

Constitution Diversified Utility and Energy Trust No 3

~~AMPCI Macquarie Infrastructure
Management No 2 Limited~~DUET
Management Company 2 Limited
(~~ABN 99 108 014 062~~ABN 15 108
014 062)

Date of constitution: 19 April
2007

**Consolidated version including amendments
pursuant to the Supplemental Deeds Poll
dated 2 May 2007, 24 May 2007, 31 March
2009, 25 September 2009, 27 November 2009
and 28 September 2011, 23 November 2012
and 4 December 2012.**

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Constitution of the Diversified Utility and Energy Trust No 3

Date: 19 April 2007

Operative provisions:

This deed poll is declared by ~~AMPCI Macquarie Infrastructure Management No. 2 Limited~~ DUET Management Company 2 Limited (ABN 99 108 014 062) ~~ABN 15 108 014 062~~ to be the constitution of the Diversified Utility and Energy Trust No 3.

1 Name of Trust

- 1.1 The Trust is called the Diversified Utility and Energy Trust No 3 or such other name as the Trustee determines from time to time¹.
- 1.2 If the Trustee retires or is removed, its successor as Trustee must, unless otherwise approved by the former Trustee, change the name of the Trust to a name that does not imply an association with the former Trustee or its business.

2 Assets held on trust and activities of Trust

Assets held on trust

- 2.1 The Trustee must hold the Assets on trust for Members².
- 2.2 The Assets vest in the Trustee, but must be clearly identified as property of the Trust and held separately from the assets of the Trustee and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

Activities of Trust

- 2.3 The Trust has been established for the sole purpose of investing in instruments and shall not invest or engage in any other investments or activities except with the approval of all of the Unit Holders.

3 Units, Classes and Options

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations and restrictions attaching to any particular Units or Class:

¹ See Corporations Regulation 5C.1.02.

² See section 601FC(2) of the Corporations Act.

³ See section 601FC(1)(i) of the Corporations Act.

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- (a) each Fully Paid Unit confers an equal undivided interest;
 - (b) a Unit confers an interest in the Assets as a whole, subject to the Liabilities;
 - (c) a Unit does not confer an interest in a particular Asset; and
 - (d) all Units in a Class rank equally.

Classes

- 3.3 The Trustee may create and issue Classes with such rights, obligations and restrictions attaching to the Units of such Classes as it determines in accordance with the Corporations Act and the Listing Rules.
- 3.4 Without limiting clause 3.3, the Trustee may create and issue a Class with:
 - (a) rights to convert to another Class;
 - (b) certain terms and conditions (for example, a distribution rate or the ratio at which the Units convert to the other Class) which may be reset by the Trustee at particular times or in particular circumstances;
 - (c) a fixed distribution rate to apply for a period;
 - (d) preferential participation in distributions and on termination of the Trust;
 - (e) preferred rights to particular categories or sources of income;
 - (f) restricted rights to participate in new Unit issues; and
 - (g) such other rights, obligations and restrictions as the Trustee determines.

Options

- 3.5 The Trustee may create and issue Options on such terms and conditions as the Trustee determines.
- 3.6 Subject to the Corporations Act the terms of any possible ASIC relief and the Listing Rules, if the Trustee is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Trustee is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia and New Zealand.
- 3.7 On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.
- 3.8 Subject to this constitution, the Corporations Act, the terms of any applicable ASIC Relief and the Listing Rules, the Trustee may determine that Options will be issued:
 - (a) for consideration or no consideration;

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- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Trustee (in which case the exercise price may be less than the price that would otherwise apply under this constitution by a percentage not exceeding 50%) or the price is determined in accordance with clause 4.10; and
 - (c) conferring on the Option Holder such other entitlements under this constitution as the Trustee determines,

and otherwise on terms and conditions and with such entitlements determined by the Trustee.

- 3.9 While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.

Fractions of Units

- 3.10 Fractions of a Unit may not be issued.
- 3.11 Subject to this constitution, where any calculation performed under this constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is to be rounded down or up respectively to the nearest whole Unit.
- 3.12 Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

Consolidation and division of Units and Options

- 3.13 Units and Options may be consolidated or divided as determined by the Trustee.
- 3.14 While Stapling applies, Units may only be consolidated or divided if the related Attached Securities are also consolidated or divided at the same time and to the same extent.

Transfer of Units and Options

- 3.15 Subject to this clause 3, Members may transfer Units (or while Stapling applies, Stapled Securities) and may also transfer Options subject to their terms and conditions.
- 3.16 Transfers must be in a form approved by the Trustee and be presented for Registration duly stamped as required by law.
- 3.17 A transfer is not effective until Registered.
- 3.18 While the Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Units (or while Stapling applies, Stapled Securities) which are Restricted Securities during the applicable escrow period.
- 3.19 Subject to the Listing Rules, while the Listing Rules apply, the Trustee may refuse to record any transfer in the Register without giving any

reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.18.

- 3.20 While Stapling applies, and subject to the Corporations Act and the Listing Rules, the Trustee must not record any transfer of Units in the Register unless it is a single instrument of transfer of Stapled Securities.
- 3.21 While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category at that time.

Partial takeover transfers of Units and Options

- 3.22 (Resolution required for partial takeover transfers) Notwithstanding clauses 3.15 to 3.21 (Transfer of Units and Options), if offers are made under a proportional takeover bid for Units and/or Options of the Trust in accordance with the Corporations Act:
- (a) clauses 3.22 (Resolution required for partial takeover transfers) to 3.27 (Takeover articles cease to have effect) apply;
 - (b) the registration of a transfer giving effect to a takeover contract resulting from acceptance of an offer made under the takeover bid is prohibited unless and until a resolution (an **Approving Resolution**) to approve the bid is passed in accordance with clauses 3.23 (Procedure for resolution) and 3.24 (Persons entitled to vote); and
 - (c) the directors of the Trustee must ensure that a resolution to approve the bid is voted on in accordance with articles 3.23 (Procedure for resolution) to 3.25 (Resolution passed or rejected) before the fourteenth day before the last day of the bid period.
- 3.23 (Procedure for resolution) The directors of the Trustee may determine whether the Approving Resolution is voted on:
- (a) at a meeting of persons entitled to vote on the resolution convened and conducted, subject to the provisions of article 3.24 (Persons entitled to vote), as if it were a meeting of Members convened and conducted in accordance with this Constitution and the Corporations Act with such modifications as the directors of the Trustee determine the circumstances require; or
 - (b) by means of a postal ballot conducted in accordance with the following procedure:
 - (i) a notice of postal ballot and ballot paper must be sent to all persons entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such lesser period as the

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- directors of the Trustee determine the circumstances require;
- (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a person entitled to receive them does not invalidate the postal ballot or any resolution passed under the postal ballot;
 - (iii) the notice of postal ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the directors of the Trustee consider appropriate;
 - (iv) each ballot paper must specify the name of the person entitled to vote;
 - (v) a postal ballot is only valid if the ballot paper is duly completed and:
 - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
 - (B) if the person entitled to vote is a corporation, executed under seal or as permitted by the Corporations Act or under the hand of a duly authorised officer or duly authorised attorney;
 - (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power or authority certified as a true copy by statutory declaration is or are received by the Trustee before close of business on the date specified in the notice of postal ballot for closing of the postal ballot at the registered office or Trust registry or at such other place as is specified for that purpose in the notice of postal ballot; and
 - (vii) a person may revoke a postal ballot vote by notice in writing to be received by the Trustee before the close of business on the date for closing of the postal ballot.
- 3.24 (Persons entitled to vote) The only persons entitled to vote on the Approving Resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class Units and/or Options (whichever is applicable). Each person who is entitled to vote is entitled to one vote for each bid class Units and/or Options (whichever is applicable) held by that person at that time. Neither the bidder nor any associate of the bidder is entitled to vote on the Approving Resolution.
- 3.25 (Resolution passed or rejected) If the resolution is voted on in accordance with clauses 3.22 (Resolution required for partial takeover

transfers) to 3.24 (Persons entitled to vote) then it is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is to be taken to have been rejected.

- 3.26 (Resolution taken as passed) If a resolution to approve the bid has not been voted on as at the end of the day before the fourteenth day before the last day of the offer period, then a resolution to approve the bid is taken to have been passed in accordance with clauses 3.23 (Procedure for resolution) to 3.25 (Resolution passed or rejected).
- 3.27 (Takeover articles cease to have effect) Clauses 3.22 (Resolution required for partial takeover transfers) to 3.26 (Resolution taken as passed) cease to have effect on the day three years after the later of their adoption or last renewal.

Joint tenancy

- 3.28 Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

Legal interest

- 3.29 Subject to the Corporations Act, only the persons Registered are recognised as having any interest in a Unit or Option.

Death, legal disability of Member

- 3.30 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) or any other person determined by the Trustee are recognised as having any claim to Units and Options Registered in the Member's name.

Certificates

- 3.31 No certificates will be issued for Units or Options.

Information from Members

3.32 Each Member must provide to the Trustee any information requested by the Trustee (**Required Information**) in a notice sent to the Member (a **Required Information Request**).

3.33 Subject to clause 3.34:

- (a) the Trustee may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
- (b) each Member authorises the Trustee to use Required Information in any way, including providing it to third parties.

3.34 The Trustee may only issue a Required Information Request if it believes the Required Information is necessary to:

- (a) comply with any law of Australia (including AML Legislation) or any other jurisdiction or a request for information by a

Government Authority where that request is binding on the Trustee; or

(b) avoid amounts being withheld from any payments to the Trust or any Member; or

(c) lessen the risk of the Trust or any Member suffering a material detriment (whether or not financial).

and the Required Information Request specifies a reasonable period within which the Member must provide the Requested Information.

3.35 If any Required Information is not provided by the Member within the time and in the manner specified in a Required Information Request then, despite any other provision of this constitution, the Member must indemnify the Trustee for any Loss suffered by the Trustee in relation to the Member's failure to provide the Required Information.

3.36 Each Member undertakes that any payment of money by the Trustee in accordance with instructions provided by the Member (or any agent of the Member) will not breach any law of Australia or any other jurisdiction.

3.37 The Trustee may enter into agreements with any Government Authority in any jurisdiction where the Trustee believes it is reasonably necessary to do so to:

(a) avoid amounts being withheld from any payments to the Trust or any Member; or

(b) lessen the risk of the Trust or any Member suffering a material detriment (whether or not financial).

This includes any agreement with the United States Internal Revenue Service under Chapter 4 of subtitle A of the Internal Revenue Code of 1986.

3.39 If the Trustee is required to provide any information about Members under any agreement made with a Government Authority then, to the extent permitted by Law, each Member consents to the Trustee providing that information.

4 Entry Price for Units⁴

4.1 Without limiting clause 4.12 and subject to clause 21.1 and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Entry Price calculated as:

(a) in the case of a proportionate issue (including a rights issue) while Units are Officially Quoted, in accordance with clause 4.7;

⁴ Required to be included by Section 601GA(1)(a) of the Corporations Act.

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- (b) in the case of a non proportionate issue (such as a placement of Units) while Units are Officially Quoted, in accordance with clause 4.10;
 - (c) in the case of a reinvestment of distributions while Units are Officially Quoted, in accordance with clause 4.11;
 - (d) in the case of Units issued subsequent to the exercise of an Option, in accordance with clause 3.8;
 - (e) subject to paragraphs (a), (b), and (c), in all other cases while Units are Officially Quoted as part of a Stapled Security, in accordance with clauses 4.2 and 4.8;
 - (f) subject to paragraphs (a), (b), (c) and (e), in all other cases while Units are Officially Quoted, the weighted average Market Price of Units during the ten ASX business days immediately prior to the date on which or as at which the Entry Price is to be calculated;
 - (g) in all other cases while Units are not Officially Quoted:

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

For the purposes of the formulas in this clause 4.1, “Net Asset Value”, “Accrued Income”, “Transaction Costs”, “number of Fully Paid Units on issue” and “Relevant Fraction” are each that proportion of those variables that the Trustee properly determines is referable to the Class to which the Unit for which the Entry Price is being calculated belongs.

- 4.2 Where clause 4.1(e) applies, a Stapled Security must only be issued at an application price for the Stapled Security of the weighted average Market Price of a Stapled Security during the 10 ASX Business Days immediately prior to the date upon which or as at which the Entry Price is to be calculated.
- 4.3 Each of the variables in clause 4.1(d) must be determined as at the last Valuation Time in the Distribution Period to which the distribution relates.
- 4.4 Each of the variables in clause 4.1(g) must be determined as at the next Valuation Time after:
 - (a) the Trustee receives or is deemed to receive the application for Units; or
 - (b) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,
 whichever happens later.
- 4.5 If permitted by law, the Entry Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1% of the Entry Price.

