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# APN Coburg North Retail Fund

## Constitution

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# Constitution

## Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>6</b>
1.1	Definitions	6
1.2	Interpretation	10
1.3	General compliance provision	11
<b>2</b>	<b>The Fund</b>	<b>11</b>
2.1	Responsible entity	11
2.2	Declaration of trust	11
2.3	Name of fund	12
<b>3</b>	<b>Units and Unit Holders</b>	<b>12</b>
3.2	Fractional units	12
3.3	Consolidation or division of units	12
3.4	Classes of units	13
3.5	Equal value	13
3.6	Reorganisation and division of Units	13
3.7	Rights attaching to Units	13
3.8	Directions	14
3.9	Joint Holders of Units	14
3.10	Benefits and obligations of Unit Holders	14
<b>4</b>	<b>Offer and issue of Units</b>	<b>15</b>
4.1	Offers	15
4.2	Minimum amounts	15
4.3	Form of application	15
4.4	Acceptance or rejection	15
4.5	Uncleared funds	15
4.6	Receipt of application	15
4.7	Issue of Units	15
4.8	Payments to the Responsible Entity	16
4.9	Number of units issued	16
4.10	Units as consideration	17
4.11	No certificates	17
<b>5</b>	<b>Issue Price</b>	<b>17</b>
5.1	Issue Price	17
5.2	Application Price for a rights issue	18
5.3	Issue of units to acquire an asset	18
5.4	Rounding	18
5.5	Satisfaction of Issue Price	18
<b>6</b>	<b>Redemption of Units</b>	<b>19</b>
6.1	Redemption request while Scheme is Liquid	19
6.2	Restrictions on Unit Holder	19
6.3	Redemption while Fund is Liquid or not a Registered Scheme	19
6.4	Redemption while Fund is a Registered Scheme and not Liquid	20
6.5	Minimum amounts	20
6.6	Responsible Entity discretion to redeem	21
6.7	No obligation to pay out of own funds	21
6.8	Sums owed to the Responsible Entity	21
6.9	Transfer of Assets	21
6.10	Order of redemption	21

6.11	Liquid or not Liquid	21
6.12	Liquidity facility	21
<b>7</b>	<b>Redemption Price of Units</b>	<b>22</b>
7.1	Redemption Price	22
7.2	Determination of Redemption Price	22
7.3	Receipt of redemption request	22
7.4	Rounding	22
<b>8</b>	<b>Transfers</b>	<b>22</b>
8.1	Transferability	22
8.2	Registration of transfers	23
8.3	Refusal of registration	23
<b>9</b>	<b>Transmission of Units</b>	<b>23</b>
9.1	Entitlement on death	23
9.2	Registration of persons entitled	24
9.3	Distributions and other rights	24
<b>10</b>	<b>Successor Scheme</b>	<b>24</b>
10.1	Transfer of Assets or Units to Successor Scheme	24
10.2	Applications	25
10.3	Notice of meeting	25
<b>11</b>	<b>Valuation of Assets</b>	<b>25</b>
11.1	Valuation of an Asset	25
11.2	Valuation if required	25
11.3	Method of valuation	25
11.4	Determination of Net Asset Value	25
<b>12</b>	<b>Income and distributions</b>	<b>26</b>
12.1	Determination of income and reserves	26
12.2	Distribution of income	26
12.3	Present entitlement	26
12.4	Distributable Amount	26
12.5	Distribution Entitlement	27
12.6	Discharge of Responsible Entity's obligation	27
12.7	Capital distributions	27
12.8	Grossed up Tax amounts	28
12.9	Excess distribution	28
12.10	Categories and source of income	28
12.11	Receipt	28
12.12	Reinvestment	28
12.13	Other rights or restrictions	29
12.14	Withholding Tax	29
<b>13</b>	<b>Powers of the Responsible Entity</b>	<b>29</b>
13.1	General powers of Responsible Entity	29
13.2	Specific powers of the Responsible Entity	29
13.3	Investments in related trusts	30
13.4	Delegation	30
13.5	Advisers	31
13.6	Exercise of discretion	31

<b>14</b>	<b>Remuneration and Expenses of Responsible Entity</b>	<b>31</b>
14.1	Transaction Fees	31
14.2	Management fee	31
14.3	Performance Fee	32
14.4	Waiver or deferral of remuneration	33
14.5	Priority of Responsible Entity's remuneration	33
14.6	Establishment costs	33
14.7	Differential fee arrangements	34
14.8	Units as payment for fees	34
14.9	Fees paid to the Responsible Entity in a different capacity	34
14.10	Reimbursement of Expenses	34
14.11	Proper performance of duties	34
14.12	GST	34
14.13	Taxes in other jurisdictions	35
14.14	Sums owed to the Responsible Entity	35
14.15	Amendment to Responsible Entity remuneration	36
<b>15</b>	<b>Change in Responsible Entity</b>	<b>36</b>
15.1	Voluntary retirement while the Fund is a Registered Scheme	36
15.2	Voluntary retirement while the Fund is not a Registered Scheme	36
15.3	Compulsory retirement	36
15.4	New responsible entity	36
15.5	Retirement benefit	36
<b>16</b>	<b>Limitation of liability</b>	<b>37</b>
16.1	Limitation of Responsible Entity's liability	37
16.2	Limitation of Unit Holders' liability	37
<b>17</b>	<b>Indemnity</b>	<b>38</b>
17.1	Responsible Entity's indemnity	38
17.2	Responsible Entity's indemnity continuing	38
17.3	Payment	38
17.4	Responsible Entity not to incur liability	38
17.5	Compliance Committee	39
<b>18</b>	<b>Responsible Entity's indemnity against Tax liability</b>	<b>39</b>
18.1	Indemnity	39
18.2	Joint Holders	39
<b>19</b>	<b>Register</b>	<b>39</b>
19.1	Keeping Registers	39
19.2	Responsible Entity's powers	39
19.3	Inspection	39
19.4	Changes	39
19.5	Register conclusive	39
<b>20</b>	<b>Amendments to this Constitution</b>	<b>40</b>
20.1	Overriding provision	40
20.2	Responsible Entity may amend	40
20.3	Statutory requirements	40
<b>21</b>	<b>Corporations Act and ASIC Exemptions</b>	<b>40</b>
21.1	Corporations Act	40
21.2	Agreed amendments	40

21.3	ASIC Exemptions	40
<b>22</b>	<b>Termination of Fund</b>	<b>41</b>
<b>23</b>	<b>Winding up of Fund</b>	<b>41</b>
23.1	Realisation of Assets	41
23.2	Procedure on winding up of Fund	41
23.3	Responsible Entity may recover Expenses	41
23.4	Retention of Assets	42
23.5	Postponement of realisation	42
23.6	Responsible Entity's obligation to make distributions	42
23.7	Cancellation of Units	42
23.8	Continuation of powers	42
23.9	Audit of accounts of Fund	42
<b>24</b>	<b>Meetings of Holders</b>	<b>42</b>
24.1	Convening meetings	42
24.2	Calling and holding meetings while the Fund is a Registered Scheme	43
24.3	Calling and holding meetings while Fund is not a Registered Scheme	43
24.4	Resolution binding on Unit Holders	43
24.5	Written resolution	43
24.6	Adjournments	43
24.7	Joint Unit Holders	43
<b>25</b>	<b>Notices</b>	<b>44</b>
25.1	Notices to Holders	44
25.2	Notices to joint Holders	44
25.3	Notice to successor	44
25.4	Signature on notice	44
25.5	Notices to the Responsible Entity	44
<b>26</b>	<b>Complaints</b>	<b>45</b>
26.1	Complaints Handling for Retail Clients	45
26.2	Handling of Complaints	45
<b>27</b>	<b>Rights of the Responsible Entity</b>	<b>45</b>
27.1	Right to hold Units	45
27.2	Other capacities	46
27.3	Responsible Entity may rely	46
<b>28</b>	<b>Constitution legally binding</b>	<b>46</b>
<b>29</b>	<b>Other obligations excluded</b>	<b>47</b>
<b>30</b>	<b>Payment</b>	<b>47</b>
<b>31</b>	<b>Severability</b>	<b>47</b>
<b>32</b>	<b>Governing law</b>	<b>47</b>
	<b>Schedule 1 – Examples of Expenses</b>	<b>48</b>
	<b>Signing page</b>	<b>51</b>

# Constitution

Date

25 September 2014

Parties

APN Funds Management Limited ACN 080 674 479 of Level 30, 101 Collins Street, Victoria. 3000 (APN FM)

Recitals

This Constitution is declared by the Responsible Entity to be the constitution for a trust to be known as the APN Coburg North Retail Fund.

## 1 Definitions and interpretation

### 1.1 Definitions

In this Constitution the following terms, unless the context otherwise indicates, shall have the following meanings:

**Adviser** includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Responsible Entity or its related entities to provide advice or services in relation to the Fund.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Exemption** includes:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Fund or the Responsible Entity.

**Assets** means any Property, cash, investments, rights, income and other property of the Fund from time to time.

**Associate** has the meaning given in the Corporations Act.

**ASX** means Australian Stock Exchange Limited ACN 008 624 691.

**Australian Accounting Standards** means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and

- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b).

**Business Day** means the days that most trading banks are open for business in Melbourne excluding any weekend or public holiday.

**Class** means a class of Units as determined by the Responsible Entity under clause 3.4.

**Commencement Date** means the date of commencement of the Fund, being the date on which Units are first issued.

**Complaint** has the same meaning as in Australian Standard ISO 10002-2006 (or such other instrument which replaces it) and includes a dispute.

**Compliance Committee** means a compliance committee for the Fund established in accordance with section 601JA of the Corporations Act.

