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# APA Group



Australian Pipeline Ltd  
ACN 091 344 704

Australian Pipeline Trust  
ARSN 091 678 778

APT Investment Trust  
ARSN 115 585 441

**ASX ANNOUNCEMENT**  
**APA Sub Group (ASX: HDF)**

17 December 2012

The Manager  
Company Announcements Office  
Australian Securities Exchange  
4<sup>th</sup> Floor, 20 Bridge Street  
Sydney NSW 2000

**Electronic Lodgement**

Dear Sir/Madam

**Company Announcement**

I attach the following announcement for release to the market:

- Constitution of APA Sub Trust No 1 (formerly named HDUF Finance Trust) consolidated;
- Constitution of APA Sub Trust No 2 (formerly named HDUF Epic Trust) consolidated; and
- Constitution of APA Sub Trust No 3 (formerly named HDUF Further Investments Trust) consolidated.

The Constitutions include amendments approved by Australian Pipeline Limited as the responsible entity of APA Sub Group which comprises the above three trusts.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Knapman', written in a cursive style.

**Mark Knapman**  
Company Secretary  
Australian Pipeline Limited

# Consolidated Constitution

Incorporating all amendments up to 13 December 2012

## APA Sub Trust No 1

ARSN 109 770 765

## Responsible Entity:

### Australian Pipeline Limited

ACN 091 344 704

Complete and up to date as at 13 December 2012

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# This Constitution

is made on 1 June 2004 by the trustee of the Trust.

This consolidated constitution comprises:

- (a) the Constitution dated 1 June 2004;
- (b) the first supplemental constitution dated 27 October 2004;
- (c) the second supplemental constitution dated 15 March 2005;
- (d) the third supplemental constitution dated 30 June 2005;
- (e) the fourth supplemental constitution dated 8 January 2007;
- (f) the fifth supplemental constitution dated 5 January 2009;
- (g) the sixth supplemental constitution dated 1 July 2009; and
- (h) the seventh supplemental constitution dated 13 December 2012.

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## 1 Meaning of words and interpretation

### 1.1 Definitions

- (a) In this deed, unless the context otherwise requires:

**Application** means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;  
or
- (3) an application for Options;

**Application Moneys** means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units or Options;

**Approved Financial Product** means a Financial Product in respect of which approval has been given by ASTC in accordance with the ASTC Settlement Rules;

**Approved Valuer** means a valuer appointed by the Trustee;

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

**Asset Benchmark Value** or **ABV** means, with respect to any Asset at any time (**relevant time**), the Cost Base for that Asset increased in the case of each amount paid for that Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment for that Asset to the relevant time;

**Asset Realised Value** or **ARV** means, with respect to any Asset at any time, the aggregate of each amount paid to the Trustee for or in respect of that Asset including dividends, distributions, sale proceeds and the value of franking credits increased in the case of the amount paid for each Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time;

**Assets** means all the cash, investments, rights and other property of the Trust;

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

**ASTC** means the ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

**ASX** means ASX Limited;

**Attached Security** means a Security which is from time to time Stapled or to be Stapled to a Unit;

**Auditor** means the auditor from time to time appointed by the Trustee to audit the Trust

**Benchmark Rate** means 4% per annum over the 10 year government bond return;

**Business Day** has the meaning given to that term in the Listing Rules;

**Compliance Committee** means the compliance committee for the Trust as required by section 601JA of the Corporations Act;

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

**Corporations Act** means Corporations Act 2001;

**Costs** includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

**Cost Base** means in the case of any Asset, the cost of acquisition of that Asset, including the purchase price;

**Current Unit Value** means the amount obtained by dividing the Net Asset Value applicable to a particular class of Units by the number of Units on Issue in that class of Units;

**Distributable Amount** means the amount determined in accordance with clause 9.3(a);

**Distribution Calculation Date** means the day or days in each year or such other dates as the Trustee may determine;

**Distribution Date** means 30 days after the Distribution Calculation Date for the relevant Distribution Period or such other date determined by the Trustee;

**Distribution Entitlement** means a Unit Holder's entitlement to the Distributable Amount determined in accordance with clause 9.3(a);



**Distribution Period** means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

**Financial Product** has the meaning given in the ASTC Settlement Rules;

**Financial Year** means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

**Foreign Interests** means the Units or Options a Foreign Unit Holder would have been entitled to but for clause 4.7(a);