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- 4.6 For the purposes of clause 4.4 the day and time of receipt of an application for Units is:
- (a) the time of actual receipt if the application is received before the Prescribed Time on a Business Day; or
 - (b) the time of deemed receipt if the application is deemed to be received before the Prescribed Time on a Business Day; or
 - (c) the commencement of business on the next following Business Day if the application is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

Proportionate Issue

- 4.7 While Units are Officially Quoted, the Trustee may (subject to the terms of any applicable ASIC Relief) offer Units for subscription at a price determined by the Trustee to those persons who were Members on a date determined by the Trustee not being more than 30 days immediately prior to the date of the offer, provided that:
- (a) all Members are offered Units at the same Entry Price on a pari passu basis (whether or not the right of entitlement is renounceable);
 - (b) all of the Units so offered are in the same Class;
 - (c) where Units are Officially Quoted as part of a Stapled Security and it is proposed to issue Stapled Securities at an application price less than the Market Price of a Stapled Security on a day not more than 5 ASX Business Days prior to the date on which an Offer Document pursuant to which the offer is made is lodged with ASIC or, in the case of an Alternative Rights Offer, the date on which the offer is announced to the ASX, the aggregate of the relevant Entry Price and the application price of Attached Securities is not less than 50% of the Market Price of a Stapled Security as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC or, in the case of an Alternative Rights Offer, the date on which the offer is announced to the ASX;
 - (d) in all other cases, where it is proposed to issue Units at an Entry Price less than the Market Price of a Unit on a day not more than 5 ASX Business Days prior to the date on which an Offer Document pursuant to which the offer is made is lodged with ASIC or, in the case of an Alternative Rights Offer, the date of the Offer Document under which the offer is made, the relevant Entry Price is not less than 50% of the Market Price of a Unit as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC or, in the case of an Alternative Rights Offer, the date of the Offer Document under which the offer is made;

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- (e) while Stapling applies, the same Members are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered,

but, subject to the Listing Rules, the Corporations Act and any applicable ASIC Relief, the Trustee is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia or New Zealand.⁵

While Stapling applies, any offer of Units under this clause 4.7 may only be accepted if the offeree accepts that offer of Units, as well as the offer of Attached Securities referred to in paragraph (e) of this clause 4.7 at the same time.

The Trustee may adjust any entitlement to accord with the Listing Rules and in the case of fractions, the Trustee must offer the next higher whole number of Units. Any Member may, unless the terms of issue provide otherwise, renounce its entitlement in favour of some other person.

Any Units offered under this clause 4.7 which are not subscribed for within the period during which the offer is capable of acceptance may be offered for subscription by the Trustee to any person, provided that:

- (i) where paragraph (c) of this clause 4.7 applies, the aggregate of the relevant Entry Price and the application price of Attached Securities is not less than that at which the Stapled Securities were originally offered to holders of Stapled Securities; and
- (ii) where paragraph (d) of this clause 4.7 applies, the Entry Price is not less than that at which the Units were originally offered to Members.

If an underwriter has underwritten an offer for subscription under this clause, the underwriter may take up any Units not subscribed for by the Unit Holder at the Entry Price referred to in sub-clause (i) or (ii) above.

Determination by Trustee while Stapling applies

4.8 Where:

- (a) Stapling applies; and
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (c) this constitution contains a provision for the calculation or determination of the application price for the Stapled Security but not for the Unit;

⁵ Assumes the Trustee is able to comply with the conditions in Listing Rule 7.7.1

the Trustee must determine what part of the application price of a Stapled Security is to represent the Entry Price of the Unit for the purposes of this constitution.

Minimum subscription

- 4.9 Where an Offer Document specifies a minimum subscription in respect of an issue of Units, no Units shall be issued until the minimum subscription has been raised. If the minimum subscription is not subscribed or the Trustee otherwise decides not to proceed with the issue of Units, the full amount paid by each subscriber (less any applicable financial institutions duty, bank account debits tax and other tax) will be reimbursed and shall be repaid to the subscriber.

Placements and other issues

- 4.10 While Units are Officially Quoted, subject to the Corporations Act and the Listing Rules, the Trustee may at any time issue Units to any person whether by way of placement or otherwise, at a price and on terms determined by it, provided that:
- (a) the Trustee complies with the Listing Rules applicable to the issue and any applicable ASIC Relief⁶, except that in the case of the 2009 Placement, the Trustee may issue Stapled Securities at an issue price of \$1.30 per Stapled Security;
 - (b) while Stapling applies, the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered;
 - (c) in the case of Units issued upon the exercise of an Option, the price will be determined in accordance with this constitution and the terms and conditions of the Option;
 - (d) in respect of a placement, if Member approval or ratification of the issue is sought:
 - (i) the Members who hold interests in the same Class approve the issue by a Placement Resolution;
 - (ii) unless the Trustee reasonably considers that the proposed placement will not adversely affect the interests of Members holding Units in another Class (nor the interests of persons holding interests of any other kind in the Trust) – Members holding Units in that other Class (or persons holding interests of any other kind in that Trust) approve the proposed placement by a Placement Resolution; and
 - (iii) any notice convening a meeting to vote on a proposed Placement Resolution contains particulars of the use to be made of the money raised by the issue.

⁶ See ASIC Class Order CO 05/26 and clause 4.2

For the purposes of this clause 4.10(d), "**Placement Resolution**" means a special resolution in relation to the approval or ratification of a placement of Units by the Trustee where:

- (a) votes are only cast in respect of interests (the "**Eligible Interests**"):
 - (i) that are held by a Member who will not (or did not) acquire any of the interests that are to be (or were) issued; or
 - (ii) that are held by a Member for the benefit of another person who will not (or did not) obtain any beneficial ownership of any of the interests that are to be (or were) issued; and
- (b) the value of the Eligible Interests held by the Members who vote represents at least 25% of the total value of Eligible Interests.

While Stapling applies, an offer of Units under this clause 4.10 may only be accepted if the offeree at the same time accepts that offer of Units and the offer of Attached Securities referred to above in this clause 4.10.

For the purposes of this clause 4.10:

"**2009 Placement**" means a placement of Stapled Securities to institutional investors made on or about the same time as the 2009 Entitlement Offer.

"**2009 Entitlement Offer**" means the Alternative Rights Offer of Stapled Securities made or to be made by the Stapled Group to eligible security holders on or about 31 March 2009.

Distribution Reinvestment

4.11

- (a) While Units are Officially Quoted as part of a Stapled Security, the Entry Price payable for each additional Unit issued or transferred on reinvestment of distributions (if any) is to be determined in accordance with this clause 4.11(a) and clause 4.8. Where the previous sentence applies, a Stapled Security must only be issued at the average of the daily volume weighted average price of all sales of Stapled Securities recorded on the ASX during the Pricing Period (but not including sales arising from any Excluded Transactions) (unless the Trustee reasonably determines that this calculation does not provide a fair reflection of the market price of the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Stapled Securities as determined by an appropriately qualified and experienced

expert independent of the Trustee, whose identity and instructions will be determined by the Trustee) less such discount, if any, not exceeding 10% as the Trustee may determine from time to time.

- (b) In all other cases while the Units are Officially Quoted, the Entry Price payable for each additional Unit on reinvestment of distributions (if any) is the average of the daily volume weighted average price of all sales of Units of that Class recorded on the ASX during the Pricing Period (but not including sales arising from any Excluded Transactions) less such discount, if any, not exceeding 10% as the Trustee may determine from time to time.
- (b) The Trustee may arrange for any offer for subscription of Units on reinvestment of distributions under this clause to be fully or partly underwritten from time to time by any person.

For the purposes of this clause 4.11:

- (i) "Pricing Period" means in respect of a particular distribution the period of 10 Trading Days (or such other period of not less than 5 Trading Days as the Trustee may determine), ending on the 5th Trading Day prior to the date scheduled for payment of that distribution (or such other date as the Trustee may determine).
- (ii) "Excluded Transaction" means each of the following:
 - (A) a transaction classified under the ASX Market Rules as a "Special Crossing";
 - (B) a crossing prior to the commencement of normal trading;
 - (C) a crossing during the closing phase and after hours adjust phase;
 - (D) any overseas trade or trade pursuant to the exercise of options over Stapled Securities;
 - (E) any overnight crossing; and
 - (F) any other sale which the Trustee considers may not be fairly reflective of natural supply and demand.
- (iii) "Trading Day" means a day that is a trading day for the purposes of the ASX Market Rules and which is a full day on which Stapled Securities are quoted on ASX and not suspended from quotation or made subject to a trading halt.

- 4.12 In addition to any other power the Trustee has to issue Units or Options, while the Trust is Listed, the Trustee may at any time issue

Units or Options to any person on terms determined by it, provided that:

- (a) the price at which the Units or Options are offered or are to be issued (and the price at which Units are to be issued on exercise of the Options) is:
 - (i) an amount determined by the Trustee under clause 4.8 based on the Determined Issue Price of a Stapled Security on a Relevant Day; and
 - (ii) in the case of an issue price of an Option, the Determined Issue Price of that Option on a Relevant Day;
- (b) the Trustee complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC relief; and
- (c) while Stapling applies, any offer of Units which are to be issued pursuant to this clause 4.12 must be accompanied by a contemporaneous and corresponding offer of Attached Securities and the offer is capable of acceptance only if the recipient takes up an identical number of Units and Attached Securities.

POWERS

4.13 ~~NOT USED~~ If Stapled Securities are issued consequent upon an Exchange of POWERS, the Entry Price for the Stapled Securities is to be the product of the Reference Price and one minus the Exchange Discount.

4.14 ~~Despite anything else in this Constitution, the Trustee may issue Units to any person on the terms set out in, and otherwise in accordance with, the product disclosure statement and prospectus dated on or about June 2007 and issued by the Trustee and other entities within the Stapled Group provided that:~~

- ~~(a) the price at which such Units are offered or are to be issued is an amount determined by the Trustee under clause 4.8 based on the Determined Issue Price of a Stapled Security on a Relevant Day; and~~
- ~~(b) clause 4.12 (c) shall apply as if it were set out in full in this sub-paragraph,~~

~~and, for the purposes of this clause, the defined terms used in this clause and the application of clause 4.8 to this clause, the Trustee shall be entitled to assume that the Units are quoted and are Stapled to the units in Diversified Utility and Energy Trust No 1 (ARSN 109 363 037) and the units in the Diversified Utility and Energy Trust No 2 (ARSN 109 363 135) and the shares in DUET Investment Holdings Limited (ACN 120 456 573).~~

5 Application for Units or Options

Application form

- 5.1 An applicant for Units or Options must complete a form approved by the Trustee and give it to the Trustee if the Trustee so requires. The form may be transmitted electronically if approved by the Trustee.

Payment

- 5.2 Payment in respect of an application in a form acceptable to the Trustee, or a transfer of property of a kind acceptable to the Trustee and able to be vested in the Trustee or a custodian appointed by it (accompanied by a recent valuation of the property acceptable to the Trustee, if the Trustee requires), must:
- (a) accompany the application;
 - (b) be received by or made available to the Trustee or the custodian within such period before or after the Trustee receives the application form as the Trustee determines from time to time or as the terms and conditions of the relevant Option contemplate; or
 - (c) comprise a reinvestment of distribution in accordance with clause 10.10.

Stapling

- 5.3 While Stapling applies, an applicant for Units must at the same time make an application for an identical number of Attached Securities.

Amount of payment

- 5.4 For the purposes of clause 5.2 and subject to clause 8.2:
- (a) payment in respect of a Unit must be an amount equal to the Entry Price; and
 - (b) transfer of property in respect of a Unit must have a value equal to the Entry Price plus any costs associated with the transfer of the property incurred or likely to be incurred by the Trustee if the Trustee so requires.

Trustee may reject

- 5.5 Subject to clause 5.6, the Trustee may reject an application in whole or in part without giving any reason for the rejection.

Trustee must reject

- 5.6 While Stapling applies, the Trustee must reject an application for Units if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

Minimum amounts

- 5.7 Subject to the Corporations Act, the Trustee may set a minimum application amount and a minimum holding for the Trust or in respect

of particular Classes or circumstances, and alter or waive those amounts at any time.

Issue date

- 5.8 Units which are issued (other than Units which are issued on a reinvestment of distribution in accordance with clause 10.10) are taken to be issued when:
- (a) the Trustee accepts the application; or
 - (b) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,
- whichever happens later.

Uncleared funds

- 5.9 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Trustee within 5 Business Days of the date the Units are taken to be issued in accordance with clause 5.8 or such other period as the Trustee determines.

Transfer of application money or property to sub-trust

- 5.10 Notwithstanding clauses 4.4, 4.6, 5.2, 5.4 and 5.8 the Trustee may determine that the application money or property against which Units are to be issued is to be vested in the trustee of a trust in which the Trustee has a direct or indirect interest rather than the Trustee itself.
- 5.11 If the Trustee makes a determination under clause 5.10, clauses 4.4, 5.2 and 5.8 apply as if references to receiving or vesting of application money or property in the Trustee were references to receiving or vesting of application money or property by the trustee of the relevant trust.

Holding statements

- 5.12 Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.

6 Withdrawal Price of Units⁷

- 6.1 Subject to clauses 8.4 and 9.3 and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be redeemed at a Withdrawal Price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units on issue} + \text{Relevant Fraction}}$$

⁷ Required to be included by Section 601GA(4) of the Corporations Act.

For the purposes of the formula in this clause 6.1, “Net Asset Value”, “Transaction Costs”, “number of Fully Paid Units on issue” and “Relevant Fraction” are each that proportion of those variables that the Trustee properly determines is referable to the Class to which the Unit for which the Withdrawal Price is being calculated belongs.

- 6.2 Each of the variables in clause 6.1 must be determined:
- (a) while the Trust is Liquid - as at the next Valuation Time after the Trustee receives the withdrawal request; or
 - (b) while the Trust is not Liquid - at the time the withdrawal offer closes.
- 6.3 The Withdrawal Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1% of the Withdrawal Price.
- 6.4 For the purposes of clause 6.2 the day and time of receipt of a withdrawal request is:
- (a) the time of actual receipt if the request is received before the Prescribed Time on a Business Day; or
 - (b) the time of deemed receipt if the request is deemed to be received before the Prescribed Time on a Business Day; or
 - (c) the commencement of business on the next following Business Day if the request is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

7 Withdrawal procedures⁸

Request for withdrawal

- 7.1 A Member may make a withdrawal request for the redemption of some or all of their Units in any manner and on such conditions as approved by the Trustee.
- 7.2 A Member may not withdraw a withdrawal request unless the Trustee agrees.
- 7.3 The Trustee is not obliged to give effect to a withdrawal request. However:
- (a) the Trustee may facilitate the purchase of the Units the subject of a withdrawal request by another interested Eligible Person; and
 - (b) the Trustee may, subject to the Corporations Act, decide to give effect to the withdrawal request⁹, in which case it will do

⁸ These procedures must be fair to all Members: Section 601GA(4) of the Corporations Act.

so in accordance with the applicable provisions of this clause 7.