**Compliance Committee Member** means a member of the Compliance Committee.

**Compliance Plan** means the compliance plan for the Fund as required by section 601HA of the Corporations Act.

**Constitution** means this constitution, as amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth), as amended from time to time.

**Distributable Amount** means the amount determined in accordance with clause 12.4.

**Distribution Calculation Date** means 30 June and 31 December in each Financial Year or any other dates the Responsible Entity nominates.

**Distribution Date** means the day two months after the Distribution Calculation Date for the relevant Distribution Period or any other date nominated by the Responsible Entity.

**Distribution Entitlement** means the entitlement of a Unit Holder to the Distributable Amount determined in accordance with clause 12.4(c).

**Distribution Period** means the period commencing on the Commencement Date and ending on the following Distribution Calculation Date and each subsequent period commencing on the day after a Distribution Calculation Date and ending on the next Distribution Calculation Date or on termination of the Fund.

**EDR Service** means the Financial Ombudsman Service or such other ASIC-approved external dispute resolution service which replaces it.

**Expenses** includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these. Examples of Expenses are set out in Schedule 1.

**Financial Year** means, unless otherwise determined by the Responsible Entity, the period beginning on the Commencement Date and ending on the following 30 June, and each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Fund.



**Fund** means the trust constituted by this Constitution and known as the APN Coburg North Retail Fund;

**Gross Asset Value** means the consolidated total assets of the Fund and its controlled entities as a consolidated entity, applying Australian Accounting Standards.

**GST** has the meaning given to that expression in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

**GST Law** has the meaning given to that expression in the GST Act.

**Half Year** means each 6 month period ending on the last day of June and December in each year.

**Holder** means a Unit Holder.

**IDPS** means an investor directed portfolio service.

**Issue Price** of a Unit on any day means the amount determined under clause 5.

**Liabilities** mean 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 Fund or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
  - (b) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
  - (c) in determining the Net Asset Value of the Fund for the purposes of calculating the Issue Price and the Redemption Price, a provision for the Performance Fee calculated on the assumption that the Performance Fee would be due and payable to the Responsible Entity pursuant to clause 14.3(a)(i) at the time the Issue Price is calculated under clause 5.1(c) or the Redemption Price is calculated under clause 7.2; and
  - (d) other appropriate provisions in accordance with Australian Accounting Standards,
- but excluding:
- (e) liabilities attached to application money or property in respect of which Units have not yet been issued; or
  - (f) any amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Fund. For the avoidance of doubt, this definition of 'Liabilities' applies to the operation of the Fund under this Constitution only and is not intended to affect any other meaning of 'liabilities' of the Fund which the Responsible Entity may be required to adopt for financial reporting purposes.

**Liquid** has the meaning given in section 601KA(4) of the Corporations Act.

**Minimum Subscription Amount** means such other amount as specified in the current product disclosure document or other offering document for the Fund.

**Month** means a calendar month.

**Net Asset Value** means the Gross Asset Value less the following:

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Responsible Entity determines should be made); and
- (b) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day which the Net Asset Value is determined;

**Net Income** means for a Distribution Period, the net income of the Fund determined by the Responsible Entity in accordance with Australian Accounting Standards.

**Performance Fee** means the performance fee determined to be charged by the Responsible Entity under clause 14.3.

**Property** means any real property purchased by the Responsible Entity as trustee and/or responsible entity for the Fund.

**Redemption Price** means the amount determined under clause 7.

**Register** means each of the registers established and kept by the Responsible Entity under clause 19.

**Registered Scheme** means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) of the Corporations Act.

**Relevant Person** means a person who at any time was, is, or shall become a Unit Holder and that person's executors, administrators, successors and assigns.

**Responsible Entity** means APN FM or any other person acting as the trustee or responsible entity of the Fund in accordance with the provisions of this Constitution and, where appropriate, includes any agent or Adviser appointed by the Responsible Entity.

**Retail Client** is defined under the Corporations Act.

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

**Special Resolution** has the meaning given to that expression in the Corporations Act.

**Tax** means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other

amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

**Tax Act** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (as the case requires).

**Transaction Charge** means, in relation to a Unit (where appropriate), an amount determined by the Responsible Entity which reflects a fair estimate of Expenses incurred or that would be incurred:

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the redemption of Units; or
- (c) for the transfer of Assets to a Unit Holder under clause 23.2(b).

as the case requires.

**Terms of Issue** means the terms and conditions upon which a Unit is issued as disclosed in any product disclosure statement, information memorandum or other offer document for the Fund contained in this Constitution.

**Unit** means a unit in the Fund created under this Constitution.

**Unit Holder** means a person registered as the holder of a Unit (including any person jointly registered) who holds an interest in the Fund.

**Unit Holding** means the total Units held by a Unit Holder.

**Valuation Time** means any time the Net Asset Value is determined by the Responsible Entity.

**Withdrawal Offer** means an offer made by the Responsible Entity in respect of the Fund in accordance with section 601KB of the Corporations Act.

**Wholesale Client** is defined under the Corporations Act.

## 1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to an agreement or document (including, without limitation, a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document;
- (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (i) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
- (j) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

### **1.3 General compliance provision**

- (a) Where the Fund is a Registered Scheme, a provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) This clause 1.3 is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this Constitution.
- (c) This clause 1.3 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.
- (d) If the terms of any current ASIC Exemption are applicable on the basis that the constitution contains certain provisions, then such provisions are deemed to be contained in this Constitution.

## **2 The Fund**

### **2.1 Responsible entity**

As from the Commencement Date, APN FM is and has agreed to act as the responsible entity and/or trustee of the Fund.

### **2.2 Declaration of trust**

- (a) The Assets shall vest in the Responsible Entity on the Commencement Date and the Responsible Entity declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Constitution.
- (b) The Responsible Entity shall clearly identify the Assets as property of the Fund and hold the Assets separately from the assets of the Responsible Entity and any other managed investment scheme.

### **2.3 Name of fund**

- (a) The name of the Fund is the 'APN Coburg North Retail Fund' or such other name as the Responsible Entity may from time to time determine.
- (b) Subject to clause 2.3(c) and clause 2.3(d), if:
  - (i) APN FM retires or is removed as responsible entity of the Fund; or
  - (ii) there is a change in who controls APN FM whilst it is the responsible entity of the Fund,

(each a 'Name Change Event'), then the name of the Fund must be changed by deleting the expression 'APN' and the Responsible Entity or a new responsible entity must not use that expression (or a substantially or deceptively similar expression or letters) in connection with the Fund. APN FM or the new responsible entity must amend this Constitution to reflect the change in the name of the Fund within 20 Business Days of the Name Change Event occurring. The Responsible Entity or new responsible entity covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.

- (c) The Responsible Entity or new responsible entity may use the expression 'APN Coburg North Retail Fund' for the purpose of advertising the change of name of the Fund for 20 Business Days after the Name Change Event or in the case of APN FM retiring or being removed as responsible entity of the Fund, such longer period as APN FM agrees. In the case of APN FM retiring or being removed as responsible entity of the Fund, any advertisement must be approved by APN FM. Such approval must not be unreasonably withheld.
- (d) Clause 2.3(b) does not apply if APN FM agrees otherwise subject to any conditions it may specify (in its absolute discretion).

## **3 Units and Unit Holders**

- (a) The beneficial interest in the Fund is divided into Units.
- (b) Each Unit confers on the Unit Holder a beneficial interest in the Fund as an entirety and does not confer an interest in a particular part of the Fund or the Assets.

### **3.2 Fractional units**

The Responsible Entity may issue fractions of a Unit calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines.

### **3.3 Consolidation or division of units**

- (a) The Responsible Entity may consolidate or divide the number of Units on issue (or Units issued in any Class).
- (b) Any consolidation or division shall apply equally to all Units on issue (or all Units issued in the same Class).
- (c) The Responsible Entity shall amend the Register to record any consolidation or division of Units.

### **3.4 Classes of units**

- (a) The Responsible Entity may create different Classes. If the Responsible Entity so determines in relation to particular Units, the Terms of Issue of those Units may:
  - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units; and
  - (ii) provide for conversion of Units from one Class to another Class and, if the Responsible Entity so determines, change the number of Units on such a conversion.
- (b) Where the Fund is a Registered Scheme, the creation, changing of Class rights or conversion of Units from one Class to another pursuant to clause 3.4(a) must comply with section 601FC(1)(d) of the Corporations Act.
- (c) The Responsible Entity may make a determination that specific variables (including Assets, Liabilities and Expenses), are referable to a specific Class and that:
  - (i) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
  - (ii) any variable that relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units in issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at the most recent Valuation Time.

### **3.5 Equal value**

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

### **3.6 Reorganisation and division of Units**

- (a) Subject to the Corporations Act, Units may be consolidated, divided or converted in a ratio as determined by the Responsible Entity (Reorganisation).
- (b) Each Unit Holder, by subscribing for or taking a transfer or, or otherwise acquiring, a Unit will be taken to have consented to Reorganisations.
- (c) To effect any Reorganisation of a Unit of a Unit Holder, the Unit Holder appoints the Responsible Entity as the Unit Holder's attorney in the Unit Holder's name and on the Unit Holder's behalf to do all acts and things which the Responsible Entity considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Unit.

### **3.7 Rights attaching to Units**

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
  - (i) interfere with or question the rights, powers, authority, discretion or obligations of the Responsible Entity under this Constitution;

- (ii) exercise any right, power or privilege in respect of an Asset;
  - (iii) lodge a caveat in respect of any Asset; or
  - (iv) require that any Asset be transferred to the Unit Holder or any other person.
- (c) A Unit Holder may not create any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other security interest over a Unit without the consent of the Responsible Entity.