**Foreign Unit Holder** means a Unit Holder whose address appearing in the Register is in a country outside Australia;

**Forfeited Unit** means a Partly Paid Unit which is forfeited under clause 3.8(c) by non-payment of an Instalment;

**Fully Paid Unit** means a Unit on which the whole of the Issue Price has been paid;

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

**Gross Asset Value** means the sum of:

- (1) the value of all Assets; and
- (2) any other amounts which, in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

**GST** means any goods and services tax or similar value added tax imposed in relation to a supply of any goods, property, service or any other thing;

**GST Act** means A New Tax System (Goods and Services Tax) GST Act 1999;

**Holder** means a Unit Holder or Option Holder (as the context may require);

**Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to interest and other borrowing costs, fees paid to the Trustee and any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust;

**Incentive Fee** means the incentive fee payable to the Trustee calculated in accordance with schedule 3;

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

**Issue Price** means the price determined in accordance with clause 5, or the Terms of Offer or Terms of Issue;

**July 2009 Offer** means the fundraising described in an announcement to the ASX on or about 1 July 2009 consisting of:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional securityholders and the second being the offer of Stapled Securities to eligible retail securityholders. The securityholders (other than Foreign Unit Holders) will be invited to participate in the offer on a pro-rata basis according to their existing securityholding as at the record date determined by the Trustee; and
- (b) an institutional placement of Stapled Securities.

**Liabilities** means liabilities of the Trust including any provision the Trustee decides should be taken into account but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust and excluding any amount relating to derivative instruments used for hedging;

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

**Listed** means:

- (1) in respect of the Trust, the Trust being admitted to the official list of ASX; and
- (2) in the case of Stapled Securities or Units, being Officially Quoted;

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Trust, including any variation, consolidation or replacement of those rules and is to be taken subject to any waiver or exemption granted to the Trust from compliance with those rules;

**Management Fee** means the management fee payable to the Trustee calculated in accordance with schedule 3;

**Market Capitalisation** means, in respect of any particular day, the market capitalisation of the Trust as determined by multiplying the Market Price of Units in each class on that day by the number of Units in that class on issue on that day and aggregating the results (if there is more than one class of Units on issue on that day);

**Market Price** has the meaning given in clause 1.3;

**Marketable Parcel** has the meaning given to that expression in the Listing Rules;

**Meeting** means a meeting of Holders convened in accordance with this deed;

**Minimum Holding** means:

- (1) if Units are not admitted to the Official List, such number as the Trustee from time to time determines; or
- (2) if Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; and
- (3) in relation to Options, such number of Options (if any) as is specified in the Terms of Offer or Terms of Issue;

**month** means calendar month;

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

- (1) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

**Net Taxable Income** means, for any Distribution Period, the net income for that period determined in accordance with the principles applicable under section 95(1) of the Tax Act;

**Non-Cash Income** means for any period, the sum of:

- (1) the amount (if any) that in relation to the foreign income (as defined in the Tax Act) of the Trust for the Distribution Period, is equal to the amount of foreign tax (as defined in the Tax Act) paid or deemed to be paid under the Tax Act; and
- (2) the amount (if any) that in relation to the Distribution Period is included in the assessable income of the Trust under section 160AQT of the Tax Act;

**Official List** means the official list of ASX;

**Official Quotation** or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

**Option** means an option granted by the Trustee in respect of unissued Stapled Securities;

**Option Holder** means the person for the time being registered as a holder of an Option, including any persons jointly registered;

**Ordinary Unit** means a Unit that has not been issued in a specific class of units;

**Ordinary Unit Holder** means a holder of an Ordinary Unit;

**Paid-up Proportion** in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

**Partly Paid Unit** means a Unit in respect of which any portion of its Issue Price remains unpaid;

**Portfolio Benchmark Value** or **PBV** means the aggregate sum of the ABV for each Asset of the Trust;

**Portfolio Market Value** or **PMV** means the aggregate of each amount paid to the Trustee for, or in respect of, all Assets including dividends, distributions and the value of franking credits increased in the case of each amount paid to the Trustee for each Asset by:

- (1) the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time; and
- (2) the most recent valuation undertaken in accordance with clause 8 for each Asset;

**Prospectus** means a product disclosure statement for the purposes of the Corporations Act in respect of an issue or offer of Units or Options;

