

## ONE FUNDS MANAGEMENT LIMITED

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Sydney Leisure, Gaming and Property Growth Fund  
(Vauxhall) No. 1

*Constitution*

<b>Date</b>	This Constitution is a deed poll made on the date noted on page 47 of this document.
<b>Party</b>	One Funds Management Limited ACN 117 797 403 of Level 11, 20 Hunter Street, Sydney, New South Wales  (Trustee)
<b>Introduction</b>	<p>A. This Constitution establishes the Trust for the benefit of all Unitholders. Those Unitholders are bound by this Constitution.</p> <p>B. The Trustee has agreed to manage the Trust formed by this Constitution for the benefit of Unitholders and at the end of the term wind up the Trust.</p> <p>C. If the Trust is a Registered Scheme, then the Trustee will be the responsible entity.</p> <p>D. The terms of this Constitution follow.</p>
<b>Schedules</b>	<p>The following Schedules form part of this Constitution:</p> <p>A. Schedule 1—Dictionary.</p> <p>B. Schedule 2—Rules for interpretation.</p> <p>C. Schedule 3—Restructure Proposals.</p>

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## TERMS

### 1. Constitution of the Trust

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#### 1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on—

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

#### 1.2 *Confirmation of appointment*

The appointment of the Trustee of the Trust is hereby confirmed and the Trustee agrees to manage the Trust upon and subject to the terms contained in this Constitution.

#### 1.3 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Unitholder. Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, the Units will be held upon and subject to the provisions contained in this Constitution.

### 2. Trust

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#### 2.1 *Name of the Trust*

- (a) The Trust will be known as the Sydney Leisure, Gaming and Property Growth Fund (Vauxhall) No. 1. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If One Funds Management Limited retires or is removed, then its successor as Trustee must, unless otherwise approved by One Funds Management Limited, change the name of the Trust to a name that does not imply an association with One Funds Management Limited or its business.

#### 2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the Initial Units are first issued in accordance with clause 3.1.



### 2.3 *Term of the Trust*

The Trust will end on the earlier of—

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

### 2.4 *No merger*

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

## 3. *Creation and sale of Units*

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### 3.1 *Initial Units*

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

### 3.2 *Units—division of beneficial interest*

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

### **3.3 Further issues of Units**

- (a) Subject to the Act, the Trustee may determine to create and issue further Units of the same class or of a different class to those already on issue.
- (b) The Trustee may make the issue of further Units in different classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may—
  - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units, or
  - (ii) provide for conversion of Units from one class to another class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of the class of Units which they hold as set out in this Constitution or a schedule to this Constitution.
- (d) Notwithstanding any other provision in this Constitution, the rights, obligations and restrictions attaching to a class of Unit (including the rights, obligations and restrictions attaching to Ordinary Units) are subject always to the rights, obligations and restrictions which attach to Units issued in other classes. For example, and for the removal of doubt, if a class of Unit is issued by the Trustee which has a right to receive some of the Distributable Amount or Dividend Amount in priority or preference to other classes of Units, then the rights of holders of other classes of Units are subject to this right.
- (e) The Trustee may create and issue Options to subscribe for Units, on such terms and conditions as it determines. On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

### **3.4 Fractions of Units**

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) If fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.
- (c) The Trustee may consolidate or divide Units or fractions of Units of the same class on terms it determines.

### **3.5 Application Price of a Unit**

- (a) For all Units issued prior to or pursuant to the first Disclosure Document, the Application Price of a single Unit is \$1.00. At all other times the Application Price will be determined as follows:

- (i) If the Trust is not a Registered Scheme, then at a price determined by the Trustee in its absolute discretion.
  - (ii) If the Trust is a Registered Scheme, then in accordance with clause 3.5(b), subject to the Trustee determining another Unit price in accordance with the remainder of this clause 3.5, or in accordance with clause 3.6.
- (b) Subject to clause 3.5(a) and clauses 3.5(c) and 3.6, the Application Price of a single Unit is the price calculated as follows:

$\frac{\text{Net Asset Value} + \text{TUP} + \text{Transaction Costs}}{\text{Units in Issue}}$
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Where “TUP” is the total Unpaid Proportion of all Units in issue (if any).

- (c) Notwithstanding any other provision of this Constitution, the Trustee may set the Application Price for Units at an Application Price different from the fixed price in clause 3.5(a) or different from that determined in accordance with clause 3.5(b), in relation to some Units, a class of Units or all Units, to the extent it is permitted to do so under the terms of any exemption or relief provided by ASIC (and subject to the terms of that exemption or relief). In particular the Trustee may (subject to the terms of the exemption or relief) exercise discretion in determining—
- (i) any matter affecting the value of any factor included in the calculation of the Application Price, and
  - (ii) any matter which is an aspect of the method of calculating the Application Price.
- (d) For the purpose of clause 3.5(b), “Net Asset Value”, “Transaction Costs” and “Units in Issue” are each that proportion of those variables that the Trustee determines is properly referable to the class of Unit to which the Unit being priced belongs.

### **3.6 Application Price on exercise of Option**

Subject to clause 3.5, the Act and the conditions of any applicable relief provided by ASIC, the exercise price for Units to be issued on the exercise of an Option will be the Application Price determined on the Business Day immediately preceding the date the Options are offered.

### **3.7 Time to calculate Application Price**

Subject to clauses 3.5(c) and 3.6, the time at which the Trustee must calculate the Application Price is the next Relevant Valuation Time after the later of the following to occur:

- (a) The time the Trustee receives the relevant application for Units.

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

### **3.8 Time to calculate Application Price—fixed capital raisings**

Notwithstanding clause 3.7, the Trustee may calculate the Application Price at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

### **3.9 Units issued against uncleared funds**

- (a) For the purposes of this clause 3, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay as a receipt of Application Money.
- (b) Units issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property, are (at the election of the Trustee) void if the funds are not subsequently cleared, or the property does not vest in the Trustee, within 10 Business Days after the receipt of the relevant application for Units.

