

## ABACUS INCOME TRUST CONSTITUTION

**THIS DEED POLL** is made by **ABACUS FUNDS MANAGEMENT LIMITED** (ACN 007 415 590) of Level 13, 77 Castlereagh Street, Sydney, New South Wales.

### **BACKGROUND:**

The Responsible Entity wishes to establish a trust to be known as **Abacus Income Trust** on the terms and conditions contained in this Deed.

### **OPERATIVE PROVISIONS:**

#### **1. OPERATION OF THIS DEED**

This Deed shall take effect immediately upon registration of the Trust as a managed investment scheme pursuant to Part 5C.1 of the Corporations Act. The Trust, however, will commence as provided in **Clause 4.1**.

#### **2. DEFINITIONS AND INTERPRETATION**

##### **2.1 Definitions**

In this Deed and in all instruments issued under this Deed, the following expressions, in the absence of contrary intention, have the following meanings:

**Abacus Security:** a stapled security comprising one AGHL Share, one AGPL Share, one AT Unit, one Unit, one ASOL Share and one ASPT Unit;

**Abacus Securityholder:** each person registered in the Register as a holder of Abacus Securities.

**Abacus Stapling Deed:** the Stapling Deed between each of AGHL, AGPL, the Responsible Entity as responsible entity for the Trust, AFML as responsible entity for AT, ASOL and ASFML as responsible entity of ASPT dated 6 March 2012;

**Abacus Storage King or ASK:** the ASX listed stapled group to be known as Abacus Storage King which, upon establishment on the De-stapling Implementation Date, will comprise ASPT and ASOL and their respective Subsidiaries;

**ABG Acquirer:** each of AGPL, AFML as responsible entity for AT and AFML as trustee for Abacus Ventures Trust and **ABG Acquirers** means all of them;

**ABG Security:** upon completion of the Unstapling transactions in accordance with **Clause 24A.1(b)(ii)**, a stapled security comprising one AGHL Share, one AGPL Share, one AT Unit and one Unit;

**Accounting Income:** for any period, all the net income of the Trust as determined by the Responsible Entity;

**Acquisition Costs:** stamp duty, legal and ancillary expenses incurred in connection with the acquisition of any Real Property;

**Adviser:** any adviser, consultant or expert including any architect, project manager, business manager, barrister, solicitor, underwriter, accountant, Auditor, valuer, banker, real estate agent, broker or property manager;

**AFML:** Abacus Funds Management Limited (ABN 66 007 415 590);

**AGHL:** Abacus Group Holdings Limited (ACN 080 604 619);

**AGHL Share:** a fully paid ordinary share in AGHL;

**AGPL:** Abacus Group Projects Limited (ACN 104 066 104);

**AGPL Share:** a fully paid ordinary share in AGPL;

**Allotment and Completion Date:** has the meaning given in the Implementation Deed;

**ART:** Abacus Repository Trust (ABN 69 921 016 532);

**ART Unit:** a fully paid ordinary unit in ART;

**ASFML:** Abacus Storage Funds Management Limited (ABN 41 109 324 834);

**ASIC:** the Australian Securities and Investments Commission, including its delegates;

**ASK Security:** upon completion of the Stapling transactions in accordance with paragraph 8 of Schedule 2 to the Implementation Deed, a stapled security comprising one ASPT Unit and one ASOL Share;

**ASOL:** Abacus Storage Operations Limited (ACN 112 457 075);

**ASOL Share:** a fully paid ordinary share in ASOL;

**ASPT:** Abacus Storage Property Trust (ARSN 111 629 559);

**ASPT Unit:** a fully paid ordinary unit in ASPT;

**Asset:** any asset of the Trust Fund including all the Property, Investments, rights and income of the Trust from time to time, but excluding:

- (a) any application money or property in respect of which Units have not yet been issued;
- (b) amounts allocated for payment to Unit Holders as proceeds of redemption which have not yet been paid; and
- (c) any amounts which have been credited to a distribution account or set aside for distribution to Unit Holders in accordance with **Clause 18**, and Assets means all of them.

For the purposes of calculating Net Asset Value as used in the formulae in **Clauses 5.3(a)(viii)** and **15.15(a)**, "Assets" includes amounts not yet paid in respect of Partly Paid Units whether or not those amounts have been called;

**Associate:** an associate as defined in Division 2 of Part 1.2 of the Corporations Act and Associated has a corresponding meaning;

**ASX:** ASX Limited (ACN 008 624 691) or the market operated by it, as the context requires;

**ASX Settlement:** ASX Settlement Pty Limited (ACN 008 504 532) or the operator of a CS Facility;

**ASX Settlement Rules:** the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time, or the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived from time to time;

**AT:** Abacus Trust (ARSN 096 572 128);

**AT Unit:** a fully paid ordinary unit in AT;

**Attached Securities:** any Security which is from time to time Stapled together with other Securities to form a Stapled Security but does not include an Unstapled Security;

**Auditor:** the Auditor of the Trust;

**Australian Accounting Standards:**

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

**Business Day:**

- (a) if the Trust is Listed, a day which is a business day under the Listing Rules; and
- (b) if the Trust is not Listed, a day other than a Saturday or Sunday or public holiday in Sydney on which trading banks in Sydney are generally open for business;

**Chair:** has the meaning given in **Clause 23.22(a)**;

**CHESS:** the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement;

**CHESS Approved Securities:** securities in respect of which approval has been given by the securities clearing house or the operator of a CS Facility (including the body corporate approved or licensed under the Corporations Act, namely, ASX Settlement) in accordance with the ASX Settlement Rules;

**Complaint:** an expression of dissatisfaction made to the Responsible Entity related to the Trust or the complaints handling process itself where a response or resolution is explicitly or implicitly expected (or as otherwise defined in the Australian Standard AS/NZS 10002:2014 or any other standard which replaces that standard);

**Completion:** in respect of the Proposal, has the meaning given in the Implementation Deed;

**Compliance Committee:** the compliance committee for the purposes of Part 5C.5 of the Corporations Act;

**Corporations Act:** the Corporations Act 2001 (Cth), and a reference to the Corporations Act or a provision of it includes a reference as modified by applicable Relief;

**Corresponding Number:** in relation to an Other Attached Security, at any time the number of those Other Attached Securities that are Stapled to an issued Unit at that time;

**CS Facility:** a prescribed CS facility (as defined in the Corporations Act) or such equivalent facility as may be used by ASX from time to time;

**Current Market Value:** on any day for Units or, while Stapling applies, Stapled Securities that are Officially Quoted:

- (a) the weighted average of the daily volume weighted average of all sale prices for Units or, while Stapling applies, Stapled Securities on the ASX during the last 10 Trading Days immediately preceding the relevant day(whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market; or
- (c) if:
  - (i) in the case of paragraph (a), Units, or while Stapling applies, Stapled Securities have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the case of paragraphs (a) or (b), in the Responsible Entity's opinion, a determination under paragraphs (a) or (b) of this definition (as relevant) would not provide a fair reflection of the current market value of the Units, or while Stapling applies, the Stapled Securities,

the price per Unit, or while Stapling applies, Stapled Security that an independent qualified valuer with relevant market experience in determining the issue price of securities in similar circumstances determines to be the market price for the Unit, or while Stapling applies, Stapled Security on the relevant day.

**Custodian:** the Responsible Entity or other custodian or nominee nominated under **Clause 17.3**;

**Deed:** this Deed as amended from time to time;

**Derivative:** a contract whose value depends on or derives from the value of an underlying asset, reference rate or index and includes, without limitation, options, futures, swaps and forward contracts;

**De-stapling Implementation Date:** has the meaning given in the Implementation Deed;

**Distributable Income:** the distributable income of the Trust determined in accordance with **Clause 18.1**;

**Distribution Date:** the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period, being not later than 90 days after the end of a Distribution Period;

**Distribution Period:** a period of not more than 12 months as determined by the Responsible Entity and notified to the Unit Holders or specified in an Offer Document or other offer document. Where the termination of the Trust occurs during a Distribution Period, the last Distribution Period will end on the date of termination. The Responsible Entity may change the duration or dates of the commencement or end of Distribution Periods;

**Effective Date:** has the meaning given in the Implementation Deed;

**Entity:** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust;

**Excluded Foreign Unitholder:** a foreign unitholder ineligible to participate in a Stapling Proposal, and in particular, to receive Stapled Securities;

**Expenses:** includes costs, commissions, brokerage, fees, taxes and duties. Examples of expenses are given in **Clause 19.7**;

**Financial Market:** a financial market in respect of which ASIC has issued a licence under the Corporations Act;

**Financial Year:** a period of 12 months ending on 30 June or on such other date determined by the Responsible Entity. The period from the commencement of the Trust to the next succeeding 30 June will be the first financial year of the Trust. Where the Trust is terminated, the last Financial Year of the Trust will end on the date the Trust is wound up pursuant to **Clause 16**;

**Former Unit Holder:** a person who was registered as the holder of a Unit at any time but who is not longer registered as the holder of any Units at the relevant time;

**Gross Asset Value:** the aggregate value of the Assets calculated in accordance with **Clause 22** but without deducting any Liabilities such as debt funding;

**Implementation Deed:** the implementation deed between each of AGHL, AGPL, the Responsible Entity as responsible entity for the Trust, AFML as responsible entity for AT, ASOL and ASFML as responsible entity for ASPT dated 16 June 2023, as amended from time to time;

**Income Tax Assessment Act:** the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997, as may be applicable;

**Incoming Capital Reallocation Amount:** has the meaning given to that term in **Clause 5.14**;

**Indicative Buy Back Price:**

- (a) where a Unit does not form part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or
- (b) where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day;

**Interest Rate:** the daily 1M BBSW Bid index on Bloomberg plus 2%;

**Investment:** any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a trustee and an investment includes the pursuit of gain or the protection against loss by way of any of the following:

- (a) where applicable, the acquisition or holding of any Property;
- (b) the making available of financial accommodation; and
- (c) the entering of any contract;

**Issue Price:** the price at which Units or Options are issued or sold;

**Land:** includes any interest in land whether vested or contingent, freehold or leasehold, and whether at law or in equity;

**Last Registration Date:** has the meaning given in the Implementation Deed;

**Law:** includes the Corporations Act and any statute and any rule of common law, rule of equity or judgment which applies to the Trust or the Responsible Entity (as the case may be);

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

- (a) each liability of the Responsible Entity in respect of the Trust or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (b) each other amount payable out of the Trust Fund or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability,

Liabilities may also include other appropriate provisions in accordance with Australian Accounting Standards;

**Liquid:** has the same meaning as in the Corporations Act;

**Listed:** admitted to and not *removed* from **the** Official List of the ASX and **Listing** has a corresponding meaning;

**Listing Rules:** the Listing Rules of the ASX and any other rules of the ASX which are applicable whilst the Trust is admitted to the Official List of the ASX, each as amended or replaced from time to time, subject to the extent of any written waiver by the ASX;

**Market Value:**

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, its face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a Financial Market, the latest closing price on that market that is readily available to the Responsible Entity, unless:
  - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or

- (ii) the Responsible Entity reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an independent qualified valuer at the expense of the Trust;
- (c) in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any Financial Market:
  - (i) the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund; plus
  - (ii) any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity. Where the fund is operated by the Responsible Entity or a related body corporate of the Trustee, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the fund;
- (d) in the case of an Asset that is a real estate asset, the latest independent valuation of the real estate asset or, for a real estate asset not yet revalued since its acquisition, the real estate asset's purchase price (including acquisition costs, the total costs of subsequent additions and costs to date for development in progress, where applicable); and
- (e) in the case of any other Asset, the value of the Asset determined in accordance with relevant accounting standards or, if the Trustee is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an independent qualified valuer at the expense of the Trust;

**month:** calendar month;

**Net Asset Value:** the value of the Assets calculated in accordance with **Clause 22** less Liabilities and provisions which the Responsible Entity considers appropriate (including provisions for the costs of acquiring or realising investments);

**Net Sale Proceeds:** the sale price of any Real Property after deduction of all selling costs and expenses, including (but not limited to) advertising costs and agents' commissions;

**New Attached Security:** a Security that the Responsible Entity determines to Staple to the Units or, where Stapling applies, the other Stapled Securities in accordance with this Deed;

**Offer:** has the meaning given in the Implementation Deed;

**Offer Document:** any information memorandum, product disclosure statement, prospectus or other offer document issued by the Responsible Entity in relation to Units or Options;

**Offer Securities:** the ASK Securities to be offered, and allotted and issued, under the Offer;

**Official List:** the Official List of the ASX as defined in the Listing Rules;

**Official Quotation:** admitted to quotation by ASX under the Listing Rules including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and **Officially Quoted** has a corresponding meaning;

**Option:** an option to acquire a Unit by way of subscription;

**Option Holder:** a person registered as the holder of an Option and includes persons jointly registered;

**Other Attached Security:**

- (a) in respect of a Unit, a Corresponding Number of each Attached Security other than a Unit; and
- (b) in respect of an Attached Security that is not a Unit, a Corresponding Number of each Security Stapled to that Attached Security other than the relevant Attached Security;

**Outgoing Capital Reallocation Amount:** has the meaning given to that term in **Clause 5.14**;

**Partly Paid Unit:** a Unit on which the Issue Price has not been paid in full (whether or not called);

**person:** includes, corporation, trust, fund, firm, body or individual;

**Property:** property of any description and includes Land or personal property and any estate or interest in property and any debt or chose in action or any other right or interest and any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property;

**Proposal:** the proposal to establish Abacus Storage King as a separate ASX listed stapled group as described in the Transaction Booklet and approved by resolution by the requisite majorities of Abacus Securityholders and, without limitation, includes the steps and actions set out in the Transaction Documents and **Clause 24A** of this Deed and the transactions contemplated by them;

**Proposal Conditions Precedent:** the conditions precedent to the Proposal set out in clause 3.1 of the Implementation Deed;

**Proposal EGM:** the extraordinary general meeting of Abacus Securityholders convened to consider, and if thought fit, approve the Proposal Resolutions, and includes any adjournment or postponement of those meetings;

**Proposal Resolutions:** the resolutions set out in the notices of meeting contained in the Transaction Booklet, which will be put forward for consideration by Abacus Securityholders at the Proposal EGM;

**Purchase Price:** in respect of any Real Property, the purchase price payable to the vendor of that Real Property (and, for the avoidance of doubt, excluding any Acquisition Costs);

**Real Property:** real property or an interest in real property;

**Reallocation Date:** has the meaning given to that term in **Clause 5.14**;

**Redemption Price:** the Unit price calculated in accordance with **Clause 15.15**;

**Register:** the register of Unit Holders or Option Holders maintained in accordance with **Clause 12** and, where Stapling applies, includes the Stapled Security Register;

**Registered:** recorded in the Register and Registration has a corresponding meaning;



**Registered Scheme:** a managed investment scheme registered with ASIC under Chapter 5C of the Corporations Act;

**Registrar:** the body responsible for keeping and maintaining the Register;

**Relief:** a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC which is applicable to the Responsible Entity or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument;

**Responsible Entity:** Abacus Funds Management Limited (ABN 66 007 415 590) or other responsible entity for the time being of the Trust for the purposes of Part 5C.2 of the Corporations Act;

**Restricted Securities:** has the same meaning as in the Listing Rules;

**Retail Client:** has the meaning given to that term in the Corporations Act;

**Security:** has the meaning given to that term in section 92(1) of the Corporations Act and also includes a unit in a unit trust and any right, interest or option to acquire a share, note, unit, interest in a managed investment scheme or debenture and includes a Unit and an Option;

**Stapled:** the linking together of Securities so that, subject to their terms of issue, an Attached Security may not be dealt with without the Other Attached Securities, and the word **Stapling** has a corresponding meaning;

**Stapled Entity:** any corporation, trust or managed investment scheme whose Securities are Attached Securities Stapled to the Units;

**Stapled Security:** the stapled security created by the Stapling together of the Attached Securities being, while Stapling applies, a Unit and each Other Attached Security that are Stapled together and registered in the name of the Unit Holder;

**Stapled Security Register:** the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with **Clause 6.11**;

**Stapling Commencement Time:** the most recent date and time determined by the Responsible Entity to be the date and time on which all the Units on issue are Stapled to an Attached Security or Attached Securities (as applicable) in accordance with this Deed;