**Quarter** means each 3 month period ending on the last day of March, June, September and December in each year;

**Redemption Price** means the amount calculated under clause 5.8;

**Register** means the register of Unit Holders or Option Holders maintained by the Trustee under Chapter 2C of the Corporations Act, as the context requires;

**Responsible Entity** means the Trustee;

**Security** has the meaning given to that term in section 92(1) of the Corporations Act;

**Staple, Stapled** or **Stapling** means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others;

**Stapled Entity** means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;

**Stapled Entity's Constitution** means the constitution of a Stapled Entity;

**Stapled Security** means a Unit and each Attached Security which are Stapled together;

**Stapled Security Register** means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 19.4;

**Stapling Date** means the date determined by the Trustee to be the day on which all Units on issue in the Trust will be Stapled to an Attached Security or Attached Securities;

**TAPS** means Trust-issued Adjustable Preferred Securities issued by the TAPS Issuer pursuant to the TAPS Constitution which provides that in specified circumstances TAPS may, in accordance with the terms of the TAPS Constitution, be exchanged for Units which form part of a Stapled Security;

**TAPS Constitution** means the constitution of the TAPS Trust dated 18 February 2005 as amended;

**TAPS Issuer** means Hastings Funds Management Limited ACN 058 693 388 as responsible entity of the TAPS Trust;

**TAPS Trust** means the TAPS Trust ARSN 113 037 317;

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

**Tax Act** means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

**Terms of Issue** in relation to a Stapled Security, Unit or an Option means the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed);

**Terms of Offer** in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

**Transaction Costs** means:

- (1) when calculating the Issue Price of a Unit, the Trustee's estimate of the total cost of acquiring the Assets; and
- (2) when calculating the Redemption Price of a Unit, the Trustee's estimate of the total cost of selling the Assets,

as described in the current Prospectus;

**Trust** means the APA Sub Trust No 1 constituted under this deed;

**Trustee** means Australian Pipeline Limited ACN 091 344 704 or any other company named in the ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

**Unit** means an undivided interest in the Trust as provided for in this deed and includes all classes of units on issue at the relevant time;

**Unit Holder** means a person registered as the holder of a Unit, including any persons jointly registered;

**Unit Holding** means the total number of Units held by a Unit Holder;

**Units on Issue** means the number of Units created under this deed and not cancelled;

**Unstapled** means, in relation to a Unit, not being Stapled to each Attached Security;

**Unstapling Date** means the date determined by the Trustee to be the unstapling date pursuant to clause 20.3;

**Weighted Average NAV per Unit** means the Weighted Average Net Asset Value divided by the Weighted Average Units on Issue;

**Weighted Average Net Asset Value** means the average Net Asset Value weighted according to the daily Net Asset Value; and

**Weighted Average Units on Issue** means the average number of total Units on issue weighted according to the daily number of Units on issue.

- (b) Unless otherwise specified in this deed, terms defined for the purposes of the Corporations Act are used in this deed with the same meaning.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document; and
- (f) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

## 1.3 Market Price

- (a) The **Market Price** for a Stapled Security in a class or an Option (as the case requires), on any Business Day is:
  - (1) the daily weighted average traded price for a Stapled Security in that class or Option in that class for all sales on ASX for the period of the lesser of:
    - (A) 15 Business Days immediately preceding the relevant Business Day; or

- (B) the number of Business Days immediately preceding the relevant Business Day during which the Stapled Security was quoted on ASX,

in either case whether or not a sale was recorded on any particular day (apportioned between the Unit and any Attached Securities as the Trustee determines); or

- (2) if the Trustee believes that the calculation in clause 1.3(a)(1) does not provide a fair reflection of the market price of a Stapled Security or Option, an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security or Option;
- (b) Despite clause 1.3(a), for the purposes of clause 5.7(h), the Market Price for a Stapled Security or Option means an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of a Stapled Security or Option at or around the relevant date.
  - (c) The “Market Price” of an Option on any Business Day must be determined in the same manner as the Market Price for a Stapled Security is determined.

#### **1.4 General compliance provision**

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Act, or the terms of any applicable ASIC instrument (including a class order) or any ASX Waiver from time to time does not operate to the extent of, and for the duration of, the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this deed.
- (c) This clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.
- (d) If the terms of any current ASIC instrument of relief or exemption (including a class order) are applicable on the basis that this deed contains certain provisions, then such provisions are deemed to be contained in this deed.

