

GPT Platform Pty Ltd

Constitution

GPT QuadReal Logistics Trust

Execution Version

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

© Allens Australia 2020

Contents

1	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	7
1.3	Rounding and currency	8
1.4	Deed binding	8
2	The Trust	8
2.1	Appointment of trustee	8
2.2	Declaration of trust	8
2.3	Name of Trust	8
2.4	Wholesale trust	9
3	Unitholders' Agreement	9
4	Units and Unit Holders	10
4.1	Units	10
4.2	Classes	10
4.3	Fractions	10
4.4	Equal value	10
4.5	Interest	10
4.6	Consolidation and re-division	10
4.7	Rights attaching to Units	10
4.8	Unit Holder directions	11
4.9	Information from Unit Holders	11
4.10	Capital contributions	12
5	Offer of Units	12
5.1	Unitholders' Agreement	12
5.2	Offer and minimum subscription	12
5.3	Form of application	12
5.4	Acceptance or rejection	13
5.5	Uncleared funds	13
5.6	Issue of Units	13
5.7	Number of Units issued	13
5.8	Units as consideration	13
5.9	Certificates	14
5.10	Restriction on issue and redemption of interests	14
6	Partly Paid Units and Cancellation	14
6.1	Terms of Issue	14
6.2	Calls	14
6.3	Interest on late payment of Call	14
6.4	Non-receipt of notice of Call	14
6.5	Deductions for unpaid Calls	14
6.6	Notice requiring payment of sums payable	14
6.7	Cancellation on non-compliance with notice	15
6.8	Entry on Register of Unit Holders	15
6.9	Issue of Replacement Units	15
6.10	Not proceeding with Cancellation	15
6.11	Liability notwithstanding Cancellation	16
6.12	Proceeds of issue	16

6.13	Joint holders	16
6.14	Winding up	16
7	Issue Price	16
7.1	Issue Price	16
7.2	Satisfaction of Issue Price	17
8	Redemption of Units	17
8.1	Unitholders' Agreement	17
8.2	Terms of Issue	17
8.3	Redemption request	17
8.4	Action following request	17
8.5	Sums arising	17
8.6	Transfer of Assets	18
8.7	Effective time of a redemption and cancellation of Units upon redemption	18
8.8	Order	18
9	Redemption Price	18
10	Transfers	18
10.1	Unitholders' Agreement	18
10.2	Terms of Issue	18
10.3	Transferability	18
10.4	Registration of transfers	19
10.5	Where registration may be refused	19
10.6	Where registration may not be refused	19
10.7	Notice of non-registration	19
11	Transmission of Units	20
11.1	Registration of persons entitled	20
11.2	Distributions and other rights	20
12	AMIT rules	20
13	Income and Distributions	21
13.1	Determination of income and reverses	21
13.2	Distribution of income	21
13.3	Distribution Entitlement for a Distribution Period	21
13.4	Distribution of Entitlement	22
13.5	Categories and sources of income	22
13.6	Capital distributions	22
13.7	Change in Tax Act	22
13.8	Entitlement to Distributable Income in Respect of Ordinary Units withdrawn	23
13.9	Reinvestment	23
14	Powers and Duties of Trustee	23
14.1	Powers	23
14.2	Delegation	24
14.3	Advisers	25
15	Valuations	25
15.1	Valuation of an Asset	25
15.2	Valuation if required	25
15.3	Valuation method	25
15.4	Determination of Net Fund Value	25
16	Holding Assets	25

16.1	How held	25
16.2	Other Custodian	25
16.3	Holding of Assets	26
17	The Register	26
17.1	Keeping the Register	26
17.2	Information in and form of Register	26
17.3	Changes	26
17.4	Register	26
18	The Trustee's Limitation of Liability	26
18.1	General	26
18.2	Specific	26
19	Indemnities	26
19.1	Trustee's indemnity	26
19.2	Trustee's indemnity continuing	27
19.3	Payment	27
19.4	The Trustee not to incur liability	27
19.5	Right of indemnity not affected by an unrelated breach	27
19.6	Indemnity under Law	27
20	The Trustee's Indemnity by Unit Holders for Tax Liability	27
20.1	Liability limited	27
20.2	Joint Unit Holders	27
21	Change of Trustee	27
21.1	Voluntary retirement	27
21.2	Compulsory retirement	27
21.3	New Trustee	28
21.4	Release	28
22	Amendments to Deed	28
22.1	General	28
22.2	Amendments to AMIT rules	28
23	Statements, Accounts and Audit	28
23.1	Appointment of auditors	28
23.2	Retirement of auditors	28
23.3	Remuneration of auditors	29
23.4	Accounts and reports	29
23.5	Audit	29
24	Meetings of Unit Holders	29
24.1	Convening meetings	29
24.2	Cancellation or adjournment	29
24.3	Non-receipt	29
24.4	Resolution binding on Unit Holders	29
24.5	Written resolution	29
25	Service of Documents	29
26	Termination Event	31
27	Procedure After a Termination Event	31
27.1	Notice of winding up	31
27.2	Realisation of Trust Fund	31

27.3	Final distribution	31
27.4	Transfer of Assets	31
27.5	Postponement of realisation	32
27.6	Retention of property	32
27.7	Continuation of powers	32
27.8	Cancellation of Units	32
28	Fees and costs	32
28.1	Establishment Costs	32
28.2	Differential fee arrangements	32
28.3	Expenses	32
28.4	Waiver of Expenses	33
28.5	Fees paid to the Trustee in a different capacity	33
28.6	Recovery of GST	33
28.7	Liability Net of GST	33
28.8	Adjustment events	33
29	Unit Holders' Liability	33
29.1	Liability	33
29.2	Limitation of liability	34
30	Other Activities and Obligations of the Trustee	34
30.1	Other activities	34
30.2	Other obligations	34
30.3	Hold Units	34
31	Payments	34
31.1	Money payable	34
31.2	Failed payments	35
31.3	Joint Unit Holders	35
31.4	Deductions for Tax or other payments	35
32	Governing Law and Jurisdiction	35
33	Severability	35
	Schedule 1 – Expenses	36

This deed is made on 6 November 2020

Party

GPT Platform Pty Ltd (ABN 51164839061) of Level 51, 19 Martin Place, Sydney NSW 2000 (the *Trustee*).

It is declared as follows.

1 Definitions and Interpretation

1.1 Definitions

In this Constitution the following definitions apply unless the context otherwise requires.

1997 Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Adviser includes any adviser, consultant or expert including any project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, investment manager, asset manager, broker, administrator, property manager, environmental auditor or assessor and any other person appointed by the Trustee to provide advice in relation to the Trust.

AMIT has the meaning given to it in section 276-10 of the 1997 Tax Act.

AML Legislation means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Financial Transaction Reports Act 1988* (Cth) and any similar legislation in any jurisdiction.

Applicable Legislation means the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other legislation applying to the Trustee or the Trust that affects any limitation of the Trustee's liability.

Assessable Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Assets means all the Property, Investments, rights and income of the Trust from time to time.

Asset Value at any time means the value of all Assets in the Trust Fund at that time, as most recently calculated in accordance with clause 15.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Australian FATCA Legislation means Division 396 of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

Business Day means a day on which banks are open in Sydney, Hong Kong or Vancouver other than a Saturday, Sunday or public holiday.

Call means a call on a Unit Holder to pay all or any part of the unpaid Issue Price for a Partly Paid Unit.

Cancelled, in relation to a Partly Paid Unit, means terminated for failure to pay a Call and cancelled in the manner set out in clause 6 and the Terms of Issue of that Unit.

Cancellation Notice means a notice given under clause 6.6.

Cash includes cheques.

Class means a class of Units, being Units, which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class.

Commencement Date means the date on which the Trust commences in accordance with clause 2.2(b).

Commodity means any tangible personal property, currency, interest or other rate, financial or other index or indices (including any share index) and such other tangible or intangible thing determined by the Trustee to be a Commodity for the purposes of this definition.

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

Custodian means a custodian or nominee appointed under clause 16.2.

Derivative has the meaning given in the Corporations Act but also includes:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the Trustee, for the purpose or anticipated or intended purpose of:
 - (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
 - (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
 - (iii) securing a profit or avoiding a loss,

associated with any Commodity, Property or Investment.

Distribution Entitlement has the meaning given in clause 13.3.

Distribution Date means the last day of the relevant Quarter.

Distribution Period means:

- (a) for the last distribution Period, the period beginning on the day after the preceding Distribution Date to the date of termination of the Trust; and
- (b) in all other circumstances, the period beginning on the day after the preceding Distribution Date to the next occurring Distribution Date.

Distribution Price means:

- (a) in relation to Units that were Fully Paid Units on a Relevant Date, the Issue Price immediately before 5:00pm (New South Wales Time) on the last day of the relevant Distribution Period; or
- (b) in relation to units that were Partly Paid Units on Relevant Date, the Issue Price immediately before 5:00pm (New South Wales Time) on the last day of the relevant Quarter less the unpaid amount which remains unpaid on the Relevant Date.

For the purpose of the definition, 'Issue Price' means the Issue Price that would apply if a Unit were issued immediately before 5:00pm (New South Wales Time) on the last day of the relevant Distribution Period.

Establishment Costs has the meaning given in clause 28.1.

Exempt Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Expenses includes any costs, liabilities, expenses, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in Schedule 1.

Financial Year means a year ending on 31 December in each year but:

- (a) the period commencing on the Commencement Date and ending on the following 31 December will be the first Financial Year; and
- (b) the period commencing on the 1 January immediately before the day all the assets of the Trust have been realised and distributed in accordance with clause 27 and ending on that final distribution day will be the last Financial Year.