### **3.8 Directions**

A Unit Holder may not give any direction to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which:

- (a) may result in the Responsible Entity acting contrary to the law; or
- (b) would otherwise be within the scope of any discretion or power expressly conferred on the Responsible Entity by this Constitution.

### **3.9 Joint Holders of Units**

Where two or more persons are registered as the Holders of a Unit they are, for the purpose of the administration of the Fund and not otherwise, deemed to hold the Unit as joint tenants, on the following conditions:

- (a) the Responsible Entity shall not be bound to register more than three persons as joint Holders of the Unit;
- (b) the joint Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Holder, the survivor or survivors shall be the only person or persons whom the Responsible Entity will recognise as having any title to the Unit, subject to the production of any evidence of death that the Responsible Entity requires;
- (d) any one of the joint Holders may give an effective receipt that discharges the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Holders of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the joint Holders.

### **3.10 Benefits and obligations of Unit Holders**

Except where expressly provided in this Constitution to the contrary, all benefits and obligations contained in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.

## **4 Offer and issue of Units**

### **4.1 Offers**

The Responsible Entity may at any time offer Units for subscription or sale and may invite persons to make offers to subscribe for or buy Units.

### **4.2 Minimum amounts**

The Responsible Entity may specify a minimum initial application amount, minimum further application amount or minimum holding amount in respect of Units for the Fund as a whole or a Class and vary those amounts at its discretion.

### **4.3 Form of application**

- (a) Each application for Units will, unless the Responsible Entity approves otherwise:
  - (i) conform with the form and content requirements of any relevant disclosure document; and
  - (ii) be accompanied by application monies as required by any relevant disclosure document; or
  - (iii) if there is no relevant disclosure document, be made in such manner as the Responsible Entity approves.
- (b) The Responsible Entity may authorise an application to be transmitted electronically.

### **4.4 Acceptance or rejection**

The Responsible Entity may, without being bound to give any reason:

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

### **4.5 Uncleared funds**

Units issued against application money paid other than in cleared funds are void if the funds are not cleared within 5 Business Days of being presented for payment.

### **4.6 Receipt of application**

The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

### **4.7 Issue of Units**

Unless otherwise determined by the Responsible Entity, Units are taken to be issued:

- (a) on the later of the day on which:



- (i) the Responsible Entity accepts the application for Units and the applicant is registered as the Holder of the Unit on the Register; or
- (ii) the Responsible Entity receives the application money, or the property (which is acceptable to the Responsible Entity) against which the Units are to be issued is vested in the Responsible Entity; and
- (b) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clause 12.12, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.

#### **4.8 Payments to the Responsible Entity**

- (a) All payments or transfers of property received for an application for Units must be made out to the Responsible Entity or its nominated custodial agent.
- (b) If property is to be transferred to the Responsible Entity as payment for the issue of Units, the Responsible Entity must not accept the application for Units unless:
  - (i) an effective transfer of title to the property free of all encumbrances is received; and
  - (ii) a valuation acceptable to the Responsible Entity has been obtained by the applicant stating the current market value of the property.
- (c) The applicant must pay all Expenses and other amounts payable, including the valuation of the property, to transfer the property to the Responsible Entity. If such amounts are not paid, the Responsible Entity may deduct such amounts from the value of the property prior to determining the number of Units to be issued under clause 4.9 or 4.10.
- (d) Payments received and accepted by the Responsible Entity prior to the issue of the Units forms part of the Assets of the Fund.
- (e) Payments not accepted by the Responsible Entity shall be repaid but no interest in respect of the payment shall be payable.

#### **4.9 Number of units issued**

Subject to clause 4.10 and the Terms of Issue of a Unit, the number of Units issued at any time in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be the number determined in accordance with the following formula:

A - B

C

Where:

- A is the application money or the value of the property transferred to the Responsible Entity;
- B any contribution fee payable pursuant to clause 14.1(a); and

C is the Issue Price at the time of issue of the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines from time to time.

#### 4.10 Units as consideration

Where an investment is acquired (on behalf of the Fund) for consideration which includes the issue of Units by the Responsible Entity, the number of Units created and issued by the Responsible Entity is determined in accordance with the following formula:

$$\frac{A - B - C}{D}$$

D

Where:

A is the value of the investment being acquired as determined in accordance with clause 11;

B is the amount of the cash consideration paid in respect of the investment (if any);

C any contribution fee payable pursuant to clause 14.1(a); and

D is the Issue Price of the Units being issued (as determined in accordance with clause 5.3).

#### 4.11 No certificates

No certificates will be issued for Units, unless determined otherwise by the Responsible Entity.

### 5 Issue Price

#### 5.1 Issue Price

(a) The Issue Price for the issue of Units prior to the Minimum Subscription Amount being met is \$1.

(b) At any other time, but subject to the rights, obligations and restrictions attaching to the Terms of Issue of any particular Units or Class the Issue Price for a Unit shall be determined in accordance with the following formula:

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

Where:

A is the Net Asset Value or where Units in a Class are issued, the proportion of the 'Net Asset Value' that is properly attributable to that Class;

B is the number of Units on issue in the relevant Class (as the case may be); and

C is any relevant Transaction Charge.

- (c) Each of the variables in clause 5.1(b) must be determined as at the first Valuation Time after the later of the day on which the Responsible Entity:
  - (i) accepts the completed application for Units; or
  - (ii) receives the application money, or the property against which the Units are to be issued is vested in the Responsible Entity.

## **5.2 Application Price for a rights issue**

- (a) Subject to the Corporations Act and any conditions imposed by the Corporations Act, the Responsible Entity may issue Units at a price other than a price determined under clause 5.1 pursuant to offers made at substantially the same time to only and all of the then Unit Holders if:
  - (i) all the Units offered are in the same class;
  - (ii) the price of all the Units offered is the same;
  - (iii) a discount to the price which would otherwise apply pursuant to clause 5.1 does not exceed 50 percent, and
  - (iv) the amount of Units offered to each Unit Holder is proportionate to the value of that Unit Holder's Unit holding.
- (b) However, if the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude Unit Holders that are connected to a place outside this jurisdiction (foreign Unit Holders) and not unfair to those Unit Holders, the Responsible Entity need not offer or issue the Units to the foreign Unit Holders if the Units are sold taking reasonable steps to maximise the sale price net of expenses of the sale and the foreign Unit Holders are properly paid the net sale price.

## **5.3 Issue of units to acquire an asset**

- (a) Subject to clause 5.3(b), where Units are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Fund), the Issue Price for those Units must be calculated in accordance with clause 5.1(b) on the date of the agreement under which there will be an issue of Units.
- (b) The Responsible Entity may determine a different Issue Price in relation to some Units, a Class or all Units. Where the Fund is a Registered Scheme, such determination of the Issue Price for Units or a Class of Units will be in accordance with the relevant provisions Corporations Act and any applicable ASIC Exemption.

## **5.4 Rounding**

The Issue Price may be rounded as the Responsible Entity determines.

## **5.5 Satisfaction of Issue Price**

The Issue Price may be satisfied by payment in cash or by transfer to the Responsible Entity of property acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts payment other than cash, it may determine that some or all of the costs associated with the valuation or transfer of such property are payable or reimbursable out of the Assets or by the applicant.

## **6 Redemption of Units**

### **6.1 Redemption request while Scheme is Liquid**

A Unit Holder may make a request for the redemption of some or all of its Units, or to realise a specified amount, in any manner or form approved or required by the Responsible Entity and delivered to the registered office (or other place nominated by the Responsible Entity) and:

- (a) while the Fund is a Registered Scheme and not Liquid, the Responsible Entity must only give effect to that redemption request in the circumstances set out in clause 6.4; and
- (b) at any other time, the Responsible Entity must give effect to that request at the time and in the manner set out in clause 6.3, unless otherwise agreed by the Responsible Entity.

### **6.2 Restrictions on Unit Holder**

- (a) Upon making a redemption request under clause 6.1, the Unit Holder will have no right to deal with the Units that are subject of the request (unless and until the request is denied by the Responsible Entity).
- (b) A Unit Holder may not withdraw a redemption request unless the Responsible Entity agrees.

### **6.3 Redemption while Fund is Liquid or not a Registered Scheme**

- (a) Within a reasonable time of receiving the redemption request under clause 6.1, the Responsible Entity must consider that request and, subject to the Corporations Act (where the Fund is a Registered Scheme), Responsible Entity may in its absolute discretion:
  - (i) deny the request and notify the Unit Holder accordingly;
  - (ii) effect the redemption request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Redemption Price out of the Assets;
  - (iii) subject to the Corporations Act (where applicable), purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the redemption request; or
  - (iv) partially effect the redemption in the manner described in clause 6.3(a)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 6.3(a)(iii).
- (b) If the Unit Holder has made a redemption request which complies with this Constitution and the Responsible Entity accepts the redemption request, the Responsible Entity must satisfy the redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 8. The payment must be made within 21 days of the day on which the redemption request was made.

- (c) Notwithstanding clause 6.3(b), the Responsible Entity may extend the period allowed for satisfying a redemption request until a later date if in the opinion of the Responsible Entity:
  - (i) 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;
  - (ii) the Responsible Entity does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request; or
  - (iii) it is, for any reason, impractical to calculate the Net Asset Value of the Assets, including because of the closure of an exchange or trading or withdrawal restrictions in respect of a security.

#### **6.4 Redemption while Fund is a Registered Scheme and not Liquid**

- (a) This clause 6.4 shall apply when the Fund is a Registered Scheme and not Liquid.
- (b) While the Fund is not Liquid, a Unit Holder may only withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act.
- (c) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Fund.
- (d) The Responsible Entity is not at any time obliged to make a Withdrawal Offer.
- (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 Withdrawal Offer effective as at the time the Withdrawal Offer is made.