### **3.10 Net Asset Value**

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

### **3.11 Satisfaction of Application Money**

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

### **3.12 Perpetuity period and restriction on issue and redemption of Units**

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

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## 4. Application for Units

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### 4.1 *Form of application*

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

### 4.2 *Application payment*

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 15, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

### 4.3 *Holding Application Money*

All Application Money must be held by the Trustee (or its agent) on trust for the Applicants.

### 4.4 *Interest on Application Money*

Unless the Trustee decides otherwise, interest earned on Application Money will form part of the Assets, and for the avoidance of doubt, any interest earned on Application Money is not available to a particular Applicant nor is it attributable to a particular Applicant.

### 4.5 *Trustee may refuse application form*

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application form is refused, then the Trustee must refund to the Applicant any money paid by that Applicant plus any interest earned within five Business Days after the refusal.

### 4.6 *Investment of the Application Money*

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

### 4.7 *Minimum application*

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

**4.8 Date Units issued**

- (a) Units are taken to be issued on the date the Trustee accepts the relevant application for Units.
- (b) However, Units issued on a reinvestment pursuant to clause 15 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

**4.9 Number of Units issued**

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

$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$
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- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 4.9(a) assuming the Application Price per Unit was due and paid in full on the date of issue.
- (c) At the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

**4.10 Unit certificates**

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

**4.11 Unitholder identification requirements**

- (a) Without affecting clause 4.1, the Trustee may require any Applicant to provide to the Trustee evidence of the identity of that Applicant (or of any person or entity with an interest in the Applicant), in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 4.5, the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion, if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 4.11(a), or the evidence provided is not satisfactory to the Trustee.
- (c) If, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder) is a different person or entity from the person or entity originally represented to the Trustee, then the Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void.
- (d) Nothing in this clause 4.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law relating to the control or identification of money laundering or terrorism financing. This

clause 4.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

## **5. Partly Paid Units**

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### **5.1 *Payment of Application Price by instalments***

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

### **5.2 *Determination of amount and timing of instalments***

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

### **5.3 *Variation or waiver of terms and conditions***

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

### **5.4 *Notice of instalments***

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

### **5.5 *Interest on instalments and costs***

If a Unitholder does not pay an instalment by the due time and date—

- (a) then interest is payable by the Unitholder on the sum due, calculated in accordance with clause 27.10(a), and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

### **5.6 *Failure to pay instalments***

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).

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

#### **5.7 *If requirements of any notice not complied with***

If the requirements of any notice issued under clause 5.6 are not complied with—

- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Trustee so determining, and
- (b) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

#### **5.8 *Disposal of forfeited Units***

- (a) Subject to the Act, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either—
  - (i) at a price that is no less than a price calculated in accordance with clause 3.5, or
  - (ii) in accordance with any applicable ASIC relief in relation to the sale of forfeited Units, if the Trustee complies with the conditions of the relief.
- (b) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (c) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Trustee thinks fit.



### **5.9 *Holder of forfeited Units***

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

### **5.10 *Evidence of forfeiture***

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

### **5.11 *Consideration for forfeited Units***

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

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

### **5.12 *Deductions from consideration for forfeited Units***

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

### **5.13 *Joint holders***

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

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

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

**5.15 Termination of the Trust**

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the unpaid Application Price of each Partly Paid Unit is payable immediately upon termination of the Trust.

**6. Withdrawal Price for Units****6.1 Withdrawal price**

- (a) If the Trust is not a Registered Scheme, then Units may be redeemed at a Withdrawal Price determined by the Trustee in its absolute discretion.
- (b) If the Trust is a Registered Scheme, then a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$\frac{\text{Net Asset Value} + \text{TUP} - \text{Transaction Costs}}{\text{Units in Issue}}$
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Where "TUP" is the total Unpaid Proportion of all Units in Issue (if any).

- (c) For the purposes of the calculation in clause 6.1(b):
- (i) The Trustee may (subject to the terms of any exemption or relief provided by ASIC) exercise discretion in determining:
- A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price, and
- B. any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) "Net Asset Value", "Transaction Costs" and "Units in Issue" are each that proportion of those variables that the Trustee determines is properly referable to the class of Unit to which the Unit being priced belongs.

**6.2 Time to calculate Withdrawal Price**

The Withdrawal Price must be calculated—

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

## 7. Withdrawal procedures

### 7.1 *Right to withdraw*

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

### 7.2 *Application of withdrawal provisions*

- (a) Clauses 7.3 to 7.6 apply whether or not the Trust is Liquid.
- (b) Clauses 7.4 to 7.6 apply whether or not the Trust is a Registered Scheme.
- (c) Clauses 7.7 and 7.8 apply while the Trust is Liquid.
- (d) Clause 7.9 applies while the Trust is not Liquid.

### 7.3 *Requests for withdrawal*

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

- (a) if the Trust is Liquid, by providing notice to the Trustee in writing and the Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 7 (subject to clauses 7.7 and 7.8), or
- (b) if the Trust is not Liquid, in response to a withdrawal offer made by the Trustee and in accordance with the Act.

### 7.4 *Compulsory withdrawal*

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

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

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

### **7.5 Money owed**

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

### **7.6 Transfer of Assets to satisfy withdrawal or distribution**

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

### **7.7 Suspension of withdrawals**

- (a) The Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time—
- (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up
  - (ii) if it is not in the best interests of Unitholders for withdrawals to be made
  - (iii) if due to circumstances beyond the Trustee's reasonable control it cannot calculate or pay the Withdrawal Price, or
  - (iv) if it is not able to realise Assets needed to satisfy the withdrawal requests within the time required.

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

### **7.8 Provisions which apply when the Trust is Liquid**

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 90 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the trustee must satisfy the request within 21 days from the date on which it determines to give effect to the request—
- (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 7.6
  - (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request, or
  - (iii) partially in the manner described in clause 7.8(a)(i) and partially in the manner described in clause 7.8(a)(ii).
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding in the Trust.
- (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding in the Trust.
- (e) The Trustee may redeem some or all of the Units which are the subject of the request.
- (f) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceed the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in Section 601KD of the Act (as if the Trust was not Liquid). The Trustee may, but is not obliged to, process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).

