

I certify that this is a true copy of a copy of the AUFM  
Supplemental Deed : AU Investments Series Asian Equity Growth  
Fund dated 1 April 2011.

JNW 25/9/24

Liesl Petterd

271 Spring Street Melbourne Vic

**SUPPLEMENTAL DEED**

member Covenant 3000  
Institute of Australia.

AUSTRALIAN UNITY INVESTMENTS SERIES ASIAN EQUITY GROWTH FUND  
ARSN 140 274 728

AUSTRALIAN UNITY FUNDS MANAGEMENT LIMITED  
(Responsible Entity)

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Date

1 April

2011

Parties

Name

Australian Unity Funds Management Limited ("AUFM")

ABN

60 071 497 115

Short form name

Responsible Entity

Address

Level 14, 114 Albert Road  
SOUTH MELBOURNE VICTORIA 3205

Attention: Company Secretary

## BACKGROUND

- A The Responsible Entity is the responsible entity of the Australian Unity Investments Seres Asian Equity Growth Fund ARSN 140 274 728 ("Trust"), a registered managed investment scheme governed by a deed poll dated 26 October 2009 ("Constitution") and registered by ASIC on 11 November 2009.
- B The Constitution was amended pursuant to supplemental deeds on 10 November 2009 and 7 January 2010.
- C Clause 19 of the Constitution provides that this constitution may be amended or repealed and replaced with a new constitution by a supplemental deed if the provisions of the supplemental deed have been approved by a Special Resolution of the Unit Holders; or the Responsible Entity reasonably considers that the provisions of the supplemental deed will not adversely affect the rights of Unit Holders.
- D Pursuant to section 601GC(1)(b) of the Corporations Act 2001 (Cth) (**Corporations Act**), the Constitution of a registered scheme may be modified by the responsible entity if the responsible entity considers the change will not adversely affect members' rights.
- E The Responsible Entity has determined to amend the Constitution to clarify the operation of certain provisions, introduce new provisions and to change the name of the Trust pursuant to sub-clause 2.1 of the Constitution.

- F The Responsible Entity has considered the proposed amendments to the Constitution to be effected by this Supplemental Deed and is satisfied that the amendments will not adversely affect the rights and interests of the Unit Holders of the Trust.

## **AGREED TERMS**

### **1. Defined terms & interpretation**

In this deed, unless the contrary intention is expressed or implied, word and expression defined in the Constitution have the same meanings when used in this deed.

### **2. Amendments to the Constitution**

- (a) By this Supplemental Deed the Responsible Entity, pursuant to its powers under the Constitution, amends the Constitution as set out in Annexure A to this deed, so that the words, numbers and symbols which are:
- (i) underlined are inserted into the Constitution; and
  - (ii) struck through are deleted from the Constitution.
- (b) Annexure A contains the Constitution consolidated to include all the amendments effected by this deed after they have all become operative in accordance with clause 19.

### **3. Commencement**

This deed takes effect on the date that it is lodged with ASIC in accordance with section 601GC(2) of the Corporations Act.

### **4. No redeclaration etc.**

The Responsible Entity confirms that it is not, by this deed:

- (a) redeclaring the Trust;
- (b) resettling the Trust;
- (c) causing the transfer, vesting or accruing of property in any person; or
- (d) entering into a new constitution.


Other than the amendments made in this deed, the Constitution continues in full force and effect.

### **5. Governing law and jurisdiction**


This Deed is governed by the laws of Victoria

EXECUTED as a deed poll.

Executed by AUSTRALIAN UNITY  
FUNDS MANAGEMENT LIMITED in  
accordance with Section 127 of the  
*Corporations Act 2001* in the presence of

  
\_\_\_\_\_  
Signature of director  
**Rohan Mead**  
**Director**

\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)  
Kirsten Mander

\_\_\_\_\_  
Company Secretary  
\_\_\_\_\_  
Name of director/company secretary  
(print)

## **SUPPLEMENTAL DEED**

**AUSTRALIAN UNITY INVESTMENTS SERIES ASIAN EQUITY GROWTH FUND**

**ARSN 140 274 728**

**AUSTRALIAN UNITY FUNDS MANAGEMENT LIMITED**  
**(Responsible Entity)**

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Annexure A

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# CONSTITUTION

By Deed Poll

AUSTRALIAN UNITY FUNDS MANAGEMENT LIMITED  
ABN 60 071 497 115

~~ESTABLISHING THE AUSTRALIAN UNITY INVESTMENTS  
SERES ASIAN EQUITY GROWTH A-REIT FUND~~

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**Constitution**  
By Deed Poll

**DATED 26 October 2009**

**By**

**AUSTRALIAN UNITY FUNDS MANAGEMENT LIMITED ABN 60 071 497 115** of Level 14,  
114 Albert Road, South Melbourne, Victoria, 3205 (**Responsible Entity**).

**BACKGROUND**

- A On 26 October 2009 AUFM executed a trust deed (“**Constitution**”) establishing the Australian Unity Investments Seres Asian Equity Fund (“**Trust**”), of which AUFM was the Responsible Entity.
- B The Constitution was amended pursuant to a supplementary deed on 10 November 2009 and subsequently registered by ASIC on 11 November 2009.
- C On 7 January 2010, the Constitution was amended to reflect the change of name of the scheme to the Australian Unity Investments Seres Asian Equity Growth Fund (“**Trust**”).

**Operative Provisions.**

**1. DEFINED MEANINGS**

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- 1.1 Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.
- 1.2 **ASIC relief**

If ASIC grants relief or an exemption from, or modification to, the provisions of the *Corporations Act* (relief) on condition that this constitution contain certain provisions, then those provisions are taken to be incorporated into this constitution at all times at which they are required to be included in order for the relief to apply and prevail over any other provisions of this constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust or the Responsible Entity) then the relief (and the provisions it requires) will be taken to be incorporated unless the Responsible Entity declares in writing that the relief is not to apply.

**2. ESTABLISHMENT OF THE TRUST**

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**2.1 Name of the Trust**

The Trust formed under this constitution is called the “*Australian Unity Investments Seres Asian Equity Growth A-REIT Fund*” or any other name the Responsible Entity determines.

## 2.2 Declaration of trust

The Responsible Entity declares that it will hold the Fund upon trust for the Unit Holders on, and subject to, the terms and conditions of this constitution.

## 2.3 Commencement of the Trust

The Trust commences on the date that the Responsible Entity's nominee subscribes \$10.00 for Units in the Fund. The Responsible Entity's nominee must be issued with 10 Units in return for that payment.

## 2.4 Duration of the Trust

The Trust ends when the winding up of the Trust under this constitution is completed and the final distribution is made to Unit Holders and all liabilities have been paid.

## 2.5 No interference by Unit Holders

No Unit Holder, other than as provided by the *Corporations Act* or this constitution, is entitled to:

- 2.5.1 interfere with the rights or powers of the Responsible Entity or its agents or their dealings with the Fund, the Assets, or any part of them;
- 2.5.2 exercise any rights, powers or privileges in respect of any Asset;
- 2.5.3 interfere in any way with the Trust or Fund constituted under this constitution; or
- 2.5.4 lodge a caveat in respect of any Asset.

## 2.6 Assets not available to another trust

The Assets are not available to meet any liabilities of any trust other than the Trust. The Responsible Entity must, while required by the *Corporations Act*, ensure that the Assets are identified clearly as the property of the Trust and held separately from the property of the Responsible Entity and the property of any other trust or syndicate.

## 2.7 Vesting of property

The Assets vest in the Responsible Entity on trust for the Unit Holders throughout the continuance of the Trust.

# 3. UNITS

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## 3.1 Beneficial interest divided into Units

- 3.1.1 The beneficial interest in the Fund is divided into Units.
- 3.1.2 Each Unit confers an equal undivided interest.

### 3.2 Interest conferred by Units

A Unit:

- 3.2.1 confers on its registered holder in the Register an equal undivided interest in the Fund and Assets as a whole; and
- 3.2.2 does not confer any interest in any particular part of the Fund or in any Asset but only such interest in the Fund and Assets as a whole subject to the Liabilities.