#### **6.5 Minimum amounts**

- (a) The Responsible Entity may specify a minimum redemption amount for the Fund or a Class and vary that amount at its discretion.
- (b) Unless otherwise determined by the Responsible Entity, the Responsible Entity need not give effect to a redemption request if:
  - (i) the aggregate Redemption Price of the Units to be redeemed is less than any minimum redemption amount determined by the Responsible Entity; and
  - (ii) the redemption would result in the aggregate Redemption Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 4.2.
- (c) If compliance with a redemption request would result in the aggregate Redemption Price of a Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Responsible Entity under clause 4.2, the Responsible Entity may treat the redemption request as relating to the Unit Holder's entire Unit Holding.

- (d) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days' notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Redemption Price of that Unit Holding is less than the then current minimum holding amount, without the need for a redemption request.
- (e) The Responsible Entity may redeem the Unit Holding of a Unit Holder without the need for a redemption request 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.

#### **6.6 Responsible Entity discretion to redeem**

The Responsible Entity may at any time in its absolute discretion redeem some or all of the Units held by a Unit Holder at the Redemption Price without being requested to do so by giving at least 30 days' notice to the Unit Holder of its intention to redeem such Units including, without limitation, in the circumstances set out in clause 14.14.

#### **6.7 No obligation to pay out of own funds**

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

#### **6.8 Sums owed to the Responsible Entity**

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

#### **6.9 Transfer of Assets**

- (a) The Responsible Entity may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Redemption Price due to the Unit Holder pursuant to a redemption request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 6.9(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the redemption request or Withdrawal Offer (based on a valuation of the Assets carried out within one month before the date of the proposed transfer which is consistent with the range of ordinary commercial practice for valuing assets of that type and be reasonably current). If the Responsible Entity requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.

#### **6.10 Order of redemption**

Unless the Responsible Entity determines otherwise, the first Units issued to a Unit Holder are the first to be redeemed.

#### **6.11 Liquid or not Liquid**

The Responsible Entity will determine whether the Fund is Liquid. Such a determination is binding on Holders and no Holder shall be entitled to challenge it.

#### **6.12 Liquidity facility**

The Responsible Entity may on behalf of the Unit Holders arrange a facility through which Unit Holders may transfer their Units on terms and conditions contained in the disclosure

document under which the Unit Holders acquired the Units (if applicable) or such other terms and conditions as are notified to Unit Holders from time to time ('Liquidity Facility'). Unit Holders using a Liquidity Facility are bound by its terms and conditions.

## **7 Redemption Price of Units**

### **7.1 Redemption Price**

Subject to the Corporations Act, a Unit must only be redeemed at a Redemption Price calculated in accordance with the following formula:

$(A/B) - C$

Where:

- A is Net Asset Value or where Units in a Class are redeemed, the proportion of the 'Net Asset Value' that is properly attributable to that Class;
- B is the number of Units on issue in the relevant Class (as the case may be); and
- C is any relevant Transaction Charge.

### **7.2 Determination of Redemption Price**

Each of the variables in clause 7.1 must be determined:

- (a) while the Fund is a Registered Scheme and not Liquid, as at the day on which the Withdrawal Offer closes; and
- (b) at any other time, as at the next Valuation Time after the Responsible Entity received (or is taken to have received) a redemption request.

### **7.3 Receipt of redemption request**

The Responsible Entity may determine that a redemption request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

### **7.4 Rounding**

The Redemption Price may be rounded as the Responsible Entity determines.

## **8 Transfers**

### **8.1 Transferability**

Subject to this clause 8 and the terms of their issue, a Unit may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the Responsible Entity approves or requires.

## **8.2 Registration of transfers**

- (a) A transferor of Units remains the Holder of the Units transferred until the transfer is registered by the Responsible Entity.
- (b) If a Holder wishes to transfer its Units the following documents must be lodged for registration with the Responsible Entity:
  - (i) a proper instrument of transfer (duly stamped if relevant);
  - (ii) the certificate (if any) for the Units; and
  - (iii) any other information that the Responsible Entity may require.
- (c) Subject to clause 8.3, the Responsible Entity may register the transferee as the Holder of the Units.
- (d) The Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

## **8.3 Refusal of registration**

Subject to the Corporations Act, the Responsible Entity may refuse to register any transfer of Units without being bound to provide a reason for such refusal.

# **9 Transmission of Units**

## **9.1 Entitlement on death**

- (a) Subject to clause 9.1(b), if a Holder dies:
  - (i) the survivor (or survivors), where the Holder was a joint Holder; or
  - (ii) the legal personal representatives of the deceased, where the Holder was a sole Holder,

will be the only persons recognised by the Responsible Entity as having any title to the Holder's interest in the Units.
- (b) The Responsible Entity may refuse to recognise any person referred to in clause 9.1(a) or to recognise any claim without providing any reason. The Responsible Entity may require evidence of a Holder's death as it thinks fit.
- (c) This clause 9 does not release:
  - (i) the estate of a deceased joint Holder from any liability in respect of a Unit that had been jointly held by the Holder with other persons; or
  - (ii) where the Holder was a sole Holder, the legal personal representative or the trustee of the Holder's estate from any liability in respect of Units held by the deceased Unit Holder.



## 9.2 Registration of persons entitled

- (a) Subject to the Corporations Act, the *Bankruptcy Act 1966* (Cth) and the production of any information that is properly required by the Responsible Entity, a person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Holder may elect to:
  - (i) by written notice to the Responsible Entity, be registered as the Holder of the Unit; or
  - (ii) nominate some other person to be registered as the Holder of the Unit.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
  - (i) the right to transfer;
  - (ii) the registration of the transfer of; and
  - (iii) the issue of certificates for,

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

## 9.3 Distributions and other rights

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

## 10 Successor Scheme

### 10.1 Transfer of Assets or Units to Successor Scheme

The Responsible Entity may, with the approval of a Special Resolution of Unit Holders, in relation to specific Unit Holders or all Unit Holders, in full discharge of those Unit Holders' rights in respect of Units and rights arising under this Constitution:

- (a) transfer Assets having a value equal (as nearly as practicably possible) to the value of the Units of the relevant Unit Holders to another managed investment scheme (**Successor Scheme**) in exchange for the issue to those Unit Holders of units in the Successor Scheme with an equivalent total issue price (as nearly as practicable); or
- (b) cause the Units of those Unit Holders to be transferred to the trustee or custodian of the Successor Scheme in exchange for the issue to the relevant Unit Holders of

units in the Successor Scheme with an equivalent total issue price (as nearly as practicable),

if having regard to any reasonably foreseeable material benefits and detriments to Unit Holders the Responsible Entity believes that to do so is in the interests of the Unit Holders as a whole, or is not materially adverse to those Unit Holders and to the Unit Holders as a whole.

## **10.2 Applications**

The Responsible Entity is authorised to complete any application for units or other documents reasonably required in relation to the issue of units in the Successor Scheme and any form of transfer or other documents reasonably required in relation to the transfer of Units to the responsible entity or custodian of the Successor Scheme, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.

## **10.3 Notice of meeting**

Where the Responsible Entity calls a meeting of Unit Holders to approve the transfer of Assets or Units to a Successor Scheme in accordance with clause 11.1, the relevant notice of meeting must contain information about the Successor Scheme considered appropriate by the Responsible Entity.

# **11 Valuation of Assets**

## **11.1 Valuation of an Asset**

The Responsible Entity may, at any time, cause the valuation of any Asset.

## **11.2 Valuation if required**

The Responsible Entity must cause an Asset to be valued if and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with those requirements.

## **11.3 Method of valuation**

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time.
- (b) Unless the Responsible Entity decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value and whilst the Fund is a Registered Scheme, the valuation methods and policies applied by the Responsible Entity must be based on the ordinary commercial practice for valuing the relevant type of asset that is reasonably current at the time of the issue or withdrawal of Units.

## **11.4 Determination of Net Asset Value**

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

## **12 Income and distributions**

### **12.1 Determination of income and reserves**

The Responsible Entity shall determine, in accordance with Australian Accounting Standards:

- (a) the Net Income of the Fund and whether any item is on income or capital account; and
- (b) the extent to which reserves or provisions need to be made.

### **12.2 Distribution of income**

For each Distribution Period, the Responsible Entity shall calculate the Distributable Amount and distribute each Unit Holder's Distribution Entitlement.

### **12.3 Present entitlement**

The persons who are Unit Holders at 5.00 p.m. on the last day of a Distribution Period shall have an absolute vested and indefeasible interest in the Distributable Amount for that Distribution Period, irrespective of the number of days they have been a Unit Holder in that Distribution Period.

### **12.4 Distributable Amount**

- (a) The Distributable Amount for a Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) shall be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the Distributable Amount;

I is the Net Income of the Fund for that Distribution Period (as determined by the Responsible Entity pursuant to clause 12.1) less any amount of the Net Income that is set aside as a reserve or provision in accordance with clause 12.1; and

C is any additional amount (including capital) that the Responsible Entity has determined is to be distributed.

- (b) The Distributable Amount for the last Distribution Period in a Financial Year shall be the difference between:
  - (i) the 'net income' of the Fund calculated in accordance with section 95(1) of the Income Tax Assessment Act 1936 (Cth) as amended or substituted from time to time less any amount of the income that is set aside as a reserve or provision in accordance with clause 12.1; and
  - (ii) the total of the Distribution Amounts for all the prior Distribution Period in that Financial Year,

plus any additional amount (including capital) that the Responsible Entity has determined is to be distributed.

- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Distribution Period shall be determined in accordance with the following formula:

$A \times B$

$C$

Where:

- A is the Distributable Amount;
- B is the aggregate of the number of Units held by the Unit Holder at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of Units held by that Unit Holder at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 12.13 (if any), multiplied by the relevant proportion; and
- C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of total Units on issue at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 12.13 (if any), multiplied by the relevant proportion.

## **12.5 Distribution Entitlement**

- (a) The Responsible Entity shall pay to each Unit Holder its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Responsible Entity shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Responsible Entity determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as income for the following Distribution Period.
- (c) The Responsible Entity may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Responsible Entity under this Constitution or that is required to be deducted by law.

## **12.6 Discharge of Responsible Entity's obligation**

It is acknowledged by Unit Holders that payments of Distributable Amounts in accordance with clause 12.14 shall be a good and complete discharge of any liability owed by the Responsible Entity to any person in respect of an entitlement to the Distributable Amount.

## **12.7 Capital distributions**

The Responsible Entity may distribute the capital of the Fund to the Unit Holders in addition to a distribution made under clause 12.4. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the

capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on issue on that date. A distribution under this clause may be in cash or by way of Assets or by way of bonus Units.

## **12.8 Grossed up Tax amounts**

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Amount for a Distribution Period which is referable to a dividend or other income to which they are presently entitled.

## **12.9 Excess distribution**

If at the end of a Financial Year the auditor of the Fund determines that the amount distributed as the Distributable Amount under this clause 12 exceeds the aggregate of the net income for the Financial Year, the excess will be taken to be a distribution of capital.

## **12.10 Categories and source of income**

The Responsible Entity may keep separate accounts for any category or source of income and distribute the income from any category or source to any Unit Holder.

## **12.11 Receipt**

- (a) For the purposes of this clause 12, the Responsible Entity is entitled to treat any amount which the Responsible Entity is entitled to receive but has not actually received before the Distribution Calculation Date as actually received:
  - (i) before the Distribution Calculation Date; or
  - (ii) after the Distribution Calculation Date.
- (b) If any amount has been included in the Distributable Amount and is not subsequently received by the Responsible Entity, the Responsible Entity shall be entitled to recover any amount that has been over distributed. However, the Responsible Entity shall not be bound to pursue that right of recovery. The Responsible Entity may determine that any amount so distributed is to be treated as a distribution of the capital of the Fund. No claim will lie against the Responsible Entity at the suit of any Unit Holder or any other person by reason of that distribution or any resultant loss to the Fund.

## **12.12 Reinvestment**

A Unit Holder may, if the Responsible Entity approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 5. The procedure for reinvestment of distributions is to be determined by the Responsible Entity and notified to Unit Holders from time to time.

### **12.13 Other rights or restrictions**

For the removal of doubt and despite anything else contained in this clause 12, the rights of a Unit Holder under this clause 12 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Responsible Entity is entitled to do so under the Corporations Act, the Responsible Entity may issue:

- (a) Units on terms which entitle the Unit Holder to a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Amount to which a Unit Holder holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (b) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued.

### **12.14 Withholding Tax**

The Responsible Entity may deduct from any amount dealt with under this clause 12 any Tax that it is required by law to deduct from such amount.

## **13 Powers of the Responsible Entity**

### **13.1 General powers of Responsible Entity**

- (a) Subject to this Constitution, the Responsible Entity has all the powers in respect of the Fund that are possible under law to confer on a responsible entity as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.
- (b) The generality of this clause 13.1 is not limited by anything in the remainder of this clause 13.
- (c) To the maximum extent permitted by law:
  - (i) any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment (other than those duties imposed under section 601FC of the Corporations Act) are hereby excluded; and
  - (ii) without limiting the generality of clause 13.1(c)(i) section 6 of the Trustee Act 1958 (Vic) is hereby expressly excluded from operation in relation to this Constitution and the Fund.

### **13.2 Specific powers of the Responsible Entity**

Without limiting the generality of clause 13.1, the Responsible Entity in its capacity as responsible entity of the Fund may:

- (a) borrow or raise money (whether or not on security) and incur any and all types of obligations and liabilities and issue debt instruments;
- (b) create Security Interests over all or any part the Assets;

- (c) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
    - (i) purchasing or disposing of Assets for cash or other consideration; and
    - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction ;
  - (d) subject to clause 2.2(b) mix Assets with assets of any other person or trust;
  - (e) share risk and returns with any other person or trust;
  - (f) vary, replace or deal with the Assets in any way;
  - (g) buy-back Units;
  - (h) fetter future discretions, such as by the granting of options;
  - (i) enter into any arrangement or agreement with underwriters in relation to the Fund;
  - (j) exercise all voting rights conferred by the Assets as it thinks fit; and
  - (k) give guarantees and/or indemnities to any person,
- as if it were dealing with its own assets.

### 13.3 Investments in related trusts

Subject to the Corporations Act (where the Fund is a Registered Scheme), the Responsible Entity may invest in a trust or scheme in respect of which the Responsible Entity is the trustee or an associate of a trustee. The Responsible Entity and investment manager (if any) may be remunerated and reimbursed out of such trust or scheme to the extent permitted by the Corporations Act.

### 13.4 Delegation

- (a) Without limiting clause 13.1, the Responsible Entity may appoint any person as its delegate, attorney or agent to:
  - (i) perform any act;
  - (ii) carry out any obligation; or
  - (iii) exercise any power,

that the Responsible Entity has under this Constitution.
- (b) The Responsible Entity may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Responsible Entity, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Responsible Entity and perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.
- (c) Any person appointed under clauses 13.4(a) or 13.4(b) may be an Associate or employee of the Responsible Entity.

- (d) An appointment under clauses 13.4(a) or 13.4(b) may be joint.
- (e) Subject to section 601FB of the Corporations Act (where the Fund is a Registered Scheme), the Responsible Entity will not be liable for the acts or omissions of any delegate.

### **13.5 Advisers**

Without limiting this clause, the Responsible Entity may engage an Adviser to assist with its duties and functions under this Constitution. An Adviser may be an Associate or employee of the Responsible Entity.

### **13.6 Exercise of discretion**

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

## **14 Remuneration and Expenses of Responsible Entity**

### **14.1 Transaction Fees**

Subject to clause 14.11, the Responsible Entity is entitled to the following fees in respect of specific transactions:

- (a) a contribution fee determined by the Responsible Entity and notified to Unit Holders of up to 5% of each contribution made by a Unit Holder payable out of application moneys from the Commencement Date until the termination of the Fund as specified in the current product disclosure document or other offering document for the Fund;
- (b) an acquisition fee of up to 5% of the acquisition price of a Property held by the Fund or a controlled entity of the Fund, payable from the Assets as at the date of settlement of the acquisition of the Property;
- (c) a disposal fee of up to 5% of the disposal price of a Property held by the Fund or a controlled entity of the Fund, payable from the Assets as at the date of settlement of the disposal of the Property;
- (d) a leasing fee of up to 3 month's gross rent of properties leased out by the Fund or by a controlled entity of the Fund, payable from the Assets as at the date of execution of the lease;
- (e) a project management fee of up to 5% of the value of any works (as determined by a quantity surveyor) undertaken in respect of any Property, payable monthly in arrears; and
- (f) a debt arranging fee of up to 2% of the gross amount of external borrowings obtained by the Fund or a controlled entity of the Fund, payable from the Assets as at the date of execution of the relevant facility.

### **14.2 Management fee**

Subject to clause 14.11, the Responsible Entity is entitled to a management fee determined by the Responsible Entity and notified to Unit Holders of up to 2% per annum



of the Gross Asset Value accrued daily and payable monthly in arrears out of the Assets from the Commencement Date until the realisation and distribution of all of the Assets in accordance with clause 23.2(a).

### 14.3 Performance Fee

- (a) Subject to the Corporations Act and the Terms of Issue of Units, the Responsible Entity becomes entitled to a Performance Fee determined in accordance with clause 14.3(c) as at the time:
  - (i) the Responsible Entity is removed or retires as the trustee and/or responsible entity of the Fund; or
  - (ii) the beneficial ownership of the Property is transferred by the Fund as a result of:
    - (A) the sale of the Property to a third party;
    - (B) the transfer of the Property or Units in the Fund to a Successor Scheme in accordance with clause 10; or
    - (C) the Fund making an in species distribution of all or part of the Property to Unit Holders.
- (b) The Performance Fee is payable from the Assets of the Fund:
  - (i) in the case of the circumstances set out in clause 14.3(a)(i), within 7 days of the removal or the retirement of the Responsible Entity; and
  - (ii) in any other case, within 7 days of the Responsible Entity entering into any unconditional agreement or arrangement for the transfer of the Property.
- (c) The Performance Fee payable under clause 14.3(a) must be determined in accordance with the following formula:
 
$$P = F \times OP$$

Where:

  - P is the amount of the Performance Fee;
  - F is a factor determined by the Responsible Entity of up to 40%;
  - OP is the amount of cash flow required to reduce the Internal Rate of Return to the Target Rate of Return. Where:
 

**Internal Rate of Return** is determined as:

    - (A) where the Performance Fee is payable under clause 14.3(a)(i), 14.3(a)(ii)(B) or 14.3(a)(ii)(C) the Internal Rate of Return is the annualised discount rate that would result in a net present value of zero for the following series of cash flows:
      - (1) the hypothetical sum of all income and capital distributions, including any franking and other tax credits, but excluding any Performance Fees paid/payable, that has been or

would be made to Unit Holders had all of the Assets held by the Fund been realised at market value (as determined by an independent valuer appointed by the Responsible Entity) on the date the Responsible Entity is removed or retires as trustee and/or responsible entity of the Fund or the date the Property is transferred under clauses 14.3(a)(ii)(B) or 14.3(a)(ii)(C);

- (2) any amount paid to the previous responsible entity and/or trustee pursuant to clause 14.3(a)(i) and
  - (3) the total investment made by Unit Holders in the Fund; or
- (B) where the Performance Fee is payable under clause 14.3(a)(ii)(A) the Internal Rate of Return is the annualised discount rate that would result in a net present value of zero for the following series of cashflows:
- (1) the sum of all income and the value of any capital distributions, including any franking and other tax credits, but excluding any Performance Fees paid/payable, that has been or would be made to Unit Holders by the Fund taking into account the sale price of the Property and the net proceeds available for distribution to Unit Holders;
  - (2) less any amount paid to the previous responsible entity and/or trustee pursuant to clause 14.3(a)(i) ; and
  - (3) less the total investment made by Unit Holders in the Fund.