Fully Paid Unit means a Unit for which the Issue Price is fully paid.

Fund Value at any time, means the aggregate of the following at that time as calculated by the Trustee:

- (a) the gross Asset Value;
- (b) the amount of money held in the Trust Fund (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets (to the extent not included in paragraphs (a) or (b)).

Government Authority means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a securities exchange.

GST has the meaning given in section 195–1 of the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

GST Amount has the meaning given in clause 28.6.

Indemnified Matter has the meaning given in clause 19.2.

Input Tax Credit has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Interest Rate means the daily buying rate displayed at or about 10.30am on the Reuters screen BBSW page for Australian bank bills of a three-Month duration.

Investment means any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a trustee and includes:

- (a) (without limiting paragraph (b)) financial products; and
- (b) the pursuit of gain or the protection against Loss by way of any of the following:
 - (i) acquiring or holding of any Property;
 - (ii) making available financial accommodation; or
 - (iii) entering into any contract or a Derivative,

and may involve incurring a liability or obligation of any kind.

Investment Committee has the meaning given in the Unitholders' Agreement.

Investment Management Agreement means, to the extent it is in force, the agreement so

entitled between the Trustee and the Investment Manager. All references to the Investment Management Agreement in this Constitution will be disregarded where, at the relevant time, there is no Investment Management Agreement in force.

Investment Manager means, to the extent that the Investment Management Agreement is in force, GPT BP Development Pty Ltd or any other person who is the Investment Manager acting under and in accordance with the Investment Management Agreement. All references to the Investment Manager in this Constitution will be disregarded where, at the relevant time, there is no Investment Management Agreement in force.

Issue Price in relation to a Unit means the price at which that Unit is issued and calculated in accordance with this Constitution.

Land includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity and any buildings or other improvements on that land.

Law includes any statute and rule of common law, rule of equity or judgment and any agreement made with a Government Authority which applies to the Trust or the Trustee (as the case may be).

Liabilities at any time means all present liabilities of the Trust including any provision which the Trustee decides should be taken into account in determining the liabilities of the Trust but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Loss means any losses, liabilities, costs, expenses or damages.

Month means a calendar month.

Net Class Value at any time, means that portion of the Net Fund Value that is attributable to a particular Class.

Net Fund Value at any time, means the Fund Value less the Liabilities at that time.

Net Proceeds From Realisation means the proceeds from sale or other realisation of the Assets after paying or providing for:

- (a) all Liabilities of the Trust;
- (b) any unpaid fees payable (or to be payable) to the Trustee; and
- (c) any Expenses incurred in realising the Assets.

Non-assessable, Non exempt Income has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Operating Income means the gross income realised by the Trust from its operation including rent, interest, dividends, distribution and otherwise less expenses arising in deriving that income including, but not limited to:

- (c) property outgoings;
- (d) repairs and maintenance;
- (e) interest and other borrowing costs;
- (f) fees paid to the Trustee; and
- (g) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust.

Over has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Partly Paid Proportion means the number derived from multiplying the number of Partly Paid Units on Issue by the following fraction:

$$\frac{\text{the total of all amounts paid or due but unpaid for Partly Paid Units on issue}}{\text{the total of all Issue Prices for Partly Paid Units on issue}}$$

Partly Paid Units means Units which have an Issue Price which is payable by instalments and in respect of which all instalments have not been called.

Portfolio Entity has the meaning given in Schedule 1.

Property means property of any description and includes:

- (a) Land and any personal property;
- (b) any estate or interest in property;
- (c) any debt or chose in action or any other right or interest;
- (d) any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property; and
- (e) anything regarded as an asset for the purposes of Australian Accounting Standards.

Quarter means a period of three Months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or winding up of the Trust) and **Quarterly** has a corresponding meaning.

Redemption Price in relation to a Unit means the price at which that Unit is to be redeemed in accordance with clause 9.

Register means the register of Unit Holders kept under clause 17.

Relevant Agreement means any written agreement from time to time which the Unit Holders and the Trustee agree is a 'Relevant Agreement' and as at the date of this Constitution the Unitholders Agreement will be a Relevant Agreement.

Relevant Date means any day during the relevant Distribution Period in respect of which the Distribution Price of a Unit is required by this clause to be multiplied by the number of days during the relevant Distribution Period in respect of which the Unit was entitled to participate in the distribution.

Replacement Units has the meaning given in clause 6.9.

Required Information has the meaning given in clause 4.9(a).

Required Information Request has the meaning given in clause 4.9(a).

Reserved Matter has the meaning given in the Unitholders' Agreement.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Special Resolution means a resolution passed by at least 75% of the votes cast by Unit Holders entitled to vote on the resolution.

Tax means all income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority in Australia or elsewhere,

including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

Tax Act means the *Income Tax Assessment Act 1936* (Cth), the 1997 Tax Act and the *Taxation Administration Act 1953* (Cth).

Tax Offset has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Termination Event means the Trustee:

- (a) subject to the Unitholders' Agreement, decides that the Trust should terminate and the Assets be realised in accordance with clause 27;
- (b) is required by the Corporations Act to wind up the Trust or is otherwise required by Law to realise the Assets and distribute the proceeds.

Terms of Issue, in relation to a Unit means the terms and conditions upon which that Unit is issued.

Transaction Costs means:

- (a) when calculating the Issue Price of a Unit, the Trustee's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time,

(in each case excluding the actual cost of the Assets); or

- (c) in either case, to the extent consistent with applicable Law, a lesser amount (including zero) determined by the Trustee.

In estimating the total Expenses, the Trustee may take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

Trust means the GPT QuadReal Logistics Trust constituted by this Constitution.

Trust Component Deficit has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Trust Document means each of:

- (a) the Unitholders' Deed;
- (b) the Investment Management Agreement;
- (c) the property management agreement between the Trustee and GPT Property Management Pty Ltd dated on or around the date of this Deed;
- (d) the development management agreement between the Trustee and GPT Development Custodian Pty Ltd dated on or around the date of this Deed.

Trust Fund means all Assets of the Trust (including money paid to the Trustee for the issue of any Units except where an application for that issue has not been accepted).

Trustee means GPT Platform Pty Ltd or any other person appointed as trustee of the Trust.

Under has the meaning given to it in subsection 995-1(1) of the 1997 Tax Act.

Unit means a unit created under this Constitution and for the time being held by Unit Holders.

Unit Holder means the person registered as the holder of that Unit (including persons registered jointly).

Unitholders' Agreement means any agreement of that name to be entered into between the Unit Holders and the Trustee (as amended from time to time). All references to the Unitholders' Agreement in this Constitution will be disregarded where, at that time, there is no Unitholders' Agreement in force.

Units on Issue in relation to a Unit or Class means the total number of Units of that kind issued which have not been redeemed.

Valuation Time means any time the Net Fund Value is determined.

1.2 Interpretation

- (a) Headings, recitals and the table of contents are for convenience only and do not affect the interpretation of this Constitution.
- (b) Mentioning anything after the expression 'includes', 'including', for example, or similar expressions, does not limit what else might be included.
- (c) If a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day.
- (d) The following rules apply unless the context requires otherwise:
 - (i) the singular includes the plural, and the converse also applies;
 - (ii) a gender includes all genders;
 - (iii) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (iv) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
 - (v) a reference to a clause, paragraph, subparagraph, Schedule or annexure is a reference to a clause, paragraph, subparagraph of or Schedule or annexure to, this Constitution, and a reference to a paragraph is a reference to a paragraph of the same clause or Schedule unless the context requires otherwise;
 - (vi) a reference to an agreement or document (including a reference to this Constitution) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document;
 - (vii) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form;
 - (viii) a reference to a party to this Constitution or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
 - (ix) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (x) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
 - (xi) a word or phrase appearing in a certain context which, when used in a similar context in the Corporations Act would have a particular meaning, has that meaning in this Constitution;

- (xii) a reference to a right or benefit of any two or more people comprising a single party confers that right or benefit, as the case may be, on each of them severally and each two or more of them jointly. Unless otherwise expressly stated in this Constitution, a reference to a liability or obligation of any two or more people comprising a single party imposes that liability or obligation on each of them severally (and not jointly or jointly and severally). A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately);
- (xiii) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (xiv) a reference to dollars, AUD and \$ is a reference to Australian currency unless otherwise stated;
- (xv) a month means a calendar month;
- (xvi) a reference to a day means a calendar day; and
- (xvii) any appointment of the Trustee as an attorney under this Constitution is irrevocable.

1.3 Rounding and currency

- (a) Subject to clause 4.3, all calculations under this Constitution may be rounded up or down to the number of decimal places (or nearest whole number) determined by the Trustee.
- (b) Subject to clauses 4.3 and 5.7, where total amounts payable to or by a person include a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Trustee.
- (c) Where the Trustee needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units to be issued to an applicant, the Trustee will disclose the method of calculating the conversion to the applicant.

1.4 Deed binding

This Constitution binds the Trustee, each Unit Holder, any other person with an interest in the Trust and any person claiming through any of them as if each of them had been a party to it.

2 The 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 Trust Fund on trust for the Unit Holders in accordance with this Constitution.
- (b) The Trust commences on the date Units are first issued.

2.3 Name of Trust

- (a) The name of the Trust is the GPT QuadReal Logistics Trust or any other name that the Trustee determines.