### 3.3 Units confer identical rights and interests

~~From the commencement of the Trust, subject only to proportional values changing, or being changed, under clause 3.4, or, at any given time all of the Units into which the beneficial interest in the Fund is for the time being divided confer identical rights and interests. Except in respect of any rights, obligations or restrictions attaching to any particular Unit or class of Units or as otherwise set out in this constitution, at any given time all of the Units into which the beneficial interest in the Trust is for the time being divided are of equal value and confer identical rights and interests.~~

### 3.4 Reconstruction of Units

The Responsible Entity may at any time consolidate, divide or issue Units as it determines.

### 3.5 Joint Tenancy

Persons registered in the Register jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees. Only the person whose name appears first in the Register as one of the joint holders of a Unit is entitled to delivery of any notices, cheques or other communications from the Responsible Entity. A notice, cheque or other communication given to that person is regarded as given to all the joint holders.

### 3.6 Classes of Units

#### Definitions

~~For the purposes of this clause 3.6, the words set out below have the following meaning:~~

~~Required Majority means a simple majority except where this constitution or any applicable law provides otherwise, in which case it will be the majority otherwise so required.~~

- 3.6.1 The Responsible Entity may at any time, ~~create and~~, issue Units with any preferred, deferred or other special rights, obligations or restrictions, whether in relation to distributions, voting, return of capital, withdrawal, payment of calls or otherwise, that the Responsible Entity determines.
- 3.6.2 The Responsible Entity may not create and issue Units of different classes if to do so would affect existing Unit Holders' rights and entitlements to the Trust.
- 3.6.3 The rights attaching to Units in a class of Units may be varied or cancelled by the Responsible Entity by a Special Resolution of Unit Holders together with a resolution passed at a meeting of the class of Unit Holders whose rights are being varied or cancelled where the Required Majority is 75% in accordance with the Corporations Act 2001 (Cth) as it may determine except where such variation or cancellation will have, or be likely to have a material adverse affect on:

(a) existing Unit Holders, in which case such variation or cancellation may be made only with the consent of a Special Resolution of Unit Holders; or

(a)(b) existing Unit Holders in that class only, in which case such variation or cancellation may be made only with the consent of a Special Resolution of the Class of Unit Holders whose rights are being varied or cancelled.

~~3-6-23.6.4~~ 6.4 All Units of a class will be of an equal value and confer identical interests and rights to, and be subject to the same conditions as, all other Units in that class. Separate classes of Units do not constitute separate trusts. Subject to its duties and the terms of issue of the relevant Units, the Responsible Entity may, at any time, categorise Units into classes or recategorise Units into a different class. The provisions of this clause 3 and any other relevant provisions of this constitution are to be read subject to this subclause.

## **4. CREATION OF UNITS**

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### **4.1 Application Price for Units**

4.1.1 A Unit must only be issued at the Application Price calculated as follows:

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

However, where more than one class is on issue, the Application Price applicable for a class is determined by dividing the Net Asset Value that the Responsible Entity determines is properly referable to the class by the number of Units then on issue in that class and adding the proportion of Transaction Costs that the Responsible Entity determines is properly referable to the class.

4.1.2 A Fractional Unit must be issued at a price equal to the fraction of the Application Price contributed by the Applicant.

### **4.2 Application for Units**

4.2.1 A person who wishes to subscribe for Units must follow such procedures as the Responsible Entity requires. Any form may be transmitted electronically if approved by the Responsible Entity.

4.2.2 If Application is made for a Fractional Unit and the Applicant already holds a Fractional Unit, both Fractional Units will be treated as being consolidated into a Unit or another Fractional Unit or both, and the Application Price in respect of that Fractional Unit shall be adjusted accordingly.

~~4.2.3 Any Fractional Unit may be rounded upwards or downwards to the fourth decimal place.~~

### **4.3 Receipt of an Application**

Where an Application is received by the Responsible Entity:

4.3.1 before such time on a Business Day as is determined by the Responsible Entity, the Application will be deemed to have been received on the same Business Day;

- 4.3.2 on or after such time on a Business Day as is determined by the Responsible Entity, the Application will be deemed to have been received no later than the next Business Day;
- 4.3.3 on any day which is not a Business Day, the Application will be deemed to have been received on the next Business Day following that day,

and the Application Price must be determined as at the next Valuation Date and Valuation Time following deemed receipt of the Application.

#### 4.4 Payments to the Responsible Entity

- 4.4.1 Payment in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
- (a) accompany the Application;
  - (b) be received by or made available to the Responsible Entity or the custodian within such period before or after the Responsible Entity determines from time to time; or
  - (c) comprise a reinvestment of distribution in accordance with **clause 10.10**.
- 4.4.2 If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the relocation or transfer of the property are payable or reimbursable by the Applicant.

#### 4.5 Allotment of Units

- 4.5.1 A Unit created is regarded as allotted to the person entitled to it when:
- (a) the Responsible Entity accepts the Application; or
  - (b) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,
- whichever happens later.
- 4.5.2 The Responsible Entity may set a minimum application amount for the Trust or for a class of Units and may alter that amount at any time. The Responsible Entity may set a different application amount for different classes of units.
- 4.5.3 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Responsible Entity within one (1) month of receipt of the application or such other period as the Responsible Entity reasonably determines.

#### 4.6 Responsible Entity's discretion on application

The Responsible Entity may in its absolute discretion accept or reject in whole or in part any Application for Units without reason.

#### 4.7 Confirmation

Subject to clause 4.6, the Responsible Entity must enter the Applicant on the Register (or where the person is a Unit Holder, alter the Register accordingly).

#### 4.8 Cheques to be cleared

If the application money in respect of any Application is tendered by way of uncleared funds and the funds are not cleared, the Responsible Entity may elect to treat the Application as not having been made and make appropriate entries in the records of the Trust.

#### 4.9 Fractional Units

The Responsible Entity may issue and allow to remain on issue a Fractional Unit to a Unit Holder. The provisions of this constitution relating to Units and Unit Holders apply to Fractional Units and holders of Fractional Units and the Fractional Unit has a value equal to the proportion which the value of the relevant Fractional Unit bears to the value of a Unit (calculated to such number of decimal places as the Responsible Entity determines). The Responsible Entity may add any Fractional Unit to, and consolidate it with, such other Fractional Units (if any) as are held by a Unit Holder.

#### 4.10 Deposit Advices

No certificates will be issued for the Units. The Responsible Entity may send Unit Holders a Deposit Advice. The Deposit Advice is evidence of title to Units only to the extent that it is consistent with the entries in the Register.

#### 4.10.11 Rounding

The Application Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Application Price may round (either up or down); any amounts to be calculated or paid under this Constitution to such number of decimal places or to a whole cent as determined by the Responsible Entity.

### 5. TRANSFER AND TRANSMISSION OF UNITS

#### 5.1 Transfer or transmission of Units permitted

Subject to this constitution, Units may be transferred or transmitted provided that:

as a result of the transfer no Unit Holder would hold less than the Minimum Holding; and

5.1.1 ~~if the transferring Unit Holder borrowed, or is deemed to have borrowed, or owes money or incurred a debt (including any form of vendor finance), in respect of the acquisition of the Units, pursuant to arrangements referred to in the Product Disclosure Statement, the transferee assumes the rights and obligations of the transferring Unit Holder (whether by assignment, novation or otherwise) in respect of the borrowing or debt.~~

#### 5.2 Form of Transfer

5.2.1 All transfers of Units must be in a form approved by the Responsible Entity and be presented for registration:

- (a) accompanied by such evidence as may be required by the Responsible Entity; and
- (b) if necessary, duly stamped.

### 5.3 Evidence to accompany transfer

An instrument of transfer of Units must be accompanied by such evidence (if any) as the Responsible Entity requires to prove the transferor's title or right to transfer the Units. A transfer is not effective until registered.

### 5.4 Responsible Entity may decline to register any transfer

5.4.1 ~~The Responsible Entity may decline to register any transfer during the fourteen (14) days immediately preceding a distribution under clause 10~~ may in its absolute discretion and acting reasonably accept or reject a request to transfer Units. The Responsible Entity is not required to provide reasons for any such refusal.

5.4.2 Any transfer the Responsible Entity refuses to register shall be returned to the Unit Holder on request within twelve (12) months of the Responsible Entity giving the Unit Holder notice of its refusal to register the transfer, except in the case of suspected fraud.