### **7.9 Provisions which apply when the Trust is not Liquid**

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer, which complies with the Act,

currently open for acceptance by Unitholders. The Trustee may make separate withdrawal offers in respect of different classes of Units or a withdrawal offer only in respect of a particular class.

- (b) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion.
- (c) The withdrawal offer may be made by—
  - (i) publishing it (for example, in a national newspaper or on the World Wide Web), or
  - (ii) giving a copy to all Unitholders to whom the withdrawal offer is available.
- (d) The Trustee is not at any time obliged to make a withdrawal offer.
- (e) If the Trustee receives a withdrawal request before it makes a withdrawal offer, then it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (f) The Trustee may cancel any withdrawal offer it has made by—
  - (i) publishing the fact of the cancellation (for example, in a national newspaper or on the World Wide Web), or
  - (ii) giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made.

## **8. Register of Unitholders**

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### **8.1 *Trustee must maintain the Register***

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

### **8.2 *Removing information from the Register***

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

### **8.3 *Register is evidence of who are Unitholders***

Except in the case of manifest error, the Trustee may treat a registered Unitholder as the legal owner of Units registered in the Unitholder's name on the

Register. The Trustee is not required to recognise any beneficial interest held in any Unit.

#### **8.4 *Change of details***

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

#### **8.5 *Limit to number of registered holders***

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

### **9. *Interests of Unitholders***

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#### **9.1 *Joint holders***

If the same Units are held by more than one Unitholder, then these Unitholders hold them as joint tenants.

#### **9.2 *Restrictions on Unitholders***

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

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

### **10. *Valuation of Assets***

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#### **10.1 *Periodic valuations***

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

#### **10.2 *Net Asset Value***

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

### **10.3 Valuation methodology**

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

## **11. Trustee's powers and duties**

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### **11.1 General powers**

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

### **11.2 Specific powers**

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

- (a) Acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction (which for the avoidance of doubt includes the acquisition of any contractual or other rights and the provision of debt with or without security).
- (b) Dispose of or otherwise deal with the Assets.
- (c) Manage and administer the Assets.
- (d) Lend all or any money at any time forming part of the Assets to any person with or without the security of any property, including where the amount of any such loan is in excess to the value of the secured property.
- (e) Complete and execute any mortgage document and any other security document, including any document relating to the priority of a security held on behalf of the Trust.
- (f) Do everything which, in the Trustee's opinion, is necessary or expedient to enable the exercise of any right as lender in relation to any loan made from the Assets, including exercising a power of sale pursuant to a mortgage document or the Conveyancing Act 1919 (NSW) or a corresponding enactment of a State or Territory or the Commonwealth of Australia, to execute any contract for sale of real property offered as security, transfer, lease or easement document required to register any dealings and complete the sale of such real property offered as security to the trust and the subject of the exercise of any power of sale.



- (g) Do everything which, in the Trustee's opinion, is necessary or expedient, to enable any security held on behalf of the Trust to be discharged.
- (h) Borrow or raise money (including but not limited to the issue of unsecured notes and other debt products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), grant security, enter into ISDA master agreements and derivative transactions (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to—
  - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and
  - (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (i) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then—
  - (i) it may do so on terms the Trustee thinks fit, and
  - (ii) the agent or delegate may be an Associate of the Trustee.
- (j) Act as underwriter for the offer of any securities or other interests in the Trust.
- (k) Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time.
- (l) Hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property.
- (m) Delegate (in writing) the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (n) Enter into any option agreement relating to any lending or financing facility, agreement or transaction.
- (o) Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred

notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.

### **11.3 Restructure Proposals**

- (a) The Trustee may, in accordance with the provisions of Schedule 3, do any and all things required to implement a Restructure Proposal. If a Restructure Proposal is approved, then the provisions of Schedule 3 apply.
- (b) Nothing in clause 11.3(a) prevents a Restructure Proposal being implemented by another mechanism.

### **11.4 Interested dealings by Trustee**

- (a) Subject to the Act, the Trustee may—
  - (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust
  - (ii) act in the same or similar capacity in relation to any other managed investment scheme
  - (iii) hold Units in, or other securities issued by, the Trust in any capacity
  - (iv) hold or deal in or have any other interest in an Asset, or
  - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause 11.4, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 11.4(a)—
  - (i) it may retain and need not account for any benefit derived by it, and
  - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.

### **11.5 Retirement benefit**

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to—

- (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement, or
  - (ii) its retirement as Trustee.
- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

### **11.6 Investment powers**

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the Trustee Act 1925 (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers.

### **11.7 Exercise of discretion**

The Trustee may, in its absolute discretion, decide how and when to exercise its powers.

## **12. Financial reports and tax returns**

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### **12.1 Accounts, audit and other reports**

While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.

### **12.2 Tax returns**

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

### **12.3 Electronic annual financial report to Unitholders**

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

## **13. Fees and expenses**

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### **13.1 Ongoing management fee**

The Trustee is entitled to an ongoing management fee of up to 2.5 percent per annum of the gross value of the Assets (including the gross value of the assets of

any Sub Entities, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity). This fee is accrued daily and is payable monthly in arrears out of the Assets from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.