#### **1.5 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4.
- (b) If the Trust is admitted to the Official List of ASX, the following clauses apply:
  - (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;

- (3) 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);
- (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
- (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
- (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of, and for the duration of, the inconsistency.

## **1.6 Additional Listing Rule requirements**

At all times that the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under clause 3.8 has not been paid;
  - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with schedule 2;
  - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined Corporations Act as the “specified time” for deciding who held the Unit or Option for the purpose of the meeting;
  - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;



- (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
  - (4) the divestment is under a court order; or
  - (5) the divestment is under clause 3.9; and
- (c) unless the law and relevant ASTC Settlement Rules permit otherwise at the time, the Trustee must not divest a Unit Holder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASTC Settlement Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASTC Settlement Rule 5.12.

## **1.7 Accounting Standards**

To the extent to which

- (a) the calculation of the Issue Price;
- (b) the extent of any limitation on borrowings; or
- (c) the calculation of the Distributable Amount,

may involve the application of generally accepted accounting principles or accounting standards, the principles or standards to be applied are those as generally accepted or in force immediately before 1 January 2005.

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## **2 The Trust**

### **2.1 Trustee**

Australian Pipeline Limited is appointed and agrees to act as trustee of the Trust.

### **2.2 Declaration of Trust**

- (a) Westpac Investment Vehicle Pty Limited ACN 093 721 423 (**Westpac**) applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (b) Jim Hallam applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (c) The Trustee issues 1 Ordinary Unit to Westpac and 1 Ordinary Unit to Jim Hallam.

### **2.3 Name of Trust**

The name of the Trust is the APA Sub Trust No 1. The Trustee may change the name of the Trust in accordance with the Corporations Act.

### **2.4 Assets**

The Trustee must hold the Assets on trust for the Unit Holders.

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## **3 Interest of Unit Holder**

### **3.1 Division into Units**

- (a) The beneficial interest in the Assets is divided into Units. The Unit Holders are beneficially entitled to the Assets, however, no Unit confers an interest in a particular part of the Trust or in particular Assets except that, if any Units are issued relating to a particular class of Asset, those Units confer an interest in the class of Asset described but in no particular part of that class of Asset.
- (b) A Holder may not:
  - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
  - (2) claim or exercise any right in respect of any Asset or lodge any caveat or other notice affecting any Asset; or
  - (3) require that any Asset be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
  - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
  - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

### **3.2 Fractions and splitting**

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit. However, while Stapling applies, a fraction of a Unit may only be issued if a fraction of an Attached Security stapled to the fraction of Unit is also issued.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unit Holder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

While Stapling applies, Units may only be consolidated or split if the related Attached Securities are also consolidated or split at the same time and to the same extent.

- (d) Subject to any law or Listing Rule or the ASTC Settlement Rules, the Trustee may split Units pursuant to clause (c) to create additional Units of the same class or to split the Units according to rights or characteristics attaching to those Units so that 2 or more additional classes of Units are created comprising a sub-set of rights attaching to the split Units.

### **3.3 Issue of Partly Paid Units**

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust and the Trustee must ensure that this is stated in the Terms of Issue.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.
- (e) While Stapling applies:
  - (1) Partly Paid Units may not be issued unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid and are to be Stapled to the Partly Paid Units; and
  - (2) any issue of Partly Paid Units must be on the basis that 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 Stapled to those Units is also paid.

### **3.4 Joint Holders**

Where two or more persons are registered as the Holders of a Unit or an Option (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and

- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is taken to be given to all the joint holders.

### **3.5 Classes of Units**

- (a) The Trustee may at any time issue Units in two or more classes (including income and capital units) and, subject to law and the Listing Rules, subject to any terms or conditions and having such rights as the Trustee determines.
- (b) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee may convert any class of a Unit Holder's Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unit Holder.

### **3.6 Benefits and obligations of Unit Holders and Option Holders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unit Holder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Option Holder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Option Holders where expressly provided in this deed. Where the interests of Option Holders and Unit Holders conflict, the Trustee must prefer the interests of Unit Holders.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unit Holder and the Trustee and to any call on Partly Paid Units which the Trustee is entitled to make under clauses 3.3 and 3.8 to 3.15.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the Assets of the Trust.