- 7.4 If clause 7.3(a) applies and an Eligible Person wishes to purchase any Units the subject of a withdrawal request, then, subject to the Corporations Act, the Trustee may determine (at the request of a Member or otherwise) that the purchase is to be effected by the redemption of the Units and the issue of the same number of Units to the purchaser (in each case at the agreed price for the issue of Units and the agreed price for the redemption of Units), rather than by a transfer of the Units. If the Trustee makes a determination, the purchase may only be effected in that manner and clauses 7.5 to 7.14 do not apply.

When Trust is Liquid¹⁰

- 7.5 Clauses 7.6, 7.7 and 7.8 apply only while the Trust is Liquid¹¹.
- 7.6 If the Trustee decides to give effect to a withdrawal request it must do so at the time and in the manner set out in this clause 7.
- 7.7 The Trustee may decide to satisfy a withdrawal request either in relation to all or some of the Units which are the subject of the request.
- 7.8 If the Trustee decides to give effect to a withdrawal request it must satisfy the withdrawal request by payment from the Assets of the Withdrawal Price calculated in accordance with this constitution. The payment must be made within a reasonable period.

When Trust is not Liquid¹²

- 7.9 Clauses 7.10 to 7.14 apply only while the Trust is not Liquid.
- 7.10 A Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee under the Corporations Act and this constitution regulating offers of that kind¹³.
- 7.11 If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.12 The Trustee may make a withdrawal offer by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
 - (b) giving a copy to the Members or Members of a Class.¹⁴

However, the Trustee is not at any time obliged to make a withdrawal offer.

⁹ There is no legal requirement to offer a right of withdrawal. When setting up a new trust the Trustee can choose whether or not to offer such a right. For a registered scheme, if a right is offered, it must be specified in the constitution.

¹⁰ Required to be included by Section 601GA(4)(b) of the Corporations Act.

¹¹ For definition of a liquid scheme see Section 601KA of the Corporations Act.

¹² Required to be included by Section 601GA(4)(c) of the Corporations Act.

¹³ Refer sections 601KB to 601KE of the Corporations Act.

¹⁴ Subject to Section 601FC(1)(d) of the Corporations Act.

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- 7.13 The Trustee may cancel a withdrawal offer by:
- (a) publishing a notice of cancellation by any means (for example in a newspaper or on the internet); or
 - (b) notice in writing to the Members to whom the withdrawal offer was made.¹⁵
- 7.14 If the Trustee receives a withdrawal request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Clauses applicable to all withdrawals

- 7.15 The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- 7.16 Subject to the Corporations Act, the Trustee need not give effect to a withdrawal request in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amounts as determined by the Trustee from time to time unless the withdrawal request relates to the balance of the Member's holding.
- 7.17 Subject to the Corporations Act, if compliance with a withdrawal request would result in the Member holding Units with an aggregate Withdrawal Price which is less than the then current minimum holding amount, the Trustee may treat the withdrawal request as relating to the balance of the Member's holding.
- 7.18 If a Member holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount, the Trustee may redeem that Member's holding without a withdrawal request.
- 7.19 If the Trustee increases the minimum holding amount, the Trustee may after giving 30 days' notice to a Member who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount redeem that Member's holding without the need for a withdrawal request.

Discretionary withdrawal

- 7.20 If the Trustee is not obliged to give effect to a withdrawal request, it may in any event, redeem some or all of the Units which are the subject of the request¹⁶.
- 7.21 The Trustee may at any time cause the redemption of any or all of a Member's Units.

Sums owed to Trustee

- 7.22 The Trustee may deduct from the proceeds of withdrawal or money paid pursuant to a withdrawal offer any money due to it by the Member.

¹⁵ Subject to Section 601FC(1)(d) of the Corporations Act.

¹⁶ Subject to section 601FC(1)(d) of the Corporations Act.

Transfer of Assets

- 7.23 The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the withdrawal request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Trustee requires, some or all of the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

Withdrawal while Stapling applies

- 7.24 While Stapling applies:
- (a) a Member who makes a withdrawal request must at the same time make a withdrawal request for the Attached Securities; and
 - (b) the Trustee may not redeem a Unit unless the Attached Securities are redeemed or bought back and cancelled or the Attached Securities are unstapled from the Unit to be redeemed.

On market buy-backs

- 7.25 While the Units are Officially Quoted the Trustee may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units (or where Stapling applies, Stapled Securities) to be cancelled. No Withdrawal Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Trustee may only buy back and cancel the Units if the Attached Securities are also bought back and cancelled at the same time. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Trustee must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.
- 7.26 While the Units are Officially Quoted the Trustee may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 7.10, in which case clauses 7.10 to 7.19 apply in relation to the withdrawal offer. Where the Units comprise part of Stapled Securities the Trustee may only redeem the Units if the Attached Securities are redeemed at the same time.

Application of Clause 7 while Units are Officially Quoted

- 7.27 While the Units are Officially Quoted:

-
- (a) Clauses 7.1, 7.2 and 7.10 to 7.19 apply only to the extent provided for in clause 7.26;
 - (b) clauses 7.20 to 7.26 apply; and
 - (c) the other provisions of clause 7 do not apply.

8 Partly paid Units

Partly paid Units

- 8.1 The Trustee may determine that any Unit or Class of Units is to be partly paid. If it does so, the following provisions of this clause 8 apply.

Subscription Amount

- 8.2 For the purposes of clause 5.2:
 - (a) payment in respect of a Unit must be an amount equal to the Subscription Amount; and
 - (b) transfer of property in respect of a Unit must have a value equal to the Subscription Amount, plus any costs associated with the transfer of the property incurred or likely to be incurred by the Trustee if the Trustee so requires.

Withdrawal Price

- 8.3 For so long as Units are partly paid, the Uncalled Amount must be deducted from the Withdrawal Price calculated under clause 6.1.

Calls by Trustee regarding Uncalled Amounts

- 8.4 If there is an Uncalled Amount in respect of a Unit, the Trustee may:
 - (a) call on a Member to pay all or any part of the Uncalled Amount, subject to the rights, obligations and restrictions attaching to any Units or Class; and
 - (b) only make such a call if it also makes the same call on all other Members who hold Units of that Class which are similarly partly paid.

Unpaid call

- 8.5 If a call under clause 8.4 remains unpaid, the Trustee may give the Member a notice requiring payment by a nominated date of any part of the Uncalled Amount together with interest determined in accordance with clause 8.5 from the date the call was due.
- 8.6 The interest rate is the higher of 25% per annum and the Market Rate plus 5% per annum and is calculated on the daily balance and accrues daily unless the Trustee determines otherwise.

Forfeiture

- 8.7 If the notice under clause 8.5 is not complied with by the nominated date:

-
- (a) the Trustee may determine that the Unit (including any accrued income) (together with the Attached Securities) is forfeited from the nominated date; and
 - (b) subject to the Listing Rules, the Corporations Act and this constitution, all voting rights, entitlements to the distribution of income and other rights in connection with the Unit and the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Trustee.

8.8 If any Attached Security is forfeited, the Trustee may forfeit the Unit to which it is Stapled.

Forfeited Units may be disposed of

8.9

- (a) The Trustee may dispose of a forfeited Unit (together with the Attached Securities) in such manner as it determines.
- (b) The Trustee must use reasonable endeavours to ensure that the disposal price of the Unit is at least the Entry Price at the date of the disposal less the then Uncalled Amount.
- (c) Proceeds of disposal must be applied in the following order:
 - (i) to the payment of costs and expenses of the forfeiture and disposal;
 - (ii) to unpaid interest; and then
 - (iii) to any unpaid amount in respect of which the notice in clause 8.5 was given,

and any balance is an Asset of the Trust.

Trustee may Register

8.10 The Trustee may execute a transfer of the forfeited Unit (together with the Attached Securities) in favour of the purchaser or its nominee, and register the purchaser or its nominee as the holder of the Unit (together with the Attached Securities), and the Member authorises the Trustee and appoints the Trustee as its attorney to do so.

Remaining liability

8.11 The Member whose Unit was forfeited ceases to be a Member from the nominated date referred to in clause 8.5 but remains liable to pay to the Trustee:

- (a) all unpaid amounts in respect of the forfeited Units;
- (b) the costs and expenses of the forfeiture and disposal; and
- (c) interest on the unpaid calls at the rate determined under clause 8.6 from the date of forfeiture,

but their liability in respect of the matters listed at (a), (b) and (c) above (but not otherwise) ceases if and when the Trustee receives payment in full of all amounts owing in respect of the Unit(s).

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- 8.12 The purchaser of a forfeited Unit remains liable to pay the amount equal to the Uncalled Amount (if any) on the Unit in accordance with this constitution.

Cancelling forfeiture

- 8.13 The Trustee may cancel forfeiture before the Units are disposed of on such terms as it determines, and must do so if the Member pays the amounts owing in respect of the Units.

Income Distributions in relation to partly paid Units

- 8.14 For the purposes of a distribution under clause 10, a partly paid Unit must be counted as a fraction of a Unit of which the numerator is the amount paid-up in respect of the Unit for the relevant Distribution Period and of which the denominator is the total Entry Price for that Unit, rounded on such basis as the Trustee determines.

Stapling

- 8.15 While Stapling applies:
- (a) Units may not be issued partly paid unless there is at the same time a corresponding issue of Attached Securities which are also partly paid; and
 - (b) a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

9 Valuation of assets

- 9.1 The Trustee may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.¹⁷
- 9.2 The Trustee may determine Net Asset Value at any time, including more than once on each day.
- 9.3 The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value¹⁸. Where the Trustee values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Trustee must be capable of resulting in a calculation of the Entry Price or Withdrawal Price that is independently verifiable.

10 Income and distributions to Members

Distributable income

- 10.1 The Trustee must determine the Distributable Income and the Income of the Trust for each Financial Year.

¹⁷ See section 601FC(j) of the Corporations Act. for Scheme Operator's obligations concerning valuation

¹⁸ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

- 10.2 Distributable Income for a Financial Year will be the amount the Trustee determines to be the distributable income. Unless the Trustee in its discretion otherwise determines, the Distributable Income will be:
- (a) the amount which if distributed in cash to Members for the period would prevent the Trustee being liable to tax on the income of the Trust under section 99 or section 99A of the Tax Act for the Financial Year as if the period is a year of income; and
 - (b) any additional amount whether income or capital which the Trustee considers appropriate for distribution for the period.
- 10.3 The Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

Present entitlement

- 10.4 A person who at any time during the Financial Year is or has been a Member, is presently entitled to the Distributable Income of the Trust for the Financial Year, in the proportion that the Income Distributions made to the Member in respect of the Financial Year bear to the sum of the Income Distributions made to all persons who are or have been Members at any time during the Financial Year.

Income Distributions

- 10.5 An Income Distribution in respect of a Member for a Distribution Period means an amount calculated by the Trustee as follows:

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

where

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and
- C is the Distribution Amount for the Distribution Period.

Satisfaction of present entitlement

- 10.6 The present entitlement of a Member to the Distributable Income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within three months after the Distribution Calculation Date. Notwithstanding any other provision of this constitution, a Member cannot be defeated of any share of the Distributable Income to which the Member is presently entitled under clause 10.4.

Other distributions

- 10.7 The Trustee may at any time distribute an amount (whether capital or income) to Members pro rata according to the number of Units held as at a time decided by the Trustee. The distribution may be in cash, by way of additional Units or by a distribution of Assets.

Stapling

- 10.8 While Stapling applies, the Trustee may not make a distribution by way of additional Units under clause 10.7 unless at the same time as the increase in the number of Units, the Members subscribe for or purchase an identical number of Attached Securities which when issued or acquired (respectively) are then Stapled to the additional Units issued.

The Trustee may provide for and pay on behalf of Members all or part of the subscription or purchase price for such Attached Securities out of the amount available to be distributed.

Separate accounts

- 10.9 The Trustee may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members or Classes.

Reinvestment

- 10.10 The Trustee may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units. If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest distributions on the first Business Day after the distribution is paid at an Entry Price determined in accordance with clause 4.1 and the terms of the distribution reinvestment plan.

- 10.11 While Stapling applies, no reinvestment under clause 10.10 may occur unless at the same time as Members are issued with additional Units, Members are issued with or are transferred an identical number of Attached Securities which are then stapled to the additional Units issued.

The Trustee may provide for and pay on behalf of Members all or part of the application money for such Attached Securities out of the amount otherwise available for reinvestment.

- 10.12 If the Trustee decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

Position on transfer of Units

- 10.13 A person registered as a Member on a Distribution Calculation Date is to receive the Income Distribution for the distribution period notwithstanding a transfer or transmission of Units after the Distribution Calculation Date.

Classes

- 10.14 The rights of a Member under this clause 10 are subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.
- 10.15 The Trustee may effect a distribution to Members by distributing Assets to all Members rather than paying in cash or issuing additional Units. If the Trustee wishes to do so, subject to clause 29.1 the Trustee must effect the distribution to all Members in the same way. The Assets distributed to each Member must be of the same type, have the same rights and be fully paid. The Assets distributed may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be distributed to Members (or a nominee on behalf of a Member), each Member irrevocably appoints the Trustee to act as their agent and attorney to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Member to give effect to the distribution of Assets, including:
- (a) to agree to obtain the Assets; and
 - (b) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme and to consent to the entry of the name of the Member in the register of members of a company or managed investment scheme and so far as permitted by law, to supply any information, notices and elections held by it in respect of the Member to such company or the responsible entity or trustee of such managed investment scheme (or their advisers or service providers).