- (b) Subject to paragraph (c), if the Investment Management Agreement is terminated (a **Name Event**) then the Trustee must not use the word 'GPT' (or any substantially or deceptively similar word) in connection with the Trust. If applicable, the Trustee must amend this Constitution to reflect any required change in the name of the Trust within 20 Business Days of the Name Event occurring. The Trustee covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.
- (c) Paragraph (b) does not apply if the Investment Manager agrees otherwise subject to any conditions it may specify (in its absolute discretion).

2.4 Wholesale trust

It is acknowledged that the Trust has been established with the intention that an offer of Units will only be made by the Trustee to wholesale clients and the Units will only be issued to wholesale clients.

3 Unitholders' Agreement

- (a) This clause 3 applies only for so long as a Unitholders' Agreement is in force.
- (b) Subject to any caveats, limitations or exceptions contained in the Unitholders' Agreement concerning when the Unitholders' Agreement should or should not override this Constitution, this Constitution (other than clauses 5.10 and 22.1(d)) is to be read subject to the Unitholders' Agreement. If there is any inconsistency between this Constitution and the Unitholders' Agreement, then, to the maximum extent permitted by Law, the Unitholders' Agreement prevails to the extent of the inconsistency and this Constitution must be read and construed accordingly.
- (c) Each Unit Holder undertakes with each other Unit Holder and the Trustee to:
 - (i) exercise all its votes, powers and rights under this Constitution and the Law so as to give full force and effect to the provisions and intentions of the Unitholders' Agreement; and
 - (ii) exercise all its votes, powers and rights in relation to the Trust so as to ensure that the Trustee fully and promptly observes, complies with and gives effect to the requirements and intentions of the Unitholders' Agreement and this Constitution.
- (d) To the maximum extent permitted by Law:
 - (i) the Trustee must do all things necessary or desirable to give effect to the provisions and intentions of the Unitholders' Agreement in accordance with its terms; and
 - (ii) without limiting the generality of the foregoing the Trustee must not take any action with respect to a matter which is a Reserved Matter without the requisite approval under the Unitholders' Agreement.
- (e) If it is necessary to include a provision in, or otherwise amend, this Constitution, to ensure that a provision of the Unitholders' Agreement is effective in accordance with its terms, the Unit Holders agree to procure the amendment to this Constitution, subject, at all times to preserving the Trustee's right of indemnity and the rights granted in clause 18 of this Constitution.
- (f) The Unitholder's Agreement, and any other agreements specified in the Unitholders' Agreement, is a Relevant Agreement and the Unit Holder may, pursuant to the Unitholder's Agreement, determine by way of approving a Reserved Matter to:

- (i) designate another agreement as a Relevant Agreement; and
- (ii) determine that this clause 3 applies in respect of such Relevant Agreement as if any reference to Unitholders' Agreement were a reference to Relevant Agreement instead.

4 Units and Unit Holders

4.1 Units

The beneficial interest in the Trust Fund will be divided into Units which may be issued by the Trustee at any time. Unless the Terms of Issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations, of Unit Holders under this Constitution.

4.2 Classes

Subject to the Unitholders' Agreement, different Classes may be issued. Subject to clause 22.1(b) and 22.1(c), if the Trustee determines in relation to particular Units, the Terms of Issue of those Units may:

- (a) provide for an issue price or redemption price that is specified or calculated in a way that is different from the prices or methods set out in clauses 7.1 and 9 respectively;
- (b) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by Units;
- (c) create rights which are preferred or subordinate to those that apply to other Units or another Class; and
- (d) 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.

4.3 Fractions

Subject to clause 4.6, fractions of a Unit may be issued. However, in the Trustee's discretion, when any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued may be rounded down to the nearest whole Unit. Any excess application or other money becomes an Asset.

4.4 Equal value

At any time, all the Units of a Class are of equal value.

4.5 Interest

A Unit confers an interest in the Trust Fund as a whole. No Unit confers any interest in any particular Asset.

4.6 Consolidation and re-division

- (a) Subject to paragraph (b), the Trustee may at any time consolidate or divide the Trust Fund into any number of Units other than the number into which the Trust Fund is for the time being divided.
- (b) A consolidation or division of a kind referred to in paragraph (a) must not change the ratio of Units of a Class registered in the name of any Unit Holder to the Units on Issue in that Class.

4.7 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.

- (b) Each Unit Holder agrees not to:
 - (i) interfere with any rights or powers of the Trustee under this Constitution;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

4.8 Unit Holder directions

Unit Holders may not give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the Trustee incurring a Liability for which it would not be indemnified out of the Assets or acting contrary to Law.

4.9 Information from Unit Holders

- (a) Each Unit Holder must provide to the Trustee any information reasonably requested by the Trustee (**Required Information**) in a notice sent to the Unit Holder (a **Required Information Request**).
- (b) Subject to paragraph (c):
 - (i) the Trustee may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
 - (ii) each Unit Holder authorises the Trustee to use Required Information in any way required in the Trustee's reasonable discretion, including providing it to third parties.
- (c) The Trustee may only issue a Required Information Request if it reasonably believes the Required Information is necessary to:
 - (i) comply with any Law (including AML Legislation or the Australian FATCA Legislation) or any other jurisdiction or a request for information by a Government Authority where that request is binding on the Trustee; or
 - (ii) give effect to or comply with the Tax Act, including, without limitation, Australia's managed investment trust regime or the AMIT tax rules;
 - (iii) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or
 - (iv) lessen the risk of the Trustee or any Unit Holder suffering a material detriment (whether or not financial),and the Required Information Request specifies a reasonable period within which the Unit Holder must provide the Required Information.
- (d) If any Required Information is not provided by the Unit Holder within the time and in the manner specified in a Required Information Request then, despite any other provision of this Constitution, the Unit Holder must indemnify the Trustee for any Loss suffered by the Trustee in relation to the Unit Holder's failure to provide the Required Information.
- (e) Each Unit Holder undertakes that any payment of money by the Trustee in accordance with instructions provided by the Unit Holder (or any agent of the Unit Holder) will not breach any law of Australia or any other jurisdiction.
- (f) The Trustee may enter into agreements with any Government Authority in any jurisdiction where the Trustee believes it is reasonably necessary to do so to:

- (i) avoid amounts being withheld from any payments to the Trust or any Unit Holder; or
 - (ii) lessen the risk of the Trust or any Unit Holder suffering a material detriment (whether or not financial).
- (g) If the Trustee is required to provide any information about Unit Holders under any Law then, to the extent permitted by Law, each Unit Holder consents to the Trustee providing that information.

4.10 Capital contributions

- (a) Subject to the Unitholders' Agreement and paragraphs (b) and (e), a Unit Holder may, at any time, pay an amount to the Trustee as an additional capital contribution to the Trust.
- (b) The Trustee may accept or decline an additional capital contribution under paragraph (a) in its absolute discretion. However, unless the Trustee decides otherwise and subject to paragraph (e):
 - (i) the amount of the capital contribution must be calculated on a per Unit basis;
 - (ii) the total amount to be contributed by the Unit Holder must be the per Unit amount calculated in accordance with subparagraph (i) multiplied by the total number of Units held by the Unit Holder;
 - (iii) where there is more than one Unit Holder, the amount of the capital contribution must be the same on a per Unit basis for each Unit Holder and each Unit Holder must make a total contribution as calculated under subparagraph (ii); and
 - (iv) each Unit Holder contribution must be paid as one payment within a time specified by the Trustee.
- (c) Any amount contributed under this clause 4.10 will become an Asset on payment of the amount to the Trustee or as the Trustee directs.
- (d) Nothing in this clause 4.10:
 - (i) restricts the Trustee's power to issue Units and no clause relating to issuing Units limits the Trustee's powers under this clause; or
 - (ii) prevents the Trustee from approaching a Unit Holder regarding an additional capital contribution or proposing a capital contribution.
- (e) This clause 4.10 has effect in respect of each Class of Units but is subject to the Terms of Issue of that Class.

5 Offer of Units

5.1 Unitholders' Agreement

Without limiting the generality of clause 3, this clause 5 is subject to compliance with the processes set out in the Unitholders' Agreement.

5.2 Offer and minimum subscription

The Trustee may at any time offer Units for subscription or sale. The Trustee may determine a minimum amount which must be lodged with an application for Units and a minimum holding of Units for the Trust. The Trustee may invite persons to make offers to subscribe for Units.

5.3 Form of application

Each application for Units will be made in such manner as the Trustee approves.

5.4 Acceptance or rejection

Subject to the Unitholders' Agreement, the Trustee may, without giving any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of the application.

5.5 Uncleared funds

Units issued against application money in the form of a cheque or other payment order (other than in cleared funds) may be cancelled by the Trustee if the cheque or payment order is not cleared within a reasonable time determined by the Trustee provided that the Trustee has notified the Unit Holder and provided the Unit Holder with a reasonable opportunity to remedy the situation.

5.6 Issue of Units

Units are taken to be issued when:

- (a) the Trustee accepts the application and the Units are entered in the Register; or
- (b) the application money is received by (or Property which is acceptable to the Trustee against which Units are to be issued is transferred to) the Trustee,

whichever is the later or at such other time as the Trustee determines provided that, except as determined otherwise by the Trustee acting reasonably, where two or more Unit Holders are applying for further Units on a pro rata basis, and such applications are accepted by the Trustee, such Units shall be issued to each of those Unit Holders at the same time.

5.7 Number of Units issued

Subject to clause 5.8 and the terms of any Partly Paid Unit, the number of Units issued at any time in respect of an application for Units will be calculated as follows:

- (a) by dividing the application moneys or the value of the Property paid by the applicable Issue Price at that time; and
- (b) by rounding down to the nearest Unit,

and any balancing amount will become an Asset.