### **13.2 Fee on retirement or removal**

If One Funds Management Limited is removed as the Trustee of the Trust, then the following applies:

- (a) In consideration for work done in establishing the Trust and facilitating the orderly replacement of One Funds Management Limited as trustee of the Trust, One Funds Management Limited is entitled to a retirement or removal fee.
- (b) The retirement or removal fee is only payable in the following circumstances:
  - (i) If One Funds Management Limited is removed as the trustee of the Trust before the third anniversary of the date of issue of the Trust's first Disclosure Document and provided that One Funds Management Limited is not removed because of its gross negligence in the management of the Trust or for a material fiduciary breach. In this clause 13.2(b) a "material fiduciary breach" is a breach by the Trustee of a fiduciary duty to Unitholders which causes them substantial loss.
  - (ii) If One Funds Management Limited retires as the trustee of Trust before the third anniversary of the date of issue of the Trust's first Disclosure Document.
- (c) The amount of the retirement or removal fee referred to in clause 13.2(a) is the total amount of the ongoing management fee payable under clause 13.1 that One Funds Management Limited would have received if it had been the trustee of the Trust until the third anniversary of the date of issue of the Trust's first Disclosure Document, with such amount being determined based on the gross value of the Assets as at the time of calculation of the retirement or removal fee.
- (d) The fee in clause 13.2(a) becomes due and payable on the day (as applicable)—
  - (i) a meeting of Unitholders is called, requisitioned or convened to—
    - A. propose removing One Funds Management Limited as Trustee of the Trust (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document), or

- B. to propose modify, repealing or replacing this Constitution pursuant to section 601GC(1)(a) of the Act by modifying, repealing or replacing this clause 13.2 or any part of this clause 13.2 (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document), or
- (ii) One Funds Management Limited retires as trustee of the Trust under the terms of the Investment Management Agreement.
- (e) Any Trustee of the Trust that succeeds One Funds Management Limited is not entitled to any benefit under this clause at any time.

### **13.3 Waiver and deferral of fees and expenses**

The Trustee may at any time and for any time—

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

### **13.4 Fees can be applied to acquire Units**

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

### **13.5 Other fees or different fees**

While the Trust is not a Registered Scheme—

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document, and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 13, provided they are disclosed in a Disclosure Document.

### **13.6 Fees and costs**

- (a) All costs, charges and expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, or the performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such costs, charges and expenses, then the Trustee will, in addition to the remuneration payable to

it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such costs, charges and expenses, together with any GST payable in respect of those costs, charges and expenses.

- (b) Without limiting clause 13.6(a), this includes costs, charges and expenses connected with the following:
- (i) The acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
  - (ii) The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
  - (iii) Costs of raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
  - (iv) The appointment of any consultant, agent, broker, underwriter or delegate by the Trustee, including a custodian and an investment manager, and including all fees payable to these parties.
  - (v) The administration or management of the Trust or its Assets and Liabilities.
  - (vi) Bank charges on the operation of bank accounts.
  - (vii) Borrowing money, raising finance or granting security over the Assets.
  - (viii) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity.
  - (ix) Fees and charges of any regulatory or statutory authority.
  - (x) Convening and holding meetings of Unitholders.
  - (xi) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
  - (xii) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.
  - (xiii) Keeping and maintaining of the accounting records and registers of the Trust.
  - (xiv) Retirement and the appointment of a substitute trustee.
  - (xv) The initiation, conduct and settlement of any court proceedings—

- A. to enforce any provisions of this Constitution, or
  - B. in relation to the Trust or any of its Assets or Liabilities.
- (xvi) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required).
- (xvii) Acquiring, establishing, maintaining and developing computer software systems required for the administration of the Trust.
- (xviii) Reasonable travelling and accommodation expenses of the Trustee.
- (xix) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xx) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xxi) The establishment, management and maintenance of any—
- A. listing on any exchange or secondary market of the Trust or any Units, and
  - B. any rating of the Trust or any Units.
- (xxii) The performance of the functions and duties of the Trustee under the Constitution.
- (xxiii) Costs, charges and expenses related to—
- A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members
  - B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act, and
  - C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxiv) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.

- (xxv) Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee.
- (d) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

### **13.7 Performance of duties**

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 13.7(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 13.7 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

### **13.8 Goods and Services Tax**

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

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



or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

### **13.9 Fees or amounts payable by Trust or Sub Entities**

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

## **14. Distributions from the Trust**

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### **14.1 Trustee will collect in all money**

The Trustee must collect or cause to be collected all amounts generated from the Assets and pay these into an account in the name of the Trustee (or if a custodian is appointed into an account in the name of the custodian) on behalf of the Trust. The Trustee will make all payments relating to the Trust from this account.

### **14.2 Situation if Trust taxed as a company**

If the Trustee considers the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 14.2 applies in respect of that Financial Year and the following applies:

- (a) As soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine—
  - (i) if there is to be any Dividend Amount for the Distribution Period, and
  - (ii) if so, then the amount of the Dividend Amount and the amount of any franking credits (if any) to be attached to the Dividend Amount.
- (b) The Trustee may determine the extent to which the Dividend Amount (if any) comprises profits, retained profits, capital, returned capital or income of a particular character.
- (c) Subject to any Terms of Issue conferred on a particular class of Units, at the end of the Distribution Period, a Unitholder is entitled to a Dividend Entitlement, calculated as follows:

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

Where:

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

B = The Total Paid-up Proportion at the end of the Distribution Period.

C = The Dividend Amount (if any) for the Distribution Period.

- (d) Dividend Entitlements (if any) must be paid to Unitholders within three months after the Distribution Calculation Date.

#### **14.3 *Situation if Trust not taxed similar to a company***

Clauses 14.4 to 14.10 apply if clause 14.2 does not apply.

#### **14.4 *Calculation of Distributable Amount***

The Distributable Amount of the Trust for a Distribution Period will be the amount determined, by the Trustee, pursuant to the definition in Schedule 1. If for a period ending on the last day of a Financial Year the Trustee has not made a determination for the purpose of this clause 14.4 before the end of that Financial Year, then the Distributable Amount of the Trust will be the amount mentioned in sub-paragraph (a) of that definition.

#### **14.5 *Persons who will receive Distributable Amount***

The Trustee may determine the Distributable Amount for a Distribution Period and transfer that amount to a separate account to be held on trust, and after payment of all Tax, subject to any Terms of Issue, pay that amount to Unitholders who are Unitholders on the last day of that Distribution Period in accordance with the following formula (subject to any payments or adjustments required as a result of clause 14.11):

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

Where:

A = The number of Units held by the Unitholder at the close of business on the last day of the Distribution Period.