The Assets distributed, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within three months before the date of the proposed distribution). If the Trustee requires, the costs involved in distributing those Assets must be paid by the Member or deducted from the distribution due to the Member.

11 Payments

General

- 11.1 Money payable by the Trustee to a Member may be paid in any manner the Trustee decides.

Cheques

- 11.2 Cheques issued by the Trustee that are not presented within 6 months or such lesser period as determined by the Trustee may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the Entry Price prevailing at the next Valuation Time after the cheque is cancelled.

Unsuccessful payment

- 11.3 Where the Trustee attempts to make a payment to a Member and is unsuccessful, any amounts to be paid to that Member after the failure

of the attempt may be reinvested by the Trustee on behalf of the Member without attempting again to make payment to the Member.

Fractions of cents

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

Joint Members

- 11.5 A payment to any one of joint Members discharges the Trustee in respect of the payment.

Tax and amounts owing

- 11.6 The Trustee may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Trustee or any other person,

which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Trustee considers should be deducted.

12 Powers of the Trustee

General powers

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

Contracting powers¹⁹

- 12.2 Without limiting clause 12.1, the Trustee in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and/or debt facilities, hedging arrangements, convertible notes and derivatives), to grant all types of security (whether for obligations of the Trustee or another person) and to incur all types of obligations and liabilities, including guarantees and indemnities.

Investment powers

- 12.3 Without limiting clause 12.1, but subject to clause 2.3, the Trustee in its capacity as trustee of the Trust may invest in, partition, dispose of or otherwise deal with property and rights in its absolute discretion.²⁰

¹⁹ Required to be included by Section 601GA(3) of the Corporations Act.

²⁰ Subject to Section 601FC(4) of the Corporations Act.

Power of delegation²¹

- 12.4 The Trustee may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold any Asset or title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.
- 12.5 The Trustee may include in the authorisation provisions to:
- (a) protect and assist those dealing with the agent or delegate; and
 - (b) limit the Trustee's liability,
- as the Trustee thinks fit.
- 12.6 The agent or delegate may be an associate of the Trustee.²²
- 12.7 Without limiting clause 12.1, the Trustee may engage any person to underwrite the subscription or purchase of Units or to manage an offer of Units on such terms as the Trustee determines. Notwithstanding clause 20.6, any Underwriting Liabilities or Offer Management Liabilities of the Trustee are an expense of the Trust, provided the Trustee has, in relation to those Underwriting Liabilities or Offer Management Liabilities, acted in good faith and without wilful default. This clause applies whether the underwriting agreement or the agreement to manage the offer of Units was entered into before the date of effect of this constitution or otherwise.
- 12.8 Unless the agreement between the Trustee and the underwriter or offer manager expressly states the contrary intention, the underwriter or the offer manager (as the case may be) will not be an agent or delegate of the Trustee.

Exercise of discretion

- 12.9 Subject to this constitution, the Trustee may in its absolute discretion decide how and when to exercise its powers.

Power to unstaple Units

- 12.10 If Units comprise part of Stapled Securities, subject to the Corporations Act and the Listing Rules and to approval by Resolution, the Trustee may at any time apply to have the Stapled Securities unstapled and, if the Stapled Securities are Officially Quoted, removed from quotation.

Power to staple additional Securities

- 12.11 The Trustee may, subject to the Corporations Act and the Listing Rules, cause the Stapling of any other security or securities to the Units.

²¹ See also Section 601FB. of the Corporations Act.

²² Subject to Part 5C.7 of the Corporations Act.

- 12.12 The Trustee is empowered to execute all documents and do all things that it considers to be necessary, desirable or reasonably incidental to give effect to the Stapling of any other security or securities to the Units including consolidating or dividing the Units, without needing further authority or approval from Members.
- 12.13 The Trustee is irrevocably appointed the agent and attorney of each Member to execute all documents and do all things which it reasonably considers are necessary or desirable to be done on behalf of Members to give effect to the Stapling of any security or securities to the Units, including making distributions (whether of cash or securities or any other asset) to or on behalf of a Member, applying for or purchasing-acquiring securities on behalf of a Member, transferring securities to a Member (including, without limitation, by way of an in specie distribution), agreeing to become a member of the company or managed investment scheme issuing the securities or whose securities are being acquired or transferred and consenting to the entry of the name of the Member in the register of members of the company or managed investment scheme issuing the securities or whose securities are being acquired or transferred and, so far as permitted by law, to supply any such company or responsible entity or trustee of such managed investment scheme (or their advisers or service providers) information, notices and elections relating to that Member.

Registration and Listing of the Trust

- 12.14 Without limiting clause 12.1, the Trustee may in its capacity as trustee of the Trust apply for registration of the Trust as a Registered Scheme, and the Trustee is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.

Listing of the Trust

- 12.15 Without limiting clause 12.1, the Trustee may apply for the Trust to be Listed and Units to be Officially Quoted, including as Stapled Securities, and the Trustee is authorised on its own behalf and on behalf of each Member to do all things necessary to effect the Trust's admission to the Official List.

~~Obligation to enter into a Parent Entities Deed and Stapling Deed~~

- 12.16 ~~NOT USED~~ Without limiting clause 12.1, the Trustee must enter into or accede to, as applicable, the Parent Entities Deed and Stapling Deed.

13 Retirement of Trustee

Voluntary retirement

- 13.1 The Trustee may retire as a responsible entity of the Trust as permitted by law. If permitted by law or any ASIC Relief, the Trustee may appoint a replacement trustee by deed.

Compulsory retirement

13.2 The Trustee must retire when required by law²³.

New Trustee

13.3 Any proposed replacement Trustee must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

Release

13.4 When it retires or is removed, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed.²⁴

14 Notices to Members and Register

14.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be:

(a) ~~given in writing (which includes a facsimile, email or other electronic means) or in such other manner as the Trustee determines, and in the Trustee's discretion:~~

(~~a~~b) delivered or sent to the Member at the Member's address last advised to the Trustee or, if the Trustee determines, to the electronic address or facsimile number last advised to the Trustee or given by telephone; or

(b) delivered or sent by sending a notification to the Member by any other electronic means the Member has nominated by which the Member may (i) be notified that documents are available for access and (ii) access documents.

14.2 A cheque payable to a Member or a person authorised in writing by the Member may be:

(a) posted to the Member's address; or

(b) handed to the Member or a person authorised in writing (including by facsimile) by the Member²⁵; or

(c) delivered to the Member in such other manner as agreed by the Trustee.

14.3 In the case of joint Members, the address, electronic address, or facsimile number or other electronic means of the Member means the address, or electronic address, facsimile number or other electronic means of the Member first named in the Register.

²³ See Section 601FM and 601FA of the Corporations Act.

²⁴ See section 601FR of the Corporations Act for the Scheme Operator's obligation to transfer records, etc. Section 601FS of the Corporations Act restricts this release.

²⁵ See Clause 17.3(c).

- 14.4 Subject to the Corporations Act, a notice, cheque or other communication sent by the Trustee by:
- (a) post is taken to be received on the Business Day after it is posted;
- (b) ~~and a facsimile or other electronic means is conclusively considered to have been received when the fax or other electronic transmission is sent. Any document made available to a Member by electronic means as contemplated by clause 14.1(b) is conclusively considered to have been received when notification that the document is available for access by that means is sent.~~ ~~is taken to be received immediately upon receipt by the transmitter of confirmation of transmission from the receiving facsimile machine.~~ Proof of actual receipt is not required. The Trustee may determine²⁶ the time at which other forms of communication will be taken to be received.
- 14.5 Subject to the Corporations Act, a single register may be kept in which details of the holders of Units and the holders of Attached Securities are recorded.
- 14.6 The signature to any notice or other communication by the Trustee may be written, printed, stamped or produced electronically and the signature may be that of the Trustee or of any director or secretary of the Trustee.

15 Notices to the Trustee

- 15.1 A notice required under this constitution to be given to the Trustee must be given in writing (which includes a facsimile), or in such other manner as the Trustee determines. A written notice given to the Trustee must be legible.
- 15.2 The notice is effective only at the time of receipt unless the Trustee determines another time at which a form of communication is taken to be received.
- 15.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member²⁷ unless the Trustee dispenses with this requirement.

16 Resolutions of Members

Corporations Act

- 16.1 This clause 16 is subject to the Corporations Act.²⁸

²⁶ See Section 252G(4) of the Corporations Act.

²⁷ See Clause 17.3(c).

²⁸ Refer Part 2G.4 of the Corporations Act.

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- 16.2 The Trustee may at any time convene a meeting of Members or of a Class of Members, and must do so if required by the Corporations Act.²⁹

Trustee may determine

- 16.3 Subject to this clause 16 the Trustee may determine the time and place at which a meeting of Members or a Class of Members will be convened and the manner in which the meeting will be conducted.

Notice

- 16.4 A meeting of Members or a Class of Members must be convened by notice in writing sent to every Member entitled to attend and vote. The notice of meeting need not set out the terms of any resolution. Despite section 252G(3) of the Corporations Act, the Trustee may give a notice of meeting in accordance with clause 14 and despite section 252G(4) of the Corporations Act, a notice of meeting will be taken to be sent in accordance with clause 14.

Proxies

- 16.5 The Trustee may:
- (a) determine that an appointment of a proxy is valid even if it contains only some of the information required under the Corporations Act; and
 - (b) establish procedures for accepting appointments of proxy by electronic means, including procedures for authentication of an appointment other than by signature.
- 16.6 While Stapling applies, subject to the Corporations Act, the form of the proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

Non-receipt

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

No quorum

- 16.8 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
 - (b) otherwise - adjourned to such place and time as the Trustee decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Chairman

- 16.9 The Trustee may appoint a person to chair a meeting of Members.

²⁹ Refer Part 2G.4 of the Corporations Act.

16.10 The decision of the chairman on any matter relating to the conduct of the meeting is final.

16.10A At any meeting of Members where the chairman is to be elected by Members (including under sections 252C, 252D or 252E of the Corporations Act) (an *Elected Chair*) the Trustee must appoint a person to facilitate convening the meeting and appointing an Elected Chair (the *Interim Chair*). The Interim Chair must endeavour to ensure that an Elected Chair is appointed as quickly as possible. Until the Elected Chair is appointed, the Interim Chair is taken to be the chairman for all purposes and has all the powers, duties and discretions of a chairman at a meeting of Unit Holders. The powers of the Interim Chair include determining how to call for nominations of an Elected Chair and the election process.

Adjournment

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

Other attendees

16.12 The Trustee may invite any person to attend and speak at a meeting.

Resolutions binding

16.13 A Resolution by:

- (a) Members binds all Members; or
- (b) Members of a Class, binds all Members of that Class,

whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

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

Minutes

16.15 The minutes of a meeting of Members or Members of a Class signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

Stapling

16.16 While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Trustee may make such rules for the conduct of such meetings as the Trustee determines.

16.17 While Stapling applies, the auditor and the representatives of each Stapled Entity may attend and speak at any meeting or invite any other person to attend and speak.

17 Rights and liabilities of Trustee

Trustee may not hold Units

- 17.1 The Trustee may not hold Units or Options in the Trust in any capacity³⁰ and may not become a beneficiary under the Trust.

Other capacities

- 17.2 Subject to the Corporations Act³¹, the Trustee (and its associates) may:
- (a) deal with itself (as trustee of the Trust or in another capacity), any Stapled Entity, any other Group Entity, an associate, any Member or with any other person;
 - (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), any Stapled Entity, any other Group Entity, an associate, any Member or with any other person and retain for its own benefit any profits or benefits derived from any such contract or transaction;
 - (c) act in the same or a similar capacity in relation to any similar scheme or any other managed investment scheme; and
 - (d) deal with any other entity in which the Trustee holds an investment on behalf of the Trust,

and in each case the Trustee or any associate may retain for its own benefits all profits or benefits derived from that activity.

Associates of the Trustee may hold Units or Options in any capacity.

Trustee may rely

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

³⁰ See Section 601FG, Section 253E and Part 5C.7 of the Corporations Act.

³¹ Refer Part 5C.7 of the Corporations Act.

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

Rating

- 17.4 The Trustee may arrange to have the Trust given a credit rating by a Ratings Agency.
- 17.5 During such period as a credit rating is maintained in respect of the Trust the Trustee must comply with all undertakings given or made to the Ratings Agency from time to time in order to maintain any credit rating assigned to the Trust provided that the obligation of the Trustee to comply with such undertakings will at all times be subject to the following:
- (a) the undertakings given or made to the Ratings Agency must not be inconsistent with the powers of the Trustee in relation to making investments of, or otherwise dealing with, Assets as provided for in this constitution;
 - (b) compliance with those undertakings does not constitute a breach of the duties of the Trustee contained in this constitution or imposed by any relevant statute or regulation from time to time; and
 - (c) compliance with those undertakings does not limit any protection, benefit or indemnity conferred on the Trustee under this constitution.
- 17.6 The Trustee may notify the Ratings Agency of its intention to cease to have the Trust assigned a credit rating. Such notice is effective when served on the Ratings Agency and the credit rating will cease to be assigned to the Trust after the expiration of ninety (90) days from the date of service of such notice on the Ratings Agency or such lesser period as agreed between the Trustee and the Ratings Agency.

After the expiration of the notice period referred to in this clause 17.6, the Trustee will be released from any undertakings given or made to the Ratings Agency.

Voting

- 17.7 Subject to the Corporations Act, and without limiting clause 12.1, the Trustee may exercise all voting rights conferred by the Assets in its absolute discretion.

Trustee's duties in relation to Stapling

- 17.8 Notwithstanding any other provision of this constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the Trustee may, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Members of the Trust and the members of the Stapled Entities as a whole and not only to the interests of the Members of the Trust alone.