### **3.8 Failure to pay instalment on Partly Paid Unit**

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (b) If a Unit Holder does not pay an Instalment on the due date, the Trustee must serve the Unit Holder with a notice not later than 7 days after the due date containing:
- (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
  - (2) a statement that interest:
    - (A) runs from the due date of the Instalment until the date the Trustee receives payment of the overdue amount in full; and
    - (B) is payable at a fair market rate determined by the Trustee;
  - (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice;
  - (4) a warning that if payment in full is not received by the due date specified in the notice, the Partly Paid Unit is forfeited and the Trustee may offer the Forfeited Unit for sale; and
  - (5) if Stapling applies, a statement that an equal number of each Attached Security will also be liable to be forfeited.

The omission to give such notice by the Trustee or the non-receipt of such notice by the Unit Holder does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (c) If payment in full is not received by the due date specified in the notice issued under clause 3.8(b), the Partly Paid Unit is forfeited (concurrently with the forfeiture of the same number of each Attached Security if Stapling applies) and the Trustee may offer the Forfeited Unit for sale.

### **3.9 Sale of Forfeited Unit**

- (a) Despite clause 3.9(d), if the Trustee offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit (and while Stapling applies as agent for the holder of the Attached Security Stapled to the forfeited Unit).
- (b) If the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee. Any such sale must also be with respect to the same number of Attached Security while Stapling applies.
- (c) The Trustee must ensure that the auction is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unit Holder for any loss suffered by the Unit Holder as a result of the sale.

### **3.10 Income and Capital of a Forfeited Unit**

Distribution of income and capital under clause 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.9(b), the Trustee must give notice of the sale of a Forfeited Unit:

- (a) to all Unit Holders in writing; and
- (b) by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### **3.12 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.8(b) and any other amount payable in respect of the forfeiture (provided that this clause 3.12 will not apply where the Trustee is already under an obligation to sell such Units to a third party).

### **3.13 Consequences of sale and continuing liability**

- (a) On completion of the sale of the Forfeited Unit, the Holder ceases to be the Holder of that Unit but remains liable to the Trustee for the total amount set out in the notice served under clause 3.8(b).
- (b) The Unit Holder's liability under this clause ceases as soon as the Trustee receives:
  - (1) payment in full of the amount set out in the notice under clause 3.8(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unit Holder to recover the amount due (including any amounts due in respect of the same number of Attached Securities Stapled to those Units if Stapling applies).
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (1) that a Partly Paid Unit has been forfeited (and referring to the same number of Attached Securities if Stapling applies); and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) If the Trustee executes a transfer of a Forfeited Unit (which transfer must include the same number of Attached Securities if Stapling applies), the Trustee must register the transferee as the Holder of the Forfeited Unit.

- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

### **3.14 Proceeds of sale of Forfeited Unit**

- (a) If a Forfeited Unit is sold under clause 3.9, the Trustee must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments (such Costs are to be appropriately weighted between the Trust and the Attached Security if Stapling applies);
  - (3) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(b);
  - (4) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying the balance to the Unit Holder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

### **3.15 Lien for Amounts Owing**

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unit Holder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unit Holders. The lien extends to distributions from time to time declared in respect of such Units but if the Trustee registers any transfer of any Units upon which it has a lien, those Units are freed and discharged from the lien.

### **3.16 Trustee Units**

The Trustee may issue and receive Units on arm's length terms in lieu of fees which are payable to it for the proper performance of its functions and duties under this deed.

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## **4 Application Procedures**

### **4.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units in a class of Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Money by the Issue Price of Units in that class of Units.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Money by the amount of the Issue Price for a Unit in that class which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

### **4.2 Application for Units or Options**

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee;
- (c) include with the Application the Application Money in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee; and
- (d) while Stapling applies, make an application for an identical number of Attached Securities to be Stapled to those Units.

### **4.3 Payments to the Trustee**

- (a) If on Application for Units or Options the payment received or property to be transferred to the Trustee is such that the number of Units or Options which would otherwise be issued would be less than the Minimum Holding the Trustee must hold the payment or property received on trust for the applicant until the Trustee has accepted or rejected the Application.
- (b) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (c) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee before the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (d) If Units or Options are issued and:



- (1) the Trustee has not received the Application Money in accordance with the Terms of Issue; or
- (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Money for the Units or Options.