5.8 Units as consideration

Where an Investment is acquired for consideration which includes the issue of Units by the Trustee, the number of Units created and issued by the Trustee is determined in accordance with the following formula.

$$\frac{MVA - C}{IP}$$

where:

- MVA = the value of the Investment being acquired as determined in accordance with this Constitution
- C = the amount of the Cash consideration paid in respect of the Investment (if any)
- IP = the Issue Price of the Units being issued (as determined in accordance with clause 7.1)

5.9 Certificates

Unless their Terms of Issue require it, no certificates will be issued for Units (unless the Trustee determines otherwise in relation to some Units, or a Class or all Units).

5.10 Restriction on issue and redemption of interests

The Trustee cannot issue or redeem any Units or any other interests in the Trust from the 80th anniversary of the Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of Law or equity. This clause prevails over all other provisions of this Constitution.

6 Partly Paid Units and Cancellation

6.1 Terms of Issue

- (a) Subject to the Unitholders' Agreement, the Trustee may issue Partly Paid Units on such terms and conditions as it determines. In particular, without limitation, the Trustee may determine the number of instalments and the terms on which they are payable.
- (b) This clause 6 applies to all Partly Paid Units unless the Terms of Issue of a Unit specify otherwise. If there is an inconsistency between this clause 6 and the Terms of Issue, the Terms of Issue prevail.

6.2 Calls

Each Unit Holder of a Partly Paid Unit must pay a Call made in accordance with the Terms of Issue of the Unit. The Trustee may only make a Call if the Call is made on all Unit Holders of that Class. If the date fixed for payment of a Call is not a Business Day, the Call is due and must be paid on the immediately preceding Business Day.

6.3 Interest on late payment of Call

If any Call is not paid on or before the day appointed for payment, the Unit Holder of the Partly Paid Unit must pay interest on the amount of the Call from the day appointed for the payment to the time of actual payment. Interest which accrues on an unpaid Call will become an Asset. Interest will be payable at the Interest Rate (determined as at the day appointed for payment or, if a rate cannot be determined on that day, on the next day that the rate can be determined).

6.4 Non-receipt of notice of Call

A Call is not invalidated because any Unit Holder does not receive a notice of the Call, or because notice is accidentally not sent to any Unit Holder.

6.5 Deductions for unpaid Calls

If all or part of a Call is not paid by the date appointed for payment, the Trustee may apply any amount payable to the relevant Unit Holder under this Constitution to pay amounts unpaid under the Call (as well as accrued interest and all Expenses incurred by the Trustee in relation to the unpaid Call).

6.6 Notice requiring payment of sums payable

- (a) Without limiting clause 6.5, if a Call is not paid in full by the day appointed for the payment, the Trustee may give a notice to the Unit Holder requiring payment of the unpaid amounts, accrued interest and all Expenses incurred by the Trustee in relation to the unpaid Call.

- (b) The notice must appoint a day (at least 14 days after the date of the notice) by which the payment required by the notice is to be made.
- (c) The notice must also state that, if the payment is not made by the day appointed, the Units to which the Call related will be liable to be Cancelled.

6.7 Cancellation on non-compliance with notice

- (a) If a Unit Holder does not comply with a Cancellation Notice, any Units the subject of the Cancellation Notice may be Cancelled. The Trustee is not liable to a Unit Holder for any Loss suffered by the Unit Holder as a result of the Cancellation.
- (b) Cancellation may be effected by a notice from the Trustee, with effect from the date of the notice.
- (c) Cancellation includes cancelling all rights to any distributions (and other money payable to the Unit Holder relating to the Cancelled Units) not actually paid to the Unit Holder before the Cancellation (except where such amounts have already been applied to reduce the Call amount under clause 6.5).
- (d) Cancellation of Units in those circumstances is a right of the Trustee arising from the Unit Holder's failure to comply with a Cancellation Notice. The Trustee's right to Cancel a Partly Paid Unit in those circumstances is a Term of Issue of the Unit.

6.8 Entry on Register of Unit Holders

Where any Unit has been Cancelled in accordance with this clause, the Trustee will enter the Cancellation and the date of the Cancellation in the Register of Unit Holders.

6.9 Issue of Replacement Units

- (a) The Trustee may issue Units (**Replacement Units**) to replace the Cancelled Units.
- (b) Subject to paragraph (c), the Replacement Units will be issued with the same Terms of Issue as Cancelled Units (including the Issue Price). However, subject to paragraph (c), the amount immediately payable in relation to the Replacement Unit will be equal to the amount paid up and payable in relation to the Cancelled Unit (including the amount payable in relation to the Call made but not paid in relation to the Cancelled Unit). Also, the Call not paid in relation to the Cancelled Units will be taken to have been paid in relation to the Replacement Units.
- (c) Despite paragraph (b), the Trustee may determine the Issue Price of the Replacement Unit as the Trustee considers appropriate (including as to the amount immediately payable in relation to the Replacement Unit).

6.10 Not proceeding with Cancellation

At any time before a Unit is Cancelled:

- (a) the Trustee may decide not to proceed with the Cancellation upon such conditions as it determines; and
- (b) if the Unit Holder pays to the Trustee the full amount owing in relation to the Units in question (including accrued interest and all Expenses incurred by the Trustee in relation to the unpaid Call), the Trustee must not proceed with the Cancellation.

6.11 Liability notwithstanding Cancellation

A Unit Holder whose Units have been Cancelled remains liable to pay to the Trustee all amounts unpaid specified in clauses 6.12(a), 6.12(b) and 6.12(c) which are referable to the Cancelled Units. That liability ceases when the Trustee is paid all such amounts under clause 6.12 or otherwise in relation to the Cancelled Units.

6.12 Proceeds of issue

The amounts received from issuing the Replacement Units (and all distributions and other money from time to time payable but not paid to the Unit Holder in relation to the Cancelled Units) must be applied to pay:

- (a) first, all costs which have been or will be incurred in relation to the Cancellation and the issue;
- (b) second, the amount of the unpaid Call; and
- (c) third, any accrued interest on the Call and any other moneys payable to the Trustee.

The balance (if any) must be paid to the Unit Holder whose Units have been Cancelled. If the net proceeds of the Cancellation are insufficient to pay the amounts in paragraphs (a), (b) and (c) then the Unit Holder remains liable for the difference between the net proceeds of issue and the sum of those amounts.

6.13 Joint holders

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

6.14 Winding up

The whole of the unpaid Issue Price of each Partly Paid Unit is payable upon a Termination Event occurring.

7 Issue Price**7.1 Issue Price**

- (a) The Issue Price for the Units issued to establish the Trust under clause 2.2(b) is \$1.00 per Unit.
- (b) Subject to paragraph (c), the Issue Price for any Unit issued after Units issued in accordance with paragraph (a) will be equal to:

$$\frac{\text{Net Fund Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}}$$

all calculated as at the first Valuation Time after the Trustee receives:

- (i) the application for Units; or
- (ii) the application money (if applicable) or the Property (or other Investment) to be transferred to the Trustee,

whichever happens later.

- (c) The Trustee may determine a different Issue Price in relation to Units or a Class.

7.2 Satisfaction of Issue Price

The Issue Price may be satisfied by payment of Cash or by transfer to the Trustee of Property or another Investment acceptable to the Trustee (or by a combination of both). If the Trustee accepts Property or Investments, it may determine that some or all of the costs associated with the valuation, transfer or assignment of the Property or Investments are payable or reimbursable out of the Trust Fund or by the applicant (or both in agreed proportions).

8 Redemption of Units

8.1 Unitholders' Agreement

Without limiting the generality of clause 3, this clause 8 is subject to compliance with the processes set out in the Unitholders' Agreement.

8.2 Terms of Issue

This clause 8 has effect in respect of each Class of Units but are subject to the Terms of Issue of that Class.

8.3 Redemption request

Subject to obtaining the requisite approval under the Unitholders' Agreement, any Unit Holder may request that some or all of their Units be redeemed. Each request must:

- (a) satisfy the form and content requirements prescribed by the Trustee; and
- (b) be delivered to the Trustee at its registered office (or other place nominated by the Trustee).

On making such a request, the Unit Holder will have no right to deal with the Units (unless and until the request is denied by the Trustee). A Unit Holder may not withdraw a redemption request unless the Trustee agrees.

8.4 Action following request

Within a reasonable time of receiving a redemption request under clause 8.3 and subject to the Unitholders' Agreement, the Trustee must consider that request and may:

- (a) deny the request (but it must then notify the Unit Holder accordingly); or
- (b) effect the redemption by causing the number (or value) of Units held by the Unit Holder referred to in the redemption notice to be redeemed at the applicable Redemption Price out of the Trust Fund; or
- (c) purchase (in a capacity other than as trustee of the Trust) or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the redemption notice; or
- (d) partially effect the redemption in the manner described in paragraph (b) and partially purchase (or arrange for Units to be purchased) in the manner described in paragraph (c).

8.5 Sums arising

The Trustee may deduct from the proceeds of redemption of Units any money due to the Trustee in relation to the Unit Holder.

8.6 Transfer of Assets

Rather than pay Cash to effect a redemption (or pay a distribution) in whole or in part the Trustee may, with the prior approval of Unit Holders, transfer Assets to a Unit Holder (or the Unit Holder's nominee). The Trustee must satisfy itself that the value of the Assets (with any Cash paid) will equal the total amount of Cash otherwise payable. The Trustee may do this on the basis of a valuation of the Assets obtained within 30 Business Days before the redemption or distribution payment date. Unless the Trustee decides otherwise, Expenses incurred in transferring the Assets will be borne by the Unit Holder.