**Stapling Proposal:** a proposal to Staple any Security or other financial products (including a New Attached Security) to the Units or, where Stapling applies, the Stapled Securities;

**Stapling Provisions:** the provisions relating to Stapling in **Clauses 6.8 to 6.15** and **Clause 5.9**, as applied under **Clauses 6.1** and **6.7**;

**Sub-Trust:** a trust in which all issued units are owned (directly or through another trust or trusts) by the Trust or a trust which the Trust controls (as that term is defined in section 50AA of the Corporations Act but disregarding the impact of section 50AA(4) of the Corporations Act);

**Subsidiary:** has the meaning given to that term in the Corporations Act, but an Entity will also be taken to be a Subsidiary of an Entity if it is controlled (as that term is defined in section 50AA of the Corporations Act but disregarding the impact of section 50AA(4) of the Corporations Act) by that Entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share and the ability to control the appointment or removal of the trustee or responsible entity of the trust is considered to satisfy the test which relates to the ability to control the composition of a body corporate's board; and
- (b) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation,

and, in the case of both paragraphs (a) and (b), disregarding the impact of section 48(2) of the Corporations Act;

**Tax:** includes any tax (including goods and services tax), duty (including financial institutions duty and stamp duty), impost and the like and includes any interest or penalty or the like imposed on those amounts;

**Total Purchase Price:** in respect of any Real Property, the Purchase Price for the Real Property plus Acquisition Costs and, where applicable, costs associated with the issue of an Offer Document to raise equity for the acquisition of the Real Property;

**Trading Day:** has the meaning given in the Listing Rules;

**Transaction:** the transaction contemplated by an Offer Document and the subscription of Units and associated business transactions including where applicable the acquisition and/or development of Land and other Assets as described in an Offer Document;

**Transaction Booklet:** the information booklet dated 19 June 2023 in relation to the Proposal, which comprises an explanatory memorandum and notices of meeting in respect of the Proposal EGM and the Proposal Resolutions and a prospectus and product disclosure statement in relation to the offer and issue of the Offer Securities and the issue of ASK Securities (or its component securities) in connection with the Proposal, including any supplementary or replacement disclosure document;

**Transaction Costs:** an amount (if any) as determined by the Responsible Entity as appropriate to factor into the Issue Price or Redemption Price to avoid an adverse impact on other Unit Holders holding Units arising from actual or anticipated expenses associated with an issue or redemption of Units or the investment of application moneys, or the acquisition or disposal of assets to fund the redemption;

**Transaction Documents:** has the meaning given in the Implementation Deed;

**Trust:** the trust governed by this Deed called Abacus Income Trust or any other name chosen by the Responsible Entity;

**Trust Fund:** all investments and property held by or on behalf of the Responsible Entity on the trusts of this Deed from time to time but excluding such Distributable Income as has been credited to a distribution account in accordance with **Clause 18**;

**unpaid amount:** the amount of the Issue Price in respect of a Unit which has not been paid (whether called or not);

**Unit:** an interest in the Trust Fund in accordance with this Deed;

**Unit Holder:** a person for the time being Registered as the holder of a Unit, and includes persons jointly Registered and, unless the context requires otherwise, a reference in this Deed, the Corporations Act or any document to a member is to be construed as a reference to a Unit Holder;

**Unmarketable Parcel:** a number of Units or Stapled Securities which is less than that required for the time being to constitute a marketable parcel of Units or Stapled Securities, as the case may be, as defined by the Listing Rules;

**Unstapled:** the process that results in one or more Attached Securities not, or no longer, being Stapled to each Unit or each Other Attached Security, or all of the Attached Securities ceasing to be Stapled, in accordance with this Deed, and Unstapling has a corresponding meaning;

**Unstapled Security:** a Security which is no longer Stapled in accordance with this Deed;

**Unstapling Date:** has the meaning given in **Clause 6.9**;

**Valuation Time:** a time at which the Responsible Entity calculates Net Asset Value; and

**withdrawal offer:** an offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act to allow for redemption of Units.

## 2.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) references to statutes or other laws include all regulations and other instruments and amendments, regulations, replacements and consolidations;
- (b) unless the context otherwise requires, definitions in the Corporations Act are used with the same meaning;
- (c) singular includes the plural and vice versa. A gender includes the other genders. Headings do not affect the interpretation of this Deed;
- (d) references to “including” and “for example” mean “including without limitation” and “include” and “includes” have corresponding meanings;
- (e) references to a “signature” or a document (including a notice) being “signed” includes that document being executed under hand or under seal, by electronic signature or other signature which is not handwritten, in accordance with applicable law, or in any other manner approved by the Responsible Entity;
- (f) references to a document or agreement, including this Deed, includes a reference to that document or agreement as amended, restated, novated or replaced from time to time;
- (g) references to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Deed and a reference to this Deed includes any schedules and annexures;
- (h) references to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (i) references to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (j) references to a party includes its executors, administrators, successors and permitted assigns; and

- (k) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.

### 2.3 Rounding

All calculations under this Deed may be rounded up or down and to the nearest whole number as determined by the Responsible Entity.

### 2.4 Record date

Subject to the Listing Rules, the Responsible Entity will determine the record date for determining Unit Holders' entitlements including their entitlements to participate in new issues and distributions of income and capital.

## 3. CORPORATIONS ACT AND RELIEF

- (a) Despite anything in this Deed, while the Trust is a Registered Scheme, to the extent that a Clause of this Deed is inconsistent with a provision of the Corporations Act applicable to Registered Schemes, the Clause is of no effect to the extent of the inconsistency, but not otherwise.
- (b) Subject to **Clause 3(d)**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief, the provisions of this Deed operate subject to the Relief.
- (c) Subject to **Clause 3(d)**, where the Corporations Act requires that this Deed contain certain provisions, or if relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief if this Deed includes specified provisions ("**Required Provisions**") then, to the extent the Corporations Act allows, the Required Provisions are taken to be included in this Deed and prevail over the other provisions of this Deed to the extent of any inconsistency.
- (d) If the relief is granted by class order or regulatory instrument of general application (rather than specifically in relation to the Trust), the Relief applies, and the specified provisions referred to in **Clause 3(c)** are taken to be included in this Deed, unless the Responsible Entity states in writing that that is not the case.
- (e) The Unit Holders:
  - (i) authorise the Responsible Entity to make the amendments referred to in this Clause in a deed and, if required, to lodge it with ASIC; and
  - (ii) agree that, subject to the Corporations Act, their rights under this Deed do not include or extend to a right not to have this Deed amended to include Required Provisions.

Changes in the text of the Deed to which this Clause applies are made pursuant to the power in **Clause 24**, but in respect of those changes the requirements of **Clause 24** are to be read subject to this Clause.

- (f) accordance with ASIC Instrument 2017/125 or its equivalent or any similar Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this Deed because of the operation of **Clauses 3(c)** to **3(e)** that is covered by the Relief is not a modification of, or the repeal and replacement of, the Deed that is required to

comply with subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the Deed to which this Clause applies are made pursuant to the power in **Clause 24**, but in respect of those changes the requirements of **Clause 24** are to be read subject to this Clause.

#### **4. CONSTITUTION AND DURATION OF THE TRUST AND EFFECT OF THIS DEED**

##### **4.1 Commencement and duration of Trust**

Subject to this Deed, the Trust will commence on such date as the Responsible Entity determines and will terminate in accordance with this Deed, the Corporations Act or any rule of law or equity.

##### **4.2 Constitution and its enforceability**

This Deed is the constitution of the Trust for the purposes of the Corporations Act and its provisions shall be legally enforceable by the Unit Holders against the Responsible Entity and by the Responsible Entity against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

##### **4.3 Vesting of Trust Fund**

The Trust Fund is and will be vested in and held by the Responsible Entity on trust for the Unit Holders on the terms of this Deed.

##### **4.4 Binding effect of Deed**

This Deed will be binding on the Responsible Entity and each Unit Holder and Option Holder and all persons claiming through them as if they are parties to this Deed.

#### **5. CREATION AND SALE OF UNITS**

##### **5.1 Units**

The beneficial interest in the Trust will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Trust but not an interest in any particular part of the Trust.

##### **5.2 Transaction Costs**

In each case where an Issue Price is determined under this **Clause 5** or **Clause 7** (except **Clause 5.3(a)(viii)**) there will be added to the Issue Price such Transaction Costs (if any) as the Responsible Entity determines and is permitted to include pursuant to any Relief but, for the avoidance of doubt, without double counting any Transaction Costs.

##### **5.3 Issue Price for Units**

- (a) Subject to the Stapling Provisions while they apply, the Issue Price for a Unit must be calculated as follows:
  - (i) in the case of Units or Stapled Securities issued pursuant to the Proposal, in accordance with **Clause 24A**;
  - (ii) in the case of a proportionate offer (including a rights issue), in accordance with **Clause 5.4**;

- (iii) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with **Clause 5.5**;
- (iv) in the case of reinvestment of distributions, in accordance with **Clauses 5.6 and 5.7**;
- (v) in the case of Units issued pursuant to the exercise of an Option, in accordance with **Clause 7**;
- (vi) subject to **Clauses 5.3(a)(i) to 5.3(a)(v)**, in all other cases while Stapling applies and Stapled Securities are Officially Quoted, the Current Market Value of a Stapled Security on the Business Day immediately before the date on which or as at which the Issue Price is to be calculated minus the issue price of the Other Attached Securities or the amount determined by the Responsible Entity in accordance with **Clause 5.9**;
- (vii) subject to **Clauses 5.3(a)(i) to 5.3(a)(v)**, in all other cases while Units are Officially Quoted and Stapling does not apply, the Current Market Value of Units on the Business Day immediately before the date on which or as at which the Issue Price is to be calculated; and
- (viii) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

- (b) Each of the variables in **Clause 5.3(a)(viii)** must be determined as at the next Valuation Time after:
  - (i) the Responsible Entity receives the application for Units (or, where Stapling applies, Stapled Securities); or
  - (ii) the Responsible Entity receives the application money or the property against which Units (or, where Stapling applies, Stapled Securities) are to be issued is vested in the Responsible Entity,

whichever happens later.

#### **5.4 Pro rata rights issues**

- (a) Subject to the terms of any applicable Relief and the Listing Rules (while the Listing Rules apply), the Responsible Entity may offer Units (including as a component of Stapled Securities) for subscription at a price determined by the Responsible Entity to those persons who were Unit Holders on a date determined by the Responsible Entity:
  - (i) provided that, subject to **Clause 5.4(a)(ii)**, all Unit Holders are offered Units or Stapled Securities (as applicable) in proportion to the value of the Unit Holder's Units or Stapled Securities (as applicable) (or, where the offer is made only to Unit Holders who hold Units or Stapled Securities (as applicable) in a particular class, to the value of the Unit Holder's Units or Stapled Securities (as applicable) in that class) at the relevant date; and

- (ii) the Responsible Entity may exclude a Unit Holder from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by any applicable Relief.
- (b) If the Trust is a Registered Scheme and the Responsible Entity is making an offer of Units or Stapled Securities (as applicable) to Unit Holders which complies with the principles set out in **Clause 5.4(a)**, the Responsible Entity is not required to offer Units or Stapled Securities (as applicable) to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable Relief and, if relevant, the Listing Rules.
- (c) In respect of the terms of pro rata issues under **Clause 5.4(a)**:
  - (i) Any offer made under **Clause 5.4(a)** must specify the period during which it may be accepted. It must be made to Unit Holders in proportion to the value of their respective holding of Units or Stapled Securities (as applicable) on the date determined by the Trustee under **Clause 5.4(a)**. The Responsible Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units or Stapled Securities (as applicable). Any Unit Holder may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
  - (ii) Any Units or Stapled Securities (as applicable) offered for subscription under **Clause 5.4(a)** which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The Issue Price payable in relation to such further offer must not be less than that at which the Units or Stapled Securities (as applicable) were originally offered to Unit Holders.
  - (iii) If an underwriter has underwritten any offer for subscription of Units or Stapled Securities under **Clause 5.4(a)**, the underwriter may take up any Units or Stapled Securities (as applicable) not subscribed for by Unit Holders.

## 5.5 Placements and security purchase plan while Officially Quoted

While Units or, while Stapling applies, Stapled Securities are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units (including as a component of Stapled Securities) by way of a placement or under a security purchase plan:

- (a) at a price equal to:
  - (i) while Stapling does not apply, the Current Market Value of Units on the Business Day immediately before the date of the offer (or, if there is no offer, the Business Day immediately before the date on which the Units are issued); or
  - (ii) while Stapling applies, the Current Market Value of a Stapled Security on the Business Day immediately before the date of the offer (or, if there is no offer, the Business Day immediately before the date on which the Stapled Securities are issued) minus the issue price of the Other Attached Securities or the amount determined by the Responsible Entity in accordance with **Clause 5.9**; or

- (b) at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable Relief.

## **5.6 Reinvestment while Officially Quoted**

- (a) If reinvestment of distributions payable to a Unit Holder applies while the Units (or, while Stapling applies, the Stapled Securities) are Officially Quoted, subject to the Listing Rules, and to the extent it is permitted to do so or is not prohibited from doing so under the provisions of the Corporations Act and any applicable Relief, the Responsible Entity may issue Units (or, while Stapling applies, Stapled Securities) on the basis that the Issue Price for each additional Unit (or, while Stapling applies, the aggregate of the Issue Price for each additional Unit and the issue price for the Other Attached Securities) issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which the Units or Stapled Securities (as applicable) are to be issued upon reinvestment, the price will be the average of the daily volume weighted average price for Units or Stapled Securities (as applicable) for each of the 15 Trading Days from and including the Trading Day after the Record Date for the relevant Distribution Period.
- (b) If the amount to be reinvested in additional Units or Other Attached Securities (as applicable) results in a fraction of a Unit or Stapled Security (as applicable), the Responsible Entity may determine how such fractional entitlements will be dealt with in its absolute discretion (including carrying forward any such entitlements for reinvestment in connection with a subsequent distribution or rounding such entitlements to the nearest whole Unit or Stapled Security (as applicable)).

## **5.7 Reinvestment while not Officially Quoted**

While Units, or while Stapling applies, Stapled Securities are not Officially Quoted, to the extent it is permitted to do so or is not prohibited from doing so under the provisions of the Corporations Act and any applicable Relief, the Responsible Entity may issue Units (or, while Stapling applies, the Stapled Securities) on the basis that the Issue Price payable for each additional Unit (or, while Stapling applies, the aggregate of the Issue Price for each additional Unit and the issue price for the Other Attached Securities) on reinvestment of distributions payable to a Unit Holder is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which the Units or Stapled Securities (as applicable) are to be issued upon reinvestment, the application price will be as calculated under **Clause 5.3(a)(viii)** on the first Business Day after the end of the Distribution Period to which the distribution relates.

## **5.8 Satisfaction of Issue Price**

The Issue Price may be satisfied in such manner as the Responsible Entity determines including by payment of cash or by transfer to the Responsible Entity (or other persons nominated by the Responsible Entity or as agreed between the Responsible Entity and the applicant) of property or investments other than cash acceptable to the Responsible Entity, or by a combination of these methods or any other methods as determined by the Responsible Entity. Any expenses incurred in respect of a transfer of investments must be paid by the Unit Holder. If the Responsible Entity accepts a transfer of property or investments other than cash:

- (a) the value attributed to the property or investment must be equivalent to a price at which the Responsible Entity could properly buy it and, if the Responsible



Entity requires, the applicant must provide a recent valuation of the property or investment; and

- (b) any costs associated with the valuation or transfer of the property or investments (beyond the amount of the Transaction Costs factor in the Issue Price for the Units) must be paid by the applicant either directly or by deducting the costs from the market value of the property or investments before the number of Units to be issued is calculated, as the Responsible Entity decides.

## **5.9 Apportionment of Issue Price**

Subject to the terms of any Relief, where:

- (a) a Unit forms part of a Stapled Security and, as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (b) this Deed contains a provision for the calculation or determination of the Issue Price for a Stapled Security but not for a Unit,

the Issue Price of the Unit will be determined as follows:

- (c) the Responsible Entity and the Stapled Entities will determine what part of the amount payable for the issue of a Stapled Security is to represent the issue prices of the Unit and each Other Attached Security, respectively; and
- (d) unless otherwise determined by or agreed between the Responsible Entity and the Stapled Entities, the issue price for a Stapled Security will be allocated between the Issue Price of a Unit and the issue price of each Other Attached Security in the ratio that the net tangible assets of the Trust and each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security bears to the amount of the aggregate net tangible assets of those Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security, and where an option to acquire a Stapled Security is issued after the Stapling Commencement Time, the allocation of the Issue Price of the Option must be determined in accordance with this **Clause 5.9**, with any necessary modifications.