### 5.5 Recognition of title

If a Unit Holder dies, or becomes subject to a legal disability, the survivors or survivor where the deceased was a joint holder and the executors or administrators of the deceased where the Unit Holder was a sole holder, or the legal personal representative in any other case, are the only persons entitled to be recognised by the Responsible Entity as having any title to the Units registered in the Unit Holder's name.

### 5.6 Registration of new holder in certain circumstances and election

5.6.1 Any person becoming entitled to any Units in consequence of the death, bankruptcy or other disability of a Unit Holder (**Representative**) may, upon such evidence being produced as is required by the Responsible Entity, elect either to be registered as the holder of the Units or to have some other nominated person registered as the transferee of the Units.

5.6.2 A Representative that elects to be registered as the holder of the Unit must deliver or send to the Responsible Entity an election notice in writing in a form approved by the Responsible Entity and signed by the Representative.

5.6.3 If the Representative elects to have the Representative's nominee registered, the Representative and the nominee must testify the election by delivering or sending to the Responsible Entity a transfer to the nominee.

5.6.4 All the provisions of this constitution relating to the registration of transfers of Units apply to a notice or transfer under this clause 5.6 as if the death, bankruptcy, insanity or other disability of the Unit Holder had not occurred and the notice or transfer was a transfer executed by the Unit Holder.



## 5.7 Good discharge

A Representative is entitled to receive, and may give a discharge for, all moneys payable in respect of the Units but the Representative is not entitled to receive notices of, or to attend or vote at, any meetings of Unit Holders until the Representative's name is entered in the Register as the Unit Holder in respect of the Units.

## 5.8 Suspension

The Responsible Entity may suspend the registration of transfers and transmissions of Units for up to 30 days in aggregate in each calendar year.

# 6. POWERS OF THE RESPONSIBLE ENTITY

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## 6.1 Investment policy for the Trust

Without limiting clause 6.2, the Responsible Entity may in its capacity as trustee of the Trust, invest in, dispose of, or otherwise deal with property and rights in its absolute discretion and the Responsible Entity may vary its investment policy from time to time.

## 6.2 Responsible Entity to manage the Trust

6.2.1 Subject to this constitution, the Responsible Entity has all the powers in respect of the Trust of a natural person, as absolute owner of the Assets and acting in its personal capacity, having regard to its role as the responsible entity.

6.2.2 The Responsible Entity has absolute discretion as to the investment of any part of the Trust's Assets and as to the purchase, sale, transfer, exchange or alteration of any of those Assets.

6.2.3 The Responsible Entity may invest in a Related Trust. The Responsible Entity may be remunerated and reimbursed for costs out of any Related Trust to the extent permitted by law.

6.2.4 The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

## 6.3 Responsible Entity's Powers

Subject to the proper performance by the Responsible Entity of its duties under this constitution and at law, the Responsible Entity in its capacity as the responsible entity of the Trust has power to:

6.3.1 borrow and raise money for the purposes of the Trust and to grant security over the Assets; and

6.3.2 underwrite, or sub-underwrite (or join with others in underwriting or sub-underwriting) the subscription for any investment;

~~6.3.16.3.3~~ enter into any derivatives transactions; and

~~6.3.26.3.4~~ to incur all types of obligations and liabilities.

#### 6.4 Appointment of custodian

The Responsible Entity may (or if required by law, must) appoint a custodian of the Assets. The appointment may be in a form the Responsible Entity and custodian choose. The Responsible Entity may include in the appointment document any provisions the Responsible Entity thinks fit to protect and assist those dealings with the custodian.

#### 6.5 Agents

The Responsible Entity, by power of attorney or otherwise, may authorise any person or persons (whether or not being persons related to, or associated with, the Responsible Entity) to do anything that the Responsible Entity may do, including to hold any Asset and to execute documents on its behalf. If the Responsible Entity appoints a custodian to hold Assets, the custodian acts as the agent of the Responsible Entity.

#### 6.6 Absolute discretion

The Responsible Entity has an absolute discretion as to the manner, mode and time of exercise of the powers, authorities and duties conferred on it under this constitution or the Corporations Act.

#### 6.7 Appointment of advisers

The Responsible Entity may engage any agent, adviser, valuer, broker, underwriter or contractor to advise, provide services or assist the Responsible Entity in managing the Trust or dealing with any Asset or Liability.

### 7. WITHDRAWAL PRICE OF UNITS

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#### 7.1 Withdrawal Price of Units

7.1.1 The Withdrawal Price in respect of a Unit will be calculated as follows:

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

However, where more than one class is on issue, the Withdrawal Price applicable for a class is determined by dividing the Net Asset Value that the Responsible Entity determines is properly referable to the relevant class by the number of Units then on issue in that class and then subtracting the proportion of Transaction Costs that the Responsible Entity determines is properly referable to the class.

#### 7.2 Variables

The Withdrawal Price must be determined:

7.2.1 while the Trust is Liquid, as at the next Valuation Date and Valuation Time after the Responsible Entity accepts the withdrawal request; or

7.2.2 while the Trust is not Liquid, at the time the withdrawal offer closes.

### 7.3 Rounding

The Withdrawal Price may be rounded as the Responsible Entity determines. ~~The amount of the rounding must not be more than 1% of the Withdrawal Price.~~

## 8. WITHDRAWAL PROCEDURES

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### 8.1 Request for withdrawal

A Unit Holder may make a request for the withdrawal of some or all of its Units in any manner approved by the Responsible Entity and while the Trust is Liquid, the Responsible Entity must give effect to that request at the time and in the manner set out in this clause 8.

### 8.2 Receipt of a Withdrawal Request

Where a withdrawal request is received by the Responsible Entity:

8.2.1 before such time on a Business Day as is determined by the Responsible Entity, the withdrawal request will be deemed to have been received on the same Business Day;

8.2.2 on or after such time on a Business Day as is determined by the Responsible Entity, the withdrawal request will be deemed to have been received no later than the next Business Day;

8.2.3 on any day which is not a Business Day, the withdrawal request will be deemed to have been received on the next Business Day following that day.

### 8.3 Unit Holder may not withdraw request

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

### 8.4 When Trust is Liquid

Clauses 8.5 to 8.12 apply only while the Trust is Liquid.

### 8.5 Responsible Entity to satisfy

The Responsible Entity must satisfy a withdrawal request in respect of a Unit by payment from the Assets of the Withdrawal Price. The payment must be made within:

8.5.1 ~~3024~~ days of receipt of the request; or

8.5.2 such later time as the Responsible Entity may determine having regard to its ability to realise or value any of the Assets and to the best interests of Unit Holders provided such later time is as soon as reasonably practicable; and

8.5.3 such longer period as allowed by clause 8.6.

### 8.6 Extension of request period

If the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for

satisfaction of the request may be extended by the number of days during which such circumstances apply.

**8.7 Minimum withdrawal**

The Responsible Entity need not give effect to a withdrawal request in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Responsible Entity from time to time unless the withdrawal request relates to the balance of that Unit Holder's holding of Units.

**8.8 No payment from Responsible Entity's own fund**

The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.

**8.9 Setting of minimum holding amount**

The Responsible Entity may set a Minimum Holding amount for the Trust and alter that amount at any time.

**8.10 Withdrawal to below Minimum Holding**

If compliance with a withdrawal request would result in the Unit Holder holding Units with an aggregate Withdrawal Price which is less than the then current Minimum Holding, the Responsible Entity may treat the withdrawal request as relating to the balance of that Unit Holder's holding of Units.

**8.11 Increase in Minimum Holding**

If the Responsible Entity increases the Minimum Holding, the Responsible Entity may after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the then current Minimum Holding, effect the withdrawal of that Unit Holder's holding of Units without the need for a withdrawal request.

**8.12 Discretionary redemption**

If the Responsible Entity is not obliged to give effect to a withdrawal request, it may effect the redemption of some or all of the Units which are the subject of the request.

**8.13 When Trust is not Liquid**

While the Trust is not Liquid:

8.13.1 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;

8.13.2 the Responsible Entity is not at any time obliged to make a withdrawal offer; and

8.13.3 if the Responsible Entity receives a withdrawal 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.

#### **8.14 Whether or not the Trust is Liquid**

Whether or not the Trust is Liquid:

- 8.14.1 the Responsible Entity may deduct from the proceeds of withdrawal all money paid pursuant to a withdrawal offer; any money due to it by the Unit Holder; and
- 8.14.2 the Responsible Entity may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.