B = The Distributable Amount for the Distribution Period.

C = The number of Units held by all Unitholders at the close of business on the last day of the Distribution Period.

#### **14.6 *Unitholders presently entitled to Distributable Amount***

Any person who is a Unitholder or was a Unitholder at any time during the Financial Year will, on the last day of the Financial Year, be presently entitled (within the meaning of the Tax Act) to all of the Distributable Amount payable to them in respect of the relevant Financial Year in the proportion that the Distributable Amount payable to them in respect of the Financial Year bears to the sum of the Distributable Amount payable to all persons who have been Unitholders at any time during the Financial Year.

**14.7 Time for distribution of Distributable Amount**

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

**14.8 Nature of receipts and nature of distributions to Unitholders**

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

**14.9 Other distributions**

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

**14.10 Preparation of accounts**

Notwithstanding that the Distributable Amount of the Trust may be calculated in accordance with clause 14.4, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount pursuant to clause 14.4. Without limiting clauses 14.8 or 14.9, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

**14.11 Rights in respect of Partly Paid Units**

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

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Trust, then that Unit may be eligible for increased participation in the

Distributable Amount at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.

- (ii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as if it were fully paid.
  - (iii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as the terms of its issue provide.
- (b) However, if the Trustee does not make such a determination, then clause 14.11(a)(i) will apply.

#### **14.12 Initial distribution entitlements**

For the removal of doubt and despite anything in this clause 14, the Trustee may in its discretion issue Units on terms that such Units—

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

#### **14.13 Unitholder's rights**

For the removal of doubt and despite anything in this clause 14, the rights of a Unitholder under this clause 14 are subject to the rights, obligations and restrictions attaching to the Units which they hold. For example, the Trustee may issue a class of Units having rights to receive a distribution in preference to other classes of Units.

### **15. Distribution reinvestment**

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#### **15.1 Reinvestment**

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units.

#### **15.2 Compulsory reinvestment**

The Trustee may require Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units.

### **15.3 Notice to Unitholders**

If the Trustee permits reinvestment of distributions, then it must notify Unitholders of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms (for example, in a national newspaper or on the World Wide Web). The Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it (for example, in a national newspaper or on the World Wide Web).

## **16. Deductions from Distributions**

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### **16.1 Deduction of Taxes**

The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted:

- (a) Any amount of Tax (or an estimate of it).
- (b) Any other amount owed by the Unitholder to the Trustee or any other person.

### **16.2 Indemnity**

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

## **17. Transfer of Unitholder's Units**

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### **17.1 Right to transfer Units**

A Unitholder may transfer its Units in the Trust only in accordance with this clause 17.

### **17.2 Form of transfer**

Any transfer must be made by way of a form approved by the Trustee and be stamped (if applicable).

### **17.3 Trustee's discretion to enter transfer**

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

**17.4 Transfer effective when registered**

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

**17.5 Suspension prior to end of year**

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

**17.6 Listing on a secondary market or exchange**

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

**18. Transmission of Unitholder's Units**

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**18.1 Death or legal disability—sole Unitholder**

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

**18.2 Death or legal disability—joint Unitholder**

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

**19. Winding up of the Trust**

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**19.1 Events which cause a winding up**

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

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

**19.2 Process of winding up**

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) Subject to clause 19.2(e), the Trustee must convert the Assets to money, deduct all proper costs and then (subject to the Terms of Issue conferred on a particular class or on particular classes of Units) divide the balance amongst the Unitholders in accordance with the following formula:

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

Where—

A = the amount remaining in the Trust after deduction of the costs referred to in this clause 19.2(b)

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

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

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

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

- (c) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in this clause 19.2(b) results in a negative dollar amount, then that Unitholder must pay to the Trustee within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.
- (d) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain classes of Units in preference to the holders of other classes of Units, as required by the Terms of Issue of each Unit class.
- (e) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (f) Despite clause 19.2(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust.

**19.3 Trustee may withhold proceeds of realisation**

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

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

**19.4 Auditor's certificate**

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

**20. Unvested interests**

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.
- (b) Nothing in this clause 20 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

**21. Indemnity and liability****21.1 Liability of the Trustee**

Except to the extent the Act imposes liability—

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

**21.2 Indemnity from the Trust**

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of—
  - (i) any liability incurred by the Trustee in the performance of its duties in respect of the Trust



- (ii) all fees payable to and costs recoverable by the Trustee under this Constitution, and
  - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or in breach of trust.

### **21.3 Payment of taxes**

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

### **21.4 Reliance on others**

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

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

### **21.5 Trustee not liable for good faith error**

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

### **21.6 *Limitation of liability of Unitholders***

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

### **21.7 *Indemnity unaffected by unrelated breach of trust***

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

## **22. Meetings of Unitholders**

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### **22.1 *Trustee calling or postponing a Unitholders' Meeting***

The Trustee may call a meeting of the Unitholders at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders, at any time prior to the commencement of the meeting.

### **22.2 *Unitholders calling a Unitholders' meeting***

- (a) While the Trust is not a Registered Scheme—
  - (i) the Trustee must call and arrange to hold a meeting of Unitholders to consider and vote on a proposed resolution on the request of Unitholders with at least 15 percent of the votes that may be cast on the resolution, and
  - (ii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 22.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.

### **22.3 *Notice***

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

#### **22.4 Trustee may determine**

Subject to this clause 22 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

#### **22.5 Quorum**

- (a) The quorum for a meeting is two persons present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum. If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they will only be counted as one individual.
- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then—
  - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved, or
  - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things, then the meeting is adjourned to—
    - A. if the date is not specified—the same day in the next week
    - B. if the time is not specified—the same time, and
    - C. if the place is not specified—the same place.
- (d) If the meeting is adjourned pursuant to clause 22.5(c)(ii), then the Unitholders present in person or by proxy constitute a quorum.