## **5.10 Issue of Units to the Responsible Entity**

- (a) Subject to the Corporations Act and the conditions of any Relief, the Responsible Entity may hold and be issued Units in the Trust.
- (b) The Issue Price for Units issued to the Responsible Entity may be satisfied, in addition to the manner specified in **Clause 5.8** and without limitation, by a waiver or abatement of the fees the Responsible Entity is entitled to receive pursuant to **Clause 19** or by the provision of services by the Responsible Entity to the Trust for the balance (or part of the balance) of the term of the Trust.
- (c) Where the Issue Price of Units issued to the Responsible Entity is satisfied by a waiver or abatement of the fees of the Responsible Entity or otherwise in accordance with paragraph (b), the Responsible Entity will amend this Deed (if necessary) to reflect the reduction in fees payable to the Responsible Entity.

## 5.11 Different classes of Units

The Responsible Entity may issue Units with special rights or restrictions and those rights and restrictions will prevail over any inconsistent provisions of this Deed.

## 5.12 Capital Reallocation – Issuance and consolidation of Units

- (a) Notwithstanding any other provision of this Deed, the Responsible Entity may at any time issue Units (“**Capital Reallocation Units**”) in either of the following circumstances:
- (i) to the holders of Stapled Securities if a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for the holders of Stapled Securities and applies a distribution paid out of that Stapled Entity towards the Issue Price for those Capital Reallocation Units; or
  - (ii) to any Stapled Entity if the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities,

so long as immediately following the issue of Capital Reallocation Units referred to in paragraph (i) above or the in-specie distribution referred to in paragraph (ii) above, the Responsible Entity immediately consolidates the Capital Reallocation Units with all other Units then on issue in the Trust such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue immediately prior to the issue of Capital Reallocation Units.

- (b) The Unit resulting from the consolidation of a Unit (“**Original Unit**”) with a Capital Reallocation Unit pursuant to **Clause 5.12(a)** will be taken for all purposes to be Stapled to the same Other Attached Securities as those to which the Original Unit was stapled.

## 5.13 Application of capital reduction to capitalise Stapled Entity

The Responsible Entity may reduce the capital of the Trust and may, as agent for and in the name of each Unit Holder, apply the amount of the reduction that the Unit Holder is otherwise entitled to, to the purchase of Securities in any other Stapled Entity pro rata in proportion to the number of Securities held by the Unit Holder in that Stapled Entity.

## 5.14 Capital Reallocation – Capital rebalancing between Stapled Entities

- (a) Without limiting any other provision of the Deed, the Responsible Entity may at any time distribute an amount of capital of the Trust (“**Outgoing Capital Reallocation Amount**”) to the Unit Holders on terms that a pro rata amount of the Outgoing Capital Reallocation Amount in respect of each Unit on issue as at a date determined by the Responsible Entity (“**Reallocation Date**”) is to be applied by the Responsible Entity as agent and attorney for and on behalf of each Unit Holder by paying that amount (or part of that amount, if there is more than one Stapled Entity) to a Stapled Entity as an additional capital payment in respect of the relevant Other Attached Security of that Stapled Entity which is already issued and to which the Unit (or, if applicable, a fraction of a Unit) is Stapled. If the Responsible Entity determines to pay a distribution as an Outgoing Capital Reallocation Amount, then:

- (i) each Unit Holder is deemed to have directed the Responsible Entity to pay their proportionate share of the Outgoing Capital Reallocation Amount to the relevant Stapled Entity or Stapled Entities on that basis;
  - (ii) the Responsible Entity must pay and apply on behalf of the Unit Holder the Outgoing Capital Reallocation Amount as nearly as practicable in the same proportion as that which the number of Units the Unit Holder holds bears to the total number of Units on issue as at the Reallocation Date;
  - (iii) each Unit Holder will be deemed to have directed the Responsible Entity, and irrevocably appointed the Responsible Entity as its attorney and agent, to do all things the Responsible Entity considers necessary to give effect to the reallocation of capital under this **Clause 5.14(a)**; and
  - (iv) the simultaneous reduction in the capital attributed to each Unit (or, if applicable, each a fraction of a Unit) resulting from payment of the Outgoing Capital Reallocation Amount will be reflected in the records of the Trust.
- (b) If at any time, a Stapled Entity proposes to undertake a capital distribution (including, if the Stapled Entity is a company, an equal reduction of capital) on terms that the whole or any part of the amount to be paid by way of capital distribution or capital reduction in respect of each Other Attached Security of which that Stapled Entity is the issuer ("**Incoming Capital Reallocation Amount**") is to be paid to or for the benefit of the Trust on terms which substantially mirror the provisions of **Clause 5.14(a)**, then each Unit Holder is:
- (i) deemed to have directed the Responsible Entity to accept the Unit Holder's proportionate share of the Incoming Capital Reallocation Amount (calculated according to the number of Units (including, if applicable, fractions of a Unit) held by the Unit Holder at the time the Incoming Capital Reallocation Amount is paid);
  - (ii) deemed to have appointed the Responsible Entity as their attorney and agent to do all things the Responsible Entity considers necessary or desirable to give effect to the receipt of their proportionate share of the Incoming Capital Reallocation Amount by the Responsible Entity; and
  - (iii) if the Stapled Entity is a company which proposes to undertake an equal reduction of capital, then each Unit Holder irrevocably appoints and directs the Responsible Entity to do the following on the Unit Holder's behalf:
    - (A) consent in writing (including executing any documents) to any variation of the rights attaching to any shares in the Stapled Entity constituted by any modification of the constitution of the Stapled Entity that increases or provides for an increase in the liability of the Unit Holder in its capacity as a holder of shares to contribute to the share capital of the Stapled Entity, and that increase in that liability; and
    - (B) consent in writing (including executing any documents) to the increase in the Unit Holder's liability to contribute to the share capital of the Stapled Entity in accordance with the constitution of the Stapled Entity,

and the Responsible Entity shall apply, at the same time in respect of each Unit Holder, the Unit Holder's per Unit share of the Incoming Capital Reallocation Amount as an additional capital payment in respect of each of the Unit Holder's Units (including, if applicable, fractions of a Unit) to which the relevant Other Attached Securities are Stapled. All amounts so received by the Responsible Entity are Assets, and the simultaneous increase in the capital attributed to each Unit (and, if applicable, to each fraction of a Unit) from the application of the Incoming Capital Reallocation Amount will be reflected in the records of the Trust. This does not limit the general power of the Responsible Entity to accept capital contributions.

## **6. STAPLING OF UNITS**

### **6.1 Stapling authorisation and power to Staple Securities**

- (a) The Responsible Entity may, subject to this **Clause 6**, the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to any Unit and may cause the Stapling of further Securities to the Stapled Securities whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Stapling of the Units to the other component Securities of the Abacus Securities commenced on 6 March 2012 and the Stapling Provisions have applied, and will continue to apply, from such date until they cease to apply in accordance with this Deed (but noting that any amendments to the Stapling Provisions after 6 March 2012 apply on and from the date such amendments became effective and do not apply retrospectively).
- (c) Without limiting any other provision of this Deed, the Responsible Entity may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, determine:
  - (i) to carry out and give effect to a Stapling Proposal (including determining that a Security is a New Attached Security subject to the Listing Rules and the constituent documents of the issuer of the relevant Security (which must include provisions in substantially the same form as this **Clause 6**) and each Stapled Entity);
  - (ii) that the Stapling Provisions will take effect in accordance with **Clause 6.7**; and
  - (iii) the Stapling Commencement Time,

without the need for any further authority or approval from or on behalf of Unit Holders.

### **6.2 Not used**

### **6.3 Power to implement Stapling Proposal and limitation of liability**

- (a) Without limiting any other provision of this Deed, and subject to the Corporations Act, and if the Units are Officially Quoted, the Listing Rules, the Responsible Entity has power to do all things (including executing all documents and giving all consents) which it considers are necessary, desirable or reasonably incidental to give effect to a Stapling Proposal and/or the Stapling Provisions or any transactions contemplated by them.

- (b) To the maximum extent permitted by law, and without derogating from any limitation of the Responsible Entity's liability under this Deed, the Responsible Entity will not have any liability of any nature whatsoever beyond the Assets to Unit Holders or Former Unit Holders arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the proper implementation of the Stapling Proposal and/or the Stapling Provisions or any transactions contemplated by them.

#### **6.4 Appointment of Responsible Entity as agent and attorney**

- (a) The Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to execute all documents and do all things (including giving all consents) which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unit Holder, including:
  - (i) taking all necessary action to compulsorily transfer or effect the disposal of all Units or Stapled Securities (as applicable) held by or on behalf of each Excluded Foreign Unitholder;
  - (ii) applying for or purchasing Securities in the name of the Unit Holder, including Securities in a Stapled Entity;
  - (iii) applying the proceeds of any distributions and/or other payments out of the Assets or, subject to the Corporations Act and the Listing Rules, redemption of Units on behalf of the Unit Holder;
  - (iv) agreeing or consenting on behalf of the Unit Holder to be a member of an Entity or be bound by the constitution of an Entity (in each case, including a Stapled Entity);
  - (v) accepting transfers of Securities or assets for the Unit Holder,to give effect to a Stapling Proposal and/or the Stapling Provisions or any transactions contemplated by them or to give effect to any issue of Securities or a capital distribution (including by way of a capital reduction or capital reallocation) as contemplated by **Clauses 5.12 to 5.14, 18.5 or 18.6.**
- (b) The Responsible Entity is authorised to execute these documents and do these things without needing any further authority or approval from the Unit Holders.

#### **6.5 Interested dealings by the Responsible Entity**

Subject to the Corporations Act, the Responsible Entity or an officer, employee or associate of the Responsible Entity may do any act, matter or thing described in or contemplated by this **Clause 6** even if it has an interest in the outcome of such exercise.

#### **6.6 Paramountcy**

- (a) This **Clause 6** has effect notwithstanding any other provision of this Deed and prevails over any other provision of this Deed to the extent of any inconsistency except to the extent provided in **Clause 29** or where this would result in a breach of the Corporations Act, the Listing Rules or any other law.
- (b) This **Clause 6** prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Deed.

## 6.7 Operation of Stapling Provisions

Subject to **Clause 6.1(b)**, if the Responsible Entity determines in accordance with **Clause 6.1(c)**, the Stapling Provisions take effect on and from the Stapling Commencement Time and apply until they cease to apply in accordance with this Deed. While the Stapling Provisions apply, any provisions of this Deed, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

## 6.8 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Other Attached Securities. Otherwise, subject to the Corporations Act, a joint certificate may be issued to evidence title to Stapled Securities comprising Units and Other Attached Securities.
- (c) The number of issued Units at any time must equal the number of issued Other Attached Securities divided by the relevant Corresponding Number.
- (d) On and from the Stapling Commencement Time and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Other Attached Security to form a Stapled Security.
- (e) On and from the Stapling Commencement Time and prior to the Unstapling Date, the Responsible Entity and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Attached Security no longer being a component of a Stapled Security other than in accordance with **Clause 6.9**. In particular:
  - (i) the Responsible Entity must not offer a Unit for subscription or sale (including by way of offering of Options) unless an offer is made at the same time and to the same person for the Corresponding Number of each Other Attached Security for issue or sale;
  - (ii) any offer of a Unit for subscription or sale (including by way of offering of Options) must require the offeree to subscribe for or buy the Corresponding Number of each Other Attached Security;
  - (iii) a Unit Holder must not make an application for Units or sell or transfer a Unit to any person unless the Corresponding Number of each Other Attached Security is also applied for, sold or transferred to the same person at the same time;
  - (iv) the Responsible Entity must not issue or sell a Unit to any person unless the Corresponding Number of each Other Attached Security is also issued or sold to the same person at the same time;
  - (v) the Responsible Entity must not consolidate, sub-divide, cancel, buy-back, redeem or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation,

buy-back, redemption or other reorganisation of all Other Attached Securities;

- (vi) the Responsible Entity must not forfeit a Unit Holder's Unit unless the Corresponding Number of each Other Attached Security is also forfeited;
- (vii) the Responsible Entity is not required to, and must not, accept or register an application for Units or the transmission or transfer of Units which are Stapled pursuant to **Clause 9**, **Clause 14** or **Clause 34** unless the applicant at the same time applies for, or the transmission or transfer of Units is a single instrument of transfer that also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Other Attached Security; and
- (viii) an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires a Corresponding Number of each Other Attached Security.

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of Options and, without limitation, an Option may only be offered, issued, transferred or redeemed if arrangements are in place such that on exercise of the Option, the same person acquires or retains (as applicable) a Corresponding Number of options over Other Attached Securities.

## 6.9 Unstapling

- (a) Subject to approval by a special resolution of the Unit Holders and the members or unitholders of each Stapled Entity respectively (or, in respect of the Proposal, approval of the Proposal Resolutions by the requisite majorities of Abacus Securityholders), the constituent documents of each Stapled Entity, the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, the Responsible Entity may determine:
  - (i) to carry out and give effect to a proposal to Unstaple one or more Attached Securities from each Unit or Other Attached Security or to Unstaple all of the Attached Securities;
  - (ii) that the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled; and
  - (iii) that a particular date is to be the Unstapling Date.

For the avoidance of doubt, no further approval by special resolution of the Unit Holders and/or the members or unitholders of each Stapled Entity is required under this **Clause 6.9(a)** to give effect to the Proposal.

- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from a time on the Unstapling Date to be determined by the Responsible Entity, each Attached Security which the Responsible Entity determined under **Clause 6.9(a)** was to be Unstapled ceases to be Stapled to each Unit or Other Attached Security or all of the Attached Securities (as applicable) in accordance with the determination and the Responsible Entity must do all things reasonably necessary and desirable to procure that each Unit is Unstapled.

- (d) If the Responsible Entity determines to Unstaple one or more Attached Securities pursuant to this **Clause 6.9**, this does not prevent the Responsible Entity from subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security.

#### **6.10 Transfers of Stapled Securities**

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of **Clause 14**, the transfer is a single instrument of transfer that also causes the transfer of the Corresponding Number of each Other Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which does not provide for, or is not accompanied by, a transfer of the Corresponding Number of each Other Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Other Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Other Attached Security to which a Unit is Stapled which does not provide for, or is not accompanied by, a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any Other Attached Securities to which the Unit is Stapled to the same transferee.
- (d) Each Unit Holder irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the Responsible Entity reasonably considers is necessary or desirable) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Other Attached Security which was Stapled to a Unit forfeited pursuant to **Clause 7.4** and which has been cancelled or sold.

#### **6.11 Stapled Security Register**

Subject to the Corporations Act, the Responsible Entity must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Unit Holders, the number of Units held, the number of Other Attached Securities held by the Unit Holders to which each Unit Holder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Responsible Entity.

#### **6.12 Variation of Stapling provisions**

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this Deed which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit if that restriction also exists for all Other Attached Securities unless that restriction is simultaneously removed for all Other Attached Securities.



### 6.13 Maintenance of Listing and Consistency with Constitutions of Stapled Entities

- (a) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are and continue to be Officially Quoted as one joint security.
- (b) The Responsible Entity must use every reasonable endeavour to procure that the Stapled Securities are dealt with under this Deed in a manner consistent with the provisions relating to the Other Attached Securities in the constitutions of the Stapled Entities.

### 6.14 Responsible Entity's Duties

Despite any rule of law (but subject to the Corporations Act as modified by any Relief), while the Stapling Provisions apply:

- (a) the Responsible Entity is entitled to have regard to the fact that the Trust is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entities are aligned; and
- (b) in exercising any power or discretion or in fulfilling any of its obligations, the Responsible Entity may have regard to the interests of holders of Stapled Securities as a whole and not only the interests of Unit Holders or holders of Other Attached Securities considered separately.