#### **8.15 Facility restricting dealings with Units**

The Responsible Entity may from time to time by written notice to Unit Holders offer:

- 8.15.1 a facility whereby any proposed dealings with some or all of the Unit Holder's Units may be suspended where two (2) or more contrary or inconsistent directions or instructions (whether in whole or part or written or verbal) are received by the Responsible Entity in respect of some or all of the Unit Holder's Units within one (1) Business Day of each other; or
- 8.15.2 a facility whereby a Unit Holder may request the Responsible Entity to enter a person in the Register as a person interested in the Units of the Unit Holder referred to in the request (**Interested Person**), such Interested Person to be entitled under the facility to request the Responsible Entity to suspend any proposed dealing in the Units in which they are interested upon prompt notification by the Responsible Entity of such proposal,

in the manner and on such terms, conditions and restrictions as the Responsible Entity may determine from time to time.

### **9. RIGHTS OF RESPONSIBLE ENTITY**

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#### **9.1 May act in relation to other trusts**

Nothing in this constitution prevents the Responsible Entity from establishing or acting as responsible entity, manager or trustee for trusts, syndicates or schemes whether of a similar nature to, or different from, the Trust.

#### **9.2 Dealings with associates**

Subject to the Corporations Act, the Responsible Entity and its associates may without any liability to account to any Unit Holder or the Trust:

- 9.2.1 hold Units;
- 9.2.2 deal with the Trust and any Unit Holder;

9.2.3 be interested in any contract or transaction with the Trust and any Unit Holder and may retain for its own benefit any profits or benefits derived from any such contract or transaction; and

9.2.4 act in the same or a similar capacity in relation to any other trust, syndicate or scheme.

## **10. INCOME OF TRUST**

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### **10.1 Responsible Entity to determine Distributable Income**

The Responsible Entity must determine the Distributable Income of the Trust for each Distribution Period, as at the end of the relevant Distribution Period. The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves and provisions need to be made.

### **10.2 Unit Holders entitled to Distributable Income;**

(a) Persons who are Unit Holders at the end of a Distribution Period are presently and absolutely entitled to all of the Distributable Income of the Trust for the relevant Distribution Period in proportion to number of Units held by them at the end of the Distribution Period. The Income Entitlement of a Unit Holder at the end of a Distribution Period for the Distribution Period is:

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

where:

IE is the Income Entitlement of a Unit Holder for the Distribution Period;

A is the number of Units held by a Unit Holder at the end of the Distribution Period;

B is the Distributable Income of the Trust for the Distribution Period;

C is the number of Units held by all Unit Holders at the end of the Distribution Period.

(b) Where more than one class of Units is on issue, the Distributable Income referable to a class is the amount of Distributable Income, calculated in accordance with this clause, the Responsible Entity determines is properly referable to the class, and the calculations in paragraph (a) shall be applied separately to each class of Units as the proportion of the relevant variable that the Responsible Entity determines is properly referable to the particular class.

### **10.3 Allocation of Income Entitlements**

10.3.1 The Responsible Entity must allocate or cause to be allocated and distributed to each Unit Holder the Income Entitlement for the Unit Holder for a Distribution Period.

10.3.2 Where a transfer of Units has occurred pursuant to clause 5.1, the transferee is presently entitled to the transferor's portion of the Distributable Income for the Distribution Period.

#### 10.4 Responsible Entity may determine

Notwithstanding that persons who are Unit Holders at the end of a Distribution Period are entitled to the Distributable Income of the Trust, the Responsible Entity may determine that an amount of cash greater or lesser than all of the Distributable Income is to be distributed to the Unit Holders.

#### 10.5 Manner in which a distribution is effected

The Distributable Income of the Trust must be distributed to the Unit Holders by way of distribution to, or on behalf of, the Unit Holders in accordance with this constitution. If the amount of Distributable Income to be distributed to any one Unit Holder is less than \$5.00, the Responsible Entity may, in its absolute discretion, determine that a distribution will not be made to that Unit Holder.

#### 10.6 Payments

Money payable by the Responsible Entity to a Unit Holder may be paid in any manner the Responsible Entity decides.

#### 10.7 Two failed direct transfers

Where the Responsible Entity attempts to make a payment by electronic transfer of funds to a Unit Holder and the transfer is unsuccessful on two (2) occasions, the Responsible Entity may reinvest the money in Units on the Unit Holder's behalf following failure of the second attempt.

#### 10.8 Payment of whole cents only

Only whole cents are to be paid and any remaining fraction of a cent becomes an Asset.

#### 10.9 Payment of joint Unit Holder sufficient

A payment to any one (1) of joint Unit Holders will discharge the Responsible Entity in respect of the payment.

#### 10.10 Reinvestment

The Responsible Entity may determine whether to permit or require the reinvestment. If the Responsible Entity determines to permit reinvestment:

~~10.9.1~~10.10.1 A Unit Holder may elect in writing, or such other form as approved by the Responsible Entity, to reinvest some or all of any distribution to acquire additional Units.

~~10.9.2~~10.10.2 A Unit Holder's request for reinvestment must be received by the Responsible Entity not less than thirty (30) days prior to the end of the Distribution Period or such other period as the Responsible Entity determines.

~~10.9.3~~10.10.3 The Responsible Entity must notify Unit Holders of the procedure for reinvestment and any change in the procedure.

~~10.9.4~~10.10.4 If reinvestment occurs the Responsible Entity is deemed to have received and accepted an application to reinvest distributions on ~~the next Business Day after~~ the day that the distribution to the Unit Holder was due to take place.

~~10.9.5~~10.10.5 Units issued as a result of the reinvestment of any distribution are done so in accordance with the provisions of clause 4.1.1 but excluding any Transaction Costs.

#### ~~10.10~~10.11 Return of capital or income

~~10.10.1~~10.11.1 The Responsible Entity may at any time distribute any amount of capital of the Trust to the Unit Holders as at a date specified by the Responsible Entity in proportion to their Units, or to Unit Holders within a class pro rata according to the number of Units held within that class, on that date. The distribution may be in cash or by way of additional Units.

~~10.10.2~~10.11.2 The Responsible Entity may at any time during a Distribution Period distribute any amount of Income of the Trust to the Unit Holders as at a date specified by the Responsible Entity in proportion to their Units, or to Unit Holders within a class pro rata according to the number of Units held within that class, on that date, ~~distribute any amount of Income of the Trust to persons who have been Unit Holders at any time during that Distribution Period as at a date specified by the Responsible Entity in proportion to the average number of Units held (or in proportion to the average number of Units held in the relevant class, as the case may be) by those persons during the Distribution Period (up to and including the date specified by the Responsible Entity).~~ The distribution may be in cash or by way of additional Units.

## **11. DEDUCTION OF TAX**

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### **11.1 Deductions**

The Responsible Entity may deduct from any amount payable or distributable to a Unit Holder, or received from a Unit Holder, any amount of Tax (or an estimate or instalment of it) which it is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Responsible Entity considers should be deducted. For example, this includes any amount of Tax which may be payable on, or in respect of, the issue of Units to, or cancellation of Units of, or distributions to, that Unit Holder.

### **11.2 Payments**

The Responsible Entity may make a payment in respect of any amount of Tax that the Responsible Entity reasonably believes is payable or anticipated to become payable by the Responsible Entity being Tax which is referable to a Unit Holder or for which a Unit Holder is primarily liable.

### **11.3 Application**

The Responsible Entity may apply the deduction towards:

- 11.3.1 reimbursement of the Trust for any corresponding amount paid or reimbursed out of the Trust;
- 11.3.2 reimbursement of the Responsible Entity for payment of the amount; or
- 11.3.3 the payment of the Tax to the person or authority entitled to it.



#### 11.4 Indemnity

The Responsible Entity is entitled to be indemnified out of the Assets in relation to any amount of Tax referred to in clauses ~~11.1~~ and ~~11.2~~ paid (whether or not the amount was due or payable) or payable by it.

### 12. FINANCIAL STATEMENTS, RECORDS, AUDIT AND VALUATION

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#### 12.1 Preparation of Accounts

The Responsible Entity must keep the Accounts or cause them to be kept.