#### **22.6 Chairing meetings of Unitholders**

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

#### **22.7 Proxies**

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.

- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.

#### **22.8 Adjournment**

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

#### **22.9 Demand for a poll**

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

#### **22.10 Resolutions binding**

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

#### **22.11 Objection at meeting**

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

#### **22.12 Non-receipt**

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

#### **22.13 Option Holders**

The provisions of this clause 22 relating to meetings of Unitholders also apply to meetings of Option Holders with any necessary modifications.

#### **22.14 Voting when unregistered**

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by means of the required number of Unitholders signing a document recording the making of the decision or passing of the resolution.

#### **22.15 Other decisions**

Subject to the Act (but without affecting clause 22.14), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

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**23. Retirement or removal of Trustee**

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**23.1 *Situation if Trust is a registered managed investment scheme***

If the Trust is a Registered Scheme, then clauses 23.2 and 23.3 do not apply and instead the provision of the Act regulating the retirement or removal of the Trustee will apply.

**23.2 *Retirement of the Trustee***

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

**23.3 *Removal of the Trustee by Unitholders***

If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 22.2 to consider and vote on—

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

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**24. Complaints handling**

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**24.1 *Complaints handling while registered as a managed investment scheme***

This clause 24 applies only while the Trust is a Registered Scheme.

**24.2 *Complaints handling officer***

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

**24.3 *A Unitholder may make a complaint***

- (a) Any Unitholder may make a complaint about any aspect of the Trust, or the complaints handling process itself, by contacting the Trustee. For the purposes of this clause 24, a complaint is any expression of dissatisfaction made to the Trustee, related to the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) The complaint must specify—

- (i) the name and contact details of the Complainant making the complaint, and
  - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 24.
- (c) If the complaint does not meet the requirement in clause 24.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder—
- (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint, or
  - (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (e.g. because of a physical disability).

#### **24.4 Acknowledgment of a complaint**

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

#### **24.5 Consideration of complaints**

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

**24.6 Resolving a complaint**

- (a) The Trustee must act reasonably in attempting to resolve a complaint; however, nothing in this clause 24 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) The Trustee must provide a 'final response' to a complaint within 45 days from the date of receipt of the complaint. However, the Trustee will endeavour to provide a final response to complaints in less than 45 days wherever possible.
- (c) A 'final response' to a Complainant must be in writing (unless the complaint is resolved by the end of the next business day after receipt of the complaint), and include the following:
  - (i) A statement of acceptance of the complaint.
  - (ii) The outcome of the complaint, including setting out clear and concise reasons for any decision made and references to any applicable provisions in legislation, codes, standards or procedures.
  - (iii) An offer of redress (if appropriate).
  - (iv) The Complainant's right to take their complaint to the external complaints resolution body of which the Trustee is a member, and its contact details.
- (d) If a final response cannot be provided to the Complainant within 45 days, then the Trustee must—
  - (i) inform the Complainant of the status of the complaint and the reasons for delay, and
  - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

**24.7 Further avenues open to Unitholders**

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

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

**24.8 Recording complaints**

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

**24.9 Disclosure of existence of complaints handling procedure**

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

**25. Changing this Constitution****25.1 Power to amend**

- (a) While the Trust is not a Registered Scheme, the Trustee may amend this Constitution at its absolute discretion on such terms as it sees fit.
- (b) While the Trust is a Registered Scheme, then the Constitution may be modified, or repealed and replaced with a new constitution—
  - (i) by Special Resolution of the Unitholders, or
  - (ii) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

**25.2 Lodgement of amendment**

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

**25.3 Statutory requirements**

- (a) If—
  - (i) the Act requires that this Constitution contain certain provisions, or if any ASIC relief or exemption on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC relief or exemption to apply ("Required Provisions"), or
  - (ii) any part of this Constitution (a "Required Part") is included to comply with the requirements of the Act or ASIC ("Regulatory Requirement") and that Regulatory Requirement ceases or changes,



then, to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.

- (b) The Unitholders—
  - (i) authorise the Trustee to make the amendments referred to in this clause 25.3 in a deed made for that purpose and, if required, to lodge it with ASIC, and
  - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 25.3.
- (c) Where this clause 25.3 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

## **26. Compliance plan and compliance committee**

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### **26.1 Compliance plan**

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

### **26.2 Compliance committee**

- (a) This clause 26.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

## **27. Miscellaneous Provisions**

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### **27.1 Form of notice**

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

**27.2 Address for service**

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

Trustee : One Funds Management Limited

Address : Level 11, 20 Hunter Street, Sydney, New South Wales

Facsimile : (0) 282 7700

- (b) The addresses for Unitholders will be as they appear in the Register.

**27.3 Deemed date of receipt**

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

**27.4 Notice to joint Unitholders**

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

**27.5 Payments**

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

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

**27.6 Discharge of Trustee**

The Trustee will receive a good discharge on—

- (a) payment of every cheque if duly presented and paid, or
- (b) in the case of money credited to any account with a financial institution, the receipt of the financial institution of the amount paid.

**27.7 Retention of documents**

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each

document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

### **27.8 Relationship between Trustee and Unitholders**

Each and every Unitholder and the Trustee agree—

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

### **27.9 Rounding**

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

### **27.10 Interest payable**

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the rate charged by the ANZ Bank on overdrafts in excess of \$100,000. The Trustee may waive payment of that interest in whole or in part.
- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

**27.11 Non-payment of money**

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

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

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

- (a) For notices sent under clause 27.11(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:
  - (i) Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.
  - (ii) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 27.11(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

**27.13 Trustee may require information from Unitholders**

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 27.13(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.

- (c) If any Unitholder fails to provide information required by clauses 27.13(a) or 27.13(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 27.13(a) or 27.13(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

**27.14 *Duties or like imposts payable by Unitholder***

- (a) Without limiting the other provisions of this Constitution, where any duty or stamp duty is payable on or in relation to any issue, redemption or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed (as the case may be), must pay the duty and indemnifies the Trustee in relation to the amount of the duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 27.10, 27.11 and 27.12 apply in relation to any amounts payable by a Unitholder under clause 27.14(a).