### 6.15 General

While the Stapling Provisions apply:

- (a) subject to the Corporations Act, meetings of Unit Holders may be held in conjunction with meetings of holders of the Other Attached Securities and, unless otherwise agreed between the Responsible Entity and the Stapled Entities, **Clause 23** applies to such meetings with any necessary modifications; and
- (b) a reference to a Unit in **Clauses 9, 14 and 34** is taken to include a reference to a Stapled Security, with any necessary modifications, but in all cases subject to the Stapling Provisions (including **Clauses 6.8(e)(vii)** and 6.10).

## 7. OPTIONS

### 7.1 Issue of Options

- (a) The Responsible Entity may issue Options on such terms and conditions as it determines subject to this **Clause 7**.
- (b) Subject to the Corporations Act (and the conditions of any applicable Relief) and, if relevant, the Listing Rules, while the Trust is a Registered Scheme, the Responsible Entity may issue Options over Units:
  - (i) at an Issue Price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if such determination may not be made, at a nil Issue Price; and
  - (ii) on the basis that the Issue Price for a Unit to be issued on exercise of the Option is a price determined by the Responsible Entity:

- (A) while the Units are Officially Quoted, in accordance with the terms of Relief for a rights issue or a placement of Units (as applicable), or under **Clause 5.3(a)(vii)**; or
  - (B) while the Units are not Officially Quoted, in accordance with the terms of Relief for a rights issue (if applicable) and otherwise in accordance with **Clause 5.3(a)(viii)**.
- (c) If the Trust is a Registered Scheme and the Responsible Entity is making an offer of Options to Unit Holders which complies with the principles set out in **Clause 5.4(a)**, the Responsible Entity is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable Relief and, if relevant, the Listing Rules.

## **7.2 Interest of Option Holders**

An Option shall not confer any interest in the Trust or any right to participate in the income or capital of the Trust.

## **7.3 Voting rights of Option Holders**

Option Holders shall be entitled to receive notices of, and to attend meetings of Unit Holders but shall not, subject to the Corporations Act and to any Relief, be entitled to speak or vote at any such meeting.

## **7.4 Exercise of Options**

To exercise an Option, the holder of the Option must give notice to the Responsible Entity in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

## **7.5 Lapse of Options**

An Option lapses on the earliest of:

- (a) the date stipulated in the terms of issue of the Option;
- (b) the termination of the Trust; or
- (c) the winding up of the Trust,

and the liability of the Responsible Entity ceases in respect of the Option.

## **7.6 Rights attaching to Units and Options**

Subject to the Corporations Act, the interests of Unit Holders will prevail over the interests of holders of Options in the case of conflict.

# **8. PARTLY PAID UNITS**

## **8.1 Terms of Issue**

The Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines.

## **8.2 Calls**

Each holder of a Partly Paid Unit shall be liable to pay the amount of a call in accordance with the terms and conditions of issue of the Unit.

## **8.3 Stapled Securities**

A Partly Paid Unit which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Responsible Entity has received all unpaid money in relation to that Unit; and
- (b) each Stapled Entity has received all unpaid money in relation to the relevant Attached Security to which the Unit is Stapled.

## **8.4 Interest on late payment of calls**

If any call is not paid on or before the day appointed for payment, the holder of such Partly Paid Unit shall pay interest thereon (such interest to accrue for the benefit of the Trust) from the day appointed for the payment to the time of actual payment, at such rate as is from time-to-time determined by the Responsible Entity.

## **8.5 Non-receipt of notice of call**

The non-receipt of a notice required to be given in respect of any call, or the accidental omission to give such a notice of a call, to any Unit Holder shall not invalidate the call.

## **8.6 Deductions for unpaid calls**

If all or part of a call is not paid on or before the date appointed for payment, then until such time as the call is paid, the Responsible Entity may deduct or set off such unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity by reason of the non-payment) from any amount payable to the relevant Unit Holder pursuant to **Clauses 15, 16 and 18**.

## **8.7 Forfeiture of Units**

If a call is not paid on or before the day appointed for the payment, the Responsible Entity may in its discretion at any time thereafter before the payment of the amount of the call, interest accrued thereon and the costs and expenses incurred by the Responsible Entity by reason of non-payment, cause the Units in respect of which any such amount is payable, to be forfeited with effect from a date determined by the Responsible Entity. Such forfeiture shall include forfeiture of all distributions and other moneys payable to the Unit Holder in respect of the forfeited Units and not actually paid before the forfeiture.

## **8.8 Entry on Register**

Where any Unit has been forfeited in accordance with the foregoing provisions, an entry of the forfeiture and the date thereof, shall forthwith be made in the Register.

## **8.9 Disposal of forfeited units**

Where permitted by any Relief, a forfeited Unit may be sold by the Responsible Entity at any price.

### **8.10 Annulment of forfeiture**

The Responsible Entity may, at any time before a forfeited Unit is sold, annul the forfeiture upon such conditions as the Responsible Entity determines.

### **8.11 Transfer of forfeited Units**

- (a) The Responsible Entity may, on any sale of a forfeited Unit, receive the selling price and effect in the name of the Unit Holder whose Unit has been forfeited, a transfer in favour of the transferee of the Unit.
- (b) Upon effecting the transfer, the transferee shall be registered as the holder of the Unit and the transferee's title to the Unit shall not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Unit.

### **8.12 Liability notwithstanding forfeiture**

Any Unit Holder whose Units have been forfeited will, notwithstanding such forfeiture, be liable to pay to the Responsible Entity the amount not paid and all other moneys payable in accordance with the foregoing provisions of this **Clause 8**.

### **8.13 Responsible Entity's lien**

The Responsible Entity shall have a first and paramount lien upon every Unit for amounts not paid and other moneys payable to the Responsible Entity by the Unit Holder in respect of a Unit and such lien shall extend to all distributions and other moneys from time to time payable in respect of that Unit.

### **8.14 Sale of units to enforce lien**

The Responsible Entity may sell the Units subject thereto, in the same manner, mutatis mutandis, as if the Units had been forfeited.

### **8.15 Proceeds of sale**

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien shall be applied:

- (a) firstly, in payment of all costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale;
- (b) secondly, in satisfaction of the amount of the unpaid call and interest thereon; and
- (c) the residue (if any) shall be paid to the person registered as the Unit Holder in respect of the subject Units immediately prior to the sale.

### **8.16 Underwriting of calls**

- (a) Where:
  - (i) the Responsible Entity has appointed an underwriter to underwrite the payment of a call in respect of Partly Paid Units;
  - (ii) in discharging its obligations the underwriter has purchased Units at a public auction held under **Clause 8.9** (with the relevant call credited as paid) at a price which is more than the Current Market Value; and

- (iii) the Responsible Entity is liable to pay the underwriter in respect of each Unit purchased in accordance with paragraph (ii) of this Clause, an amount equal to the amount by which the Current Market Value is less than the price paid by the underwriter for the Unit (up to the amount of the relevant call),

then the former holder of Partly Paid Units that were forfeited and sold at that public auction, is liable to the Responsible Entity in respect of those forfeited Units, and may be sued for:

- (iv) all monies payable by the Responsible Entity to the underwriter as contemplated by paragraph (iii) of this Clause;
  - (v) interest (as provided in **Clause 8.4**); and
  - (vi) all costs incurred by the Responsible Entity in procuring payment from the Former Unit Holder.
- (b) The Responsible Entity must ensure that where the Responsible Entity is liable to the underwriter as contemplated by paragraph (a)(iii) of this Clause, the Responsible Entity's liability to the underwriter may be satisfied by the assignment of the Responsible Entity's right of action under **Clause 8.16(a)(iv)** against the Former Unit Holder in full satisfaction of such liability of the Responsible Entity to the underwriter.
  - (c) For the avoidance of doubt, a Unit Holder's liability under **Clauses 8.16(a)(v)** and (vi) will not be affected by the assignment by the Responsible Entity of its right of action under **Clause 8.16(a)(iv)**.
  - (d) A Unit Holder's liability in respect of forfeited Units for the purposes of **Clause 8.12** will be satisfied to the extent that monies are paid by the Unit Holder in respect of those forfeited Units pursuant to **Clause 8.16**.

## **9. APPLICATION FOR AND ISSUE OF UNITS AND OPTIONS**

### **9.1 Form of application**

An application for Units or Options must be in such form as the Responsible Entity determines. Subject to the terms of any Relief, the Responsible Entity may determine that:

- (a) such application need not be in writing; and/or
- (b) such application need not be signed by the applicant for the Units or Options.

### **9.2 Refusal of applications**

The Responsible Entity may, without giving any reason, refuse or accept all or part of an application. A person who submits an application and is dissatisfied with the processing of their application is entitled to make a Complaint to the Responsible Entity in accordance with the Complaints handling process maintained by the Responsible Entity pursuant to **Clause 28**.

### **9.3 Issue of Units and Options**

Units and Options will be issued with effect from the date determined by the Responsible Entity.

#### **9.4 Restriction on issue of Units**

Units may not be issued 80 years after the commencement of the Trust if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

#### **9.5 Overseas Unit Holders**

Subject to the Listing Rules during such periods as the Trust is Listed, the Responsible Entity may, in relation to an offer of Units or Options to Unit Holders, elect to offer Units or Options only to Unit Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this Deed, such offer will be deemed to have been made to all Unit Holders.

#### **9.6 Underwriting of Issue**

- (a) The Responsible Entity may determine that any issue of Units or Options or payments of calls be underwritten and all expenses of the underwriter, underwriting fees and commissions, sub-underwriting fees, brokerage, handling fees and the like (including where payable to any Associate of the Responsible Entity) will be paid out of the Assets.
- (b) The underwriter or its nominee may subscribe for such Units or Options in accordance with the relevant underwriting agreement at an Issue Price not less than that at which the Units or Options were offered under the relevant Offer Document.

#### **9.7 Uncleared funds**

Where uncleared funds representing application moneys are not cleared in the ordinary course, any Units or Options thus created are void.

### **10. INVESTMENT ADVICES**

- (a) The Responsible Entity may determine whether or not investment advices or other forms of confirmation of investment will be issued for Units or Options.
- (b) The Responsible Entity may cancel or replace any investment advices in the circumstances and subject to the conditions determined by the Responsible Entity.
- (c) Investment advices may be prepared as the Responsible Entity determines and need not be signed.
- (d) Investment advices will not be evidence of ownership of Units or Options.

### **11. RIGHTS AND LIABILITIES OF UNIT HOLDERS**

#### **11.1 Rights of Unit Holders**

A Unit Holder is entitled to a beneficial interest in the Trust Fund but may not:

- (a) interfere with the exercise of the Responsible Entity's powers; or
- (b) exercise any rights in respect of any investment or require the transfer of any property.

## **11.2 Limitation of Unit Holders' liability**

- (a) The Responsible Entity may, in the absence of a separate agreement with a Unit Holder, only enforce any right of indemnity against the Assets.
- (b) In the absence of such a separate agreement, no Unit Holder will be personally liable to the Responsible Entity or any creditor of the Trust.

## **12. REGISTER**

A Register of Unit Holders and Option Holders (where required), whether loose-leaf or computer-stored and otherwise of the type determined by the Responsible Entity, will be kept by or on behalf of the Responsible Entity. The Responsible Entity will determine the information to be recorded in the Register. Entry of a person on the Register as the holder of a Unit or an Option shall be conclusive evidence of that person's ownership of that Unit or Option.

## **13. CONSOLIDATION AND SUBDIVISION OF UNITS**

### **13.1 Consolidation and subdivision**

The Responsible Entity may consolidate or subdivide Units provided that the consolidation or subdivision does not alter the ratio of Units held by any Unit Holder to the aggregate number of Units in issue.

### **13.2 Fractions and splitting**

- (a) Units may be issued in fractions at the discretion of the Responsible Entity, and the value of and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the trustee may consolidate such fractions.
- (c) The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:
  - (i) immediately amend the Register to record the consolidation or split;
  - (ii) notify the Unit Holder within 30 days of the consolidation or split;
  - (iii) ensure that each Unit is consolidated or split on the same basis as each Other Attached Security.
- (d) The Responsible Entity has the power, in giving effect to any consolidation or split of Units, to:
  - (i) make provision for the issue of fractional certificates;
  - (ii) make cash payments;
  - (iii) determine that all or any fractions may be disregarded;
  - (iv) appoint a trustee to deal with any fractions on behalf of the Unit Holders; and
  - (v) round each fractional entitlement to the nearest whole Unit.

#### 14. TRANSFER AND TRANSMISSION OF UNITS

- (a) All transfers of Units and Options must be made in the manner and form (whether in writing or not) required by the Responsible Entity and, for so long as the Trust is Listed, the ASX or other exchange regulator.
- (b) Without limiting **Clause 14(a)**, the Responsible Entity may in its absolute discretion waive any requirement that any transfer be signed by the transferor, transferee or both.
- (c) Every transfer must be delivered to the Responsible Entity, together with the certificate or certificates (if issued) in respect of the Units or Options to be transferred.
- (d) If the Units or Options (as applicable) are not Officially Quoted, the Responsible Entity may in its absolute discretion refuse to register any transfer of Units or Options, but where Units or Options are Officially Quoted, may only do so where permitted by the Listing Rules. The Responsible Entity is not required to give any reason for refusing to register a transfer.
- (e) Subject to this Deed and the Listing Rules, if the Units or Options (as applicable) are Officially Quoted, they are transferable:
  - (i) as provided by the ASX Settlement Rules, if applicable; or
  - (ii) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.
- (f) If the Units or Options (as applicable) are Officially Quoted and a duly completed instrument of transfer:
  - (i) is used to transfer a Unit or Option (as applicable) in accordance with **Clause 14(e)(i)**; and
  - (ii) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Responsible Entity properly requires to show the right of the transferor to make the transfer,

the Responsible Entity must, subject to the Responsible Entity's powers, Register the transferee as the relevant Unit Holder or Option Holder (as applicable).
- (g) Except as provided by the ASX Settlement Rules, a transfer is not effective until Registered.
- (h) If the Units or Options (as applicable) are Officially Quoted, and if permitted to do so by the Listing Rules, the Responsible Entity may:
  - (i) request ASX Settlement or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options (as applicable) from being registered on ASX Settlement's sub register or registered on an issuer-sponsored sub register, as the case may be; or
  - (ii) refuse to Register a transfer of other Units or Options (as applicable) to which **Clause 14(h)(i)** does not apply.
- (i) The Responsible Entity must:



- (i) request the ASX Settlement or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options (as applicable) from being registered on the ASX Settlement's sub register or registered on an issuer sponsored sub register, as the case may be; or
- (ii) refuse to register any transfer of Units or Options (as applicable) to which **Clause 14(i)(i)** does not apply,

if the Corporations Act or Listing Rules require the Responsible Entity to do so or the transfer is in breach of the Listing Rules or **Clause 33**.

- (j) If, in the exercise of its rights under **Clauses 14(h)** or **14(i)**, the Responsible Entity requests the application of a holding lock to prevent a transfer of Units or Options (as applicable) or refuses to Register a transfer of Units or Options (as applicable), it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:
  - (i) the holder of the Units or Options (as applicable);
  - (ii) the purported transferee; and
  - (iii) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Trustee.

- (k) The Responsible Entity must not charge a fee for registering a transfer of Units, Options or, while Stapling applies, Stapled Securities unless:
  - (i) the Unit, Options or Stapled Securities (as applicable) are not Officially Quoted; or
  - (ii) the fee is permitted by the Listing Rules.
- (l) If a Unit Holder or Option Holder dies or becomes subject to a legal disability, only the survivor or legal personal representatives (as the case may be) will be recognised as having any claim to Units or Options registered in the relevant holder's name.

## **15. REDEMPTION**

### **15.1 No obligation to redeem Units**

Subject to this Deed, the Responsible Entity is not obliged to redeem or buy-back any Units. A person whose Units have been redeemed but has not received the redemption amount in respect of those Units, and who is dissatisfied with the processing of their redemption, is entitled to make a Complaint to the Responsible Entity in accordance with the Complaints handling process maintained by the Responsible Entity pursuant to **Clause 28**.

### **15.2 While the Trust is Listed**

While the Trust is Listed:

- (a) **Clauses 15.3(a)** to **15.3(f)** apply only to the extent provided for in **Clause 15.4**;
- (b) **Clauses 15.5, 15.13, 15.14** and **15.15** apply; and

- (c) **Clauses 15.6 to 15.12** do not apply.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, **Clauses 15.14 and 15.4** apply with any necessary modifications.