8.7 Effective time of a redemption and cancellation of Units upon redemption

A redemption under this clause 8 is effective at the time the Unit Holder's name is removed from the Register (or, where not all the Unit Holder's Units are redeemed, the number of Units recorded on the Register is reduced to reflect the redemption). From that time until payment of the redemption proceeds, the former holder of the redeemed Units ceases to be a Unit Holder in relation to the redeemed Units and is a creditor of the Trustee for the amount of those proceeds. Units are automatically cancelled upon redemption.

8.8 Order

Unless the Trustee decides otherwise, the first Units issued to a Unit Holder are the first Units withdrawn.

9 Redemption Price

Subject to the Terms of Issue of a Unit or a Class, the Redemption Price for any Unit will be equal to:

$$\frac{\text{Net Fund Value - Transaction Costs}}{\text{number of Fully Paid Units on Issue + Partly Paid Proportion}} \times \frac{\text{amount paid up on that Unit}}{\text{Issue Price of that Unit}}$$

Each of these variables will be calculated as at the next Valuation Time after the Trustee received (or is taken to have received) the redemption request. The Trustee may adjust any variable where the calculation is in respect of a particular Class, but such adjustment to be subject to clauses 22.1(b) and 22.1(c).

10 Transfers

10.1 Unitholders' Agreement

Without limiting the generality of clause 3, this clause 10 is subject to compliance with the processes set out in the Unitholders' Agreement.

10.2 Terms of Issue

This clause 10 and clause 11 each have effect in respect of each Class of Units but are subject to the Terms of Issue of that Class and the Unitholders' Agreement.

10.3 Transferability

- (a) Subject to this Constitution, the Unitholders' Agreement and their Terms of Issue, a Unit may be transferred by instrument in writing, in any form that the Trustee approves.
- (b) A transferor of Units remains the holder of the Units (as the case may be) transferred until the transfer is registered in accordance with clause 10.4.

10.4 Registration of transfers

- (a) Where Units are transferred, the following documents must be lodged for registration at the registered office of the Trustee or the location of the Register:
 - (i) the instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units; and
 - (iii) any other information that the Trustee may require to establish the transferor's right to transfer the Units.
- (b) On compliance with paragraph (a), the Trustee will, subject to the powers or obligations of the Trustee to refuse registration under clause 10.5, register the transferee as a Unit Holder. The Trustee must not refuse to register a transfer of Units where such transfer is undertaken in accordance with the Unitholders' Agreement, provided that in doing so the Trustee would be properly performing or exercising its powers or duties in relation to the Trust and such action would not cause the Trustee to lose the benefit of the indemnity in clause 19.
- (c) The Trustee may waive compliance with paragraph (a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

10.5 Where registration may be refused

Subject to the Terms of Issue and the Unitholders' Agreement, the Trustee may, where permitted to do so by Law, refuse to register any transfer of Units. The Trustee must not refuse to register a transfer of Units where such transfer is undertaken in accordance with the Unitholders' Agreement, provided that in doing so the Trustee would be properly performing or exercising its powers or duties in relation to the Trust and such action would not cause the Trustee to lose the benefit of the indemnity in clause 19.1.

10.6 Where registration may not be refused

Notwithstanding any other provision of this Constitution, the Trustee may not refuse to register a transfer of Units, provided the transfer complies with the requirements of clause 10.6, if:

- (a) the transfer is either to a person holding a mortgage, charge, pledge or other Security Interest (or to a person acting as agent, trustee or nominee for such a person) (**Mortgagee**) which is given by a Unit Holder over its Units (**Unit Mortgage**), or is pursuant to an exercise by a Mortgagee of rights in relation to a Unit Mortgage;
- (b) the Mortgagee is a "wholesale client" within the meaning of the Corporations Act;
- (c) the Mortgagee is reasonably likely to satisfy bona fide internal anti-money laundering checks, 'know your client' processes or similar that might reasonably be required by the Trustee in respect of a person acting in the capacity of the Mortgagee; and
- (d) the transfer would not cause the Trustee to be in breach of Law.

In any such case, the Trustee must register the transferee as a Unit Holder. The Trustee may request and rely on a written statement of the Mortgagee certifying that the transfer is pursuant to an exercise of rights under a Unit Mortgage.

10.7 Notice of non-registration

If the Trustee declines to register any transfer of Units, the Trustee must within five Business Days after the transfer was lodged with the Trustee (or registrar), give to the person who lodged the transfer written notice of the decision to decline registration.

11 Transmission of Units

11.1 Registration of persons entitled

- (a) Subject to the production of any information that is properly required by the Trustee, a person becoming entitled to a Unit in consequence of the insolvency (or other legal disability) of a Unit Holder may elect to:
 - (i) be registered personally as a Unit Holder; or
 - (ii) have another person registered as the Unit Holder.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units apply to any relevant transfer as if the insolvency (or other legal disability) of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.

11.2 Distributions and other rights

- (a) If a Unit Holder suffers a legal disability, the Unit Holder's legal personal representative or the trustee of the Unit Holder's estate (as the case may be) is, on the production of all information as is properly required by the Trustee, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Unit Holder would have been entitled to if the Unit holder had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit as a result of the legal disability of a Unit Holder, they will, for the purposes of this Constitution, be taken to be joint holders of the Unit (as the case may be).

12 AMIT rules

For each Financial Year during which the Trust is an AMIT, the Trustee must:

- (a) Determine the total amounts of particular characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Off-sets for the Trust and any Class;
- (b) apply any Under, Over and Trust Component Deficit to the amounts in clause (a) in accordance with subdivision 276-F of the 1997 Tax Act and subject to the discretions in that subdivision;
- (c) subject to the Terms of Issue of any particular Unit or Class, allocate the amounts so determined after the application of clause ((b):
 - (i) first, to Unit Holders where their Units have been redeemed during the Financial Year, in the proportion that is equal to the amount of the Distributable Income of the Trust or Class, as relevant, to which the Unit Holder was entitled in relation to their redeemed Units divided by the total Distributable Income of the Trust or Class available for distribution for the Financial Year;
 - (ii) in relation to the remainder amounts after the allocations in paragraph (c)(i), to each Unit Holder who is on the Register during the Financial Year in the proportion that is equal to the sum of:

- (A) the amounts of Distributable Income distributed to the Holder from the Trust or Class during the Financial Year; and
 - (B) any other entitlements of the Holder to a portion of the Distributable Income of the Trust or Class for the Financial Year,
- divided by the total Distributable Income of the Trust or Class for the Financial Year after it has been reduced by any amounts allocated under paragraph (i) above; and
- (d) ensure that any allocation made in accordance with this clause is made on a fair and reasonable basis having regard to the Terms of Issue of a Unit or Class; and
 - (e) comply with the documentation requirements under subdivision 276-H of the 1997 Tax Act, including the preparation of AMIT member annual statements within the prescribed time frames.
 - (f) To the extent of any inconsistency, this clause shall prevail over clause 13.

13 Income and Distributions

13.1 Determination of income and reverses

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

13.2 Distribution of income

For each Distribution Period in which the Trustee determines to make a distribution of income to Unit Holders, the Trustee must calculate and distribute each Unit Holder's Distribution Entitlement.

13.3 Distribution Entitlement for a Distribution Period

- (a) **Distributable Income** for a Distribution Period is to be determined in accordance with the following formula:

$$DI = OI + C - R$$

Where:

DI is the amount of Distributable Income.

OI is Operating Income.

C is an additional amount (including capital) that the Trustee has determined is to be distributable in respect of the Distribution Period.

R an amount which represents income to which a Unit Holder has become entitled as a consequence of the redemption of Units during the relevant Distribution Period (refer to clause 13.8).

- (b) Subject to the Terms of Issues for any Class of Units, each Unitholder's **Distribution Entitlement** is to be determined in accordance with the following formula:

$$DE = DI \times \frac{B}{C}$$

Where:

DE is the proportion of the Distributable Income to which Unit Holder is presently entitled.

- DI is the amount of Distributable Income.
- B is the aggregate of the products obtained by multiplying the Distribution Price of each Unit held by the Unit Holder on the Distribution Date by the number of days during the relevant Distribution Period in respect of which the relevant Unit was entitled to participate in the Distributable Income.
- C is the aggregate of the products obtained by multiplying the Distribution Price of each Unit which was in existence of the Distribution Date, by the number of days during the relevant Distribution Period in respect of which the relevant unit was entitled to participate in the Distributable Income.

13.4 Distribution of Entitlement

- (a) A Unit Holder shall be entitled to participate in the Distribution Income in relation to a Unit on and from the date of issue of the Unit.
- (b) The Trustee must pay to each Unit Holder its Distribution Entitlement, if any, on or before the Distribution Payment Date.
- (c) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period, the persons who are Unit Holders on the Distribution Date for that Distribution Period have an absolute, vested and indefeasible interest in the distributable Income of that Distribution Period.
- (d) The Trustee must retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (e) The Trustee may retain from the amounts to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this Constitution or required to be deducted by law.

13.5 Categories and sources of income

For any category or source of income the Trustee may keep separate accounts and allocate the income from any category or source to any Unit Holder.

13.6 Capital distributions

The Trustee may distribute capital of the Trust to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to a proportion of the capital to be distributed determined on an equivalent basis as would apply for distribution of Distributable Income at the date, in accordance with clause 13.3. A distribution may be in Cash or of Assets or by way of bonus Units.

13.7 Change in Tax Act

Notwithstanding clauses 13.3 and 13.4, if in any Financial Year the Trustee in its capacity as Trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
 - (i) the Distributable Income for that Financial Year; or
 - (ii) In years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unit Holders, on the Distribution Date.