**Target Rate of Return** is the annualised target internal rate of return as specified in the current product disclosure document or other offering document for the Fund.

Provided that no Performance Fee is payable where the amount determined under this clause is zero or a negative number.

#### **14.4 Waiver or deferral of remuneration**

The Responsible Entity may accept a lower fee than it is entitled to receive under this Constitution, may waive any such fee, or may defer payment for a period on such terms as the Responsible Entity determines at its sole discretion.

#### **14.5 Priority of Responsible Entity's remuneration**

The remuneration of the Responsible Entity shall have priority over the payment of all other amounts payable from the Assets.

#### **14.6 Establishment costs**

- (a) Without limiting clause 14.10, the Responsible Entity may pay, on behalf of the Fund, any or all costs and expenses incurred in connection with the establishment and initial promotion of the Fund, including the production and distribution of the first disclosure document (**Establishment Costs**).

- (b) In such a case, the Responsible Entity will be entitled to be reimbursed out of the Assets for all Establishment Costs that were reasonably and properly incurred.
- (c) The Responsible Entity may waive recovery of any of the Establishment Costs, or may be reimbursed from the Assets in a year or years later than the year in which the Establishment Cost was incurred.

#### **14.7 Differential fee arrangements**

Subject to the Corporations Act and any applicable ASIC Exemption, the Responsible Entity may agree with any Unit Holder any fee arrangements with that Unit Holder which are different to those provided for under this Constitution or which apply to other Unit Holders.

#### **14.8 Units as payment for fees**

- (a) Subject to the Corporations Act, the Responsible Entity may elect that it is to be issued Units on commercial terms instead of cash in payment of its fees or reimbursement of its expenses under this Constitution.
- (b) Pursuant to this clause, the Responsible Entity is entitled to receive distributions from the commencement of a Distribution Period, a nominated date in an offer document or as otherwise determined by the Responsible Entity and thereafter in accordance with clause 13.

#### **14.9 Fees paid to the Responsible Entity in a different capacity**

Subject to the Corporations Act, the Responsible Entity may be paid a fee for work performed in connection with the Fund in its personal capacity and not in its capacity as the responsible entity of the Fund. The Responsible Entity may retain any such fee for its own purposes and is not required to account for the fee to the Fund or to Unit Holders.

#### **14.10 Reimbursement of Expenses**

All Expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Fund shall be payable or reimbursable out of the Assets to the extent that such payment or reimbursement is not prohibited by the Corporations Act, including, without limitation, Expenses arising in connection with the matters listed in Schedule 1.

#### **14.11 Proper performance of duties**

The rights of the Responsible Entity to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Responsible Entity, are only available in relation to the proper performance of those duties.

#### **14.12 GST**

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 14.12 as those expressions in the GST Law.
- (b) Any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution represents the value of the taxable supply and does not include GST.

- (c) If the Responsible Entity makes a taxable supply in connection with or arising under this Constitution (including the performance of any of its obligations) for consideration which, under clause 14.12(b), represents its value:
- (i) the Responsible Entity shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that taxable supply in addition to any other amount to which the Responsible Entity is entitled; or
  - (ii) the recipient of the supply must pay to the Responsible Entity, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that taxable supply,
- at the Responsible Entity's discretion.
- (d) The supplier of a taxable supply shall issue a valid Tax Invoice to the recipient of the supply on request.
- (e) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of GST for which the party is entitled to an input tax credit.

#### **14.13 Taxes in other jurisdictions**

- (a) Without limiting clause 14.12, any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution does not include any goods and services tax, value added tax or other similar tax payable in any jurisdiction.
- (b) In addition to any other amount to which the Responsible Entity is entitled under this Constitution, the Responsible Entity shall be entitled to be paid or reimbursed for an amount equal to any goods and services tax, value added tax or other similar tax payable by the Responsible Entity in any jurisdiction:
- (i) from the Assets; or
  - (ii) by the Holder, where the Responsible Entity has an obligation to pay such goods and services tax, value added tax or other similar tax in relation to a supply of goods and/or services made to the Holder or other event that triggers a liability for goods and services tax, value added tax or other similar tax,
- at the Responsible Entity's discretion.
- (c) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of any goods and services tax, value added tax or other similar tax payable in any jurisdiction for which the party is entitled to any input tax credit or similar credit in any jurisdiction.

#### **14.14 Sums owed to the Responsible Entity**

The Responsible Entity may redeem such number of a Unit Holder's Units (including a fraction, if necessary) as have a value (based on the Net Asset Value at that time) equal to

any amount of money due to it by the Unit Holder and deduct such amounts from the Redemption Price of the Units.

#### **14.15 Amendment to Responsible Entity remuneration**

Notwithstanding anything else contained in this Constitution, the Responsible Entity may increase the fee, charges and remuneration payable to the Responsible Entity, provided the increase is disclosed in Terms of Issue or by at least 30 days prior written notice to Unit Holders.

### **15 Change in Responsible Entity**

#### **15.1 Voluntary retirement while the Fund is a Registered Scheme**

While the Fund is a Registered Scheme, the Responsible Entity may retire as the responsible entity of the Fund as permitted by section 601FL of the Corporations Act.

#### **15.2 Voluntary retirement while the Fund is not a Registered Scheme**

While the Fund is not a Registered Scheme, the Responsible Entity may retire as the trustee of the Fund by giving at least 3 months' notice to Unit Holders (or such shorter period as they agree). On retirement, the Responsible Entity may appoint in writing another person to be the responsible entity of the Fund.

#### **15.3 Compulsory retirement**

The Responsible Entity shall retire as the responsible entity of the Fund when required by law.

#### **15.4 New responsible entity**

- (a) Any proposed replacement responsible entity shall execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) On retirement or removal the Responsible Entity shall give the new trustee or responsible entity all books, documents and records relating to the Fund.
- (c) On retirement or removal the Responsible Entity shall be released from all obligations in relation to the Fund arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Responsible Entity, all fees and other amounts owing to the Responsible Entity and all amounts deferred by the Responsible Entity pursuant to clause 14.4 become due and payable to the Responsible Entity from the Assets and the new Responsible Entity must take such action as is necessary to promptly effect all such payments.

#### **15.5 Retirement benefit**

Subject to the Corporations Act, upon retirement or removal of the Responsible Entity, the Responsible Entity may pay itself a fee of up to 2% of the Gross Asset Value of the Fund in consideration for:

- (a) assisting with the transition of the management of the Fund to the new responsible entity in the proper performance of its duties as the Responsible Entity;

- (b) retiring as responsible entity; or
- (c) agreeing to submit to a proposal for its retirement to a meeting of Unit Holders and nominating to the Unit Holders the Proposed Responsible Entity as the replacement responsible entity,

and the Responsible Entity is not required to account to Unit Holders for the benefit received.

## **16 Limitation of liability**

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

- (a) Subject to the Corporations Act (where the Fund is a Registered Scheme), none of the Responsible Entity or its directors, officers or members of the Compliance Committee is liable for any loss or damage to any person (including any Holder), arising out of any matter unless, in respect of that matter, it acted both:
  - (i) otherwise than in accordance with this Constitution; and
  - (ii) without a belief held in good faith that it was acting in accordance with this Constitution.
- (b) Subject to the Corporations Act (where the Fund is a Registered Scheme), the liability of the Responsible Entity and its directors and officers or members of the Compliance Committee in relation to the Fund is limited to the Assets from which the Responsible Entity or its directors or officers or members of the Compliance Committee is entitled to be, and is in fact, indemnified.
- (c) In particular, subject to the Corporations Act (where the Fund is a Registered Scheme), none of the Responsible Entity or its directors or officers is liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
  - (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
  - (ii) it acted as required by law; or
  - (iii) it relied in good faith upon any signature, marking or documents.

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

- (a) Subject to clauses 16.2(c) and 16.2(e) the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Fund.
- (b) A Unit Holder shall not be required to indemnify the Responsible Entity if there is a deficiency in the Assets or to meet the claim of any creditor of the Responsible Entity in respect of the Fund.
- (c) The Responsible Entity, on its own account and on account of the Fund, shall be entitled to be indemnified by each Relevant Person for any Tax, bank fees or

charges of the Relevant Person paid out of the Fund, except to the extent to which the Responsible Entity is reimbursed out of the Fund.

- (d) Joint Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 16.2(c) applies.
- (e) In the absence of a separate agreement with a Unit Holder, the recourse of the Responsible Entity and any creditor shall be limited to the Assets.