### **15.3 Withdrawal offers**

- (a) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Unit Holders, or making the offer available by electronic means and giving notice to Unit Holders that it is available.
- (c) The Responsible Entity may cancel a withdrawal offer at any time by giving notice to Members. If it does, it may do so by sending a notice that the offer is cancelled to all Unit Holders, or making the notice available by electronic means and giving notice to Unit Holders that it is available.
- (d) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Responsible Entity must pay the redemption proceeds to the withdrawing Unit Holder or Former Unit Holder within 21 days of the date on which the withdrawal offer closes.
- (e) If the Responsible Entity receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (f) If the Responsible Entity receives a redemption request while the Trust is a Registered Scheme, and the Trust subsequently ceases to be Liquid before that request has been accepted or rejected, that request lapses.

### **15.4 While Officially Quoted**

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under **Clauses 15.3(a)**, in which case **Clauses 15.3(a) to 15.3(d)** apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with **Clause 15.15**.

### **15.5 When Units are redeemed**

- (a) The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.
- (b) The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Unit Holder or Former Unit Holder. While the Trust is Liquid or not a Registered Scheme, the Responsible Entity may redeem without a redemption request some or all of the Units held by a Unit Holder to satisfy any amount of money due to it by the Unit Holder.
- (c) Units are taken to be redeemed:

- (i) where the redemption is to occur in response to a redemption request from a Unit Holder, as at the time at which the Responsible Entity has:
  - (A) received and accepted the redemption request in respect of the Units; and
  - (B) calculated the Redemption Price of the Units; or
- (ii) if paragraph (i) above does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Unit Holder in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds and may enforce their rights as a creditor as if they were still a party to this Deed. If Units are redeemed at the time referred to in paragraph (i), the Responsible Entity must as soon as is reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

## **15.6 Request for redemption**

A Unit Holder may make a request for the redemption of some or all of their Units by giving the Responsible Entity notice in writing of the request, specifying the number or value of Units to be redeemed and sufficient details to identify the Unit Holder, or by completing an electronic or digital form of redemption request or otherwise meeting the requirements of a personal or verbal redemption request process as determined by the Responsible Entity. The Responsible Entity is not obliged to satisfy any such request.

## **15.7 Request may not be withdrawn**

A Unit Holder may not withdraw a redemption request unless the Responsible Entity agrees.

## **15.8 When Trust is Liquid or not a Registered Scheme**

**Clauses 15.9, 15.11 and 15.12** apply only while:

- (a) the Trust is Liquid; or
- (b) the Trust is not a Registered Scheme.

## **15.9 Responsible Entity may redeem**

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to accept a request from a Unit Holder to redeem some or all of their Units, in whole or in part. The Responsible Entity is not required to accept any such request.
- (b) The period for consideration of redemption requests is 30 days from the date of receipt of the request, or such longer period as allowed under **Clause 15.10**. The Responsible Entity is not required to decide whether or not to accept a redemption request until the last day of that period, but subject to its duties under the Corporations Act, may do so earlier.
- (c) If the Responsible Entity determines to accept a redemption request in respect of a Unit, it must pay from the Assets to the Unit Holder or Former Unit Holder the Redemption Price of that Unit calculated in accordance with **Clause 15.15**.

The payment must be made within 21 days of the date on which the Responsible Entity accepts the request, or such longer period as allowed by **Clause 15.10**.

- (d) If the Responsible Entity decides not to accept some or all of the redemption request, it must notify the Unit Holder of its decision within 30 days of receipt of the request or such longer period as allowed by **Clause 15.10**.
- (e) If the Responsible Entity does not decide whether to accept the redemption request by the day which is 30 days after receipt of the request or the last day of such longer period as allowed by **Clause 15.10**, on that day the Responsible Entity it is taken to have decided not to accept the request, the request lapses and the Responsible Entity must notify the Unit Holder of its decision as soon as possible and in any event within a further 10 days following the deemed decision.
- (f) The day of receipt of the redemption request is:
  - (i) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
  - (ii) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.

#### **15.10 Delayed processing or payment**

Subject to **Clause 15.3(d)**, the Responsible Entity may at any time:

- (a) suspend consideration of redemption requests under **Clause 15.9(b)**; or
- (b) defer its obligation to pay the Redemption Price in respect of a redemption request it has accepted under **Clause 15.9(c)**,

if it is not possible or not in the best interests of Unit Holders, for it to process redemption requests or make the payment (as applicable) due to one or more circumstances outside its control which could not have been reasonably foreseen at the relevant time, such as restricted, suspended or permanent cessation of trading or extreme price fluctuation or uncertainty in the market for an Asset. The period allowed under **Clause 15.9** for consideration of the redemption request or payment of the Redemption Price (as applicable) may be extended by the number of days during which such circumstances apply. In determining whether to suspend or defer under this **Clause 15.10**, to the extent permitted under the Corporations Act the Responsible Entity must take into account the interests of both current Unit Holders and Former Unit Holders who have not yet received the Redemption Price for their Units at the time the circumstances arise. The time by reference to which the ability to reasonably foresee an event for the purposes of this **Clause 15.10** is to be determined is, in the case of consideration of a redemption request, the time the Responsible Entity considers the request, and in the case of a request which the Responsible Entity has accepted, the date of acceptance.

#### **15.11 Minimum holding**

If acceptance of a redemption request would result in the Unit Holder holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Unit Holder's holding.

### 15.12 Increased minimum

If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption Price less than the then current minimum holding amount, redeem that Unit Holder's holding without the need for a redemption request.

### 15.13 Redeeming Unit Holder

Unless the Responsible Entity otherwise determines, the redemption amount paid to a Unit Holder consists of capital only. The Responsible Entity may, however, having regard to all relevant equitable obligations, determine that some or all of the redemption amount consists of Distributable Income (which may include net capital gains), rather than capital, of the Financial Year in which the redemption occurs and advise the Unit Holder accordingly (and in any event as soon as practicable after the end of the Financial Year in which the redemption occurred).

### 15.14 Buy-back of Units

- (a) While the Trust is Listed, the Responsible Entity may buy back Units, subject to and in accordance with the Corporations Act (as modified from time to time) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this **Clause 15.14** the Units purchased are cancelled. No Redemption Price is payable on cancellation of the Units.
- (c) Where a Unit forms part of a Stapled Security, the Responsible Entity may only buy back and cancel Units if the Other Attached Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this **Clause 15.14** will be determined by the Responsible Entity (or its nominee) as follows:
  - (i) for any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5% (or such greater amount as may be allowed under the Listing Rules); and
  - (ii) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

### 15.15 Redemption price

- (a) Subject to **Clauses 15.14** and **15.4**, the redemption price for a Unit must be calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue}}$$

less any amount unpaid on the Unit whether called or uncalled.

- (b) Each of the variables in that formulae must be determined:
  - (i) while the Trust is Liquid, as at the next Valuation Time after the redemption request has been, or is taken to have been, received and accepted by the Responsible Entity; and
  - (ii) while the Trust is not Liquid, as at the last Valuation Time before the withdrawal offer is made.

## **16. WINDING UP OF TRUST**

### **16.1 Winding-up by Responsible Entity**

In addition to the circumstances in which the Trust may be wound up under the Corporations Act or the Listing Rules, the Responsible Entity may wind up the Trust with the prior approval of a resolution of the Unit Holders.

### **16.2 Termination in accordance with Clause 4.1**

The Responsible Entity must wind up the Trust when it has terminated pursuant to **Clause 4.1** or **Clause 16.1** or if it is terminated by the Responsible Entity with the prior approval of a resolution of the Unit Holders.

### **16.3 Procedure on winding-up**

- (a) On winding-up of the Trust, and subject to paragraph (c), the Responsible Entity must realise the assets of the Trust as soon as reasonably practicable, rather than await an improvement in the Market Value of the investments of the Trust.
- (b) Subject to **Clause 8.6**, and to the rights of the holders of different classes of Units, the net proceeds of realisation, after discharging or providing for all liabilities and meeting the expenses (including anticipated expenses) of winding-up, must be distributed to Unit Holders in proportion to the number of Units of which they are the registered holders on the date the Trust is required to be wound-up in accordance with this clause or Part 5C.9 of the Corporations Act or on the date of termination of the Trust in accordance with **Clauses 4.1** and **16.1**.
- (c) The Responsible Entity may agree with a Unit Holder that the Unit Holder's entitlement in whole or in part on the winding-up of the Trust be satisfied by transferring Assets of the Trust to that Unit Holder at their Market Value. The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Unit Holder (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). The costs involved in transfer must be paid by the Unit Holder or Former Unit Holder or deducted from the amount due to the Unit Holder or Former Unit Holder.
- (d) The Responsible Entity must arrange for an independent audit of the final accounts for the Trust after the winding-up of the Trust has been completed.

## **17. MANAGEMENT AND INVESTMENT OF THE TRUST FUND**

### **17.1 Responsible Entity's powers**

Subject to this Deed and applicable law, the Responsible Entity has the capacity and all the powers in respect of the Trust which it is possible for both a natural person and a body corporate to have if it were the absolute owner of the Trust Fund, including:

- (a) to invest the Trust Fund in any form of investment;
- (b) to deal with any Asset of the Trust;
- (c) to enter into any form of contract and incur all types of obligations and liabilities;
- (d) to borrow or obtain other financial accommodation or raise money;
- (e) to grant security over the Trust Fund (including third party security);
- (f) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (g) to make loans, including to associated or related entities;
- (h) to fetter future discretion;
- (i) to invest in Derivatives; and
- (j) to act as trustee of Sub-Trusts.

### **17.2 Appointment of Agents**

The Responsible Entity may engage agents, consultants, experts, advisers or other persons and appoint delegates (including custodians) for any purpose in the exercise of its powers, and any such consultant, expert, person or delegate may be an Associate of the Responsible Entity.

### **17.3 Appointment of Custodian**

Without limiting the Responsible Entity's power under this **Clause 17**, subject to the Corporations Act and the terms of any Relief the Responsible Entity may appoint one or more custodians to hold title to some or all of the assets of the Trust.

## **18. DISTRIBUTION OF INCOME AND CAPITAL**

### **18.1 Determination of Distributable Income**

- (a) The Distributable Income of the Trust for a Distribution Period will be such amount as the Responsible Entity determines in its discretion, provided that the Distributable Income for a Distribution Period can be no less than the net income of the Trust (within the meaning of the Income Tax Assessment Act) for that period.
- (b) The Unit Holders will be entitled to the Distributable Income of the Trust for a Distribution Period in accordance with the proportions specified in **Clause 18.3**.

## 18.2 Time for distribution of income

The Distributable Income for a Distribution Period must be distributed by the Responsible Entity to Unit Holders no later than the applicable Distribution Date.

## 18.3 Income entitlement

- (a) The Distributable Income of the Trust Fund shall accrue in respect of a Unit immediately following the creation and allotment of the Unit and shall accrue from month to month and shall be apportionable in respect of time accordingly (*the Unit Distribution*).

The present entitlement in respect of a Partly Paid Unit shall be as follows:

- (i) the entitlement shall be that proportion of the Unit Distribution which the amount received by the Responsible Entity in respect of the Unit bears to the Issue Price of the Unit;
- (ii) where the Issue Price of the Unit has been received by the Responsible Entity in instalments, each instalment shall (notwithstanding the date of actual receipt) be deemed to have been received on the first day of the month immediately following the receipt of the relevant instalment.
- (b) Subject to the terms of issue of any Units and to **Clause 8.6** and **Clause 18.3(a)**, the Distributable Income of the Trust for each Distribution Period that remains after deducting any distributions already made in relation to that Distribution Period pursuant to **Clause 15.13** will be credited to a distribution account or otherwise set aside for distribution to Unit Holders and after payment of all taxes will be distributed to Unit Holders registered at the close of business on the last day of the Distribution Period, or, where Units are Officially Quoted, to Unit Holders registered, at the close of business on the date fixed for the closing of the Register to determine income entitlements for that Distribution Period, in proportion to the number of Units of which they are the registered holders at such time.

## 18.4 Present entitlement to Accounting Income of the Trust

Persons who were entitled to Distributable Income pursuant to **Clause 18.3** in respect of a Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) to that income in the proportions set out in **Clause 18.3** on the last day of the Financial Year, but if the Responsible Entity does not make a determination for the purposes of **Clause 18.1** for the last Distribution Period in a Financial Year, then persons who are registered Unit Holders at the close of business on the last day of that Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) at that time to that part of the Distributable Income of the Trust for that Financial Year to which no Unit Holder has been presently entitled in an earlier Distribution Period for that Financial Year by virtue of **Clause 18.3** and/or **Clause 15.13**.

## 18.5 Unit or security plans

- (a) Subject to the Listing Rules and the Stapling Provisions, the Responsible Entity may at any time adopt and implement any number of plans, on terms it determines, by which a Unit Holder may elect to receive Units as, or instead of, income or capital entitlements (or, while Stapling applies, elect to receive Stapled Securities as, or instead of, dividends or distributions of the Trust and/or any Stapled Entity). Such plans may include:



- (i) a plan under which a Unit Holder who elects to participate in respect of a Unit held by the Unit Holder is entitled to an issue of bonus Units instead of an income or capital entitlement distributed as money in respect of that Unit (or, while Stapling applies, a similar bonus security plan in respect of Stapled Securities); and
  - (ii) a plan under which an income or capital entitlement to be distributed as money to a Unit Holder in respect of a Unit is, if the Unit Holder elects that the Unit participate in the plan, retained by the Trust and applied in subscription for fully paid Units pursuant to the terms of the plan (or, while Stapling applies, a similar dividend or distribution reinvestment plan in respect of Stapled Securities).
- (b) The Responsible Entity has all powers necessary or desirable to implement and carry out fully any plan adopted under this **Clause 18.5** and may (without limitation) at any time:
- (i) amend the terms of any plan as it considers desirable; and
  - (ii) suspend for any period or terminate the operation of any plan as it considers desirable.

## **18.6 Capital and other distributions**

- (a) The Responsible Entity may at any time distribute income or capital to the Unit Holders (including as part of an income distribution) by the payment of cash, the issue, transfer or distribution of Securities, the transfer or distribution of assets or in any other manner the Responsible Entity determines in proportion to the number of Units of which they are the registered holders at such time as is determined by the Responsible Entity.
- (b) In the case of an issue of Units, the terms of the issue of Units will be determined by the Responsible Entity.

## **18.7 Income categories**

The Responsible Entity may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unit Holder.

## **18.8 Distribution of specific assets**

The Responsible Entity, when determining to pay a distribution of income or capital or distributing, paying or satisfying such amounts, all or part of a redemption request or amounts owing under a buy-back, as part of the winding up of the Trust or otherwise owing to a Unit Holder in respect of the Trust, may:

- (a) direct payment of such distribution or amounts (as applicable) from any available source permitted by law;
- (b) resolve that the distribution or amounts (as applicable) be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the distribution or amounts (as applicable), including shares, debentures, debenture stock, units or other Securities of the Trust or any other Entity;
- (c) direct that the distribution or amounts (as applicable) payable in respect of any particular Units be satisfied either wholly or partly by such distribution, and that

the distribution or amounts (as applicable) payable in respect of other Units (including Units held by Excluded Foreign Holders) be paid in cash; and

- (d) unless prevented by the Listing Rules, direct payment to particular Unit Holders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other Unit Holders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.

### **18.9 Ancillary powers regarding distributions**

- (a) In relation to any determination to pay a distribution of income or capital or distribute, pay or satisfy any other amounts under **Clause 18.8**, the Responsible Entity may:
  - (i) settle any difficulty that arises in making the distribution or distributing, paying or satisfying the applicable amounts in any manner they consider expedient, including:
    - (A) making cash payments in cases where Unit Holders are entitled to fractions of shares, debentures or other Securities;
    - (B) deciding that amounts or fractions of less than a particular value decided by the Responsible Entity may be rounded or disregarded to adjust the rights of all parties;
    - (C) withholding assets, cash, shares, debentures or other Securities where the Responsible Entity is required to make a payment in respect of the Unit Holder to a government or taxing authority in relation to the distribution or issue;
    - (D) deciding to make distributions by disregarding transfers of shares or aggregating parcels of shares where they form the opinion that shareholdings have been split or aggregated to obtain the benefit of rounding on fractions of shares; and
    - (E) for an electronic transfer, if no account is nominated, or payment is rejected or refunded, determining that the Responsible Entity credit the amount to an account of the Responsible Entity until the Unit Holder nominates a valid account, or the amount is otherwise dealt with under any applicable law concerning unclaimed moneys;
  - (ii) fix the value for distribution of the specific assets or any part of those assets;
  - (iii) transfer those specific assets, pay cash or issue shares, debentures or other Securities to, or at the direction of, any Unit Holders, including on the basis of the value so fixed, in order to adjust the rights of all parties;
  - (iv) vest any of those specific assets, cash, shares, debentures or other Securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on any terms the Responsible Entity considers expedient; and
  - (v) authorise any person to make, on behalf of the Unit Holders who are, or a particular Unit Holder who is, entitled to any specific assets, cash, shares, debentures or other Securities as a result of the decision, an

agreement (including in writing) with the Responsible Entity or another person which provides, as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other Securities and by applying to them their respective proportions of the amount resolved to be distributed.

