal; (d) a Top Hat Proposal; (e) an Exchange Proposal; or (f) any other proposal to reorganise or restructure the capital of the Trust in any way.
Securities	Any shares, stocks, debentures, bonds, convertible notes or other securities or any interests in any managed investment schemes or trusts and includes any option over a Security.
Security Interest	Means: <ul style="list-style-type: none"> (a) a Mortgage; (b) a security interest as defined in the <i>Personal Property Securities Act 2009 (Cth.)</i>; (c) security for payment of money, performance of obligations or protection against default (including any mortgage, bill of sale, pledge, trust, power, deposit, lien, encumbrance, hypothecation or charge, title retention arrangement, easement, restrictive covenant, caveat or similar restriction over property); and (d) any other arrangement (including any preferential trust or set off arrangement) having a similar commercial effect as a grant of security, <p>granted to or for the benefit of the Trustee.</p>
Special Distribution Amount	Has the meaning given to it in clause 15.8.
Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.

Stapling	The linking together of all of the rights and obligations which attach to a Stapled Security.
Stapling Proposal	A proposal to cause the Stapling of any other securities or financial products to the Units.
Sub Entity	A trust, company or other entity which was established by or is managed by or controlled by, the Trustee or by an Associate or related body corporate of the Trustee and in which the Trust has a direct or indirect interest, or a trust, company or other entity of which the Trustee (in its capacity as trustee of the Trust) is a unitholder, shareholder or beneficiary.
Sub Entity Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of:</p> <ul style="list-style-type: none"> (a) the Expenses associated with the establishment of any Sub Entity and the raising of capital for any Sub Entity; and (b) Expenses associated with the acquisition of any asset or assets by any Sub Entity, <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>

Tax	<p>This term includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) Duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Assets or Liabilities or the Trust itself; (b) taxes, excises and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution; (c) taxes imposed or assessed upon: <ul style="list-style-type: none"> (i) (any Application Money or property; (ii) the Assets, any Dividend Amount, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself; or (iii) the Trustee in respect of its capacity as trustee of the Trust; (d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust; and (e) every kind of tax, excise, duty, rate, levy, deduction and charge including any GST.
Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), Tax Administration Act 1953 (Cth) or any or all of the foregoing as appropriate.
Tax Offset	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time-to-time.
Top Hat Proposal	A proposal that each Unitholder should exchange their Units for an equivalent value of units in the Top Trust.
Top Trust	A trust of which the Trustee is also the trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Total Paid-up Amount	The aggregate Paid-up Amount of all Units in Issue.
Total Unpaid Amount	The total Unpaid Amount of all Units in Issue (if any).

Transaction Costs	<p>(a) When calculating the Application Price, an amount equal to an estimate by the Trustee of:</p> <ul style="list-style-type: none"> (i) the total Expenses the Trust would incur to acquire afresh the Assets' (ii) if appropriate, the total Expenses the Trust will incur to acquire any proposed Assets' or (iii) if appropriate, having regard to the actual Expenses which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total Expenses, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the Withdrawal Price, an amount equal to an estimate by the Trustee of:</p> <ul style="list-style-type: none"> (i) the total Expenses the Trustee would incur wind to up the Trust and sell the Assets (including provision for any performance fees (if any) not yet paid to the Trustee); or (ii) if appropriate, having regard to the actual Expenses which would be incurred because of any withdrawals, a portion of the total Expenses, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>For the avoidance of doubt, the Trustee may take account of any policy it has established regarding the amortisation of Trust establishment, Trust winding up and Asset acquisition and disposal costs in estimating the total Expenses, relevant to Transaction Costs. However, the Trust must not include any amounts already taken into account in calculating the Net Asset Value.</p>
Trust	The trust constituted by this Constitution.
Trust Component	Has the meaning given to this term in section 276-260 of the Tax Act.
Trust Component Deficit	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.

Trust Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of:</p> <ul style="list-style-type: none"> (a) the Expenses associated with the establishment of the Trust and the raising of capital for the Trust; and (b) the Expenses associated with the acquisition of any Asset or Assets, <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
Trust Income	In respect of a Financial Year or an Accrual Period will be equal to the Net Income of the Trust.
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
Under	Has the meaning given to this term in section 276-345 of the Tax Act.
Unit	An undivided interest in the Trust as provided in this Constitution.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.
Unpaid Amount	<p>The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:</p> $\text{Unpaid Amount} = \text{AP} - \text{PA}$ <p>Where:</p> <ul style="list-style-type: none"> (a) AP means the Application Price of the Partly Paid Unit; and (b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.
Valuation Time	The time at which the Trustee calculates the Net Asset Value.
Vesting Day	<p>The day which is the later of:</p> <ul style="list-style-type: none"> (a) the day immediately prior to the 80th anniversary of the date of commencement of the Trust; or (b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.

Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause 6.1.
Withholding MIT	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).

Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention:

- (a) words denoting any gender include both genders;
- (b) words importing the singular include the plural and vice versa;
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation;
- (d) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, the Constitution and a reference to this Constitution includes any schedule;
- (e) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns;
- (f) a person includes companies and corporations and vice versa;
- (g) except in the dictionary, headings do not affect the interpretation of this Constitution;
- (h) general words must not be given a restrictive meaning, by reason of the fact they are followed by particular examples intended to be embraced by the general words (in this regard, the word “including” is not a word of limitation);
- (i) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause;
- (j) amounts of money are expressed in Australian dollars unless otherwise expressly stated;
- (k) a reference to a document includes any variation, novation or replacement of it;
- (l) a reference to any thing includes the whole or each part of it;
- (m) words defined in the Act have the same meaning when used in this Constitution except where the context otherwise requires;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day;
- (o) where time is to be calculated by reference to a day or event, then that day or event is excluded; and
- (p) the defined terms in Schedule 1 have the meaning given to them in that schedule except where the context otherwise requires.