## **17 Indemnity**

### **17.1 Responsible Entity's indemnity**

In addition to any indemnity available to the Responsible Entity under the law or this Constitution, but subject to the Corporations Act (where the Fund is a Registered Scheme), the Responsible Entity has a right to be fully indemnified out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Fund and against all actions, proceedings, costs, claims and demands brought against the Responsible Entity in its capacity as responsible entity of the Fund in respect of any matter or thing done or omitted (**Indemnified Matter**) except:

- (a) in the case of the Responsible Entity's own fraud, negligence or wilful default; and
- (b) in respect of the overhead expenses of the Responsible Entity.

### **17.2 Responsible Entity's indemnity continuing**

- (a) The right of indemnity of the Responsible Entity in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 17.1 will continue in favour of the Responsible Entity after it has ceased to be the Responsible Entity and will apply even if at any time the value of the Liabilities exceed the Assets.
- (c) For the avoidance of doubt, the Responsible Entity may be entitled to an indemnity under clause 17.1 in respect of any act or omission of a delegate or agent appointed by the Responsible Entity for which the delegate or agent is not obliged to fully indemnify the Fund.

### **17.3 Payment**

The Responsible Entity may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 17.1.

### **17.4 Responsible Entity not to incur liability**

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

## **17.5 Compliance Committee**

If a Compliance Committee Member incurs a liability in connection with the Fund acting in that capacity in good faith, the Responsible Entity may indemnify the Compliance Committee Member out of the Assets, to the extent permitted by the Corporations Act.

## **18 Responsible Entity's indemnity against Tax liability**

### **18.1 Indemnity**

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

### **18.2 Joint Holders**

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 18.1 applies.

## **19 Register**

### **19.1 Keeping Registers**

Where the Fund is a Registered Scheme, the Responsible Entity shall establish and keep, or cause to be kept, a Register of Unit Holders at its registered office in a form which, to the extent applicable, complies with the requirements of section 169 of the Corporations Act.

### **19.2 Responsible Entity's powers**

If the Corporations Act applies, the Responsible Entity has the powers conferred under the Corporations Act in relation to the Register.

### **19.3 Inspection**

Where the Fund is a Registered Scheme, the Responsible Entity will make the Register available for inspection without charge to Holders at all times when the Responsible Entity's registered office is open for business to the public.

### **19.4 Changes**

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

### **19.5 Register conclusive**

Except where this Constitution or the law requires otherwise, the Responsible Entity is entitled to treat the registered Holder as absolute owner of the relevant Unit for all purposes. The entry in the Register shall be conclusive except where the Responsible Entity is satisfied of manifest error and the Responsible Entity is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit.



## **20 Amendments to this Constitution**

### **20.1 Overriding provision**

This clause 20 shall be read subject to clause 21.

### **20.2 Responsible Entity may amend**

Subject to the Corporations Act (where the Fund is a Registered Scheme) and any other approval that may be required by law, the Responsible Entity may by deed replace or amend this Constitution (including this clause) or as otherwise permitted by law.

### **20.3 Statutory requirements**

Clause 20.2 does not apply to provisions deemed by clause 21 to be incorporated into this Constitution.

## **21 Corporations Act and ASIC Exemptions**

### **21.1 Corporations Act**

Notwithstanding any other provision of this Constitution, a provision of this Constitution which is expressed to apply subject to the Corporations Act, is only so subject while the Fund is a Registered Scheme (and the provision is to be read accordingly).

### **21.2 Agreed amendments**

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the Responsible Entity determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Responsible Entity to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

### **21.3 ASIC Exemptions**

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, notwithstanding any amendment to this Constitution effected under clause 20, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included 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 Fund) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Responsible Entity declares in writing that this is the case. This declaration may be made at any time.

## **22 Termination of Fund**

The Fund terminates on the earlier of:

- (a) the day eighty years less one day from the Commencement Date;
- (b) the date determined by the Responsible Entity as the date on which the Fund is to be terminated, being a date at least 3 months after the date of the provision of notice of such termination to all Unit Holders; or
- (c) the date on which the Fund is otherwise terminated by law.

## **23 Winding up of Fund**

### **23.1 Realisation of Assets**

On the termination and winding up of the Fund, the Responsible Entity shall:

- (a) not issue or redeem Units in the Fund; and
- (b) sell and realise the Assets and, subject to clauses 23.3, 23.4 and 23.5, distribute to the Unit Holders the amount calculated in accordance with clause 23.2(a).

### **23.2 Procedure on winding up of Fund**

- (a) Subject to the Terms of Issue of any Unit or Class, upon the winding up of the Fund, the net proceeds of realisation of the Assets, after making allowance for all Liabilities of the Fund (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, shall be distributed by the Responsible Entity pro rata to Unit Holders according to the number of Units they hold less the value of any Assets transferred to or to be transferred to that Unit Holder under clause 23.2(b). The Responsible Entity may distribute proceeds of realisation in instalments.
- (b) If the Unit Holder and the Responsible Entity agree, the Responsible Entity may transfer to the Unit Holder specified Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Fund, such specified Assets to be transferred at a value reasonably determined by the Responsible Entity to be the value of the relevant Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the Corporations Act, the provisions of this Constitution shall continue to apply from the date of termination of the Fund until the date of final distribution under clause 23.2(a), but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Unit Holder.

### **23.3 Responsible Entity may recover Expenses**

The Responsible Entity shall be entitled to be indemnified out of the Fund for, and to be paid and retain from the proceeds, all Expenses incurred or likely to be incurred:

- (a) by the Responsible Entity in connection with the winding up of the Fund;

- (b) by or on behalf of any creditor of the Responsible Entity in relation to the Fund; and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Responsible Entity in connection with the winding up of the Fund.

#### **23.4 Retention of Assets**

The Responsible Entity may retain under its control for so long as it thinks fit that part of the Assets which in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Fund. If any part of the Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 23.1 and 23.2.

#### **23.5 Postponement of realisation**

The Responsible Entity may postpone the realisation of any part of the Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Assets and will not be responsible for any loss attributable to that postponement.

#### **23.6 Responsible Entity's obligation to make distributions**

The Responsible Entity shall not be obliged to make a distribution to a Unit Holder under this clause 23 unless the Unit Holder delivers to the Responsible Entity any evidence of title required by the Responsible Entity together with any form of receipt and discharge required by the Responsible Entity.

#### **23.7 Cancellation of Units**

Unless the Responsible Entity determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Assets is made.

#### **23.8 Continuation of powers**

The powers, duties and rights of the Responsible Entity (including the rights to remuneration and to any indemnities under this Constitution or the law) continue following termination to the extent to which they are not inconsistent with this clause 23.

#### **23.9 Audit of accounts of Fund**

To the extent that the Corporations Act or ASIC policy requires, the Responsible Entity shall arrange for the final accounts of the Fund following the winding up to be audited by a registered company auditor who is independent of the Responsible Entity.

### **24 Meetings of Holders**

#### **24.1 Convening meetings**

The Responsible Entity may at any time convene a meeting of Unit Holders and shall do so if required by the Corporations Act.

## **24.2 Calling and holding meetings while the Fund is a Registered Scheme**

While the Fund is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) despite section 252G(4) of the Corporations Act, a notice of meeting sent by post is taken to be given the Business Day after it is posted;
- (b) where clause 11 applies, the information required by clause 11.3 must be included in the notice of meeting, in addition to the requirements under section 252J of the Corporations Act;
- (c) despite section 252R(2) of the Corporations Act, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;
- (d) despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and
- (e) despite section 252Y(2) of the Corporations Act, an appointment of a proxy:
  - (i) is valid even if it does not specify the Unit Holder's address; and
  - (ii) may be a standing one.

## **24.3 Calling and holding meetings while Fund is not a Registered Scheme**

While the Fund is not a Registered Scheme, meetings of Unit Holders will be called and held as if Part 2G.4 applied (as modified by clause 24.2) with any necessary modifications.

## **24.4 Resolution binding on Unit Holders**

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

## **24.5 Written resolution**

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

## **24.6 Adjournments**

The Responsible Entity may adjourn a meeting for any reason to such time and place as determined by the Responsible Entity.

## **24.7 Joint Unit Holders**

For the purposes of this clause 25, joint Unit Holders are counted as a single Unit Holder.

## **25 Notices**

### **25.1 Notices to Holders**

- (a) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Holder must be given in writing and may be sent to the Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Holder sent by:
  - (i) post, is taken to be received on the Business Day after it is posted;
  - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
  - (iii) other means, is taken to be received at the time the Responsible Entity determines.

### **25.2 Notices to joint Holders**

The Responsible Entity may give a notice or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.

### **25.3 Notice to successor**

The Responsible Entity may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Holder by sending it to the legal personal representatives of the Holder or trustee of the deceased Holder's estate at the address supplied for the purpose by the representative or trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Holder's address as recorded in the Register.

### **25.4 Signature on notice**

The signature on any notice or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of the Responsible Entity or of any director, secretary or other authorised officer of the Responsible Entity.

### **25.5 Notices to the Responsible Entity**

Notices to the Responsible Entity by Holders must be given in writing or in any other manner the Responsible Entity determines. A notice is effective when it is received by the Responsible Entity. A notice must be signed by the Holder or a duly authorised representative (unless the Responsible Entity waives this requirement).

## **26 Complaints**

### **26.1 Complaints Handling for Retail Clients**

Where a Complaint is made by a Unit Holder who is a Retail Client, the Responsible Entity will, as an Australian financial services licensee, comply with the dispute resolution requirements under section 912A(2) of the Corporations Act.