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- 17.9 The reference in clause 17.8 to exercising any power or discretion includes carrying out the Trustee's functions and duties and identifying Members' rights and interests.

18 Limitation of liability and indemnity in favour of Trustee

Limitation of liability

- 18.1 Subject to the Corporations Act, if the Trustee acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 18.2 Subject to the Corporations Act, the liability of the Trustee to any person other than a Member in respect of the Trust (including any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Trustee's ability to be indemnified from the Assets.

Indemnity in favour of Trustee

- 18.3 The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³². This indemnity applies notwithstanding the existence of an unrelated breach of trust.
- 18.4 To the extent not prohibited by the Corporations Act³³, the indemnity under clause 18.3 includes any liability incurred by the Trustee as a result of any act or omission of a delegate or agent appointed by the Trustee.
- 18.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Trustee retires or is removed as trustee of the Trust.

19 Liability of Members

Liability limited

- 19.1 Subject to clauses 19.3 and 19.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 19.2 A Member need not indemnify the Trustee if there is a deficiency in the Assets or meet the claim of any creditor of the Trustee in respect of the Trust.
- 19.3 The Trustee is entitled to be indemnified by a Member or former Member to the extent that the Trustee incurs any liability for Tax or User Pays Fees as a result of:
- (a) the Member's or former Member's action or inaction; or
 - (b) any act or omission requested by the Member or former Member.

³² See Section 601GA(2) of the Corporations Act.

³³ See Sections 601FB(2) and 601GA(2) of the Corporations Act.

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- 19.4 Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax or User Pays Fees to which clause 19.3 applies.

Recourse

- 19.5 In the absence of a separate agreement with a Member in this regard, the recourse of the Trustee and any creditor is limited to the Assets.

Restrictions on Members

- 19.6 A Member:
- (a) must not interfere with any rights or powers of the Trustee under this constitution;
 - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (c) may not require an Asset to be transferred to the Member.

20 Remuneration and expenses of Trustee

Application Fee

- 20.1 Whilst the Trust is unlisted, and subject to the Corporations Act, the Trustee is entitled to be paid by the applicant in respect of each application for Units in the Trust which it accepts a fee of 2% of the application money. When calculating the number of Units to be issued, the application fee must first be deducted from the value of the application money.

Base Management Fee

- 20.2
- (a) Subject to the Corporations Act, the Trustee is entitled to be paid out of the Assets a management fee of up to \$500,000 per year to be used to pay the Trustee's costs, including all overheads and whether incurred directly by the Trustee or reimbursed by the Trustee to any of its related bodies corporate in providing its services as Trustee, for which it is not otherwise reimbursed pursuant to clause 20.7 as from the Listing Date to the Base Fee in respect of each Quarter. The Base Fee for a Quarter is to be calculated by the Trustee as at the Quarter End Date for the relevant Quarter. The Base Fee for a Quarter is payable in cash promptly after calculation by the Trustee of the Base Fee for a Quarter. The amount of the Base Fee payable to the Trustee in respect of a Quarter is to be reduced by the amount of the base fee paid by a Stapled Entity in respect of that Quarter which, in the absence of such payment, would have been payable to the Trustee pursuant to this clause 20.2.
 - (b) This fee is payable from time to time upon demand by the Trustee. The Trustee may make a demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs.

- (c) The entitlement to this fee commences on and from the Fee Commencement Date and continues to the date of final distribution in accordance with clause 22.3.
- (d) The Trustee is entitled to remuneration for the period up to (and including) 30 September 2012 in the manner calculated pursuant to the former clause 20.2 which was replaced by this clause 20.2.
- (e) The Trustee must produce a statement within 1 month from the end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

Performance Fee

20.3 NOT USED

- (a) ~~Subject to the Corporations Act, the Trustee is entitled to be paid a Performance Fee as from the Listing Date equal to 20% of the amount (if any) by which the Return in respect of any Half Financial Year exceeds the Benchmark Return for that Half Financial Year.~~
- (b) ~~As the Performance Fee is to be calculated on the basis of the relative performance of the Stapled Securities while Stapling applies, the amount of the Performance Fee payable from the Assets shall be reduced by the amount (if any) of any performance fee payable by a Stapled Entity to the Trustee or any of the Trustee's related bodies corporate in respect of the Half Financial Year which, in the absence of such payment, would have been payable to the Trustee pursuant to clause 20.3(a).~~
- (c) ~~The Performance Fee is to be not less than zero. If the Return for a Half Financial Year is less than the Benchmark Return for that Half Financial Year the shortfall is to be carried forward and deducted from the Return for the next Half Financial Year or, if necessary, Half Financial Years for the purpose of calculating future Performance Fees until the shortfall is fully deducted.~~
- (d) ~~If a Performance Fee is payable in respect of a Half Financial Year, subject to the Corporations Act and the Listing Rules, the Trustee shall be entitled to nominate another person to subscribe for that number of Units, or while Stapling applies, that number of Stapled Securities equal to the amount of the Performance Fee divided by the volume weighted average trading price of all Units or Stapled Securities (as the case may require) traded on the ASX during the last 20 Trading Days of the relevant Half Financial Year and apply the Performance Fee in payment of the Entry Price of those securities. The Units or Stapled Securities must be issued as soon as reasonably practicable after the end of the Half Financial Year. To the extent that~~

~~the Performance Fee to which the Trustee is entitled under this clause 20.3 is not applied in the purchase of Units or Stapled Securities, it may be paid in cash to the Trustee out of the Assets.~~

Change of Trustee

20.4 ~~NOT USED~~ If a Trustee retires or is removed from its office, then, unless the retiring Trustee agrees otherwise, clauses 20.2 and 20.3 have effect as if:

(a) ~~in the case of clause 20.2, the date of retirement or removal is the last day of a Quarter; and~~

(b) ~~in the case of clause 20.3, the date of retirement or removal is the last day of a Half Financial Year.~~

~~The next period for fee calculation purposes will become the period from the date of retirement or removal to the last day of the current period if this clause 20.4 did not apply.~~

Transaction Fees

20.5 In addition to the fees under clauses 20.2 and 20.3, the Trustee is entitled to fees for transaction services provided in respect of acquisitions, disposals and any other dealings with Assets (including financing, whether by way of debt or equity, advisory or underwriting functions for which the Trustee might otherwise engage an external adviser). Fees payable under this clause 20.5 must be on arms-length terms.

Waiver of fees

20.6 The Trustee may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. The Trustee may do so in relation to a Class or Members generally. Where payment is deferred, the fee accrues daily until paid.

Expenses

20.7 All expenses incurred by the Trustee in relation to the proper performance of its duties in respect of the Trust³⁴ are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes those expenses permitted as expenses by other provisions of this constitution and the following expenses and expenses connected with following (for the avoidance of doubt, the following expenses are examples only and are not intended to limit the expenses which may be payable or reimbursable out of the Assets):

(a) this constitution and the formation of the Trust and registration of the Trust as a Registered Scheme;

³⁴ Refer Section 601GA(2)(b) of the Corporations Act.

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- (b) the preparation, review, distribution and promotion of any Offer Document in respect of Units and/or Stapled Securities or other promotion of the Trust or the Stapled Securities;
 - (c) the acquisition, disposal, insurance, custody, development, project management, leasing and any other dealing with Assets;
 - (d) analysis or investigations of any potential or proposed acquisition, disposal or other dealing with an investment;
 - (e) having the Trust credit rated;
 - (f) the administration, management, promotion or valuation of the Trust or its Assets and Liabilities;
 - (g) the maintenance of the Register;
 - (h) the Trust's Listing and compliance with the Listing Rules;
 - (i) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members (written or otherwise) and attending any meeting of a Stapled Entity;
 - (j) Tax;
 - (k) financial institution fees and bank fees;
 - (l) the engagement of agents, valuers, contractors and advisers (including legal advisers and accountants) whether or not the agents, valuers, contractors or advisers are associates of the Trustee;
 - (m) preparation and audit of the taxation returns and accounts of the Trust;
 - (n) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;
 - (o) any court proceedings, arbitration or other dispute including proceedings against the Trustee, except to the extent that the Trustee 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 clause 20.7(o) must be repaid;
 - (p) the compliance committee established by the Trustee in connection with the Trust (if any), including any fees paid to or insurance premiums³⁵ in respect of compliance committee members;
 - (q) ~~while there is no compliance committee and the Trust is a Registered Scheme, any fees, costs and expenses associated with the board of directors of the Trustee carrying out the~~

³⁵ See Section 601JG of the Corporations Act.

~~functions which would otherwise be carried out by a compliance committee, including any fees paid to, including:~~

- ~~(i) any fees paid or payable to the directors of the Trustee which, together with any fees paid under the equivalent provision of any Stapled Entity, must not exceed in aggregate \$1,900,000 per annum or such greater amount as the Members in general meeting determine; and~~
- ~~(ii) any expenses reimbursed to, or insurance premiums paid in respect of, the external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;~~
- (r) the preparation (if any), implementation, amendment and audit of the compliance plan;
- (s) complying with any law, and any request or requirement of ASIC;
- (t) brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring, or agreeing to procure subscription for Units or Options; and
- (u) Underwriting Liabilities and Offer Management Liabilities; and
- ~~(v) the Parent Entities Deed.~~

Deferral and waiver

20.8 The Trustee may:

- (a) defer reimbursement for an agreed period; or
- (b) waive the right to be reimbursed in respect of,

any or all expenses or any part thereof under clause 20.7. Where reimbursement is deferred, the expense (or part) accrues daily until paid.

Sums owed to the Trustee

20.9 The Trustee may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

Class Expenses

20.10 Subject to the Corporations Act, where a Class of Units is on issue the Trustee may make a determination that an expense, or part of an expense, is to be a Class Expense in relation to a Class; but if no determination is made under this clause, any expense under clause 20 is to be referable to all Units on an equal basis.

GST

20.11 The User Pays Fees and the fees payable to the Trustee under this constitution do not include any amount referable to GST. If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including the supply of any

goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Trustee shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

21 Duration of the Trust

Initial settlement

- 21.1 The Trust commences when the Initial Member subscribes for, and is issued, issued with 497,075,902 Units (the *Initial Units*). The Initial Units will be partly paid Units with a Subscription Amount of \$0.01 per Unit and an aggregate Entry Price equal to the Initial Price.

Termination

- 21.2 The Trust terminates on the earliest of:
- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Members; and
 - (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁶.

Restriction on issue and redemption of Units

- 21.3 Despite any other provisions in this constitution, no Units may be issued or redeemed after the expiry of the perpetuity period specified in clause 21.4, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

Perpetuity Period

- 21.4 For the purposes of clause 21.3 and section 5 of the *Perpetuities and Accumulations Act 1968 (Vic)*, the Trustee declares that the perpetuity period is the period from the commencement of the Trust until the date which is the 80th anniversary of the day preceding the day the Trust commenced. The specification in this clause 21.4 does not require that the Trust be wound up (and the Assets realised) on the expiry of that period.

22 Procedure on termination

Realisation of Assets

- 22.1 Following termination, the Trustee must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that. The Trustee may, however, postpone realisation of the Assets or any Asset if the Trustee considers it would be in the best interests of Members to do so, and the Trustee is not responsible for any consequent loss.

³⁶ See Part 5C.9 of the Corporations Act on winding up

Audit of winding up

- 22.2 If and to the extent that ASIC policy so requires, the Trustee must arrange for independent audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

- 22.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), meeting the expenses (including anticipated expenses) of the termination and satisfying Income Distributions, must be distributed, subject to the rights, obligations and restrictions attaching to any particular Units or Classes pro rata to Members according to the number of Units they hold. A Partly Paid Unit must be counted as a fraction of a Unit of which the numerator is the amount paid-up in respect of the Unit and of which the denominator is the total Entry Price for that Unit, rounded on such basis as the Trustee determines.

The Trustee may distribute proceeds of realisation in instalments.

- 22.4 Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 22.3, but during that period the Trustee may not accept any applications for Units from a person who is not an existing Member or satisfy any withdrawal requests.

23 Amendments to this constitution

Trustee may amend

- 23.1 Subject to the Corporations Act³⁷ this constitution may be amended:
- (a) by Resolution; or
 - (b) by deed executed by the Trustee:
 - (i) if each Member consents in writing to the amendment; or
 - (ii) otherwise, if the Corporations Act allows.

If the Constitution is amended by Resolution, the Trustee may give effect to the amendments by executing a supplemental deed.

- 23.2 Despite anything in clause 23.1, clause 17.1 is unalterable and may not be amended.

Official Quotation

- 23.3 While Units in the Trust are Officially Quoted, the Trustee and each Member must comply with the provisions of the Listing Rules relevant to them.
- 23.4 While the Trust is Listed, the following provisions apply:

³⁷ See Section 601GC of the Corporations Act for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with ASIC.

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- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
 - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
 - (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
 - (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

23.5 In accordance with ASIC class order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 23.4 is not a modification of, or the repeal and replacement of, the constitution for the purposes of sub-sections 601GC(1) and (2) of the Corporations Act.

Statutory requirements

23.6 If the Corporations Act or any ASIC Relief requires that this constitution contain certain provisions, then those provisions:

- (a) are deemed to be incorporated into this constitution at all times at which, and to the extent to which, they are required to be included; and
- (b) prevail over any other provisions of this constitution to the extent of any inconsistency.

24 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act³⁸.