**27.15 *Applicable law***

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

**Execution**

This Constitution is made this                    day of                    2015.

**Signed** by One Funds Management  
Limited ACN 117 797 403 in accordance  
with section 127 of the Corporations Act  
2001 (Cth) by

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

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**Schedule 1—Dictionary**


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Accounting Standards	Has the meaning given to that term in section 9 of the Act.
Act	The Corporations Act 2001 (Commonwealth) for the time being in force, together with the regulations.
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees, or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
ASIC	The Australian Securities and Investments Commission.
Assets	This includes all property, rights and income of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes— <ul style="list-style-type: none"> <li>(a) Application Money or property paid in respect of which Units have not been issued</li> <li>(b) proceeds from withdrawals which have not yet been paid, and</li> <li>(c) any Distributable Amount awaiting payment to Unitholders.</li> </ul>
Associate	Means an associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.
Complainant	A Unitholder who has complained to the Trustee pursuant to clause 24.
Consolidation or Division Proposal	A proposal to consolidate, divide or convert Units in a ratio determined by the Trustee, including rounding of the number of Units as the Trustee determines.
Constitution	This document (including its schedules) as it may from time to time be amended and in force.
Disclosure Document	A document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in

	respect of the disclosure document.
Distributable Amount	<p>Unless the Trustee determines otherwise, Distributable Amount means—</p> <ul style="list-style-type: none"> <li>(a) the Net Income of the Trust, reduced by any amount which would be included in the assessable income of the Trust in accordance with Division 207 of the Tax Act and reduced by any amount which would be included in the assessable income of any sub trust in accordance with Division 207 of the Tax Act to the extent that that amount would subsequently be included in the assessable income of the Trust under section 97 of the Tax Act, plus</li> <li>(b) any further amounts determined by the Trustee from time to time to be distributed to Unitholders, which are not included in the Net Income of the Trust but are included in the other Income of the Trust, plus</li> <li>(c) any amount of capital of the Trust, determined by the Trustee from time to time to be distributed to Unitholders.</li> </ul>
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<ul style="list-style-type: none"> <li>(a) For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date.</li> <li>(b) For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust.</li> <li>(c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</li> </ul>
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 14.2.
Dividend Entitlement	Amounts determined under clause 14.2(c).
Exchange Proposal	<p>A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of—</p> <ul style="list-style-type: none"> <li>(a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity</li> <li>(b) a cash payment, and</li> <li>(c) a transfer of Assets.</li> </ul>
Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then



	the Act) and that has been passed by at least 75 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).
Financial Year	The period of twelve months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
Fully Paid Unit	A Unit on which the Application Price has been fully paid.
GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Income	Means— <ul style="list-style-type: none"> <li>(a) all receipts or amounts which are, or would be recognised as, income by the application of generally accepted accounting principles, and</li> <li>(b) any other receipts or amounts which the Trustee determines to be income (whether or not those receipts or amounts are, or would be recognised as, income by the application of generally accepted accounting principles).</li> </ul>
Initial Units	Units in the Trust issued pursuant to clause 3.1.
Initial Public Offer	Means any of the following for the purpose of seeking listing of the Trust and official quotation of the Units on the market operated by ASX Limited: <ul style="list-style-type: none"> <li>(a) An initial public offer of Units for the purpose of raising substantial capital.</li> <li>(b) A sell down of a substantial portion of the Units by the Unitholders.</li> <li>(c) Any other arrangement which has substantially the same economic effect as (a) or (b).</li> </ul>
Internet	The physical infrastructure of servers, computers, fibre-optic cables and routers through which data is shared on an international network.
Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf

	of the Applicant on account of commissions, service fees, or other fees associated with the acquisition of Unit).
Investment Manager	The investment manager of the Trust appointed under the Investment Management Agreement.
Investment Management Agreement	The investment management agreement between the Trustee and the Investment Manager.
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Unitholder, or the trustee of the estate of an Applicant or Unitholder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Unitholder.
Liabilities	All liabilities of the Trust, including any provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.
Liquid	Has the same meaning as in section 601KA of the Act.
Net Asset Value	The total value of the Assets calculated in accordance with clause 10, less the Liabilities. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a class other than Ordinary Units, the Trustee may (where permitted under the Terms of Issue for that class) adopt as the Net Asset Value figure an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so and in deciding the discount to Net Asset Value or premium to Net Asset Value, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable exemption or relief granted by ASIC which allows the Trustee to exercise such a discretion.
Net Income	The net income determined in accordance with the Tax Act as calculated each Financial Year, or where the Distribution Period does not end on the last day of a Financial Year, as calculated under the Tax Act as if the Distribution Period were a year of income.
One Funds Management Limited	One Funds Management Limited ACN 117 797 403 or any other company which replaces One Funds Management Limited as trustee of the Trust and which is a related body corporate of One Funds Management Limited.
Option	An option to subscribe for a Unit.
Option Holder	A person registered as the holder of an Option (including persons jointly registered).

Ordinary Units	Units issued by the Trustee in the class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other class of Units issued by the Trustee from time to time, as set out in the Terms of Issue of that other class.
Paid-up Proportion	<p>In relation to a Unit means the number obtained by applying the following formula:</p> $\text{Paid-up Proportion} = \frac{\text{PA}}{\text{AP}}$ <p>Where—</p> <p>(a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation, and</p> <p>(b) AP means the Application Price of the Unit.</p>
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
Perpetuity Period	The period specified in clause 3.12.
Register	The register of Unitholders required to be kept according to clause 8.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Restructure Proposal	<p>A proposal approved by a resolution of Unitholders holding at least 50 percent of the votes cast by Unitholders at a meeting of Unitholders which enables all Unitholders to realise all of part of their investment in the Fund including the following:</p> <p>(a) A Sale Transaction.</p> <p>(b) A Consolidation or Division Proposal.</p> <p>(c) A Top Hat Proposal.</p> <p>(d) An Exchange Proposal.</p> <p>(e) Any other proposal to reorganise or restructure the capital of the Trust in any way.</p>
Sale Transaction	A transaction which enables all Unitholders to realise all or a

substantial portion of their investment in the Trust, including—

- (a) An Initial Public Offer
- (b) A sale of all or part of the Units where all Unitholders have the opportunity to participate.
- (c) A sale of substantial Assets where all Unitholders have the opportunity to have their Units redeemed or transferred.
- (d) Any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a), (b) or (c).