### **26.2 Handling of Complaints**

Where a Complaint is made by a Unit Holder who is a Wholesale Client, the Responsible Entity:

- (a) shall acknowledge receipt of the complaint as soon as practicable;
- (b) shall ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) shall act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (d) may, in its discretion, give any of the following remedies to the Unit Holder:
  - (i) information and explanation regarding the circumstances giving rise to the Complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (e) shall communicate to the Unit Holder as soon as practicable and, in any event, not more than 45 days after receipt by the Responsible Entity of the Complaint:
  - (i) the determination in relation to the Complaint; and
  - (ii) the remedies (if any) available to the Unit Holder,
- (f) If the Responsible Entity cannot provide a final response to the Unit Holder within 45 days (or 21 days for disputes involving default notices) as required by clause (e), the Responsible Entity must inform the Unit Holder of:
  - (i) the Status of the Complaint; and

the reasons for the delay.

## **27 Rights of the Responsible Entity**

### **27.1 Right to hold Units**

The Responsible Entity and/or any of its Associates may hold Units.

## **27.2 Other capacities**

Subject to the Corporations Act, nothing in this Constitution restricts the Responsible Entity (in its personal capacity or in any other capacity other than as responsible entity of the Fund) and/or any of its Associates:

- (a) dealing with the Responsible Entity (as responsible entity of the Fund or in another capacity), an Associate of the Responsible Entity or with any Unit Holder;
- (b) being interested in any contract or transaction or matter with the Responsible Entity (as responsible entity of the Fund or in another capacity), an Associate of the Responsible Entity or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (d) any dealings with any entity in which the Assets are invested,

and in each case the Responsible Entity (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

## **27.3 Responsible Entity may rely**

The Responsible Entity may take and may act upon:

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

and the Responsible Entity shall not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or documents.

## **28 Constitution legally binding**

This Constitution binds the Responsible Entity and each present and future Unit Holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

## **29 Other obligations excluded**

Except as required by the Corporations Act, all obligations of the Responsible Entity which may otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including, without limitation, any obligation of the Responsible Entity in its capacity as trustee of the Fund arising under any statute.

## **30 Payment**

- (a) Any money payable by the Responsible Entity to a Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Holder and posted to the Holder's address as supplied in the Register.
- (b) A Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this Constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Responsible Entity in respect of the payment.
- (d) The Responsible Entity may determine that any cheque not presented within six months or any electronic fund transfer which is unsuccessful at least two times is cancelled. If the Responsible Entity so determines the amount of the cheque or electronic fund transfer may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 12.2. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled.
- (e) Money payable to the Responsible Entity may from time to time be paid in a manner other than that described in clause 30(a) with the Responsible Entity's consent.

## **31 Severability**

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

## **32 Governing law**

This Constitution is governed by the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the courts of that State.



## Constitution

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### Schedule 1 – Examples of Expenses

The following are examples of Expenses for which the Responsible Entity may be reimbursed out of the Assets or the assets of any controlled entity of the Fund and are not intended to limit the Expenses which may be payable:

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Fund and any supplemental deed or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) the preparation approval, implementation, audit and interpretation of a Compliance Plan;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any marketing material or other documents whether required by law or otherwise to be prepared in respect of the Fund;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets or the assets of any controlled entity of the Fund;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets or the assets of any controlled entity of the Fund;
- (f) the investigation, negotiation or acquisition of any proposed investment;
- (g) the administration, management, valuation or promotion of the Fund or its Assets or the assets of any controlled entity of the Fund and Liabilities, including without limitation:
  - (i) the establishment and maintenance of accounts and Registers;
  - (ii) issuing Units by the Responsible Entity or any sales of Units by one or more Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
  - (iii) computer operation and development and data processing;
  - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Holder under this Constitution;
  - (v) dealing with Holder enquiries;
  - (vi) communications with Holders (written or otherwise);

- (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Fund or on an ongoing basis;
- (viii) leasing premises outside of Australia for the Responsible Entity in connection with the Fund; and
- (ix) any travel expenses incurred in connection with the Fund;
- (x) arranging and maintaining appropriate professional indemnity insurance;
- (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;
- (i) Taxes (provided they are not on the personal account of the Responsible Entity and including any GST charged to the Responsible Entity), stamp duty and financial institution fees;
- (j) the inclusion of the Fund on any IDPS list;
- (k) the engagement of delegates, agents, Advisers;
- (l) without limiting paragraph (k), the payment of management fees, performance fees or other fees associated with the engagement of any investment or asset manager;
- (m) preparation and audit of the taxation returns and accounts of the Fund;
- (n) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (o) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent in which case any expenses paid or reimbursed under this paragraph (o) shall be repaid;
- (p) the establishment and operation of a Compliance Committee in connection with the Fund, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of 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 (if the Fund is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (r) admission of the Fund to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Fund from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
- (s) complying with any law or any request or requirement of ASIC;
- (t) fees payable to ASIC or any other regulatory authority in relation to the Fund, Units;

- 
- (u) the assigning or maintaining of a credit rating to the Fund;
  - (v) raising money or otherwise obtaining financial accommodation for the Fund or any controlled entity of the Fund, including a capital raising by the Fund, including fees payable to any underwriter or broker; and
  - (w) calculations and determinations under this Deed.

## Constitution

### Signing page

**EXECUTED by APN FUNDS MANAGEMENT LIMITED ACN 080 674 479** in accordance with the *Corporations Act 2001* by being signed by the following officers:

.....  
Signature of director

.....  
MICHAEL JOHNSTONE

Name of director  
(please print)

.....  
Signature of director / company secretary

.....  
JOHN FREEMANTLE

Name of director / company secretary  
(please print)

## Constitution

Provision of the Corporations Act	Corresponding Clause in the Constitution
Section 601GA(1)(a) 'Consideration to acquire interests'	Clause 5
Section 601GA(1)(b) 'Power to make investments and deal with scheme property'	Clauses 13.1 and 13.2
Section 601GA(1)(c) 'method of making complaints'	Clause 26
Section 601GA(1)(d) 'winding up of scheme'	Clause 23
Section 601GA(2) 'rights to fees, expenses and indemnity'	Clause 14
Section 601GA(3) 'scheme borrowing'	Clause 13.2(a)
Section 601GA(4) 'withdrawals'	Clauses 6 and 7
Section 601GB 'legally enforceable'	Clause 28



**Hall & Wilcox**  
Lawyers

**Deed of Repeal and Replacement**

**APN Coburg North Retail Fund**

APN Funds Management Limited

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600 Bourke Street

Melbourne VIC 3000

DX 320

Telephone +61 3 9603 3555

Facsimile +61 3 9670 9632

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## Deed of Repeal and Replacement

Date

25 September 2014

Party

APN Funds Management Limited ACN 080 674 479 of Level 30, 101 Collins Street,  
Victoria 3000 (**Responsible Entity**)

### Recitals

- A By a Fund deed dated 8 September 2014 (**Original Constitution**), a scheme known as the APN Coburg North Retail Fund (**Fund**) was established.
- B The Responsible Entity accepted appointment as responsible entity of the Fund upon the establishment of the Fund and has held such office up to and including the date of this deed.
- C As at the date of this deed, there are no Unit Holders in the Fund.
- E Clause 20.2 of the Original Constitution provides that:
- "20.2 Responsible Entity may amend**  
Subject to the Corporations Act (where the Fund is a Registered Scheme) and any other approval that may be required by law, the Responsible Entity may by deed replace or amend this Constitution (including this clause) or as otherwise permitted by law."
- F Section 601GC of the Corporations Act provides that:
- "(1) **[Constitution may be modified etc]** The constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:
- (a) by special resolution of the members of the scheme; or
- (b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.
- (2) **[Lodge modification etc]** The responsible entity must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.
- (3) **[Lodge consolidated constitution]** The responsible entity must lodge with ASIC a consolidated copy of the scheme's constitution if ASIC directs it to do so.
- (4) **[Copy of constitution to member]** The responsible entity must send a copy of the scheme's constitution to a member of the scheme within 7 days if the member:
- (a) asks the responsible entity, in writing, for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the responsible entity."
- G The Responsible Entity wishes to repeal and replace the Original Constitution in the manner set out in this deed.



## Deed of Repeal and Replacement

### Terms of this deed poll

#### 1 Definitions and interpretation

Words which are defined in the Original Constitution and which are used in this deed have the same meaning in this deed as the Original Constitution, unless the context requires otherwise.

#### 2 Replacement of Original Constitution

Pursuant to clause 20.2 of the Original Constitution, the Responsible Entity hereby repeals the Original Constitution and replaces it with the constitution annexed to this deed and marked as Annexure "A" (**New Constitution**).

#### 3 Inconsistency with other documents

If this deed is inconsistent with the Original Constitution or any other document or agreement relating to the Fund, this deed prevails to the extent of the inconsistency.

#### 4 Governing law and jurisdiction

##### 4.1 Governing law

This deed shall be governed and construed in accordance with the laws of the State of Victoria.

##### 4.2 Jurisdiction

The Responsible Entity submits to the non exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with this deed.

**EXECUTED** as a deed poll

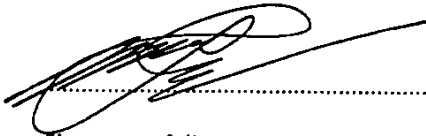
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Witnessed by:	Witnessed by:
Witnessed by:	Witnessed by:

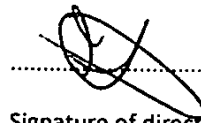
Deed of Repeal and Replacement

## Signing Page

**EXECUTED by APN FUNDS MANAGEMENT LIMITED**  
**ACN 080 674 479** in accordance with the  
*Corporations Act 2001* by being signed by the  
following officers:



Signature of director



Signature of director / company secretary

MICHAEL JOHNSTONE

Name of director

(please print)

JOHN FREEMANTLE

Name of director / company secretary

(please print)

## **Annexure A - New Constitution**

2014-15  
10/01/2014

10/01/2014