³⁸ See section 601JF

25 ~~US Tax Matters~~NOT USED

- ~~25.1 — The Trustee undertakes to use every reasonable endeavour to procure that the Trust be classified, for United States federal income tax purposes, as a partnership and not as an association or a publicly traded partnership taxable as a corporation.~~
- ~~25.2 — Subject to clause 25.3, the Trustee must appoint a person to act as a tax matters partner for the Trust for United States federal income tax purposes. If the person so appointed retires or resigns, the Trustee must immediately appoint a replacement tax matters partner.~~
- ~~25.3 — The tax matters partner appointed under clause 25.2 must be a Unit Holder (or otherwise known to the Trustee as a beneficial owner of Units) and, for as long as there are United States Persons on the Register (or otherwise known to the Trustee as beneficial owners of Units), a United States Person (provided that if there are United States Persons on the Register (or otherwise known to the Trustee as beneficial owners of Units) but none of those persons are willing or able to be appointed as a tax matters partner for any reason, and the Trustee obtains the consent of any relevant regulatory authority, the Trustee may appoint a Unit Holder who is not a United States Person as the tax matters partner).~~

26 Complaints

If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Trustee a complaint alleging that the Member has been adversely affected by the Trustee's conduct in its management or administration of the Trust, the Trustee:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Trustee as appropriate to handle complaints;
- (c) must 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 third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and

-
- (e) must communicate to the complainant as soon as practicable and in any event not more than 90 days after receipt by the Trustee of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

27 Restricted Securities

- 27.1 Clause 27.2 only operates:
 - (a) while the Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 27.2; and
 - (b) to the extent that it is not inconsistent with the Corporations Act.
- 27.2 During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution of Income from the Trust, nor any voting rights, in respect of those Units.

28 Stapling

When Stapling occurs

- 28.1 The provisions of this constitution relating to Stapling take effect on and from the Stapling Commencement Date.

Paramourncy of Stapling provisions

- 28.2 The provisions of this constitution relating to Stapling:
 - (a) apply subject to all other provisions of this constitution which may suspend, abrogate or terminate Stapling; and
 - (b) otherwise, prevail over all other provisions of this constitution, including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

Consistency with constitution

- 28.3 The Trustee undertakes to use every reasonable endeavour to procure that Attached Securities are dealt with under this constitution in a manner consistent with the provisions relating to Attached Securities in the constitution of another Stapled Entity.

Stapling - general intention

- 28.4 The Units are intended to be Stapled to the Attached Securities in the ratio of one Unit to one Attached Security. The intention is that so far as the law permits, a Unit and an Attached Security which are Stapled

together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Units the intention is that, so far as the law permits, a Unit and one each of the Attached Securities which are stapled together shall be treated as one Security.

29. Sale Facility

Sale facility

- 29.1 Subject to the Corporations Act and the Listing Rules, the Trustee shall be entitled to invoke the procedure in clauses 28.2 and 28.3 in respect of any Foreign Member if the Trustee proposes to distribute Assets in the form of securities or interests in managed investment schemes under clause 10.15 or Staple Attached Securities to the Units under clause 12.11.
- 29.2 On either the Distribution Calculation Date or the Stapling Commencement Date (**Transfer Date**):
- (a) each Foreign Member will have transferred to the Cashout Bank:
 - (i) in respect of a distribution of Assets in the form of securities, the securities that they would have been entitled to receive under the distribution; or
 - (ii) in respect of the Attached Securities to be Stapled to the Units and existing Attached Securities, the unencumbered beneficial and legal title to all Units and existing Attached Securities registered in their name on that date; and
 - (b) the Cashout Bank will become the legal and beneficial owner of the Transfer Securities under clause 28.2(a) without need for any further act by the Foreign Member. For the avoidance of doubt, the Cashout Bank will not be acting as a trustee, custodian, nominee or agent in respect of the Transfer Securities (whether for the purpose of distributions to be paid on those Transfer Securities or any sale or transfer of those Transfer Securities or otherwise).
- 29.3 On the Transfer Date the Trustee must procure that the Cashout Bank:
- (a) on, or as soon as reasonably practicable after the Transfer Date, sells the Transfer Securities; and
 - (b) pays or arranges for the payment of the Transfer Securities Price to the Foreign Member within 30 days of the Transfer Date in consideration for the Transfer Securities transferred under clause 28.2. The Cashout Bank's obligation to make such payment will be satisfied upon payment of the Transfer Securities Price to the Trust registry, for payment to the relevant Foreign Member within 30 days of the Transfer Date.

Liability of Trustee

- 29.4 The Trustee shall have no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the

Trustee doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the transfer of Assets under clause 10.15, stapling of Attached Securities under clause 12.11 or the implementation of the Sale Facility provided for in clauses 28.2 and 28.3.

30. References to Corporations Act and Listing Rules

Corporations Act

- 30.1 Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a Registered Scheme.

Listing Rules

- 30.2 Any provision of this constitution which is expressed to apply subject to the Listing Rules shall only be read as subject to the Listing Rules while the Trust is admitted to the Official List.

31 Interpretation

Definitions

- 31.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Alternative Rights Offer: a rights offer pursuant to sections 708AA and/or 1012DAA of the Corporations Act as notionally modified by ASIC Class Order 08/35.

ASX Business Day: a business day as defined in the Listing Rules.

Accrued Income: the Income Distribution for all Members of the Trust in respect of the Distribution Period in which the application is deemed to be received.

Acquisition Price: in the case of a Unit acquired by way of issue or transfer, the Entry Price paid (or taken to have been paid under clause 20.2 for the Unit on issue, plus any amounts paid pursuant to calls on that Unit.

~~**Aggregate Entry Amount:** in respect of an Issue of Units of a Member, the sum of the number of Units in the Issue, multiplied by the Acquisition Price paid for each Unit in the Issue.~~

~~**Aggregate Unit Value:** in respect of a Financial Year, the sum of the number of Units on issue at the Financial Year End Date multiplied by Entry Price paid (or taken to have been paid under clause 20.2(d)) for each Unit.~~

~~**Aggregate Weighted Unit Value:** in respect of a Financial Year, the sum of the number of Units on issue for the duration of the Financial Year multiplied by the Entry Price paid (or taken to have been paid under clause 20.2(d)) for each Unit (weighted to reflect the number of days in the Financial Year that each Unit was on issue).~~

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

Approving Resolution: a resolution to approve a proportional takeover bid for Units and/or Options (whichever is applicable) of the Trust as described in clause 3.22(b).

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief: a declaration, modification or exemption from the provisions of the Corporations Act granted by ASIC.

Assets: all the property, provisions, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of withdrawal which have not yet been paid or any amount in the distribution account.

ASX: ASX Limited.

Attached Securities: any unit in a trust or security which is from time to time Stapled or to be Stapled to a Unit.

AUD Exchange Rate means the hedge settlement rate (USD/AUD) published by the Reserve Bank of Australia and available on the website at the following internet page:
www.rba.gov.au/statistics/exchange_rate.html.

Auditor: the auditor appointed by the Trustee to audit the accounts of the Trust from time to time.

~~**Average Bond Rate:** for a date, the average of the Bond Rates applicable during the 5 Business Days immediately prior to the date.~~

~~**Base Fee:** in respect of a Quarter, an amount calculated for the duration of the Quarter at the rate of 1% per annum of the Net Investment Value as at the last day of that Quarter.~~

~~**Benchmark Return:** the amount calculated by the Trustee in respect of a Half Financial Year in accordance with the following formula:~~

$$BR = X \times \frac{Y - Z}{Z}$$

~~Where:~~

~~BR = the Benchmark Return for the Half Financial Year;~~

~~X = means the same as item "A" in the definition of Return;~~

~~Y = the average of the daily closing S&P/ASX 200 Industrials Accumulation Indices over the last 20 Trading Days of the Half Financial Year as reported by the Reporting Agency; and~~

~~Z = the average of the daily closing S&P/ASX 200 Industrials Accumulation Indices over the last 20 Trading Days of the previous Half Financial Year as reported by the Reporting Agency.~~

~~**Benchmark Yield:** in respect of a Financial Year:~~

- ~~(a) ending before the date the Trust is Listed, the Average Bond Rate for the date determined by the Trustee as being the completion date of the transactions by which the initial investments of the Trust (described in the first offer document in relation to the Trust) are acquired; and~~
- ~~(b) ending after the date the Trust is Listed, the Average Bond Rate for the date the Trust is Listed.~~

~~**Bond Rate:** for a date, the average mid rate yield for the 5 Year Treasury Fixed Coupon Bond as displayed on the relevant page of the web site of the Reserve Bank of Australia at 9am on the next Business Day (or if the yield is not displayed on the web site by 10:30am on the next Business Day, or if it is displayed but there is an obvious error in the yield, the average yield for the 5 Year Treasury Fixed Coupon Bond for the date as determined by the Trustee from such other source as it may reasonably select).~~

~~**Business Day:**~~

- ~~(a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; and~~
- ~~(b) any other day specified by the Trustee to be or not to be a business day for the purposes of this definition.~~

~~**Cashout Bank:** means an Australian Financial Services Licence holder with sufficient authority and expertise to sell the Transfer Securities.~~

~~**Class:** a class of Units.~~

~~**Class Expense:** in relation to a Class, an expense or a proportion of an expense determined by the Trustee to be referable to the Class in accordance with clause 20.9.~~

~~**Committed:** in relation to an investment, having entered into a legally binding contractual commitment to make the investment where:~~

- ~~(a) the investment has not been completed; but~~
- ~~(b) all conditions precedent to completion of the investment which are solely within the control of the Trust or, while Stapling applies, any Stapled Entity have been satisfied or waived.~~

~~**Compliance Committee Member:** a member of a compliance committee established by the Trustee in connection with the Trust.~~

~~**Corporations Act:** the Corporations Act 2001 (Cwlth).~~

Date of Delisting means whichever is the first to occur of the following:

- (a) ~~the date when the Stapled Securities or the POWERS are removed from the Official List; or~~
- (b) ~~if the Stapled Securities or the POWERS are suspended from trading by the ASX for a continuous period of 20 ASX Business Days, the day following that day.~~

Determined Issue Price: of a Relevant Security on a particular day means:

- (a) the issue price obtained for Relevant Securities pursuant to a bookbuild arranged by a reputable merchant or investment bank which is independent of the Trustee or, where more than one merchant or investment bank will arrange a bookbuild, at least one of which is independent of the Trustee, all with experience in arranging bookbuilds in the Australian equity markets or the equity market into which the Relevant Security is to be sold, provided that independent advisers appointed by the Trustee (which may include, among others, a Valuer or an Auditor) have provided written certification to the Trustee that:
 - (i) the bookbuild was conducted in accordance with normal market practice for bookbuilds;
 - (ii) the issue price obtained pursuant to the bookbuild is a fair issue price for the Relevant Securities (or, to the extent that the Trustee is issuing a component of the Relevant Securities in reliance on the Determined Issue Price, the relevant component of the Relevant Securities) having regard to the matters set out in subparagraphs (b)(iv) to (vii) below; or
- (b) an amount (which in the case of an Option is the amount or amounts at which the Relevant Security will be issued either on issue of the Option or on exercise of the Option or both) determined by an adviser who:
 - (i) is independent of the Trustee;
 - (ii) is qualified to determine and has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the issue price of the Relevant Security is being made; and
 - (iii) certifies the amount in writing to the Trustee and confirms that in determining the amount the adviser has had regard to the matters set out in paragraphs (iv) to (vii) below,

as being a fair issue price of the Relevant Security, having regard to:

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- (iv) the nature and size of the proposed offer for which purpose the issue price of a Relevant Security is being calculated;
 - (v) the circumstances in which the proposed offer of the Relevant Security will be made;
 - (vi) the interests of security holders generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising; and
 - (vii) the valuation methods and policies applied by the adviser must be capable of resulting in a calculation of the Determined Issue Price that is independently verifiable.

In circumstances where the adviser determines the issue price of an Option, the adviser must also determine the amount of the issue price which should be allocated to the issue price of an interest in the Trust. In so doing, the adviser should rely on the procedures and methodology used by the Trustee to allocate the Entry Price of a Stapled Security.

If any of paragraphs (a) or (b) in this definition are held to be void, invalid or otherwise unenforceable, it is deemed to be severed from the remainder of this definition, which will remain in full force and effect, and Determined Issue Price must be calculated in accordance with the clause which is not thereby deemed to be severed.

Distributable Income: for a period is the amount determined by the Trustee under clause 10.2.

Distribution Amount: for a Distribution Period will be:

- (a) for a Distribution Period in a Financial Year (other than the last Distribution Period in a Financial Year), so much of the income or capital as the Trustee considers is appropriate for distribution for the Distribution Period; and
- (b) for the last Distribution Period in a Financial Year, the excess of (i) over (ii) for the Distribution Period:

where:

- (i) is Distributable Income for the Financial Year; and
- (ii) is the aggregate of Distribution Amounts for preceding Distribution Periods in the Financial Year.

Distribution Calculation Date: the last day of each Financial Year and such other days as the Trustee designates.

Distribution Period:

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- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
 - (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
 - (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Eligible Person:

- (a) a person to whom Units may be issued without a product disclosure statement under Part 7.9 of the Corporations Act; or
- (b) while the Trust is a Registered Scheme, another person to whom Units may be issued or transferred in compliance with the Corporations Act (including under a product disclosure statement under Part 7.9 of the Corporations Act).

Entry Price: the Unit price determined in accordance with clause 4.