- (b) Each Unit Holder's Distribution Entitlement to the Distributable Income (calculated in accordance with clause 13.4(a)). Is to be determined in accordance with clause 13.3(b)
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause (b) to the persons who are Unit Holders on the record date for that Distribution Period.

13.8 Entitlement to Distributable Income in Respect of Ordinary Units withdrawn

- (a) In this clause, the **Relevant Distribution Period** means the Distribution Period during which the relevant Unit are withdrawn (i.e. redeemed or repurchased).
- (b) If the relevant Units are withdrawn such that the relevant Unit Holder is not a Unit Holder on the Distribution Date for the Relevant Distribution Period, then the Unit Holder will have an absolute, vested and indefeasible interest, at the time it ceases to be a Unit Holder, in the Distributable Income (if any) accruing to the relevant Units on and from the later of:
 - (i) the date on which those units are entitled to participate in distributions under clause 13.3; and
 - (ii) the first day of the Relevant Distribution Period,until the day before the date on which the Unit Holder ceases to be a unit holder, with any such amount to be paid to that person at the same time as the Distribution Entitlements of Unit Holders in respect of the Relevant Distribution Period are paid.

13.9 Reinvestment

At any time prior to the end of the Financial Year to which a distribution relates:

- (a) the Trustee may, with the approval of the Unit Holders by approving a Reserved Matter, decide to require Unit Holders to reinvest some or all of any distribution; and
- (b) a Unit Holder may, if the Trustee approves, elect to reinvest some or all of any distribution,

by acquiring Units in the Trust and the amount of distribution must be applied on behalf of the Unit Holder to acquire the additional Units in the Trust. In those cases, the Trustee is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 7. The procedure for reinvestment of distributions is to be determined by the Trustee and notified to Unit Holders from time to time.

14 Powers and Duties of Trustee

14.1 Powers

- (a) The Trustee has all the powers:
 - (i) in respect of the Trust that it is possible under the Law to confer on a trustee;
 - (ii) as though it were the absolute owner of the Assets and acting in its personal capacity; and
 - (iii) necessary for fulfilling its obligations under this Constitution and at Law.
- (b) Without limiting paragraph ((a)), but subject to the terms of the Unitholders' Agreement, the Trustee's powers include the following:
 - (i) To acquire Property or dispose of Assets for Cash or other consideration.

- (ii) To develop, improve and otherwise deal with any Assets (including by granting a lease or licence over an Asset).
- (iii) To borrow, raise money or otherwise obtain financial accommodation (for example, for the purposes of subparagraphs (b)(i) and (ii)) and to incur all types of obligations and liabilities.
- (iv) To create Security Interests over the Trust Fund or any Asset (for example, for the purposes of subparagraphs (b)(iii) and (v)).
- (v) To guarantee liabilities of any person or provide indemnities in respect of such liabilities.
- (vi) To make any kind of Investment, subject to any approval required under the Unitholders Agreement.
- (vii) To enter into Derivatives.
- (viii) To buy-back Units.
- (ix) To fetter future discretions, such as by the granting of options.
- (x) To enter into any arrangement or agreement with underwriters in relation to the Trust.
- (xi) To institute, defend and compromise legal proceedings, including arbitrations and investigations.
- (xii) To insure any Assets against all or any risks and for amounts the Trustee considers appropriate.
- (xiii) To attend and vote at meetings of any company or other entity.
- (xiv) To make the choice for the Trust to be an AMIT for the purpose of section 276-10 of the 1997 Tax Act.
- (xv) To make a choice that each Class will be treated as a separate AMIT for the purposes of section 276-20 of the 1997 Tax Act.
- (xvi) To comply with the requirements in the Tax Act relating to the administration and operation of AMITs, including information disclosure and documentation requirements.
- (xvii) To exercise any discretions in the Tax laws relating to the administration and operation of AMITs, including the allocation of Unders, Overs and Trust Component Deficits in complying with clause 12.

14.2 Delegation

- (a) The Trustee may, subject to the terms of the Unitholders' Agreement, appoint delegates or agents (including Custodians) to perform any act or exercise any power of the Trustee (including a power in turn to appoint its own agent or delegate).
- (b) An agent or delegate may be an associate or employee of the Trustee or any Unit Holder.
- (c) An appointment may be joint.
- (d) Subject to clause 14.2(e), the Trustee will not be liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting and monitoring the delegate.
- (e) Notwithstanding clause 14.2(d), the Trustee is liable for the acts or omissions of any delegate that is an associate or employee of the Trustee except to the extent that Unit

Holder has direct contractual recourse against such delegate in respect of the relevant act or omission.

- (f) The Trustee may include provisions in a delegate's appointment to protect and assist those dealing with the delegate as the Trustee thinks fit. The Trustee is deemed to have taken reasonable care in selecting any person who it is instructed by the Unit Holders to appoint.
- (g) The Trustee may vary or revoke any delegation made under paragraph (a) as the Trustee thinks fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.
- (h) Without limiting paragraph (a), the Unit Holders acknowledge that the Trustee proposes to appoint the Investment Manager under the Investment Management Agreement to provide services to the Trustee in connection with the management of the Trust and the Assets and that the fees and expenses payable under the Investment Management Agreement will, subject to the terms of the Investment Management Agreement, be Expenses payable out of the Trust Fund.

14.3 Advisers

Without limiting clause 14.1, but subject to the terms of the Unitholders' Agreement, the Trustee may engage Advisers to assist it with its duties and functions under this Constitution. An Adviser may be an associate or employee of the Trustee or any Unit Holder.

15 Valuations

15.1 Valuation of an Asset

Subject to clause 15.2, the Trustee may cause an Asset to be valued at any time.

15.2 Valuation if required

The Trustee must cause an Asset to be valued if required by:

- (a) Law and the valuation must be undertaken in accordance with the relevant requirements; or
- (b) the Unitholders Agreement and the valuation must be undertaken in accordance with any requirements under the Unitholders Agreement.

15.3 Valuation method

The Trustee may determine and vary valuation methods and policies for each category of Asset. Unless the Trustee determines otherwise, the value of an Asset will be its market value.

15.4 Determination of Net Fund Value

The Trustee may determine the Net Fund Value and any Net Class Value at any time in its discretion.

16 Holding Assets

16.1 How held

Subject to clauses 16.2 and 16.3, all Assets will be held in the name of the Trustee.

16.2 Other Custodian

If the Trustee considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Trustee and acting as agent for the Trustee.

16.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Trustee.

17 The Register

17.1 Keeping the Register

The Trustee must establish and keep a register of Unit Holders. The Trustee must enter on the register of Unit Holders the Class of Units held by a Unit Holder.

17.2 Information in and form of Register

Subject to clause 17.1, the Trustee may decide what information is included in the Register.

17.3 Changes

Every Unit Holder must promptly notify the Trustee of any change of name or address and the Trustee must alter the Register accordingly.

17.4 Register

Only the persons entered into the Register are recognised as having any interest in a Unit.

18 The Trustee's Limitation of Liability

18.1 General

To the extent permitted by Applicable Legislation, if the Trustee acts in good faith and in accordance with the Constitution without fraud, dishonesty, negligence or breach of trust, the Trustee is not liable for any Loss to any person (including any Unit Holder) arising out of any matter relating to, or connected with, the Trust. In any case, to the extent permitted by Applicable Legislation, the liability of the Trustee in relation to the Trust to any person other than a Unit Holder is limited to the Assets, from which the Trustee is entitled to be, and is in fact, indemnified.

18.2 Specific

In particular, to the extent permitted by Applicable Legislation, the Trustee is not liable for any Loss to any person arising out of any matter where in respect of that matter:

- (a) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Trustee, including where the Trustee has acted in accordance with a direction from Unit Holders; or
- (b) it acted or refrained from acting as required by Law; or
- (c) it relied in good faith on any signature, marking or documents.

19 Indemnities

19.1 Trustee's indemnity

In addition to any indemnity under any Law the Trustee has a right of indemnity out of the Trust Fund on a full indemnity basis, in respect of any liability incurred by the Trustee in properly performing or exercising any of its powers or duties in relation to the Trust, the Unitholders' Agreement or the Investment Management Agreement or any other subsequent agreement the

Trustee is required to enter into in connection with the Trust except to the extent that the Trustee has acted fraudulently, negligently or in breach of trust.

19.2 Trustee's indemnity continuing

Such right of indemnity in respect of a matter (an *Indemnified Matter*) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the Trustee retires or is removed as trustee of the Trust.

19.3 Payment

The Trustee may pay out of the Trust Fund any amount for which it would be entitled to be indemnified under clause 19.1 or clause 20.

19.4 The Trustee not to incur liability

The Trustee is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

19.5 Right of indemnity not affected by an unrelated breach

Where a liability is incurred by the Trustee in performing or exercising any of its powers or duties in relation to the Trust, the Trustee may exercise any of its rights to be indemnified or reimbursed out of the Trust Fund to meet that liability. It may do so despite any Loss incurred in relation to the Trust or any reduction in the value of the Assets arising from any unrelated act or omission by the Trustee or by any person acting on behalf of the Trustee.

19.6 Indemnity under Law

The indemnities conferred under this clause 19 are in addition to any indemnity allowed by or arising under any Law.

20 The Trustee's Indemnity by Unit Holders for Tax Liability

20.1 Liability limited

The Trustee is entitled to be indemnified by a Unit Holder or a former Unit Holder to the extent that it incurs any liability for Tax as a result of the Unit Holder's or former Unit Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.