#### 12.2 Auditor

In accordance with the Corporations Act, the Responsible Entity must appoint an Auditor for the Trust and may replace any Auditor.

#### 12.3 Valuation

The Responsible Entity may cause an Asset to be valued at any time, and must do so if required by the Corporations Act.

#### 12.4 Method of Valuation

12.4.1 Unless the Responsible Entity determines otherwise the value of an Asset will be its market value. The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time.

12.4.2 Where the Responsible Entity values an Asset at other than its market value or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the value of the Asset that is independently verifiable.

### 13. RESPONSIBLE ENTITY LIABILITY

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#### 13.1 Liability limited to amount recovered

Without limiting the generality of any other clause, except in the case of the Responsible Entity's fraud, negligence or breach of this constitution or as otherwise provided in the Corporations Act, the Responsible Entity is not liable to one or more or all of the Unit Holders or the Trust for any amount beyond the amount which it is entitled to recover and is actually indemnified for through its right of indemnity in respect of the Trust.

#### 13.2 Limitations of liability

Subject to the Corporations Act but without limiting the generality of any other clause:

13.2.1 the Responsible Entity is not required to do anything which involves the Responsible Entity incurring a liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its liability is satisfactorily limited; and

- 13.2.2 the Responsible Entity expressly excludes, to the extent permitted by the law, all obligations which might otherwise be implied or imposed by law or equity including any obligation of a responsible entity of the Trust arising under any statute.

### 13.3 Further Limitation of liability

Without limiting the generality of any other clause, to the extent permitted under the Corporations Act, except in the case of the Responsible Entity's fraud, negligence or breach of this constitution the Responsible Entity is not liable beyond the Assets actually vested in it for any loss or damage to any person in acting, or omitting to act, in good faith where:

- 13.3.1 it relied upon information or the authenticity of any document, signature or marking provided that it had no reason to believe that the information was not correct or document, signature or marking was not authentic;
- 13.3.2 it relied upon the advice, services or opinion of any person, consultant or adviser (including lawyers, accountants and other professional advisers) provided that the Responsible Entity believed the person to have relevant expertise;
- 13.3.3 it acted under the compulsion of a law of the Commonwealth, State or Territory (including paying or retaining money in good faith to meet a Liability to a duly empowered fiscal authority), or in accordance with the terms of an order or judgment of any competent court; or
- 13.3.4 a person (other than a company under its control) failed to carry out any agreement with the Responsible Entity or any of its agents in connection with the Trust.

## 14. RETIREMENT OF RESPONSIBLE ENTITY

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### 14.1 Retirement

The Responsible Entity:

- 14.1.1 must retire as the Responsible Entity when required to do so by law; and
- 14.1.2 subject to the Corporations Act, may retire as the Responsible Entity at any time.

### 14.2 Payment

The Responsible Entity may agree with an incoming responsible entity or temporary responsible entity (prior to its retirement taking effect) that the latter can remunerate it or provide some other benefit. In that event, the retiring Responsible Entity has no obligation to account to the Unit Holders for such remuneration or benefit.

### 14.3 Release

The Responsible Entity is released from all obligations in relation to the Trust arising after it ceases to act in that capacity whether because it retires or is removed. The release does not affect its right of indemnity from the Trust in respect of liabilities and expenses properly incurred before, or as a consequence of, the retirement or removal.

## **15. REMUNERATION AND EXPENSES OF RESPONSIBLE ENTITY**

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### **15.1 Responsible Entity's remuneration**

The Responsible Entity is entitled to receive out of the Assets of the Trust the remuneration and any other fees specified in Schedule 1 for the proper performance of its duties in relation to the Trust. The Responsible Entity's remuneration accrues daily and may be waived, varied or deferred in whole or in part at the Responsible Entity's discretion.

### **15.2 Variation**

Subject to any approval required by law, where the Responsible Entity is satisfied that, owing to changed economic circumstances, it is reasonable to vary the remuneration specified in Schedule 1 or the amount that the Responsible Entity is entitled to be reimbursed out of the Fund in accordance with Schedule 1, that remuneration, or that amount (as the case may be) may be varied by a deed supplemental to this constitution.

### **15.3 Establishment and administration costs**

In addition to any other right of indemnity which it may have under this constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of or paid from the Assets in relation to the proper performance of its duties for all losses, damages and costs incurred in the course of its office or in the administration or management of the Trust. Without limitation, this includes amounts payable in performing any of the Responsible Entity's duties or exercising any of the Responsible Entity's powers, including in respect of any act or omission and the amounts specified in Schedule 2. The Responsible Entity may, at its discretion, allocate costs and expenses between different classes to the extent that, in the opinion of the Responsible Entity, those costs and expenses are properly referable to that class.

### **15.4 Differential Fee Arrangements**

Notwithstanding any other provision contained in this constitution, subject to the Corporations Act and any applicable exemption or declaration granted or made by ASIC (whether by Class Order or otherwise), the Responsible Entity may in its absolute and sole discretion:

- 15.4.1 charge, rebate or otherwise waive any and all fees in respect of the Trust, including but not limited to any entry, exit and ongoing fees whatsoever;
- 15.4.2 charge different fees in relation to different classes of Units or, subject to the Corporations Act, within the same class of Units; and
- 15.4.3 enter into any fee arrangement that the Responsible Entity may decide to offer, from time to time, to all of the Unit Holders or to classes of Unit Holders, including but not limited to banding or tiered fee arrangements.

## 16. GST

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- 16.1 Terms in this clause 16 not otherwise defined in this deed have the meanings give to them in A New Tax System (Goods and Services Tax) Act 1999 ('GST Act').
- 16.2 Any consideration payable or to be provided for a supply made by the Responsible Entity to the Trust under or in connection with this deed does not include any amount on account of GST.
- 16.3 If the Responsible Entity is liable for GST on any supply it makes to the Trust under or in connection with this deed (including the supply of any goods, services, rights, benefits or things), the Responsible Entity is entitled to receive, unless otherwise provided, in addition to any fee, amount or consideration, an additional amount on account of GST, equal to the GST payable, and the Responsible Entity is entitled to be reimbursed or indemnified for the amount out of the Assets, provided the Responsible Entity gives the trust a tax invoice for the supply.
- 16.4 If an adjustment event occurs in relation to a taxable supply made by the Responsible Entity to the Trust under or in connection with this deed then the consideration payable in respect of the supply shall also be adjusted as follows:
- (a) if the adjustment event in relation to the supply gives rise to an increase in the GST payable by the Responsible Entity the amount of the difference must be paid by the Trust to the Responsible Entity; and
  - (b) if the adjustment event in relation to the supply gives rise to a decrease in the GST payable by the Responsible Entity, the Responsible Entity will refund or credit to the Trust an amount equal to the difference.
- 16.5 If a payment to a party under this deed is reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 16.17. REGISTER

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### 16.17.1 Responsible Entity must maintain

The Responsible Entity must maintain and keep or cause to be maintained and kept a Register.

### 16.17.2 No notice of trusts

The Responsible Entity is not required to enter notice of any trust in the Register. The person from time to time entered in the Register as the Unit Holder will be the only person recognised by the Responsible Entity as entitled to the Units registered in that name or to exercise the rights and privileges attaching to those Units pursuant to this constitution. The Responsible Entity is not required to register more than three persons as joint Unit Holders.

## **17.18. MEETINGS OF UNIT HOLDERS**

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### **17.18.1 Responsible Entity's powers**

Subject to the Corporations Act and this constitution, meetings of Unit Holders may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including requirements in relation to proxies.

### **17.218.2 Notice**

A notice of meeting sent by post is taken to be given the day after it is sent. If a Unit Holder does not receive a notice (including if the giving of notice was accidentally omitted to be given) the meeting is not invalidated.

### **17.318.3 Chair and adjournment**

Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Unit Holders. The decision of the chair on any matter relating to the conduct of the meeting is final. The chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit. Subject to the Corporations Act, adjournment of a meeting need not be notified to Unit Holders.

### **17.418.4 Poll**

A poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting.

### **17.518.5 Proxy**

The Responsible Entity may, in its absolute discretion, decide to accept an appointment of a proxy as valid even if it does not comply with all of the requirements of section 252Y(1) of the Corporations Act.

### **17.618.6 Voting**

Subject to this constitution and the Corporations Act, all questions will be decided by a majority vote.