- (b) Any agreement made under an authority referred to in **Clause 18.9(a)(v)** is effective and binds all Unit Holders concerned.
- (c) Instead of making a distribution or issue of specific assets, shares, debentures or other Securities to, or at the direction of, a particular Unit Holder or Unit Holders, the Responsible Entity may make a cash payment to the Unit Holder or Unit Holders (including on the basis of the cash amount of the distribution instead of the distribution of specific assets) or allocate some or all of the assets, shares, debentures or other Securities to a trustee to be sold on behalf of, and for the benefit of, or in respect of, that Unit Holder, if:
  - (i) the distribution or issue would otherwise be illegal or unlawful;
  - (ii) the distribution or issue would give rise to parcels of Securities which constitute an Unmarketable Parcel;
  - (iii) in the Responsible Entity's discretion, the distribution or issue would, for any reason, be impracticable; or
  - (iv) the Unit Holder so agrees,

and any proceeds payable to Unit Holders under this **Clause 18.9(c)** will be net of expenses incurred by the Responsible Entity and/or the relevant trustee in selling the relevant assets, shares, debentures or other Securities.

- (d) If the Responsible Entity distributes to Unit Holders (either generally or to specific Unit Holders) specific assets, shares, debentures or Securities of the Trust or another Entity (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Unit Holders irrevocably appoints the Responsible Entity, the directors of the Responsible Entity and any officer of the Responsible Entity nominated on their behalf by the directors, as their agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including, without limitation:
  - (i) agreeing or consenting on behalf of those Unit Holders to become a member, holder of shares, holder of debentures or holder of Securities of the Trust or that other Entity or be bound by the constitution of the Trust or that other Entity;
  - (ii) applying for or purchasing Securities or accepting transfers of assets on behalf of those Unit Holders; and
  - (iii) executing all documents and doing all things (including giving all consents) which such parties consider necessary, desirable or reasonably incidental to give effect to that distribution,

in each case, without the need for any further authority, act, consent or resolution from or on behalf of Unit Holders.

## **19. REMUNERATION**

### **19.1 Responsible Entity's entitlement to fees**

The Responsible Entity will be entitled to receive the fees specified in this **Clause 19** to the extent that the Responsible Entity has properly performed its duties in relation to the Trust.

### **19.2 Responsible Entity's fee**

- (a) The Responsible Entity is entitled to receive a fee of 1% per annum of the Gross Asset Value of the Trust (on a consolidated basis including, without limitation, the gross assets of all Sub-Trusts), or any lesser fee agreed by the Responsible Entity.
- (b) Such fee will accrue daily and be payable monthly in arrears within 21 days of the end of the month (or such later time as the Responsible Entity determines).
- (c) The Responsible Entity's fee will continue to be paid up to the date of completion of the final winding up of the Trust. On the date on which the Trust is wound up the Responsible Entity will be entitled to be paid the Responsible Entity's fee, pro-rated to take account of the number of days to which that fee relates.
- (d) If the Responsible Entity retires or is removed from office, the Responsible Entity will be entitled to be paid the Responsible Entity's fee up to the date of its retirement or removal, pro-rated to take account of the number of days to which that fee relates.

### **19.3 Performance fee**

- (a) Not used.
- (b) On the sale of any Real Property of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive a performance fee calculated at 10% of the excess of the Net Sale Proceeds over the Total Purchase Price subject to the following conditions:
  - (i) the performance fee will not be payable unless the Net Sale Proceeds exceed 110% of the Total Purchase Price;
  - (ii) the maximum performance fee payable under this paragraph shall be 4.5% of the Net Sale Proceeds; and
  - (iii) the performance fee will be reduced to the extent necessary to ensure that the return derived is not reduced below 110% of the Total Purchase Price.

### **19.4 Real Property Acquisition Fee**

In consideration of sourcing and conducting due diligence in acquiring Real Property on behalf of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive the following acquisition fees:

- (a) where the Purchase Price of the Real Property is above \$300 million, 0.20% of the Purchase Price;

- (b) where the Purchase Price of the Real Property is above \$200 million and equal to or below \$300 million, 0.25% of the Purchase Price;
- (c) where the Purchase Price of the Real Property is above \$100 million and equal to or below \$200 million, 0.50% of the Purchase Price;
- (d) where the Purchase Price of the Real Property is above \$50 million and equal to or below \$100 million, 0.75% of the Purchase Price; and
- (e) where the Purchase Price of the Real Property is up to \$50 million, 1% of the Purchase Price.

#### **19.5 Not used**

#### **19.6 Expenses and indemnity**

Subject to this Deed and law, all Expenses reasonably and properly incurred by or on behalf of the Responsible Entity in connection with the Trust or a Sub-Trust (including in connection with the establishment of the Trust or a Sub-Trust and an Offer Document) or, while Stapling applies, a Stapled Entity in properly performing its obligations under this Deed are payable or can be reimbursed out of the Assets on a full indemnity basis. Amounts payable under this Clause are in addition to fees payable under this Clause and rights to indemnification or reimbursement conferred under this document or by Law.

#### **19.7 Examples of Expenses**

The following is a list of examples only of Expenses that may be paid out of the Assets, being Expenses in any way connected with:

- (a) This document, the formation of the Trust and any supplemental deed amending this document including Advisers' fees, and formation of any investment vehicle in which the Trust expects to have a direct or indirect interest.
- (b) Preparation, review, distribution and promotion of any Offer Document or other offering memorandum for Units (in particular, all amounts disclosed in any Offer Document) and any issue of Units, Stapled Securities, Options or other Securities any interests in, or rights associated with, such Units, Stapled Securities, Options or other Securities.
- (c) The sale, purchase, insurance, custody, development, lease, licence, due diligence, project management, acquisition management, development management, asset management, property management, leasing and any other dealing with Assets and the services of managers or agents in respect of such matter.
- (d) The investigation or acquisition of any proposed investment or Transaction.
- (e) The administration, management, promotion or value of the Trust or its Assets and Liabilities, its admission to any Financial Market (or other facility for enabling the transfer of Units) and compliance with the rules of such an exchange or facility, any stapling of the Units with the securities of another trust or company and maintenance of registers.
- (f) Convening and holding meetings of Unit Holders and the implementation of any resolutions.
- (g) Communications with Unit Holders (written or otherwise).

- (h) Tax and bank and financial institution fees.
- (i) The engagement of Custodians, Advisers and others in accordance with this document.
- (j) Preparation and audit of the taxation returns and accounts of the Trust.
- (k) Termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a new trustee.
- (l) Any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity.
- (m) The cost of handling Complaints from Unit Holders and resolving disputes with them, including the cost of membership of an external dispute resolution scheme.
- (n) Brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units.
- (o) Underwriting, offer management or handling fees, commissions or liabilities (including amounts payable under indemnity or reimbursement provisions or in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement).
- (p) Preparation of a compliance plan, appointment of compliance committee members, appointment of a compliance consultant and payments to compliance committee members and a compliance consultant and professional indemnity insurance premiums for compliance committee members.
- (q) While there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors.
- (r) The register of Unit Holders, obtaining registry services and communications with Unit Holders.
- (s) Any deposit or other moneys (including the deposit itself and such other moneys and interest on the deposit and such other moneys) paid by the Responsible Entity or any other person on behalf of the Trust in connection with the acquisition of any Asset or a Transaction.
- (t) Any matter concerning the implementation, maintenance of or cessation of Stapling, a Stapling Proposal or giving effect to the Stapling Provisions or any transactions contemplated by them.
- (u) A Transaction.
- (v) The Proposal.
- (w) Borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs, and costs relating to interest rate swaps or any gearing facility.
- (x) Complying with any law, and any request or requirement of ASIC or ASX.

- (y) Rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property in which the Trust has a direct or indirect interest.
- (z) Fees and expenses payable to directors of the Responsible Entity and members of board committees and any costs associated with obtaining and maintaining directors and officers liability and professional indemnity insurance in respect of the directors and officers of the Responsible Entity.
- (aa) Travel and accommodation expenses of directors and employees of the Responsible Entity in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset.

In **Clauses 19.6** and **19.7**, "Expenses" includes amounts paid by the Responsible Entity to related entities or Associates, or expenses incurred by related entities or Associates of the Responsible Entity on its behalf, where the Expenses would have been reimbursable under **Clauses 19.6** and **19.7** had they been incurred by the Responsible Entity. In addition, while Stapling applies, in this **Clause 19.7** a reference to a "Unit" includes a reference to it as part of a Stapled Security and a reference to the "Trust" includes the Trust as part of a stapled group comprising the Trust and each Stapled Entity.

#### **19.8 Payments to Associates or related entities**

Payments under this **Clause 19** may be made to an Associate or related entity of the Responsible Entity.

#### **19.9 Compliance Committee**

Subject to the Corporations Act, the Responsible Entity may reimburse or indemnify out of the Assets any member of the Compliance Committee for any cost, expense or liability incurred in connection with the Trust or Sub-Trust or such membership.

#### **19.10 Waiver or postponement**

- (a) The Responsible Entity may waive, reduce, defer, delay or postpone payment of all or part of any fee or reimbursement of any Expense that it is entitled to receive under this Deed on such terms and conditions as it determines in its absolute discretion. Where payment of a fee is deferred, the deferred fee continues to accrue daily until paid.
- (b) If payment of any fee (or any part of a fee) that the Responsible Entity is entitled to receive under this Deed is deferred, delayed or postponed, for any reason, for more than 30 days from the date the Responsible Entity is entitled to be paid the relevant fee (or any part of a fee), the unpaid fee or part of a fee payable accrues interest daily at the Interest Rate until such fees or amounts are paid.

#### **19.11 Rebate**

Subject to the Corporations Act and applicable Relief, the Responsible Entity may waive, assign or rebate all or part of any fee that it is entitled to receive under this Deed in favour of any person (including one or more Unit Holders) on such terms and conditions as it determines in its absolute discretion.

## 19.12 Effect of Stapling

While Stapling applies, the Responsible Entity may in its absolute discretion agree the apportionment of Expenses incurred in connection with both the Trust and a Stapled Entity or with Stapled Securities, as between the Trust and the relevant Stapled Entity. Any such apportionment could result in the Trust bearing the entirety of the expense or it being shared with any Stapled Entity or borne totally by any Stapled Entity.

## 19.13 Goods and Services Tax ('GST')

- (a) If any GST becomes payable in respect of any taxable supply by the Responsible Entity in connection with its rights and obligations under this Deed, the Responsible Entity is entitled to increase the consideration for that supply by the amount of the GST on that supply (less, in the case of a reimbursement of expenses, the amount of any input tax credit it is entitled to in relation to the reimbursement payment). The Responsible Entity is entitled to be paid or reimbursed that GST out of the assets of the Trust. For the avoidance of doubt, the Responsible Entity is entitled to determine the amount of the GST for which it may be liable on the percentage fees and reimbursement and to adjust the percentage accordingly.
- (b) If the Responsible Entity makes a taxable supply in connection with its rights and obligations under this Deed, the Responsible Entity must issue the recipient of that taxable supply a tax invoice prior to:
  - (i) the date payment for the taxable supply is due; or
  - (ii) if there is no due date for payment for the taxable supply, the date the Responsible Entity is paid or reimbursed out of the Assets for the taxable supply.
- (c) Any invoice issued by the Responsible Entity to the Trust under this Deed must be a tax invoice.
- (d) Words or expressions used in this **Clause 19** which are defined in the *A New Tax System (Goods and Services) Tax Act 1999 (Cth)* have the same meaning in this Clause.

## 20. RETIREMENT AND REMOVAL OF RESPONSIBLE ENTITY

### 20.1 Removal of Responsible Entity

The Responsible Entity must retire as responsible entity in any of the circumstances specified in the Corporations Act or, for as long as the Trust is Listed, the Listing Rules.

### 20.2 Retirement of Responsible Entity

The Responsible Entity may retire as responsible entity subject to compliance with the requirements of the Corporations Act.

### 20.3 Appointment of new Responsible Entity

On the retirement of the Responsible Entity pursuant to **Clause 20.2**, the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the Responsible Entity.



## **20.4 Retirement Payment**

The Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Unit Holders for such remuneration or benefit.

## **21. RESPONSIBLE ENTITY'S POWERS, LIABILITIES AND INDEMNITIES**

### **21.1 General Provisions**

- (a) Without prejudice to its rights under **Clause 19.6**, the Responsible Entity shall be indemnified out of the Assets for all liabilities incurred by it, or on its behalf, to the extent to which such liabilities are incurred in relation to the proper performance of the Responsible Entity's duties and such right of indemnity continues to apply after the Responsible Entity retires or is removed as responsible entity of the Trust. The indemnity in this **Clause 21.1(a)** is in addition to any indemnity allowed by law.
- (b) The Responsible Entity may rely on the validity of any document (including any electronic communication) unless it reasonably believes the document not to be genuine.
- (c) The Responsible Entity shall not be under any liability for failure to perform any act if prevented by law.
- (d) The Responsible Entity shall not be liable to account for any payment or retention of moneys made in good faith, or to meet a liability, to a duly empowered fiscal authority.
- (e) The Responsible Entity may rely upon the advice of counsel or solicitors in relation to any matter in connection with the Trust (including the interpretation of this Deed).
- (f) The Responsible Entity may rely on advice or information from any bankers, accountants, Auditors, valuers and other persons consulted by the Responsible Entity who are believed in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Responsible Entity.
- (g) The Responsible Entity is not obliged to enter into any transaction unless its personal liability is excluded or limited as required by it.

### **21.2 Recovery of duties, charges etc**

The Responsible Entity will not be required to undertake any transaction in respect of a Unit Holder unless the Unit Holder has paid or provided for to the Responsible Entity's satisfaction all duties, taxes and the like in respect of such transaction.

### **21.3 Responsible Entity's interest in the Trust and in transactions**

- (a) The Responsible Entity and its Associates may hold Units or Options.
- (b) Nothing in this Deed restricts the Responsible Entity or its Associates from:
  - (i) dealing with the Trust or any Unit Holder or Option Holder; or

- (ii) being interested in any contract or transaction with the Trust or any Unit Holder or Option Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
  - (iii) acting in the same or a similar capacity in relation to any other scheme.
- (c) Without limiting the effect of paragraph (b), the Responsible Entity may deal with itself in relation to the Assets where in relation to such dealings it is acting in different capacities.

#### **21.4 Extent of Responsible Entity's discretion**

The Responsible Entity has absolute discretion as to how and when to exercise its powers.

#### **21.5 Limitation of Responsible Entity's liability**

Subject to the Corporations Act, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Responsible Entity will not be liable to Unit Holders or Option Holders to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liability out of the Assets.

### **22. VALUATION OF ASSETS**

#### **22.1 Periodic valuations**

The Responsible Entity may cause an Asset to be valued at any time and, if the Trust is a Registered Scheme, must do so as and when required by the Corporations Act.

#### **22.2 Net Asset Value**

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

#### **22.3 Valuation methods**

The Responsible Entity may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Trust is a Registered Scheme, the Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Issue Price or Redemption Price of a Unit, the value must be reasonably current. In the absence of any other determination by the Responsible Entity, the value of an Asset will be its Market Value.

#### **22.4 Currency conversion**

Where it is necessary for the purposes of this Deed, including for a valuation, application, redemption or distribution, to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank or an independent pricing provider (such as Reuters) nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.