~~**Exchange** means the redemption of POWERS and the issue of Stapled Securities to POWERS Holders in exchange for the POWERS they have redeemed.~~

~~**Exchange Date** means, where a POWERS Holder gives a notice to the POWERS Trustee under the POWERS Terms requesting the POWERS Trustee to Exchange all of part of their holding of POWERS:~~

- ~~(a) at least 30 ASX Business Days (but no more than three months) before a Reset Date, the Reset Date immediately following the giving of the notice; or~~
- ~~(b) after an Exchange Event occurs but no later than 30 Business Days after the publication of the notice regarding the occurrence of the Exchange Event in a daily newspaper circulated throughout Australia, the last Business Day of the month following the month in which the 30 Business Day period after the publication of the notice expires.~~

~~**Exchange Discount** means 5%.~~

~~**Exchange Event** means the occurrence of any of the following events:~~

- ~~(a) the POWERS Trust or either of the Parent Trusts terminates or the POWERS Trustee resolves to terminate the POWERS Trust or a resolution is passed to terminate or wind up a Stapled Entity;~~
- ~~(b) a Court makes an order to wind up the POWERS Trust or any Stapled Entity (other than to effect a solvent reconstruction);~~

- (c) — the members of a Stapled Entity approve a formal or informal scheme of arrangement pursuant to which a Stapled Entity is to merge with any other managed investment scheme or entity or which when implemented, will result in a person having a relevant interest in more than 50% of the Stapled Securities;
- (d) — any of the Stapled Entities sells or agrees to sell all or substantially all of its business undertaking or assets (other than to effect a solvent reconstruction);
- (e) — the Parent Trusts are entitled under the SOLAs to:
 - (i) — declare an acceleration of the moneys owing under the loans from the Parent Trustees to the Initial Asset Holding Companies, pursuant to two or more of the related SOLAs, or exercise any guarantees or other security rights pursuant to two or more of the related SOLAs; or
 - (ii) — declare an acceleration of the moneys owing under one or more SOLAs, or exercise any guarantees or other security rights pursuant to one or more SOLAs, in either case where the aggregate amount owing under those SOLAs is equal to or greater than 50% of the aggregate amount owing under all SOLAs,

but only to the extent that any distributions due and payable to POWERS Holders but deferred in accordance with the POWERS Terms are outstanding on that date;

- (f) — the POWERS are removed from the Official List;
- (g) — any distribution which a POWERS Holders is entitled is not paid in full within 20 ASX Business Days of the date which the relevant distribution first becomes payable under the POWERS Terms;
- (h) — a takeover bid (as defined in the Corporations Act) is made to acquire all or some of the Stapled Securities and the offer is, or becomes, unconditional and the bidder has a relevant interest in more than 50% of the Stapled Securities on issue or the Stapled Entities issue a statement recommending acceptance of the offer;
- (i) — a Date of Delisting occurs.

Exchange VWAP means the VWAP during the period (Reference Period) of 20 Business Days immediately preceding, but not including:

- (a) — if the Stapled Entities receives a notice that a POWERS Holder has requested an Exchange of all of or part of its holding of POWERS following a suspension of trading of the Stapled Securities for more than 20 consecutive ASX Business Days, the first day the POWERS are suspended;

- (b) ~~otherwise, the Exchange Date; and~~
- (c) ~~if the POWERS Trustee gives a notice to redeem the POWERS under sub-clause (d) or (e) below, the date of the announcement of the takeover bid or scheme of arrangement.~~
- (d) ~~If a takeover bid (as defined in the Corporations Act) is made to acquire all or some of the Stapled Securities and the offer in respect of the Stapled Securities is, or becomes, unconditional and:~~
- (i) ~~the bidder has at any time during the offer period a relevant interest in more than 50% of the Stapled Securities on issue; or~~
- (ii) ~~the Stapled Entities issue a statement recommending the acceptance of the offer;~~

~~and the offer period (as defined in the Corporations Act) for the takeover bid and the time within which a POWERS Holder can give a notice requesting an Exchange of all or part of its holding of POWERS under the POWERS Terms has expired; or~~

- (e) ~~If a formal or informal scheme of arrangement or reorganisation or other arrangement having similar effect is approved by the members of the Stapled Entities which, when implemented, will result in a person having a relevant interest in more than 50% of the Stapled Securities and the time within which a POWERS Holder can give a notice requesting an Exchange of all or part of its holding of POWERS under the POWERS Terms has expired.~~

Fee Commencement Date: the date on which the amendments to clause 20.2, as described in the notice of meeting for the meeting of Members in relation to the 2012 internalisation of the management of DUET Group, were effected by supplemental deed and lodged with ASIC.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year End Date;
- (b) for the last financial year, the period from the day immediately following the Financial Year End Date before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on a Financial Year End Date.

Financial Year End Date: 30 June or another financial year end date nominated by the Trustee for tax purposes.

Foreign Member: any Member who is a citizen or resident of a jurisdiction outside Australia and New Zealand or whose address in the register of Members is a place outside of Australia and New Zealand, unless the Trustee is satisfied that it would not be unlawful for the Trust to issue Attached Securities or distribute Assets in the form of securities (as applicable) to the Member either unconditionally or after compliance with conditions which the Trustee in its sole discretion regards as acceptable and not unduly onerous.

Fully Paid Unit: a Unit on which the Entry Price has been fully paid.

~~**Grossed-up Distribution Amount:** in respect of a Financial Year, the aggregate amount of:~~

- ~~(a) — all cash distributions (whether income or capital) made under clause 10 during the Financial Year; and~~
- ~~(b) — the value of all distributions and payments (whether income or capital) which have been made other than in cash (for example, by way of transfer of Assets other than cash or by way of additional Units).~~

~~Any distributions referred to in (a) or (b) which are made on a post-tax basis are to be Grossed Up to a Pre-Tax Dollar Amount.~~

~~**Grossed Up to a Pre-Tax Dollar Amount:** increased for any franking credits and withholding tax or income or other Tax attributed by the Trustee to the distributions or payments.~~

~~**Grossed-up Yield:** in respect of a Financial Year, a percentage yield calculated as the Grossed-up Distribution Amount for the Financial Year divided by the Aggregate Weighted Unit Value for the Financial Year.~~

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

Group Entity: each Stapled Entity, any wholly owned company, trust or other entity, the POWERS Trust and each Investee Entity.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Half Financial Year:

- ~~(a) — for the last half financial year, the period from the day immediately following the Half Financial Year End Date before the Trust terminates to the date of distribution on winding up of the Trust; and~~
- ~~(b) — in all other circumstances, the 6 month period ending on the Half Financial Year End Date.~~

Half Financial Year End Date: ~~30 June or 31 December.~~

Income: for a Financial Year will be the amount the Trustee determines to be the “net income” of the Trust under section 95(1) of the Tax Act for the Financial Year together with the amount described in clause 10.2(b) for the Financial Year.

Income Distribution: in respect of a Member for a Distribution Period, the amount calculated in respect of the Member under clause 10.5.

Initial Asset Holding Companies ~~means United Energy Distribution Holdings Pty Limited (ABN 15 104 381 660) and Alinta Networks Holdings Pty Limited (ABN 63 104 788 123) and Multinet Group Holdings Pty Limited (ABN 83 104 036 937).~~

Initial Member: Trust Company Limited (ACN 004 027 749) as custodian for AMPCI Macquarie Infrastructure Management No.1 Limited (ABN 99 108 013 672) as responsible entity of Diversified Utility and Energy Trust No. 1.

Initial Price means the amount calculated in accordance with the following formula.

$$\text{Initial Price} = \frac{A}{497,075,902}$$

Where A is USD166,098,438.00 converted into Australian dollars using the AUD Exchange Rate as at 4pm (Sydney time) on 19 June 2007.

Investee Entity: each company, trust or other entity in any operating or project group in which the Trust or, while Stapling applies, any Stapled Entity invests or to which the Trust or, while Stapling applies, any Stapled Entity lends money (directly or indirectly).

Issue: of Units, a number of Units issued at the same Entry Price and on the same date.

Liabilities: all present liabilities of the Trust including any provision taken into account in accordance with accounting standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

Listed: in the case of the Trust, the Trust being admitted to the Official List and “Listing” has a corresponding meaning.

Listing Date: the date on which the Trust is first Listed.

Listing Rules: the official Listing Rules of the ASX and any other rules of the ASX which are applicable while the Trust is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver or other dispensation by the ASX.

Liquid: has the same meaning as in the Corporations Act³⁹.

Market Price: of a Unit in respect of any ASX Business Day means:

- (a) where a sale on ASX is recorded on that ASX Business Day, the average of the intra day prices of the Units on ASX, weighted by volume, provided however that if the Stapled Security to be offered or issued will be offered or issued ex distribution and the volume weighted average traded price is for a Stapled Security is cum distribution, the Market Price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the volume weighted average traded price were for Stapled Securities cum distribution);
- (b) if the Trustee believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of the Unit on that ASX Business Day, or there is no sale on ASX recorded on that ASX Business Day or it is impracticable to calculate the price under paragraph (a), the mid-point of the bid and offer prices per Unit on ASX at the close of trading on that ASX Business Day (whether or not a sale on ASX is recorded on that ASX Business Day);
- (c) if the Trustee believes that the calculations in paragraphs (a) or (b) do not provide a fair reflection of the market price of the Unit on that ASX Business Day, the mid point of the bid and offer prices on ASX at such:
 - (i) time; or
 - (ii) times, with such weightings,
 as the Trustee determines; or
- (d) if the Trustee believes that the calculations in paragraphs (a), (b) or (c) do not provide a fair reflection of the market price of the Unit on that ASX Business Day, the price determined by a Valuer,

plus, where the Unit is a Partly Paid Unit, an amount equal to the Uncalled Amount in respect of that Unit, provided, however, that where the Units are Officially Quoted as part of a Stapled Security, the Market Price of a Unit on any ASX Business Day will be that proportion of the Market Price of a Stapled Security on that ASX

³⁹ Refer Part 5C.6

Business Day as determined by the Trustee in accordance with clause 4.8.

Market Price: of a Stapled Security in respect of any ASX Business Day means:

- (a) where a sale on ASX is recorded on that ASX Business Day, the average of the intra day prices of the Stapled Security on ASX, weighted by volume;
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of the Stapled Security on that ASX Business Day, or there is no sale on ASX recorded on that ASX Business Day or it is impracticable to calculate the price under paragraph (a), the mid-point of the bid and offer prices per Stapled Security on ASX at the close of trading on that ASX Business Day (whether or not a sale on ASX is recorded on that ASX Business Day);
- (c) if the Manager believes that the calculations in paragraphs (a) or (b) do not provide a fair reflection of the market price of the Stapled Security on that ASX Business Day, the mid point of the bid and offer prices on ASX at such:
 - (i) time; or
 - (ii) times, with such weightings,
 as the Manager determines; or
- (d) if the Manager believes that the calculations in paragraphs (a), (b) or (c) do not provide a fair reflection of the market price of the Stapled Security on that ASX Business Day, the price determined by a Valuer,

plus, where the Unit forming part of the Stapled Security is a Partly Paid Unit, an amount equal to the Uncalled Amount in respect of that Unit and the uncalled amount on the Attached Security.

Market Rate: the average mid rate for bills of exchange with a tenor of 90 days displayed on the “BBSW” page of the Reuters monitor system on the first day of the period for which the rate is to be determined, or if there is a manifest error in the calculation of that average rate or it is not displayed by 10:30am on the relevant day, the average rate for bills of that tenor offered by at least 3 Australian financial institutions on that date (whether such bids and offers are displayed on the “BBSW” page or otherwise).

~~**Market Value of the Stapled Securities:** at the end of a Quarter, the aggregate of the market value of Stapled Securities calculated on the basis of the average number of Stapled Securities on issue during the last 20 Trading Days in the relevant Quarter multiplied by the volume weighted average trading price of all Stapled Securities traded on ASX over those 20 Trading Days.~~

Market Value of the Units: at the end of a Quarter, the aggregate of the market value of the Units calculated on the basis of the average number of Units on issue during the last 20 Trading Days in the relevant Quarter multiplied by the volume weighted average trading price of all Units traded on ASX over those 20 Trading Days.

Member: the person Registered as the holder of a Unit or an Option (including persons jointly Registered) as the context may require.

Net Asset Value: the value of the Assets calculated in accordance with clause 9 less the Liabilities.

Net Investment Value means:

- (a) ~~the Market Value of the Stapled Securities or, if Stapling does not apply, the Market Value of the Units; plus~~
- (b) ~~the aggregate amount of any external borrowings of the Trust or, while Stapling applies, the Stapled Entities and their wholly owned companies, trusts or other entities (but excluding any borrowings made from the POWERS Trust and any borrowings held by any Investee Entity or held specifically for the benefit of any Investee Entity); plus~~
- (c) ~~the aggregate amounts which the Trust or, while Stapling applies, the Stapled Entities and their wholly owned companies, trusts or other entities, have Committed for future investments (other than cash or cash equivalents); less~~
- (d) ~~the aggregate amount invested by the Trust or, while Stapling applies, the Stapled Entities and their wholly owned companies, trusts or other entities, in cash or cash equivalents (but excluding cash or cash equivalents held by any Investee Entity or held specifically for the benefit of any Investee Entity).~~

Offer Document: a prospectus, product disclosure statement or other offer document issued in connection with the issue or sale of Units or Options (as the case may require).

Offer Management Liabilities: any amount which the Trustee is or may become liable to pay to a person appointed by it as a manager of an offer of Units or any other person in respect of or arising out of any agreement for the management of the offer of Units, including management fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the agreement for the management of the offer of Units and any amounts becoming payable in respect of any breach (other than for wilful default or lack of good faith) by the Trustee of its obligations, representations or warranties under any such agreement for the management of the offer of Units.

Official List: the official list of ASX.

Officially Quoted: quotation on the Official List whether securities in the Trust are quoted as Units or as part of a Stapled Security and

includes the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Option: an option to subscribe for a Unit.

Option Holder: a person registered as the holder of an Option (including persons registered jointly).

Ordinary Resolution: a Resolution where the Required Majority is a simple majority.