20.2 Joint Unit Holders

Joint Unit Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 20.1 applies.

21 Change of Trustee

21.1 Voluntary retirement

The Trustee may retire on not less than six months' notice to Unit Holders (or such shorter period as they agree). Subject to the Unitholders' Agreement, on retirement, the Trustee may appoint in writing another suitably qualified person to be the trustee.

21.2 Compulsory retirement

The Trustee must retire as the trustee of the Trust:

- (a) when required by Law; or

- (b) in accordance with the written consent of all Unitholders or as otherwise required under the Unitholders' Agreement.

21.3 New Trustee

Any replacement trustee must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it. The Trustee must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of trustee.

21.4 Release

When the Trustee retires or is removed, subject to clause 21.3, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed.

22 Amendments to Deed

22.1 General

- (a) Subject to the Unitholders' Agreement and paragraphs (b), (c) and (d), the Trustee may amend this Constitution (including this clause) by deed.
- (b) Subject to the Unitholders' Agreement, the rights or obligations attaching to Units cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Trust cannot be affected in any way, without the written approval of all Unit Holders.
- (c) Subject to the Unitholders' Agreement, the rights or obligations attaching to Units of a Class cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Trust cannot be affected in any way, without the written approval of all Unit Holders.
- (d) Clause 22.1 cannot be altered such that it would permit a person acting in the capacity of trustee of the Trust to become a Unit Holder under this Constitution or otherwise a beneficiary under the Trust.

22.2 Amendments to AMIT rules

- (a) Despite any other provision of this Constitution but subject to clause 22.1, the Trustee may make such amendments to this Constitution as are necessary or incidental to the administration or operation of the Trust by the trustee in accordance with the legislation relating to the taxation of AMITs without any resolution or written consent of Unit Holders.
- (b) The trustee will consult with the Unit Holders before amending this Constitution pursuant to paragraph (a) but, for the avoidance of doubt, the Unit holders will not have a veto right in respect of such amendments.

23 Statements, Accounts and Audit

23.1 Appointment of auditors

The Trustee may, and if required by Law must, appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under this Constitution.

23.2 Retirement of auditors

The Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the Trustee.

23.3 Remuneration of auditors

The remuneration of the Auditor will be fixed by the Trustee.

23.4 Accounts and reports

- (a) The financial statements of the Trust must be kept and prepared by the Trustee in accordance with applicable Australian Accounting Standards (if applicable), or otherwise as determined by the Trustee.
- (b) The Trustee must report to Unit Holders concerning the affairs of the Trust and their holdings. The person preparing a report may determine the form, content and timing of it.

23.5 Audit

If an Auditor has been appointed, the Trustee will cause the Auditor to audit and report on the financial statements (in the manner required by the Corporations Act to the extent it applies).

24 Meetings of Unit Holders

24.1 Convening meetings

The Trustee may at any time convene a meeting of Unit Holders and, subject to this clause 24, may determine and notify to Unit Holders the procedures which will apply to any such meeting.

24.2 Cancellation or adjournment

The chair of a meeting of Unit Holders has power to cancel a meeting or to adjourn the meeting for any reason to such place and time as the chair thinks fit.

24.3 Non-receipt

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

24.4 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders or under clause 24.5 is binding on all Unit Holders.

24.5 Written resolution

A resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by the Unit Holder.

25 Service of Documents

A reference to a document includes a notice.

- (a) A document may be given by the Trustee to any Unit Holder by, in the Trustee's discretion:
 - (i) serving it on the Unit Holder personally;

- (ii) sending it by post to the Unit Holder or leaving it at the Unit Holder's address as shown in the Register or the address nominated by the Unit Holder to the Trustee for the giving of documents;
 - (iii) sending it to the fax number nominated by the Unit Holder to the Trustee for the giving of documents;
 - (iv) sending it to the electronic address nominated by the Unit Holder to the Trustee for the giving of documents or by other electronic means nominated by the Unit Holder;
 - (v) if a Unit Holder nominates any electronic means by which the Unit Holder may be notified that documents are available and may access documents, sending a notification that the document is available for access, in each case by the relevant electronic means; or
 - (vi) serving it in any manner contemplated in this paragraph (a) on a Unit Holder's attorney as specified by the Unit Holder in a notice given under paragraph (b).
- (b) By written notice left at or sent to the registered office of the Trustee or the Trustee's securities registry, a Unit Holder may request that all documents to be given by the Trustee be served on the Unit Holder's attorney at an address, or by the electronic means, nominated in the notice and the Trustee may do so in its discretion.
- (c) A document may be sent to a Unit Holder whose address for documents is outside Australia by airmail, air courier or fax or otherwise be sent or made available electronically (including as contemplated by subparagraph (a)(v)).
- (d) Any document sent by post is conclusively considered to have been served on the next Business Day on the expiration of 48 hours after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Unit Holder personally or left at the Unit Holder's registered address is conclusively considered to have been served when delivered. Any document sent to a Unit Holder by fax or other electronic means is conclusively considered to have been served when the fax or other electronic transmission is sent. Any document made available to a Unit Holder by electronic means as contemplated by subparagraph (a)(v) is conclusively considered to have been served when notification that the document is available for access by that means is sent.
- (e) The Trustee may give a document or other communication to joint Unit Holders by giving it to the Unit Holder first named in the Register for that holding.
- (f) Every person who, by operation of Law, transfer or any other means, becomes entitled to be registered as the holder of any Units is bound by every document that, before the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those Units.
- (g) Where a Unit Holder does not have a registered address or where the Trustee has a reason in good faith to believe that a Unit Holder is not known at the Unit Holder's registered address, a document is conclusively deemed to be given to the Unit Holder if the document is exhibited in the registered office of the Trustee for a period of 24 hours (and is conclusively deemed to be duly served at the commencement of that period) unless and until the Unit Holder informs the Trustee of a new registered address.

- (h) The signature to any document or other communication by the Trustee may be written, printed, stamped or produced electronically and the signature may be that of the Trustee or of any director or secretary of the Trustee.
- (i) A Unit Holder may send a document to the Trustee by delivering it to the Trustee's registered address or any other means permitted by the Trustee and communicated to Unit Holders in writing. A document is effective when it is received by the Trustee. A document must be signed by the Unit Holder or a duly authorised representative (unless the Trustee waives this requirement).

26 Termination Event

When a Termination Event occurs, the Trustee must:

- (a) cease issuing Units or any other interests in the Trust; and
- (b) cease approving redemption requests under clause 8.3.

27 Procedure After a Termination Event

27.1 Notice of winding up

The Trustee must give Unit Holders notice of a Termination Event as soon as possible after it has occurred. The notice must provide reasonable details of the Termination Event and summarise the procedures contemplated by this clause 27.

27.2 Realisation of Trust Fund

Subject to clauses 27.4 and 27.5, as soon as practicable after giving of the notice under clause 27.1 the Trustee must sell or realise the Assets in such manner as the Trustee considers appropriate, but subject to the Terms of Issue of any Unit or Class.

27.3 Final distribution

- (a) Subject to the Terms of Issue of any Unit or Class, the Net Proceeds From Realisation must be distributed among the Unit Holders in proportion to the number of Units they hold. The Trustee may make more than one distribution under this clause. The Trustee is authorised to give notice under section 60 of the *Trustee Act 1925* (NSW) and equivalent provisions in other legislation before making any distributions under this clause.
- (b) For the purposes of distribution entitlements, Partly Paid Units will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest two decimal places, or will be treated in such other manner as the Trustee determines.
- (c) This clause does not limit clause 27.6.

27.4 Transfer of Assets

Despite clause 27.3, but subject to the Terms of Issue of any Unit or Class and the written consent of the relevant Unit Holder, the Trustee may transfer Assets to any Unit Holder holding Units having a value in excess of an amount as determined by the Trustee in satisfaction of that Unit Holder's entitlement in the Trust Fund. The value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the Expenses incurred in transferring the Assets will be borne by the Unit Holder or Unit Holders.

27.5 Postponement of realisation

The Trustee may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Unit Holders. To the extent permitted by Applicable Legislation, the Trustee will not be responsible for any Loss attributable to the postponement.

27.6 Retention of property

The Trustee may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any Expenses or Liabilities (actual or contingent) in respect of the Trust. If any Asset retained is ultimately found not to be required, then it must be distributed to the Unit Holders in accordance with this clause 27.

27.7 Continuation of powers

The powers, duties and rights of the Trustee (including the rights to remuneration and to any indemnities under this Constitution or the Law) continue following a Termination Event to the extent to which they are not inconsistent with this clause 27.

27.8 Cancellation of Units

Unless the Trustee determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date the final distribution of the Net Proceeds From Realisation is made.

28 Fees and costs

28.1 Establishment Costs

- (a) The Trustee, or an associate of the Trustee, may pay, on behalf of the Trust, any or all Expenses incurred in connection with the establishment of the Trust other than any Expenses in connection with the preparation, approval and execution of any Trust Documents or this Constitution (collectively the **Excluded Expenses**) (the **Establishment Costs**).
- (b) In such a case, the Trustee or the associate (as the case may be) will be entitled to be reimbursed out of the Trust Fund for all Establishment Costs that were reasonably incurred up to \$25,000 (the **Establishment Cost Cap**).
- (c) Any:
 - (i) Establishment Costs in excess of the Establishment Cost Cap; and
 - (ii) any Excluded Expenses,shall not be reimbursed out of the Trust Fund or otherwise deducted from the assets of the Trust or any sub-trust.
- (d) The Trustee or the associate (as the case may be) may waive recovery of any of the Establishment Costs or may be reimbursed from the Trust Fund in a year or years later than the year in which the Establishment Cost was incurred.