## **23. MEETINGS**

### **23.1 Convening and conducting of meeting**

- (a) Subject to the Corporations Act, but without prejudice to this **Clause 23**, meetings of Unit Holders may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including the requirements in relation to proxies and their use.
- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances in which a meeting must be convened on the request of Unit Holders.
- (c) If a poll is demanded it will be taken in such manner and at such time as the Chair directs. Without limiting the requirements of **Clause 23.17(d)**, a resolution put to the vote of a meeting of Unit Holders must be determined by a poll and not on a show of hands (unless the Chair of the meeting determines, subject to applicable law, that such a vote must be by way of a show of hands).
- (d) In the case of equality of votes, the Chair shall not have a casting vote.

### **23.2 Notice of general meeting**

- (a) While the Trust is a Registered Scheme, notice of a meeting of Unit Holders must be given in accordance with the Corporations Act and, subject to the Corporations Act, notice of a meeting of Unit Holders may be given, and any other information to be provided with the notice of a meeting of the Unit Holders, or at or in relation to a meeting of Unit Holders, may be provided, using one or more technologies to communicate to those entitled to receive a notice of the meeting of Unit Holders the contents of the notice (and the other information) or details of an online location where the contents of the notice (and the other information) can be viewed or from where they can be downloaded. Otherwise, notice may be given in the manner determined by the Responsible Entity.
- (b) Except as prescribed by the Corporations Act, accidental omission to give to a member a notice of, or the non-receipt by a member of a notice of, meeting, cancellation, postponement or change of place of a meeting will not invalidate the meeting, cancellation, postponement or change of place of that meeting or any proceedings or business of that meeting.

### **23.3 Quorum**

- (a) Subject to **Clause 23.3(b)**, the quorum for a meeting of Unit Holders is:
  - (i) at least 2 Unit Holders present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or
  - (ii) if the Trust has only one Unit Holder who may vote on a resolution, that Unit Holder.
- (b) Where a meeting is convened to pass an extraordinary resolution to remove the Responsible Entity the quorum shall be at least 2 Unit Holders present at all times during the meeting holding at least 51% of the votes that may be cast at the meeting.
- (c) Each person who is present at any place of the meeting, including those who attend it electronically, and who would be entitled to count towards the quorum in accordance with this article, shall be counted in the quorum for the meeting.

#### **23.4 No quorum**

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) adjourned to the same day in the following week at the same time and place; or
- (b) adjourned to such other day, time and place as the Responsible Entity may direct.

#### **23.5 Notice of meeting adjourned under Clause 23.4(b)**

If a meeting is adjourned in accordance with **Clause 23.4(b)**, written notice must be given to the Unit Holders of the day, time and place to which the meeting has been postponed.

#### **23.6 Quorum at meeting adjourned under Clause 23.4(b)**

At any meeting adjourned under **Clause 23.4(b)** if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

#### **23.7 Proxies**

- (a) The instrument appointing a proxy must be in writing and signed by the appointor, the appointor's attorney or corporate representative and, in the case of a body corporate, in accordance with the Corporations Act.
- (b) Subject to **Clause 23.7(c)** the instrument appointing a proxy, and where applicable the original or certified copy of the power of attorney under which it is signed, must be received at least 48 hours before the time of the meeting.
- (c) The Responsible Entity may determine that proxies may be received less than 48 hours before the meeting.
- (d) No proxy is valid after the expiration of 12 months from the date of its execution.
- (e) Unless the Responsible Entity has received written notice of the matter before the start of the meeting at which a proxy votes, a vote cast by a proxy will be valid even if, before the proxy voted:
  - (i) the Unit Holder dies;
  - (ii) the Unit Holder revokes the proxy's appointment; or
  - (iii) the Unit Holder revokes the authority under which the proxy was appointed by a third party.
- (f) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at any time that the Responsible Entity prescribes or accepts, or the Chair of a general meeting accepts.
- (g) Where a notice of meeting provides for electronic lodgment of proxy appointments, an appointment received at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Responsible Entity and validated by the Unit Holder if there is compliance with the requirements set out in the notice.

- (h) If the Responsible Entity receives an instrument or form appointing a proxy, attorney or corporate representative from a Unit Holder and the Responsible Entity considers that it is not properly executed or authenticated, or is incomplete or unclear:
  - (i) if the name, or the name of the office, of the proxy, attorney or corporate representative, is not filled in or is unclear, then the Responsible Entity may:
    - (A) take any of the actions referred to in **Clause 23.7(h)(iii)**; or
    - (B) determine that the proxy, attorney or corporate representative of that Unit Holder is the person specified by the Responsible Entity in the instrument or form of proxy or if no person is specified, the Chair of that meeting,

but, for the avoidance of doubt, the Responsible Entity is not required to take any action, or exercise any power or discretion, under this **Clause 23.7(h)(i)**;
  - (ii) if the instrument or form has not been duly signed or authenticated, the Responsible Entity may return the instrument or form to the appointing Unit Holder and request the Unit Holder sign or authenticate the instrument or form and return it to the Responsible Entity within a period determined by the Responsible Entity (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments);
  - (iii) if the instrument or form is otherwise unclear or incomplete, the Responsible Entity may:
    - (A) by oral or written communication, clarify with the Unit Holder any instruction on the appointment; and
    - (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Unit Holder (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Unit Holder appoints the Responsible Entity as its attorney for this purpose.
- (i) A proxy's authority to speak and vote for a Unit Holder is not suspended while the appointing Unit Holder is present at the general meeting.

### **23.8 Attorney of Unit Holder**

A Unit Holder may appoint an attorney to act on its behalf at a meeting (or meetings) of Unit Holders. Before the first meeting at which the attorney acts on the Unit Holder's behalf, the power of attorney must be deposited at the place specified in the notice of meeting.

### **23.9 Representative of body corporate**

A Unit Holder being a body corporate may, by resolution of its directors and in accordance with the Corporations Act, authorise any person to act as its representative at a meeting of Unit Holders. That representative will then have all the rights that could have been exercised by the authorising Unit Holder at the relevant meeting.

### **23.10 Form and effect of resolutions**

- (a) A resolution passed at a meeting of Unit Holders shall be binding on all such members, whether or not they voted or were present at such meeting.
- (b) The decision of the Chair on any matter relating to the conduct of the meeting of Unit Holders shall be final.
- (c) If all Unit Holders shall have signed a resolution, that resolution shall be deemed to have been passed by the requisite majority of members at a meeting of members on the day and at the time at which the resolution was last signed by a member. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders.

### **23.11 Cancellation, postponement or change of place of a meeting**

Subject to the Corporations Act, the Responsible Entity may cancel, postpone or change the place of a meeting of the Unit Holders at any time prior to the meeting, and the Chair of the meeting may cancel or change the place of a meeting of the Unit Holders once it has commenced, for any reason.

### **23.12 Notice of cancellation, postponement or change of place**

Subject to **Clause 23.2(b)**, notice of cancellation, postponement or change of place of a general meeting or notice of the date, time and place to which a meeting has been postponed must be given to Unit Holders and such notice is effective if it is given:

- (a) by publication in a daily newspaper circulating in Australia;
- (b) whilst the Units are Officially Quoted (whether alone or as a Stapled Security), by lodgment with the ASX for public release; or
- (c) subject to the Corporations Act and the Listing Rules, in any other matter determined by the Responsible Entity,

and is deemed to be given to every Unit Holder if given in such manner.

### **23.13 Notice of date, time and place of postponed meeting**

Notice of the day, time and place to which the meeting has been postponed must be given to every Unit Holder at least 5 Business Days prior to the postponed meeting.

### **23.14 Proxy, attorney or corporate representative for postponed meetings**

Where:

- (a) the terms of an instrument appointing a proxy, attorney or a corporate representative provide that such appointment is valid only for a meeting of Unit Holders held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument,

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the Unit Holder appointing the proxy, attorney or representative gives written notice specifying otherwise to the Responsible Entity 48 hours prior to the time to which the meeting has been postponed (and in that event the Unit Holder may at the same time appoint a new proxy, attorney or representative

in accordance with the relevant provisions of this **Clause 23**, with necessary modifications).

### **23.15 Adjournment of meeting**

The Chair of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting as the Chair determines.

### **23.16 Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

### **23.17 Use of technology at general meetings**

Subject to **Clause 23.18** and any applicable law, the following provisions apply to meetings of Unit Holders:

- (a) a meeting of Unit Holders may be held at two or more venues using one or more technologies that give all Unit Holders entitled to attend a reasonable opportunity to participate without being physically present in the same place (whether the meeting is held solely via the use of such technologies or via a combination of such technologies and a physical meeting), and **Clauses 23.17(b) to 23.17(g)** apply if the meeting of Unit Holders is held in that way;
- (b) the inability of one or more Unit Holders to access, or to continue to access, the meeting of Unit Holders using any technology will not affect the validity of a meeting of Unit Holders, provided sufficient Unit Holders are able to participate in the meeting of Unit Holders as are required to constitute a quorum;
- (c) all persons so participating in the meeting of Unit Holders are taken for all purposes (for example, a quorum requirement) to be present at the meeting of Unit Holders while so participating;
- (d) a vote taken at a meeting of Unit Holders must be taken on a poll, and not on a show of hands, by using one or more technologies to give each Unit Holder entitled to vote the opportunity to participate in the vote in real time and, where practicable, by recording their vote in advance of the meeting of Unit Holders;
- (e) a requirement to allow an opportunity for Unit Holders attending the general meeting to speak (for example, by asking questions) may be complied with by using one or more technologies that allow that opportunity;
- (f) notice of a meeting of Unit Holders may be given, and any other information to be provided with the notice of a meeting of the Unit Holders, or at or in relation to a meeting of Unit Holders, may be provided, using one or more technologies to communicate to those entitled to receive a notice of the meeting of Unit Holders:
  - (i) the contents of the notice and the other information; or
  - (ii) details of an online location where the contents of the notice and the other information can be viewed or from where they can be downloaded.

- (g) If, before or during the meeting, any technical difficulty occurs with respect to the technology of a meeting, the Chair of the meeting may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) but only if the meeting is held both physically and via technology and a quorum remains present and able to participate, and subject to the Corporations Act, continue to hold the meeting at the physical location (and any other place which is linked via the technology not suffering such technical difficulty) and transact business, and no Unit Holder may object to the meeting being held or continuing.

### **23.18 Obligations at law**

The obligations set out in **Clause 23.17** are not intended to impose more onerous procedures on the Trust than would otherwise be required at law. The requirements imposed by **Clause 23.17** will not apply to the Trust to the extent that such obligations are more onerous than those imposed by law.

### **23.19 Direct voting**

The Responsible Entity may determine that at any meeting of Unit Holders or class meeting of Unit Holders (including a meeting held physically, via technology or via a combination of being held physically and via technology), a Unit Holder who is entitled to attend and vote on a resolution at that meeting of Unit Holders is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Trust by post, fax, email or other electronic means approved by Responsible Entity. The Responsible Entity may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

### **23.20 Treatment of direct votes**

A direct vote on a resolution at a meeting of Unit Holders in respect of a Unit cast in accordance with **Clause 23.19** is of no effect and will be disregarded:

- (a) if, at the time of the resolution, the person who cast the direct vote:
  - (i) is not entitled to vote on the resolution in respect of the Unit; or
  - (ii) would not be entitled to vote on the resolution in respect of the Unit if the person were present at the meeting of Unit Holders at which the resolution is considered;
- (b) if, had the vote been cast in person at the meeting of Unit Holders at which the resolution is considered:
  - (i) the vote would not be valid; or
  - (ii) the Trust would be obliged to disregard the vote;
- (c) subject to any rules prescribed by the Responsible Entity, if the person who cast the direct vote is present in person at the meeting of Unit Holders at the time the resolution is considered; and
- (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Responsible Entity under **Clause 23.19**.



### 23.21 Multiple votes

Subject to any rules prescribed by the Responsible Entity, if the Trust receives a valid direct vote on a resolution in accordance with **Clauses 23.19** and **23.20** and, prior to, after or at the same time as receipt of the direct vote, the Trust receives an instrument appointing a proxy, attorney or representative to vote on behalf of the same Unit Holder on that resolution, the Trust may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or representative on the resolution at the meeting of Unit Holders.

### 23.22 Chair and passing of the Chair

- (a) Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Unit Holders ("**Chair**").
- (b) Without limiting the powers conferred on the Chair of the meeting by law, the Chair of a meeting of Unit Holders (including any person acting with the authority of the Chair):
  - (i) has charge of the general conduct of the meeting and the procedures to be adopted in relation to or at the meeting;
  - (ii) may take any action the Chair considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting;
  - (iii) may decide not to put to the meeting of Unit Holders, or withdraw from consideration by the meeting, any resolution that is set out in the notice of that meeting (other than those requisitioned by Unit Holders or required by law).
  - (iv) may determine that a vote be disregarded and treated as not having been cast (without requiring that the matter be put to a vote), if a person purports to cast a vote at or for the purposes of a general meeting in contravention of the Corporations Act or Listing Rules;
  - (v) subject to the Corporations Act, may refuse to allow any amendment to be moved to a resolution set out in the notice of that meeting, or any business to be transacted unless the general nature of the business is stated in the notice calling the meeting; and
  - (vi) subject to the Corporations Act, may terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chairman (including any person acting with the Chair's authority) is final.

- (c) The Chair may at his or her discretion, for any item of business or discrete part of a meeting of members, vacate the chair in favour of another person nominated by him or her ("**Acting Chairperson**"), including if the Chair of a meeting of Unit Holders is unwilling or unable to be the Chair for any part of the business of the meeting:
  - (i) that chairperson may withdraw as chairperson for that part of the business and the Acting Chairperson will be entitled to chair the meeting for that part of the business; and

- (ii) after that part of the business is completed, the Acting Chairperson must cease to chair the meeting upon the request of the prior Chair and the prior Chair is entitled to resume as the chairperson of the meeting.

Where an instrument of proxy appoints the Chair as proxy for part of the proceedings for which an Acting Chairperson has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairperson for the relevant part of the proceedings.

## **24. AMENDMENT TO DEED**

Subject to the Corporations Act, the Responsible Entity may amend this Deed, including this **Clause 24**. Any such amendment may have prospective or retrospective effect. Where this Deed is amended by a resolution of Unit Holders the Responsible Entity may execute a supplementary deed incorporating those amendments.

### **24A. PROPOSAL**

#### **24A.1 Power to give effect to the Proposal**

- (a) Without limiting any other provisions of this Deed, the Responsible Entity has power to do all things (including executing all documents and giving all consents) which the Responsible Entity considers necessary, desirable or reasonably incidental to implement and give effect to the Proposal and the transactions contemplated by it.
- (b) Without limiting **Clause 24A.1(a)** and despite any other provision of this Deed, the Responsible Entity is authorised and has power to take the following actions to give effect to the Proposal and the transactions contemplated by it:
  - (i) on the De-stapling Implementation Date, execute all documents and do all things within its power to terminate the Abacus Stapling Deed in accordance with its terms;
  - (ii) on the De-stapling Implementation Date and following completion of the steps described in **Clause 24A.1(b)(i)**, determine in accordance with **Clause 6.9** and the constituent documents of each Stapled Entity:
    - (A) that each ASPT Unit and each ASOL Share on issue (as set out in the Register as at the time on the De-stapling Implementation Date determined by the Responsible Entity) is Unstapled from each Other Attached Security of the ASPT Unit or ASOL Share (as applicable) (including each other), but the component securities of the ABG Securities will remain Stapled to each other;
    - (B) that the Stapling Provisions will cease to apply in respect of each Security which is to be Unstapled; and
    - (C) that the De-stapling Implementation Date is to be the Unstapling Date for the purposes of **Clause 6.9** and the time on the De-stapling Implementation Date at which such actions will occur,

and procure that such Unstapling occurs in accordance with such determination;

- (iii) on the De-stapling Implementation Date and following completion of the steps described in **Clauses 24A.1(b)(i)** and **24A.1(b)(ii)**, make any determinations, execute all documents and do all things within its power to procure that the actions set out in paragraph 6 of Schedule 2 of the Implementation Deed occur contemporaneously such that there is an equal number of ASPT Units and ASOL Shares on issue at all times;
- (iv) take all steps which are necessary, desirable or reasonably incidental to procure that Abacus Storage King is admitted to the Official List and all ASK Securities are Officially Quoted, and maintain the admission to the Official List and Official Quotation of the ASPT Units and ASOL Shares at all times; and
- (v) at any time, issue any Securities, transfer any Assets, make any distributions or other payments out of the Assets, repay and discharge any amounts due and owing between the Responsible Entity and any Stapled Entity and execute all documents and do all other things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Proposal, including executing and performing its obligations under any Transaction Document or any related documents and determining the time and date at which each action or step to implement the Proposal will occur,

in each case, without the need for any further authority, act, consent or resolution from or on behalf of Unit Holders.