### **17.718.7 Quorum**

**17.7.118.7.1** No business may be transacted at a meeting unless a quorum of Unit Holders is present at the time when the meeting commences and for the purpose of this constitution a quorum is at least 5 Unit Holders or 60% of the Unit Holders, whichever is the lower, present in person or by proxy unless, at any time, there is only one Unit Holder, in which case that one Unit Holder constitutes a quorum.

**17.7.218.7.2** If a quorum is not present 30 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Unit Holders, dissolved; or
- (b) otherwise, adjourned to such place and time as the Responsible Entity decides.

~~17.7.3~~18.7.3 At any adjourned meeting, those Unit Holders present in person or by proxy constitute a quorum.

~~17.8~~18.8 Resolutions

A resolution passed by Unit Holders at a meeting convened in accordance with this constitution binds all Unit Holders, whether or not they were present at the meeting. No objection may be made to any vote cast unless the objection is made at the meeting. The decision of the chairperson on any matter is final.

~~17.9~~18.9 Minutes

The minutes of a meeting of Unit Holders signed by the chairperson of the meeting or the next meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

~~17.10~~18.10 No distinction for different classes

For the purposes of this clause 18, but subject to the Corporations Act, all Unit Holders will have equal voting rights and each Unit held will entitle the holder of that Unit to one vote irrespective of the class of Unit held. This clause ~~17.8~~ applies also, to the extent appropriate, to meetings of Unit Holders of any class of Units.

18.11 Postponement of meetings

18.11.1 Where a meeting of Unit Holders is called by the Responsible Entity in accordance with Part 2G.4 of the Corporations Act, the Responsible Entity may postpone that meeting if it considers that the postponement will not be prejudicial to the interests of Unit Holders as a whole.

18.11.2 If a meeting of Unit Holders is postponed in accordance with clause 18.11.1 then any proxies in respect of the original meeting and the postponed meeting received by the Responsible Entity at least 48 hours before the postponed meeting date are effective for the postponed meeting.

18.19. NOTICES

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~~18.1~~19.1 Giving of notices

A notice:

~~18.1.1~~19.1.1 required to be given to a Unit Holder must be in writing and sent to the Unit Holder by post, facsimile or e-mail to the Unit Holder's registered address, facsimile number or e-mail address (as the case requires) (or for joint Unit Holders, the registered address, facsimile number or e-mail address of the Unit Holder first named in the Register);

~~18.1.2~~19.1.2 required to be given to the Responsible Entity must be in writing.

~~18.2~~19.2 Service of notice

Service of any notice or document on any one of several joint Unit Holders will be deemed effective service on the other joint Unit Holder or Unit Holder.

## **19.20.AMENDMENT**

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This constitution may be amended or repealed and replaced with a new constitution by a supplemental deed if:

~~19.1.1~~20.1.1 the provisions of the supplemental deed have been approved by a Special Resolution of the Unit Holders; or

~~19.1.2~~20.1.2 the Responsible Entity reasonably considers that the provisions of the supplemental deed will not adversely affect the rights of Unit Holders.

## **20.21.UNIT HOLDERS AND RESPONSIBLE ENTITY BOUND BY DEED**

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### **20.121.1 Constitution enforceable**

This constitution is executed for the benefit of the Unit Holders and is legally enforceable as between the Unit Holders and the Responsible Entity.

### **20.221.2 Unit Holders bound**

All Unit Holders (and all persons claiming through them) from time to time will be entitled to the benefit of, and will be bound by, this constitution (as amended) as if each Unit Holder were a party to this constitution.

## **21.22.LIMITATION OF LIABILITY OF UNIT HOLDERS**

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### **21.122.1 General limitations**

The liability of each Unit Holder is limited to the amounts subscribed, or agreed to be subscribed by the Unit Holder, for Units. A Unit Holder need not indemnify the Responsible Entity if there is a deficiency in the Assets as compared to Liabilities or to meet the claim of any creditor of the Responsible Entity in respect of the Trust. Recourse of the Responsible Entity and any creditors of the Trust is limited to the Assets.

### **21.222.2 Taxes**

The Responsible Entity is entitled to be indemnified by a Unit Holder to the extent that a Unit Holder incurs any liability for Taxes as a result of the Unit Holder's action or inaction. Joint Unit Holders are jointly and severally liable in respect of all payments including payment of Taxes.

### **21.322.3 Restrictions on Unit Holders**

A Unit Holder must not:

~~21.3.1~~22.3.1 interfere with any rights or powers of the Responsible Entity under this constitution;

~~21.3.2~~22.3.2 exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or

~~21.3.3~~22.3.3 require an Asset to be transferred to the Unit Holder.

## 22.23.COMPLAINTS HANDLING

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### 22.123.1 **Complaints handling**

The Responsible Entity must establish and maintain a procedure for dealing with complaints by Unit Holders in relation to the Trust.

### 22.223.2 **Unit Holder complaints**

A Unit Holder may by notice in writing to the Responsible Entity (or by such other method as the Responsible Entity may approve) lodge a complaint in relation to the Trust.

22.2.123.2.1 The Responsible Entity must:

- (a) record the complaint and the date it was received in a register maintained for that purpose; and
- (b) send the Unit Holder an acknowledgement of receipt of the complaint.

### 22.323.3 **Handling of complaints**

22.3.123.3.1 The Responsible Entity must deal with a complaint by a Unit Holder under clause 23.2 in accordance with this clause 23 and any rules and regulations, made for that purpose.

22.3.223.3.2 The Responsible Entity must use reasonable endeavours to deal with and resolve the complaint within 45 days of receipt of the complaint.

22.3.323.3.3 The Responsible Entity must inform the Unit Holder by notice in writing of:

- (a) the decision in relation to the complaint;
- (b) the remedies available to the Unit Holder in relation to the complaint; and
- (c) any avenues of appeal that may be available to the Unit Holder, if the Unit Holder is dissatisfied with the decision.

22.3.423.3.4 The Responsible Entity is not required to give the Unit Holder the reason for its decision in relation to a complaint.

### 22.423.4 **Assistance and information**

22.4.123.4.1 The Responsible Entity must provide a Unit Holder with all reasonable assistance and information that a Unit Holder may require in order to make a complaint and understand the complaints handling procedures adopted by the Responsible Entity.

22.4.223.4.2 A Unit Holder lodging a complaint must provide the Responsible Entity with all information the Responsible Entity may require in order to properly deal and resolve the complaint.



~~22.5~~23.5 Remedies

~~22.5.1~~23.5.1 Without limitation, the Responsible Entity may at its discretion give any of the following remedies to a Unit Holder:

- (a) information and explanation regarding the circumstances giving rise to the complaint;
- (b) an apology;
- (c) compensation for loss incurred by the Unit Holder as a result of the breach of duty (if any).

~~23.24~~ WINDING UP OF THE TRUST

Definitions

For the purposes of this clause 23, the words set out below have the following meaning:

~~Vesting Day~~ means the day on which the Trust terminates in accordance with clauses 23.1.1 and 23.1.2;

~~23.1~~24.1 Duration of Trust

Unless otherwise determined pursuant to any other provision of this constitution, the Trust terminates on the earliest of:

~~23.1.1~~24.1.1 the 80th anniversary of the day before the Trust commenced;

~~23.1.2~~24.1.2 the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to the Unit Holders; and

~~23.1.3~~24.1.3 the date on which the Trust terminates in accordance with another provision of this constitution or the Corporations Act.

~~23.2~~ Convene meeting

~~On a date nominated by the Responsible Entity being (unless the circumstances do not permit) not less than twelve (12) nor more than eighteen (18) months prior to the Vesting Day, the Responsible Entity shall convene a meeting of Unit Holders to determine whether the Unit Holders desire any plan for the continuation of the Trust or, for its conversion into an alternative type of trust for the sale and realisation of the Trust Assets in any manner other than as provided in this deed, or for dealing in any other way with the Trust Assets following the Vesting Day.~~

~~23.3~~ Plan for continuation

Any such plan shall:

- (a) ~~not offend any law against perpetuities in relation to this constitution or in relation to any new deed which may be called for by the plan; and~~
- (b) ~~be subject to ratification by a Special Resolution of all Unit Holders of all classes.~~

~~23.4 Act in accordance with the plan~~

~~The Responsible Entity shall on the Vesting Day deal with all or any part of the Trust Assets (as the case may be) in accordance with such plan.~~

~~23.5 Termination of Trust by Extraordinary Resolution~~

~~The Trust may be terminated at any time by an Extraordinary Resolution of all Unit Holders. Such termination shall take effect from the date nominated in such Extraordinary Resolution but shall not be retrospective.~~

~~24. TERMINATION PROCEDURE~~

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~~24.124.2 Realisation~~

~~The Responsible Entity is entitled to postpone the realisation of any of the Assets for any time that it thinks reasonable having regard to the interests of Unit Holders.~~

In winding up the Trust, the Responsible Entity must realise the Assets (excluding Income) and satisfy the Liabilities (excluding Expenses).