~~**Parent Entities Deed:** the deed so entitled between (amongst others) the Trustee, AMPCI Macquarie Infrastructure Management No. 1, AMPCI Macquarie Infrastructure Management No. 2, DUET Investment Holdings Limited and the trustee of the POWERS Trust.~~

~~**Parent Trustees** means each of AMPCI Macquarie Infrastructure Management No.1 Limited (ABN 99 108 013 672) as responsible entity of the Diversified Utility and Energy Trust No 1 (DUET1) and AMPCI Macquarie Infrastructure Management No.2 Limited (ABN 15 108 014 062) as responsible entity of the Diversified Utility and Energy Trust No 2 (DUET2).~~

~~**Parent Trusts** means each of Diversified Utility and Energy Trust No 1 and Diversified Utility and Energy Trust No 2.~~

Partly Paid Unit: a Unit in respect of which the full Entry Price has not been paid.

~~**Performance Fee:** the fee referred to in clause 20.2.~~

~~**POWERS:** the Preferred to Ordinary With Exchange and Reset Securities issued by the POWERS Trust.~~

~~**POWERS Holder** means with respect to a POWERS, the person registered in the register of units as the owner of POWERS.~~

~~**POWERS Trust:** the POWERS Trust (ARSN 105 094 442).~~

~~**POWERS Terms:** the terms of issue of the POWERS, as amended from time to time.~~

Prescribed Time: 2.00 pm Sydney time, or such other time or times as the Trustee determines.

Quarter:

- (a) for the first quarter, the period from the Listing Date to the next Quarter;
- (b) for the last quarter, the period from the day immediately following the Quarter End Date before the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 3 month period ending on the Quarter End Date.

Quarter End Date: 31 March, 30 June, 30 September and 31 December.

Ratings Agency: any internationally recognised ratings agency as determined by the Trustee.

~~**Reference Price** means the Exchange VWAP.~~

Register: the register of Members kept by the Trustee.

Registered: recorded in the Register.

Registered Scheme: has the meaning given in the Corporations Act.

Registration: recording in the Register.

Relevant Day:

- (a) in the case of a calculation under paragraph (a) of the definition of Determined Issue Price, the day on which the price for the Relevant Securities is set in the book build process; and
- (b) in the case of a calculation under paragraph (b) of the definition of Determined Issue Price, the day on which the adviser provides its written determination of the Determined Issue Price.

Relevant Fraction: in respect of all Partly Paid Units on issue means the sum of the amounts calculated by dividing the amount paid up on each Partly Paid Unit by the total Entry Price of that Unit.

Relevant Security:

- (a) a Stapled Security; or
- (b) an option to acquire a Unit.

~~**Reporting Agency:** Standard & Poor's or if it does not calculate the indices referred to in the definition of Return and Benchmark Return then any person selected by the Trustee who calculates and/or reports these indices.~~

Required Majority: except where this constitution or any applicable law provides otherwise, a simple majority⁴⁰.

~~**Reset Date** means:~~

- ~~(a) 1 September 2008; and subsequently~~
- ~~(b) a date which is specified by the POWERS Trustee in a notice given by the POWERS Trustee to the POWERS Holders at least 40 ASX Business Days prior to any Reset Date (which~~

⁴⁰ Circumstances where other than a simple majority can be required include changing the constitution under section 601CG of the *Corporations Act*, winding up by Members, and choosing a new responsible entity.

must be a date which is at least 12 months after the following Reset Date but no later 7 August 2013).

Resolution:

- (a) a resolution passed at a meeting of Members (or at a meeting of a Class of Members) in the Trust:
 - (i) on a show of hands, by the Required Majority of Members in the Trust (or in the Class) present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the Required Majority of votes cast by Members in the Trust (or in the Class) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed (whether on the same document or separate documents) by Members holding the Required Majority of the Units in the Trust (or in the Class).

Restricted Securities: has the same meaning as in the Listing Rules.

Return: in relation to a Half Financial Year:

- (a) ~~if Stapling applies during the Half Financial Year the sum calculated as follows:~~

$$R = A \times \frac{B - C}{C}$$

Where

R = ~~the Return for the Half Financial Year;~~

A = ~~in respect of the Half Financial Year, the average number of Stapled Securities on issue during the last 20 Trading Days in the previous Half Financial Year multiplied by the volume weighted average trading price of all Stapled Securities traded on the ASX during that 20 Trading Days period;~~

B = ~~the average of the daily closing accumulation indices for the Stapled Securities over the last 20 Trading Days of the Half Financial Year as calculated or reported by the Reporting Agency; and~~

C = ~~the average of the daily closing accumulation indices for the Stapled Securities over the last 20 Trading Days of the previous Half Financial Year as calculated or reported by the Reporting Agency.~~

- (b) ~~if the Units are not Stapled during the Half Financial Year the sum calculated as follows:~~

$$R = A \times \frac{B - C}{C}$$

Where

R = the Return for the Half Financial Year;

A = in respect of the Half Financial Year, the average number of Units on issue during the last 20 Trading Days in the previous Half Financial Year multiplied by the volume weighted average trading price of all Units traded on ASX during that 20 Trading Days period;

B = the average of the daily closing accumulation indices for the Units over the last 20 Trading Days of the Half Financial Year as calculated or reported by the Reporting Agency; and

C = the average of the daily closing accumulation indices for the Units over the last 20 Trading Days of the previous Half Financial Year as calculated or reported by the Reporting Agency.

Sale Facility: the procedures set out in clauses 28.1 to 28.3

Sale Price: the average price (less any costs) at which Transfer Securities held by the Cashout Bank are sold under clause 28.3(a).

SOLA means each of:

- (a) the three onlending agreements between each of the Parent Trustees as lenders and each of the Initial Asset Holding Companies in connection with the initial issue of POWERS (**Initial Issue**);
- (b) the onlending agreement between each of the Parent Trustees as lenders and the trust entitled the DBP Trust (established under a trust deed dated 6 September 2004 and the trustee of which is DBP Holdings Limited) in connection with the first issue POWERS after the Initial Issue; and
- (c) the subsequent onlending agreement(s) between each of the Parent Trusts as lenders and the entities which own (directly or indirectly) the Additional Regulated Assets in connection with each other subsequent issue of POWERS,

in each case taken together with the subordination provisions.

Stapled: the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which (after the Trust is Listed) are quoted on the ASX jointly as a “stapled security” or such other term as the ASX permits.

Stapled Entity: any other trust, corporation, managed investment scheme or other entity whose securities are Stapled to the Units.

Stapled Security: a Unit and each Attached Security which are Stapled together and Registered in the name of the Member.

Stapled Group: the Trust and each other Stapled Entity.

Stapling: the process that results in Units and Attached Securities being and remaining Stapled to each other.

Stapling Commencement Date: the date upon which Stapling of the Units to Attached Securities is to commence as determined by the Trustee.

Stapling Deed: the deed so entitled entered into on or about May 2007 between the Trustee as trustee of the Trust, the Trustee as trustee of Diversified Utility and Energy Trust No. 2, DUET Management Company 1 Limited ~~AMPCI Macquarie Infrastructure Management No. 1 Limited~~ as trustee of Diversified Utility and Energy Trust No. 1 and DUET Investment Holdings Limited, as amended from time to time.

Subscription Amount: in respect of an application for a Unit, the Entry Price less the Uncalled Amount.

~~**Target IRR:** the Benchmark Yield plus 7%.~~

~~**Target Yield:** in respect of a Financial Year:~~

- ~~(a) — ending before the Trust is Listed, a percentage yield calculated for the duration of the Financial Year at the rate of 6% per annum above the Benchmark Yield for the Financial Year; and~~
- ~~(b) — ending after the Trust is Listed, a percentage yield calculated for the duration of the Financial Year at the rate of 4% per annum above the Benchmark Yield for the Financial Year.~~

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or an amount recovered from the Trustee by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Trustee on account of GST, together with interest and penalties.

Tax Act means:

- (a) the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 as the case may be as amended and a reference to any section of the Income Tax Assessment Act 1936 includes a reference to that section as rewritten in the Income Tax Assessment Act 1997;
- (b) any other Act setting the rate of income tax payable; and
- (c) any regulation promulgated thereunder.

Trading Day: those ASX Business Days on which buying and selling occurs through the Stock Exchange Automated Trading System.

Transaction Costs:

- (a) when calculating the Entry Price of a Unit, an allowance for the total cost of acquiring the Assets; and
- (b) when calculating the Withdrawal Price of a Unit, an allowance for the total cost of selling the Assets,

provided that subject to the Corporations Act ⁴¹ the Trustee may:

- (c) calculate Transaction Costs on such other basis as may be in accordance with prevailing law, ASIC Relief or prevailing ASIC policy and, if necessary, amend this constitution to achieve this objective; and
- (d) in connection with any particular application or request for redemption of Units deem these costs to be a lower sum than would otherwise apply or zero.

Transfer Securities: the securities referred to in clause 28.2(a) and, in the context of their sale by the Cashout Bank following a stapling of new Attached Securities, includes those new Attached Securities.

Transfer Securities Price: an amount equal to the Sale Price multiplied by the number of Transfer Securities which are transferred to the Cashout Bank or, where the Transfer Securities are consolidated or divided by the number of consolidated or divided, Transfer Securities referable to the number of Transfer Securities which were transferred to the Cashout Bank under clause 29.2(a).

Trust: the trust constituted under or governed by this constitution.

Trustee: the company which is registered with ASIC as the responsible entity for the Trust.

Uncalled Amount: in respect of a Unit, the amount of the Entry Price which has not been paid or called under this constitution.

Underwriting Liabilities: any amount which the Trustee is or may become liable to pay to an underwriter or any other person in respect of or arising out of any underwriting agreement for Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for wilful default or lack of good faith) by the Trustee of its obligations, representations or warranties under any such underwriting agreement.

Unit: subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Trust as provided in this constitution.

⁴¹ See section 601FC(1)(d) of the *Corporations Act*.

Unit Holder: the person registered as the holder of a unit (including persons jointly registered).

~~**United States Person** shall have the meaning ascribed to it in Section 7701(a)(30) of the United States Internal Revenue Code of 1986, as amended.~~

USD means the lawful currency for the time being of United States of America.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Trustee considers should be borne by that Member.

Valuation Time: a time at which the Trustee calculates Net Asset Value.

Valuer: an independent qualified valuer appointed by the Trustee.

Withdrawal Price: the Unit price determined in accordance with clause 6.

~~**VWAP** is the arithmetic average of the daily volume weighted average sale price of Stapled Securities sold on ASX during the relevant period or on the relevant days but does not include any transaction defined in the ASX Business Rules as “special”, crossings prior to the commencement of normal trading, crossings during the after hours adjust phase and overseas trades or trades pursuant to the exercise of options over Stapled Securities and any overnight crossings.~~

~~For the purposes of calculating VWAP:~~

- ~~(a) — Where, on some or all of the ASX Business Days in the Reference Period (as defined in the definition of Exchange VWAP), Stapled Securities have been quoted on ASX as cum distribution or any other entitlement and the POWERS will Exchange into Stapled Securities after the date those Stapled Securities no longer carry that entitlement (**Ex Date**), then the arithmetic average of the daily volume weighted average price for the ASX Business Days on which those shares have been quoted cum distribution or cum entitlement shall be reduced by an amount (**Cum Value**) equal to:~~
- ~~(b) — (in case of a distribution), the amount of that distribution including the amount that would be included in the assessable income of a recipient of the distribution who is a natural person under the Tax Act;~~
- ~~(c) — (in the case of an entitlement which is traded on ASX on any of those ASX Business Days), the volume weighted average~~

~~price of all such entitlements sold on ASX during the Reference Period on the ASX Business Days on which those entitlements were traded; or~~

- ~~(d) (in the case of an entitlement not traded on ASX during the Reference Period), the value of the entitlement as reasonably determined by the POWERS Trustee; and~~
- ~~(e) Where, on some or all of the ASX Business Days in the Reference Period, Stapled Securities have been quoted ex distribution or ex entitlement, and the POWERS will Exchange into Stapled Securities which would be entitled to receive the relevant distribution or entitlement, the VWAP on the ASX Business Days on which those Stapled Securities have been quoted ex distribution or ex entitlement shall be increased by the Cum Value.~~

~~**Yield Outperformance Amount:** in respect of a Financial Year, the amount calculated by the Trustee in accordance with the following formula:~~

$$\text{Yield Outperformance Amount} = (A - B) \times C$$

~~Where~~

~~A = the Grossed up Yield for the Financial Year;~~

~~B = the Target Yield for the Financial Year; and~~

~~C = the Aggregate Unit Value for the Financial Year.~~

Interpretation

31.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law or rule (including the Listing Rules) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes insert, delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and

-
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

- 31.3 Subject to clause 3.10 all calculations under the Constitution may be rounded up or down to the number of decimal places (or nearest whole number) determined by the Trustee.

Other documents

- 31.4 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

Constitution legally binding⁴²

- 31.5 This constitution binds the Trustee and each present and future Member 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.

- 31.6 ~~NOT USED~~~~The Parent Trustees Deed binds the Trustee and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if it were a contract to which they were a party.~~

Governing law

- 31.7 This constitution is governed by the law of Victoria. The Trustee and the Unit Holders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Other obligations excluded

- 31.8 Except as required by the Corporations Act all obligations of the Trustee which might 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 Trustee in its capacity as trustee of the Trust arising under any statute.

⁴² Refer Section 601GB of the *Corporations Act*.

EXECUTED as a deed

Execution page

EXECUTED by **AMPCI**)
Macquarie Infrastructure)
Management No. 2 Limited)
DUET)
MANAGEMENT COMPANY 2)
LIMITED in accordance with)
section 127(1) of the Corporations)
Act 2001 (Cwlth) by authority of its)
directors:)

.....)
Signature of director)

.....)
Name of director (block letters)

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)