#### **24A.2 Appointment of Responsible Entity as agent and attorney**

- (a) The Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to execute all documents and do all things (including giving all consents) for and on behalf of the Unit Holder which the Responsible Entity reasonably considers are necessary or desirable to implement and give effect to the Proposal and the transactions contemplated by it.
- (b) The Responsible Entity is authorised to execute the documents and do the things referred to in **Clause 24A.2(a)** without the need for any further authority, act, consent or resolution from or on behalf of Unit Holders.
- (c) The Responsible Entity, as agent and attorney of each Unit Holder appointed under **Clause 24A.2(a)**, may sub-delegate its functions, authorities or powers under **Clause 24A.2(a)** to all or any of the officers, directors and employees of the Responsible Entity or its Stapled Entities (jointly, severally or jointly and severally).

#### **24A.3 Liability of Responsible Entity**

To the maximum extent permitted by law, and without derogating from any limitation of the Responsible Entity's liability under this Deed, the Responsible Entity has no liability of any nature whatsoever beyond the Assets to Unit Holders or Former Unit Holders arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of the Proposal.

#### **24A.4 Recognising dealings in Units**

If all of the Proposal Conditions Precedent are satisfied or, where applicable, waived in accordance with the Implementation Deed and unless the Implementation Deed is terminated in accordance with its terms:

- (a) a Unit Holder (and any person claiming through that Unit Holder) must not deal with, dispose of or purport or agree to deal with or dispose of any Units (or any interest in them) as a component of Abacus Securities after 5.00pm (AEST) on the Effective Date and any such dealing or disposal will be void and of no legal effect whatsoever and the Responsible Entity will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of such dealings or disposals; and
- (b) subject to **Clause 24A.4(a)**, the Responsible Entity will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Units (whether as a component of a Stapled Security or otherwise) received after 5.00pm (AEST) on the Effective Date (except to effect the Registration of valid dealings in Units (including dealings of the type to be effected using CHESS) on or before 5.00pm (AEST) on the Effective Date, which must in any event occur before 7.00pm (AEST) on the Last Registration Date):
  - (i) except pursuant to or in connection with the Proposal; or
  - (ii) otherwise, until the Normal Trading Date (as set out in the timetable in Schedule 1 of the Implementation Deed, as amended from time to time) and to the extent otherwise permitted under the provisions of this Deed.

#### **24A.5 Paramourncy and effect of Clause 24A**

- (a) The provisions of this **Clause 24A** apply notwithstanding and are not limited by any other provision of this Deed, and prevail over any other provision of this Deed to the extent of any inconsistency, except to the extent provided in **Clause 29** or where this would result in a breach of the Corporations Act, the Listing Rules or any other law. However, nothing in this **Clause 24A** limits the Responsible Entity's powers and discretions under this Deed (including under **Clause 17.1**).
- (b) This **Clause 24A** binds the Responsible Entity and all Unit Holders from time to time, including those who did not attend or vote at the Proposal EGM and those who voted against the Proposal Resolutions at the Proposal EGM. However, nothing in this **Clause 24A** requires the Responsible Entity to implement the Proposal.
- (c) This **Clause 24A** will lapse and have no further force or effect if the Implementation Deed is terminated in accordance with its terms prior to the Effective Date.
- (d) Subject to the Corporations Act, the Responsible Entity and any of its officers, directors, employees and associates may do any act, matter or thing described in or contemplated by this **Clause 24A** even if they have an interest (financial or otherwise) in the outcome of such exercise.

#### **25. NOTICES**

- (a) Subject to the Corporations Act, the Responsible Entity may determine methods, including electronic methods, of giving notices to Unit Holders and may also determine corresponding rules relating to deemed service and proof of service (including notices by electronic message to an electronic address as authorised by the Corporations Act). The Responsible Entity will give notices personally or by sending by post to any person who has made a request for hard copy documents only in accordance with the Corporations Act.

- (b) If:
  - (i) A Unit Holder does not have an address in the Register, or has not nominated an alternative address;
  - (ii) on two or more consecutive occasions a notice posted to a Unit Holder is returned unclaimed or with an indication that the Unit Holder is not known at the address to which it was sent; or
  - (iii) the Responsible Entity believe on other reasonable grounds that a member is not at the address shown in the Register or any alternative address provided,

the Responsible Entity may give effective notice and future notices to that Unit Holder by exhibiting the notice at the Responsible Entity's registered office for at least 48 hours. The document is taken to be served at the start of that period. It need not be addressed to the Unit Holder. This **Clause 25(b)** ceases to apply if the Unit Holder gives the Responsible Entity notice of a new address.

- (c) A document is treated as having been duly served, given or provided, irrespective of whether it is actually received:
  - (i) where dispatched by post, contractor, agent, electronic means (including by way of an electronic message to an electronic address as authorised by the Corporations Act) - on the day following the day when dispatch occurred; and
  - (ii) subject to the Corporations Act, where notice is given by publication in a newspaper circulating generally in the State in which the registered office of the Responsible Entity is located - on the day the newspaper is first published.

## **26. MODE OF PAYMENT OF MONEYS TO UNIT HOLDERS**

Moneys payable by the Responsible Entity to a Unit Holder may be paid in any manner determined by the Responsible Entity. Payment of moneys in such manner will be a good discharge to the Responsible Entity. Any joint Unit Holder may give an effective discharge to the Responsible Entity in respect of the payment.

## **27. CHANGE OF NAME OF TRUST**

- (a) The Responsible Entity may in its absolute discretion change the name of the Trust without requiring any Unit Holder consent and take whatever action is necessary to effect the change in the name of the Trust.
- (b) Should the Responsible Entity cease to be, or to be a related body corporate of, Abacus Funds Management Limited, the title of the Trust must be changed to a name which does not contain the word Abacus and the new Responsible Entity must, without requiring any Unit Holder consent, take whatever action is necessary to ensure that that word is not used in connection with the Trust. Any current Offer Document must be withdrawn. This clause may not be amended without the prior written consent of Abacus Funds Management Limited.

## 28. COMPLAINTS RESOLUTION

- (a) The Responsible Entity must take all reasonable steps to ensure that there are at all times in force appropriate arrangements for the making and resolution of Complaints by Unit Holders and Former Unit Holders in connection with the Trust.
- (b) If a Unit Holder submits a Complaint to the Responsible Entity, the Responsible Entity:
  - (i) if the Unit Holder is a Retail Client, the Responsible Entity must comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint; and
  - (ii) if the Unit Holder is not a Retail Client, the Responsible Entity must comply with **Clauses 28(c) to (g)**.
- (c) Complaints made must be properly considered and dealt with by the Responsible Entity as soon as reasonably practicable and in any event within 30 days after they are made, or such longer period as is reasonably necessary in the circumstances.
- (d) Upon receiving a Complaint from a Unit Holder or Former Unit Holder (in whatever form), the Responsible Entity must acknowledge receipt of the complaint to the Unit Holder or Former Unit Holder (as applicable) within 1 Business Day (and in circumstances where this is not possible, as soon as reasonably practicable), at the same time outlining the remedies available to the Unit Holder or Former Unit Holder (as applicable).
- (e) Within 15 Business Days of dealing with a complaint from a Unit Holder or Former Unit Holder (as applicable), the Responsible Entity will notify the Unit Holder or Former Unit Holder (as applicable) of, and the reasons for, its proposed resolution of the dispute. At the same time, the Responsible Entity will inform the Unit Holder as to what further avenues of complaint are available to the Unit Holder, including notification of an independent external dispute resolution body of which the Responsible Entity is a member.
- (f) In considering a complaint, the Responsible Entity will take into account such of the following factors as are relevant to the complaint:
  - (i) any alleged breach of the Corporations Act, this Deed or breach of trust;
  - (ii) legal advice (if any) it has received in relation to that alleged breach;
  - (iii) the supporting material provided by the Unit Holder or Former Unit Holder (as applicable) in relation to the alleged breach;
  - (iv) any material held by the Responsible Entity in relation to the alleged breach; and
  - (v) any other relevant information.
- (g) If the Unit Holder or Former Unit Holder (as applicable) reasonably requests, the Responsible Entity must provide the Unit Holder or Former Unit Holder (as applicable) with an opportunity to inspect any relevant material relating to the complaint unless to do so would prejudice the Responsible Entity or the Trust.

- (h) For the purposes of this **Clause 28**, a reference to a Unit Holder includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under this Deed but who has not yet been paid the redemption price of the Units and any person who makes a Complaint made pursuant to **Clause 9.2**.

## **29. PARAMOUNTCY OF PROVISIONS**

Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this Deed in the following order to the extent of any inconsistency:

- (a) first, **Clauses 3 and 32** and any provisions taken to be included or amended under them;
- (b) then, **Clause 24A**; and
- (c) then, **Clause 6** and the Stapling Provisions and any other provisions regarding Stapling; and
- (d) then, **Clause 33**.

Paragraphs (b) and (c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

## **30. GOVERNING LAW**

This Deed will be governed by the laws of the State of New South Wales.

## **31. SEVERABILITY**

If any provision of this Deed is illegal or invalid because it offends any applicable law:

- (a) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

## **32. LISTING RULES**

Notwithstanding anything contained in this Deed, for so long as the Trust is Listed:

- (a) If the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Deed prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision.

- (e) If the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision.
- (f) If any provision of the Deed is or becomes inconsistent with the Listing Rules, the Deed is deemed not to contain that provision to the extent of the inconsistency.

### **33. RESTRICTED SECURITIES**

If the Trust is Listed and has on issue any Units which are classified under the Listing Rules or by the ASX as restricted securities, then despite any other provisions of this Deed:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or ASX;
- (b) the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or ASX;
- (c) during a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

### **34. SMALL HOLDINGS**

If the Trust is Listed and a Unit Holder holds an Unmarketable Parcel, the provisions of Schedule 1 apply to that Unmarketable Parcel.

### **35. ACCOUNTS**

Subject to the provisions of the Corporations Act and any Relief, financial accounts will be prepared in respect of the Trust and forwarded to Unit Holders in the Trust.

### **36. ELECTRONIC DEALINGS**

Notwithstanding any other provision of this Deed (except **Clause 1**), the Responsible Entity may facilitate dealings and transactions (including applications and redemptions) by Unit Holders or prospective Unit Holders, on terms and conditions stipulated by the Responsible Entity, by Unit Holders or prospective Unit Holders by electronic or other means including telephone, computer, cheque book, credit card and other electronic, telecommunication or banking facilities.

### **37. CONSTITUTION LEGALLY BINDING**

This Deed binds the Responsible Entity, each present and future Unit Holder and any person claiming through any of them in accordance with its terms as if they were a party to this Deed. A Unit is issued subject to and on the basis that the Unit Holder is taken to have notice of and be bound by all the provisions of this Deed.



**SCHEDULE 1**  
**UNMARKETABLE PARCELS**

**1. First notice**

If at any time a Unit Holder holds an Unmarketable Parcel (including Units or Stapled Securities held jointly with other Unit Holders) (***the Relevant Units***), the Responsible Entity may give a notice (***the First Notice***) to that Unit Holder stating that unless the Unit Holder gives notice to the Responsible Entity by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Units, then the Relevant Units are liable to be sold or disposed of under this Schedule but no First Notice may be given by the Responsible Entity in relation to the Relevant Units less than 12 calendar months after a previous First Notice given in relation to the Relevant Units.

**2. Subsequent changes**

Until the Unit Holder gives a notice under **Clause 6** of this Schedule, the provisions of this Schedule continue to apply to the Relevant Units despite the fact that they have, after the giving of the First Notice, ceased to comprise an Unmarketable Parcel.

**3. Power of Responsible Entity to sell**

Subject to the following provisions of this Schedule, where a Unit Holder has been given a First Notice the Responsible Entity may sell or otherwise dispose of (***Divest***) the Relevant Units (together with all rights attaching to them including any dividends and distributions declared but unpaid). For the purposes of such sale or disposal, the directors may initiate (capitalised terms have the same meaning as they are given in the ASX Settlement Rules) a Holding Adjustment to move all of the Relevant Units from a CHESS Holding to an Issuer Sponsored Holding or a certificated holding or take any other action they consider necessary or desirable to effect the sale or disposal.

**4. Advertisement and second notice**

Where the Responsible Entity propose to Divest any Relevant Units under this Schedule:

- (a) the Responsible Entity must publish in a newspaper circulating generally in the area in which the Unit Holder holding the Relevant Units has its address for the purposes of being given notices by the Responsible Entity, a notice specifying:
  - (i) the intention to Divest the Relevant Units;
  - (ii) the name of the relevant Unit Holder; and
  - (iii) the number of the Relevant Units; and
- (b) the Responsible Entity must give a notice of intention to Divest the Relevant Units (***the Second Notice***) to the Unit Holder advising the Unit Holder that the Relevant Units are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

## **5. Notice to all joint holders**

Where a First Notice or a Second Notice is given in respect of Relevant Units which are held by Unit Holders jointly, that notice must be given to each of those joint holders.

## **6. Unit Holder may require sale not to proceed**

Each Unit Holder to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Responsible Entity prior to the Relevant Units being Divested, require the Responsible Entity not to Divest the Relevant Units, in which case the Relevant Units may not be Divested unless a new First Notice is given to that Unit Holder.

## **7. Jointly held Units**

If a Unit Holder who gives notice under **Clause 6** of this Schedule is a joint holder of a parcel of Relevant Units, that notice only prevents those Relevant Units being Divested but does not prevent other Relevant Units held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Units applies only to those other Relevant Units.

## **8. Terms of sale**

Any Relevant Units to be Divested may be Divested on the terms and in the manner and at the time the Responsible Entity determines (including by means of the Relevant Units being bought back by the Responsible Entity) provided that the Responsible Entity should use best endeavours to Divest the Relevant Units for market price. For the purpose of the Relevant Units being Divested:

- (a) the Unit Holder appoints the Responsible Entity as its agent; and
- (b) the Unit Holder appoints the Responsible Entity and each of its directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Relevant Units.

## **9. Costs of Sale**

The Responsible Entity must pay all costs and expenses in connection with the Divestiture of any Relevant Units under this Schedule to the extent permitted under the Corporations Act.

## **10. Validity of sale**

The transferee of any Relevant Units Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Units, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Responsible Entity exclusively, subject to this Deed.

## **11. Receipt of proceeds**

Where the Responsible Entity receives any consideration as a result of the Divestiture of any Relevant Units, the Responsible Entity's receipt is a good discharge to the transferee of those Relevant Units and any person claiming through that transferee.

## 12. Title of transferee

The title of the transferee to any Relevant Units Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Units to the transferee.

## 13. Application of proceeds

The proceeds of Divestiture of Relevant Units under this Schedule (following deduction of any unpaid calls and interest and expenses) (*the Sale Consideration*) must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Responsible Entity for that purpose only;
- (b) the Sale Consideration must be held in trust for the Unit Holder whose Relevant Units were Divested;
- (c) the Responsible Entity must, immediately following the receipt of the Sale Consideration, notify the Unit Holder in writing that the Sale Consideration in respect of the Relevant Units has been received by the Responsible Entity and is being held by the Responsible Entity pending instructions from the Unit Holder as to how it is to be dealt with;
- (d) the Responsible Entity must deal with the Sale Consideration as instructed by the Unit Holder on whose behalf it is held, provided that the Unit Holder accompanies that instruction with the certificate for the Relevant Units (unless the Relevant Units are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Responsible Entity; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Responsible Entity may deal with the money according to any applicable legislation concerning unclaimed moneys.

## 14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Responsible Entity was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the Responsible Entity required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Relevant Units affected by that certificate and of the right and title of the Responsible Entity to Divest the same.

## 15. Cancellation of certificates

Except where the Relevant Units are uncertificated securities, the Responsible Entity must cancel the Unit certificates for all Relevant Units Divested.

## **16. Takeovers**

The Responsible Entity may not proceed with the Divestiture of any Relevant Units where a takeover bid has been announced but the Divestiture of those Relevant Units may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.