~~24.224.3 Final distribution~~

The net proceeds of realisation, after discharging all Liabilities and meeting the expenses (including anticipated expenses) of and in connection with the termination must be distributed to the Unit Holders in proportion to the Units they hold (or, where more than one class is on issue, amongst the Unit Holders in a class in proportion to the number of Units they hold in the class). Proceeds may be distributed in one or more instalments. The Responsible Entity must ensure that the final Accounts are audited by an independent registered company auditor or firm of chartered accountants of which at least 1 partner is a registered company auditor.

~~24.324.4 Retention~~

Subject to this clause and the Corporations Act, the Responsible Entity may retain in its hands or under its control any Assets as in its reasonable opinion may be required to meet any Liabilities or any of the investments of the Trust provided that any Assets so retained to the extent that they are ultimately found not to be required will remain subject to the Trust for conversion and distribution in accordance with this constitution.

~~24.424.5 Powers continue~~

The powers, rights and discretions of the Responsible Entity under this constitution continue in full effect until there has been a final distribution to Unit Holders and all liabilities have been paid.

~~25. CORPORATIONS ACT~~

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The Corporations Act prevails over the provisions of this constitution and to the extent that any provision would, but for this clause, result in a breach of the Corporations Act, that provision does not operate.

## **26. SEVERABILITY**

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- 26.1 If any provision of this constitution is illegal or invalid because it offends any applicable law:
- 26.1.1 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
  - 26.1.2 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.

## **27. GOVERNING LAW**

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This constitution is governed by the law of Victoria.

## **28. DEFINITIONS AND INTERPRETATION**

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### **28.1 Definitions**

The following words have these meanings in this constitution:

**Accounts** means an account of the income and expenditure of the Trust and a statement of the Assets and Liabilities prepared in accordance with this constitution, generally accepted accounting principles, approved accounting standards and, if required, the Corporations Act.

**Applicant** means an applicant for a Unit.

**Application** means an application for a Unit in a form approved by the Responsible Entity.

**Application Price** in respect of a Unit has the meaning given in clause 4.1.

**ASIC** means the Australian Securities and Investments Commission, any duly authorised delegate, and its successor, however called.

**Assets** means all the property, assets, rights and Income of the Trust.

**associate** has the same meaning as in the Corporations Act.

**Auditor** means an auditor for the Trust appointed under this constitution (being a registered company auditor or a firm of chartered accountants of which at least 1 partner is a registered company auditor).

**Business Day** means, unless the Responsible Entity decides otherwise, a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

**cash** includes a cheque, bank cheque, payment order or electronic transfer of funds.

**class** means each class of Units on issue in the Trust at any time.

**Compliance Committee** means the compliance committee for the Trust, if and as required under Chapter 5C of the Corporations Act.

**Compliance Plan** means the compliance plan for the Trust as required under Chapter 5C of the Corporations Act.

**constitution** means this deed poll (as amended from time to time).

**Corporations Act** means the Corporations Act 2001 subject to any applicable ASIC relief referred to in clause 1.2.

**Distributable Income** means, in respect of a Distribution Period:

- (a) the Income (less the Expenses) for the Distribution Period as determined in accordance with this constitution and generally acceptable accounting principles and approved accounting standards and including:
  - (i) any amount in respect of the revaluation or devaluation of any asset; and
  - (ii) any other unrealised amounts; or
- (b) such other amounts as the Responsible Entity (in its absolute discretion) determines,

PROVIDED THAT in respect of any Financial Year, the Distributable Income must be not be less than the Taxable Income of the Trust for that Financial Year.

**Distribution Period** means, unless the Responsible Entity otherwise determines:

- (a) for the first Distribution Period, the period commencing on the date on which the Trust commences to the next Month End Date;
- (b) for the last Distribution Period, the period commencing the day after the Month End Date immediately before the date the Trust terminates, to the date the Trust terminates; and
- (c) for all other Distribution Periods, during the continuance of the Trust, each calendar month period ending on a Month End Date.

**Expenses** in respect of any Distribution Period means the total of:

- (a) the remuneration of the Responsible Entity for that Distribution Period;
- (b) interest on any moneys borrowed by the Responsible Entity;
- (c) an amount estimated by the Responsible Entity to cover all other expenses, disbursements and outgoings incurred or accrued during the Distribution Period which relate to the administration or management of the Trust and which pursuant to this constitution are to be reimbursed to the Responsible Entity, and are not included in the cost of any Asset purchased in that Distribution Period; and
- (d) such other amounts as the Responsible Entity determines in its absolute discretion.

**Extraordinary Resolution** has the meaning ascribed to that term in the Corporations Act.

**Financial Year** means a financial year in respect of the Trust and unless the Responsible Entity otherwise determines:

- (a) for the first Financial Year, is the period commencing on the date on which the Trust commences to the next 30 June;

- (b) for the last Financial Year, is the period commencing on the 1 July immediately before the date the Trust terminates to the date the Trust terminates; and
- (c) for all other periods, is the 12 month period ending 30 June in each year.

**Fractional Unit** means a Unit in respect of which there is contributed by the applicant an amount which is less than the full Application Price of a full Unit, or that part of a full Unit which remains after part of that full Unit has been redeemed (as the case may be).

**Fund** means all of the Assets for the time being but subject to the Liabilities at that time.

**GST** means the goods and services tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and related legislation.

**Income** includes, but is not limited to, accrued interest realised and unrealised gains and discounts earned (apportioned over the life of the facility or product to which the discount relates).

**Income Entitlement** means the amount calculated in respect of a Unit Holder in accordance with clause 10.2.

**includes** means includes, without limitation.

**legal disability** means a disability such as bankruptcy, insolvency, insanity or any other form of legal disability.

**Liabilities** means all liabilities of the Trust including liabilities accrued but not yet paid, borrowings, unpaid costs, charges, Expenses, outgoings, fees, contingent liabilities, unpaid amounts due to a Unit Holder and, without limitation, Taxes and any provision which the Responsible Entity determines should be taken into account in determining the liabilities of the Trust.

**Liquid** has the same meaning as in Part 5C.6 of the Corporations Act;

**Minimum Holding** means the number of Units specified by the Responsible Entity from time to time as being the minimum holding of Units.

**Month End Date** is each of the final days of each calendar month in each year.

**Net Asset Value** means the value of the Assets calculated in accordance with clause 12 less the Liabilities. However, where the Net Asset Value of the Trust referable to a particular class is being determined, it means the value of the Assets less the Liabilities which the Responsible Entity determines is properly referable to that class.

**pay** includes apply, transfer, assign, convey or credit a monetary amount.

**Product Disclosure Statement** means the product disclosure statement, prospectus, or other disclosure document relating to the raising of capital from the public in relation to the Trust.

**property** means property of any kind including real, personal, moveable and immovable property of any nature, wherever situated, including insurance policies, mortgages, loans, cash and choses in action.

**Register** means the register of Unit Holders.

**Related Trust** means a trust or scheme, the responsible entity or manager of which is the Responsible Entity or an associate of the Responsible Entity.

**Representative** has the meaning given in clause 5.6.

**Responsible Entity** means **Australian Unity Funds Management Limited ABN 60 071 497 115** or the responsible entity (as defined in the Corporations Act) of the Trust from time to time.

**Retail Client** has the same meaning as given by section 761G of the Corporations Act.

**Special Resolution** has the meaning ascribed to that term in the Corporations Act.

**Taxable Income** has the meaning ascribed to that term in the Income Tax Assessment Act 1997 (Cth).

**Taxes** means every kind of tax, duty, rate, levy, deduction and charge imposed by any fiscal, national, state or local authority or entity and whether presently imposed or novel, together with interest and penalties and includes a GST.