Special Resolution

A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.

Sub Entity

A trust, company or other entity which was established by or is managed by the Trustee or by an Associate or related body corporate of the Trustee and in which the Trust has a direct or indirect interest.

Tax

This term includes, but is not limited to—

- (a) stamp duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Assets or Liabilities or the Trust itself
- (b) taxes, excises and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution
- (c) taxes imposed or assessed upon—
  - (i) any Application Money or property
  - (ii) the Assets, any Dividend Amount, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself, or
  - (iii) the Trustee in respect of its capacity as trustee of the Trust
- (d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust, and
- (e) every kind of tax, excise, duty, rate, levy, deduction and charge including any GST.

Tax Act	The Income Tax Assessment Act 1936, Income Tax Assessment Act 1997, or both as appropriate.
Terms of Issue	Means the terms on which a class of Units is issued under this Constitution, as determined by the Trustee from time to time.
Total Paid-up Proportion	The aggregate Paid-up Proportion of all Units on issue in the Trust.
Top Hat Proposal	A trust of which the Trustee is also the responsible entity or trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Transaction Costs	<p>(a) When calculating the Application Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total transaction costs the Trust would incur to acquire afresh the Assets</li> <li>(ii) if appropriate, the total transaction costs the Trust will incur to acquire proposed Assets, or</li> <li>(iii) if appropriate, having regard to the actual transaction costs which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total transaction costs, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the Withdrawal Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total transaction costs the Trust would incur to sell the Assets, or</li> <li>(ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the withdrawal, a portion of the total transaction costs, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p>
Trust	The trust constituted by this Constitution.
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
Unit	An undivided interest in the Trust as provided in this document.

Unitholder	A person who holds one or more Unit or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.
Unpaid Proportion	<p>The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:</p> $\text{Unpaid Proportion} = \text{AP} - \text{PA}$ <p>Where—</p> <ul style="list-style-type: none"><li>(a) AP means the Application Price of the Partly Paid Unit, and</li><li>(b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.</li></ul>
Valuation Time	The time at which the Trustee calculates the Net Asset Value.
Vesting Day	<p>The day which is the later of—</p> <ul style="list-style-type: none"><li>(a) the day immediately prior to the 80<sup>th</sup> anniversary of the date of commencement of the Trust, or</li><li>(b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.</li></ul>
Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause 6.1.
World Wide Web	The collection of stored data (comprising documents containing text, visual images, audio clips and other information media) that is accessed through the Internet.

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**Schedule 2—Rules for interpretation**

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In this Constitution unless the context indicates a contrary intention—

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

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### Schedule 3—Restructure Proposals

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The following provisions operate to empower the Trustee to implement a Restructure Proposal on behalf of the Unitholders:

#### Restructure Proposals

#### New clauses 11A.1, 11A.2, 11A.3 and 11A.4 apply as follows:

- 11A.1—Power to implement a Restructure Proposal and limitation of liability
- (a) Having regard to the functions of the Trustee and without limiting anything else in this clause the Trustee has power to and must do all things which it considers are necessary, desirable or reasonably incidental to effect a Restructure Proposal and those powers apply notwithstanding, and are not limited by, any provision of this Constitution.
  - (b) The Trustee will not have any liability of any nature whatsoever beyond the Assets to Unitholders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the implementation of a Restructure Proposal.

- 11A.2—Appointment of Trustee as agent and attorney
- The Trustee is irrevocably appointed the agent and attorney of each Unitholder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of a Unitholder to effect a Restructure Proposal, including but without limiting the generality of the foregoing:
- (a) Applying for Securities in the name of a Unitholder.
  - (b) Making or accepting transfers of Securities in the name of and for the Unitholder.
  - (c) Receiving and giving a good discharge for moneys to which a Unitholder or former Unitholder is entitled pursuant to the terms of a Restructure Proposal and to pay those moneys in accordance with clause 11A.3, and to pay the balance to each person entitled to them or as that person directs.
  - (d) While the Trust is not a registered managed investment scheme, amending the Constitution in any way required to give effect to the Restructure Proposal and to deal with matters following implementation of the Restructure Proposal.

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

- 11A.3—Payment of fees
- If it is a term of a Restructure Proposal that, if implemented, the Trustee is—
- (a) entitled to the payment of a fee out of the Assets or is entitled to pay out of the Assets a fee to a fund manager, a property manager or any agent or contractor, or



**Restructure Proposals****New clauses 11A.1, 11A.2, 11A.3 and 11A.4 apply as follows:**

- (b) required to direct a payor (or payors) of money to Unitholders (or former unitholders in the Trust) to withhold a specified sum from such money on account of fees payable to a fund manager, any property manager or any agent or contractor to the Trustee and to pay that specific sum to the Trustee or as the Trustee so directs,

then the Trustee is authorised to make the payment or provide the direction, provided—

- (a) in the case of a payment to the Trustee, the payment is in full satisfaction of all claims that the Trustee might otherwise have against the Assets for the payment of any fees, and
- (b) in the case of a payment or a direction to pay a fund manager, any property manager or any agent or contractor, the Trustee procures an acknowledgement in writing from the payee that the payee accepts such payment in full satisfaction of all claims that it might otherwise have against the Assets or the Trustee.

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11A.4—Paramountcy	This clause 11A has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with is clause 11A does not operate to the extent of any inconsistency.
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