28.2 Differential fee arrangements

The Trustee may agree with any Unit Holder fee arrangements in respect of that Unit Holder which are different to those provided for under this Constitution.

28.3 Expenses

- (a) Subject to the Unitholders' Agreement and the terms of this Constitution including clauses 28.1 and 28.3(b) and Schedule 1, all Expenses incurred or payable by the Trustee in connection with the Trust or in performing its obligations under this Constitution can be

paid out of or reimbursed from the Trust Fund. Amounts payable under this clause 28.3 are in addition to fees (if any) payable under this clause 28 and rights to indemnification or reimbursement conferred under this Constitution or by Law.

- (b) Expenses, liabilities and costs in connection with the Trustee's own in-house administration and overhead (including taxes with respect to the Trustee's business, rent for the Trustee's premises, insurance premiums, office maintenance, directors and shareholders meetings, computer charges, salaries, research costs and other like expenses) shall be borne by the Trustee and shall not be reimbursable out of the Trust Fund.

28.4 Waiver of Expenses

The Trustee may waive or postpone reimbursement of any or all Expenses under clause 28.3.

28.5 Fees paid to the Trustee in a different capacity

The Trustee may be paid a fee or receive any other consideration for work performed by it in connection with the Trust in any capacity, including in its personal capacity. If and to the extent that the Trustee undertakes any work in connection with the Trust in any capacity other than as the trustee of the Trust, the Trustee may keep any consideration it receives for that work and is not required to account for the consideration to the Trust or Unit Holders.

28.6 Recovery of GST

The fees payable to the Trustee under this Constitution do not include any amount referable to GST. If GST is payable in respect of any supply made by the Trustee under or in connection with this Constitution, the Trustee is entitled to be paid as additional consideration an amount equal to the amount of GST payable on that supply (the **GST Amount**). The Trustee will be entitled to be reimbursed or indemnified for the GST Amount out of the Trust Fund.

28.7 Liability Net of GST

Where any indemnity, reimbursement or similar payment under this Constitution is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement in relation to the relevant cost, expense or other liability.

28.8 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Constitution, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

29 Unit Holders' Liability

29.1 Liability

To the extent permitted by Law but subject to this Constitution and the Terms of Issue relating to a Class of Units, no Unit Holder will, in its capacity as Unit Holder, be personally liable for any obligation of, or liability incurred by, the Trustee and:

- (a) a Unit Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in relation to the Trust; and
- (b) the recourse of the Trustee and any creditor of the Trustee is limited to the Assets.

Except as expressly provided, nothing in this Constitution makes the Trustee the agent of a Unit Holder nor does it create any relationship between the Trustee and each Unit Holder other than that of trustee and beneficiary.

29.2 Limitation of liability

To the extent permitted by Law but subject to this Constitution and the Terms of Issue relating to a Class of Units, each Unit Holder's liability to the Trustee or the Trust is limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for their Units. This is subject to any separate agreement between a Unit Holder and the Trustee.

30 Other Activities and Obligations of the Trustee

30.1 Other activities

Except to the extent prohibited by Law, and subject to the Unitholders' Agreement, the Trustee (in any capacity) or its related bodies corporate or other associates may:

- (a) deal with the Trustee (as trustee) or with any Unit Holder; or
- (b) be interested in any contract, transaction, or matter with the Trustee (as trustee) or with any Unit Holder; or
- (c) act as trustee or responsible entity in relation to any other trust or managed investment scheme; or
- (d) deal with any entity in which the Trustee holds an Investment on behalf of the Trust; or
- (e) undertake any other business activity (including any activities relating to Property or an Investment in which the Trust may have an interest),

and:

- (f) none of them, unless they have contracted otherwise, has any obligation to present or grant any right over any Property (including Land) to the Trust; and
- (g) in each case set out in paragraphs (a) to (e) the Trustee (or any associate) may retain for its own benefit all profits or benefits derived from that activity and each Unit Holder consents to any such dealing, interest or activity.

30.2 Other obligations

All obligations of the Trustee or restrictions on its power which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

30.3 Hold Units

The associates of the Trustee may hold Units in any capacity. Notwithstanding anything else contained in this constitution, the Trustee, while it is acting as trustee of the Trust and after it ceases to be Trustee, is absolutely prohibited from being a beneficiary or holding Units in the Trust or otherwise directly or indirectly benefiting under this Constitution, but without affecting the rights of the trustee to receive amounts in accordance with clause 28 or to be indemnified out of the property of the Trust in accordance with clause 19, and this clause 30.3 shall not be capable of amendment pursuant to clause 22 of this constitution or otherwise.

31 Payments

31.1 Money payable

Subject to the Terms of Issue relating to a Class of Units, money payable by the Trustee to a Unit Holder may be paid in any manner the Trustee decides. Unless decided otherwise, payments will be made by electronic transfer to an account nominated by the Unit Holder.

31.2 Failed payments

Where the Trustee attempts to make a payment to a Unit Holder by electronic transfer of funds and the transfer is unsuccessful three times the money may be:

- (a) In the case of a Unit Holder, reinvested in Units at the Issue Price prevailing at the next Valuation time after the third unsuccessful attempt at transfer;
- (b) held by the Trustee for the benefit of the Unit Holder; or
- (c) paid by the Trustee in accordance with applicable unclaimed money legislation.

However, the Trustee may also then draw a cheque in favour of the Unit Holder.

If the Trustee decides to make any payments by cheque, the Trustee may cancel any cheque that is not presented within six Months of its date. In that case, the Trustee may take any of the actions described in paragraphs (a) to (c) above. This clause applies to any other method of payment selected by the Trustee (with any necessary changes to take account of that means of payment).

31.3 Joint Unit Holders

A payment to any one of joint Unit Holders will discharge the Trustee for the payment.

31.4 Deductions for Tax or other payments

The Trustee may deduct from any amount payable to a Unit Holder or former Unit Holder (or received from a Unit Holder or former Unit Holder) any amount of Tax or other payment (or an estimate of it), including in respect of any amount attributed to a Holder under the AMIT rules, which the Trustee reasonably believes it must or should deduct, in respect of that Unit Holder or former Unit Holder.

32 Governing Law and Jurisdiction

This Constitution is governed by the Laws of New South Wales. In relation to it and related non-contractual matters the Trustee and each Unit Holder irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.

33 Severability

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable then so much of it as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this Constitution remains in full force and effect.

Schedule 1 – Expenses

The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

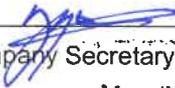
- (a) the interpretation and enforcement of this Constitution, including Advisers' fees;
- (b) the costs of preparing any supplemental deed or proposed supplemental deed amending this Constitution, any Relevant Agreements, entry into and amending the constitutions, trust deeds, by-laws, limited liability company agreements and other constituent documents of any Portfolio Entity, material agreements to which the Trustee or the constitutions, trust deeds, by-laws, limited liability company agreements and other constituent documents of any entity (including a body corporate or trust, directly or indirectly controlled by the Trustee) (each a **Portfolio Entity**) is a party and the budget of the Trust, provided that such amending or supplemental deed is for the benefit of the Trust or the Unit Holders as a whole rather than for the benefit of any particular Unit Holder or the Trustee in which case such costs shall be borne by the relevant Unit Holder or the Trustee in its personal capacity respectively);
- (c) the sale or proposed sale, purchase, a proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets or Property;
- (d) the investigation, negotiation or acquisition of any proposed Investment;
- (e) the administration, management, promotion or valuation of the Trust or its Assets and Liabilities, including:
 - (i) the establishment and maintenance of accounts and Register;
 - (ii) issuing of Units by the Trustee or any sales of Units by one or more Unit Holders, including underwriting costs;
 - (iii) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this Constitution;
 - (iv) dealing with Unit holder enquiries and complaints;
 - (v) communications with Unit Holders;
 - (vi) investor tours, analyst tours, publications and other promotional costs in relation to Assets; and
 - (vii) any travel expenses incurred by the Trustee solely in connection with the Trust;
- (f) fees payable to any regulatory body in relation to the Trust or Units;
- (g) convening and holding meetings of Unit Holders and the implementation of any resolutions;
- (h) Tax and bank fees;
- (i) the engagement of Custodians, Advisers and others;
- (j) preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Trust;

- (k) winding up (including realising the Assets of) the Trust and the retirement or removal of the Trustee and the appointment of a new Trustee;
- (l) any court proceedings, arbitration or other dispute concerning the Trust, including proceedings against the Trustee;
- (m) raising or borrowing money or otherwise obtaining financial accommodation for the Trust (including interest), including a capital raising by the Trust, including fees payable to any underwriter or broker;
- (n) giving guarantees in relation to any person or granting security over all or part of the Assets;
- (o) entry into Derivatives, including payments made under them;
- (p) the choice to be an AMIT for the purpose of section 276-10 of the 1997 Act and compliance with the requirements in the Tax Act and the *Taxation Administration Act 1953* relating to the administration and operation of AMITs, including information disclosure and documentation requirements; and
- (q) any other expenses which are designated as Permitted Expenditure under the Unitholders' Agreement.

Executed and delivered as a Deed in New South Wales

Each attorney executing this Constitution states that he or she has no notice of revocation or suspension of his or her power of attorney.

Executed in accordance with section 127 of the *Corporations Act 2001* by **GPT Platform Pty Ltd**:



Company Secretary/~~Director~~
Yasothara Yoganathan

Name of Company Secretary/~~Director~~ (print)



Director
James Anthony Coyne

Name of Director (print)