**Transaction Costs** means, subject to the Corporations Act, the Responsible Entity's estimate of the total costs of buying or selling any of the Assets, in connection with any particular application or request for withdrawal of Units provided that the Responsible Entity may in respect of any such application or request, deem these costs to be a lesser sum, or zero.

**Trust** means the trust constituted under or governed by this constitution.

**Unit** means an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Unit Holder** means a person whose name is for the time being entered in the Register as the holder of a Unit.

**Valuation Date** means the date on which the Responsible Entity calculates the Net Asset Value.

**Valuation Time** means the time at which the Responsible Entity calculates the Net Asset Value.

**Withdrawal Price** in respect of a Unit has the meaning given in clause 7.1.

## 28.2 Interpretation

In this constitution unless the contrary intention appears:

- 28.2.1 a reference to this constitution includes any amendment to, or replacement of it;
- 28.2.2 a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- 28.2.3 singular includes the plural number and vice versa;
- 28.2.4 a reference to any one gender includes each other gender (as the case may require);

- 28.2.5 the word “person” includes a firm, corporation, body corporate, unincorporated association or any governmental authority;
- 28.2.6 a reference to any thing includes a part of that thing;
- 28.2.7 headings in this constitution have been inserted for ease of reference only and do not affect the meaning or interpretation of it;
- 28.2.8 where this constitution includes an example of the operation of a provision, the example is not taken to be exhaustive and if the example is inconsistent with the provision, the provision prevails;
- 28.2.9 where a word or phrase is given a defined meaning in this constitution, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
- 28.2.10 references to clauses and schedules are to clauses of and schedules to, this constitution.
- 28.2.11 references to Units and Unit Holders will be construed, where the context permits, as references also to Units and Unit Holders of each existing class.

**EXECUTED** as a deed poll.

**EXECUTED** by **AUSTRALIAN UNITY** )  
**FUNDS MANAGEMENT LIMITED ABN 60** )  
**071 497 115** in accordance with section 127 of )  
the Corporations Act: )

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Director/Company Secretary

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Director

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Name of Director/Company Secretary  
(BLOCK LETTERS)

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Name of Director  
(BLOCK LETTERS)



## **SCHEDULE 1**

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### **1. MANAGEMENT FEE**

The Responsible Entity is entitled during the period of the Trust (and after termination, up to the date the final distribution of the Assets is made), to be paid out of the Assets a management fee of up to 5% per annum of the net or gross value of the Assets as determined by the Responsible Entity, to be calculated daily, and payable monthly in arrears, from the date the Trust commences to the date of final distribution to Unit Holders in accordance with clause 24.3.

The Responsible Entity may administer differential management fee arrangements to different classes of Units.

### **2. APPLICATION FEE**

The Responsible Entity is entitled in respect of each application for Units in the Trust which it accepts, to a fee of up to 5% of the application money. When calculating the number of Units to be issued, the application fee must first be deducted from the value of the application money or property.

### **3. EXIT FEE**

The Responsible Entity is entitled in respect of each withdrawal of Units from the Trust which it accepts, to a fee of up to 5% of the withdrawal requested by the Unit Holder. When calculating the number of Units to be redeemed, the withdrawal fee must first be added to the value of the withdrawal amount requested by the Unit Holder.

### **4. PERFORMANCE FEE**

In addition to the other fees described and payable under this Schedule 1, the Responsible Entity is entitled during the period of the Trust (and after termination, up to the date the final distribution of the Assets is made), to be paid out of the Assets a performance management fee of up to 50% of the return achieved by the Trust above the return in the same period of an independent index selected by the Responsible Entity as being appropriate to the relevant market sector and communicated to Unit Holders from time to time. This performance fee is to be calculated daily and payable quarterly in arrears or at such other time as determined by the Responsible Entity from time to time, from the date the Trust commences to the date of the final distribution to Unit Holders in accordance with clause 24.3.

### **5. COOLING OFF FEE**

The amount that would otherwise be repaid in relation to the return of application moneys within a cooling off period (if applicable) may be reduced to account for reasonable administration and transaction costs in accordance with the Corporations Act.

### **6. PROPER PERFORMANCE**

The rights under this constitution of the Responsible Entity to be paid fees out of the Assets, or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the

performance of its duties, are available only in relation to the proper performance of those duties.

**7. ADDITIONAL INDEMNITY**

Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity provided by law. Each indemnity or limitation on liability applicable to the Responsible Entity is to be read separately and not as, in any way, limiting any other indemnity or limitations. The Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

**8. AGENTS**

Without limitation to its rights under this constitution, under any law or in equity the right or entitlement of the Responsible Entity to be reimbursed or indemnified or paid a fee and any limitation of liability in favour of the Responsible Entity applies regardless of whether the Responsible Entity itself or an agent on its behalf has incurred the relevant obligation or liability, acted or omitted to act or performed the relevant function, and payments made under this Schedule 1 may be made to an associate of the Responsible Entity.

**9. GST ON REMUNERATION, FEES AND EXPENSES PAID**

Where GST is payable on fees, remuneration or expenses to which the Responsible Entity has an entitlement whether under this clause or any other clause of this constitution:

- (a) the Responsible Entity may adjust it or them for the amount of such tax on that supply;
- (b) the Responsible Entity is in all cases entitled to be paid or reimbursed that tax inclusive price out of the Assets; and
- (c) the Responsible Entity may determine the amount of the GST for which it may be liable on the fees referred to in this Schedule 1.

## **SCHEDULE 2**

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### **ESTABLISHMENT AND ADMINISTRATION COSTS**

**(Clause 15.3)**

All costs in connection with:

- (a) preparing, obtaining approval of, executing and stamping this constitution, each supplemental deed and any amending deeds;
- (b) preparing, registering, printing, promoting and distributing any Product Disclosure Statement issued by the Responsible Entity for the Units and preparing, registering, printing, promoting and distributing any document required by law to be prepared concerning the Trust;
- (c) acquiring, registering, custody, holding, managing, supervising, repairing, maintaining, valuing, selling or other dealing with an Asset (or attempting or proposing to do so) and receiving, collecting or distributing income or other Assets;
- (d) raising money or otherwise obtaining financial accommodation including, but not limited to, interest on borrowings and discounts and fees for bill facilities and any Tax payable for raising money or obtaining financial accommodation;
- (e) convening and holding meetings of Unit Holders and carrying out the directions of the meetings;
- (f) the retirement or removal of the Responsible Entity and the appointment of another in its place, including the amounts payable as a result of the retirement or removal;
- (g) establishing and maintaining accounts and the Register and calculating Distributable Income;
- (h) establishing and administering the Trust including:
  - (i) computer operation and development and data processing;
  - (ii) computer experts' fees and expenses; and
  - (iii) office expenses including the cost of postage, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this constitution;
- (i) any custodian, actuary, adviser, expert, agent, delegate, solicitor, barrister, contractor, valuer, accountant or auditor, including any who is an associate of the Responsible Entity;
- (j) all Taxes including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as reimbursement for GST;
- (k) all fees payable to ASIC or other regulatory authority;

- (l) all costs (including costs of obtaining advisory opinions) in anticipation of or in connection with any action, suit or proceeding concerning the interpretation and construction of this constitution or any provision of this constitution or against the Responsible Entity;
- (m) preparing and lodging tax returns;
- (n) terminating the Trust;
- (o) the preparation, monitoring, review, amendment or replacement of the Trust's Compliance Plan;
- (p) the appointment of the auditor of the Compliance Plan;
- (q) the Trust's Compliance Committee and its members including, but not limited to, a liability for costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (ii) in connection with an application in relation to such proceedings, in which the court grants relief for the person under the Corporations Act;
- (r) holding meetings of the members of the Trust's Compliance Committee, without regard to where any member may reside;
- (s) while there is no Compliance Committee, any costs, charges and expenses associated with or incidental to the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a Compliance Committee;
- (t) any insurance purchased or maintained or premium for insurance paid or agreed to be paid for cover against any liability incurred by a person as a member of the Trust's Compliance Committee including, but not limited to, a liability for costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome;
- (u) considering and dealing with any matter reported or recommended by the Trust's Compliance Committee.