- (e) Subject to clause 4.3(a), all income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Assets of the Trust.
- (f) Applications Money for Units or Options issued under a Prospectus must be paid to the Trustee, to be placed by the Trustee in a special trust account until the earlier of:
  - (1) the minimum subscription, if any (to be specified in the Prospectus) has been reached and the Trustee decides to proceed to allotment of Units; or
  - (2) the date by which the Application Money would need to be repaid under the Corporations Act.

Until the Trustee decides to proceed to the allotment of Units in accordance with this clause 4, it holds such Application Money upon bare trust for the applicant and the Trustee must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. No interest is payable on that money.

#### **4.4 Allotment**

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or to an Option until it is granted.

#### **4.5 Trustee's discretion on Application**

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). If Stapling applies, the Trustee must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units. Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

#### **4.6 Certificates**

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

## 4.7 Foreign Unit Holders

- (a) The Trustee may determine that Foreign Unit Holders are not to be offered Units or Options under a pro rata issue or on reinvestment of all or part of a Unit Holder's Distribution Entitlement where it reasonably considers that it would:
- (1) be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unit Holders.
- (b) If the Trustee makes a determination under clause 4.7(a), the Trustee must sell the Foreign Interests and pay to each Foreign Unit Holder the amount calculated as follows:

$$\text{where: } AF = NP \times \frac{NF}{N}$$

AF is the amount to be paid to that Foreign Unit Holder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unit Holder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unit Holder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unit Holder under clause 4.7(b).

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## 5 Issues and Redemptions

### 5.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this clause 5, the Listing Rules, current applicable laws and subject to this deed.
- (b) No sub-clause of this clause 5 (other than this clause 5.1) limits any other sub-clause.

## **5.2 Underwriting of Issue**

- (a) The Trustee may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units;
  - (3) if Stapling applies, an offer for sale, subscription or issue of Stapled Securities or Options; or
  - (4) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may, subject to applicable laws and the Listing Rules:
  - (1) be the Trustee or a Related Body Corporate of the Trustee; and
  - (2) take up any Units (or Stapled Securities, if Stapling applies) or Options not subscribed for.
- (c) The Trustee may issue Units (or Stapled Securities, if Stapling applies) and Options to an underwriter under this clause 5.2 at an Issue Price equal to the Issue Price at which the underwritten Units (or Stapled Securities, if Stapling applies) or Options were or would have been issued to persons other than the underwriter or underwriters.

## **5.3 Issues of Options**

The Trustee may issue Options for any consideration (including nil consideration) in accordance with the Terms of Offer and Terms of Issue.

## **5.4 Stapled Securities**

While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Attached Securities, or Options over unissued Attached Securities on the same terms as the Options, on the basis that Units are to be Stapled to Attached Securities and Options are to be Stapled with options in respect of unissued Attached Securities.

## **5.5 Issue of Units under Options**

- (a) The Trustee may issue Units upon the exercise of Options in accordance with the Terms of Offer and Terms of Issue.
- (b) While Stapling applies an Option may only be exercised if at the same time as Units are acquired under the Option the same person contemporaneously acquires on exercise of an option over Attached Securities an identical number of Attached Securities which are then Stapled to the Units.

## **5.6 Issue at fixed price**

In addition to any other power the Trustee has to issue Units (or Stapled Securities, if Stapling applies) under this deed, the Trustee may issue Units (or Stapled Securities, if Stapling applies) or Options at any time to any person as follows:

- (a) before the Trust being admitted to the Official List:

- (1) for the initial issue, Units at \$1.00;
- (2) for an initial capital raising of the Trust, Units at \$2.558;
- (3) for subsequent issues, units in accordance with the following formula:

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

at the time determined by the Trustee;

- (b) where the Trust has been admitted to the Official List and the Units (or Stapled Securities, if Stapling applies) or Options are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at the Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable);
- (c) where the Trust has been admitted to the Official List and Units (or Stapled Securities, if Stapling applies) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Options at the consideration for the issue of the Option in accordance with the Terms of Offer and Terms of Issue, where the Units to be issued under those Options are to be issued at Market Price of a Unit (or Stapled Securities, if Stapling applies) immediately before the date upon which the Option is issued, and Units under any such Option;
- (d) where Units (or Stapled Securities, if Stapling applies) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, Stapled Securities at the Market Value on the Business Day before the day the offer to issue the Stapled Securities is made, less the value of the Attached Securities Stapled to the Unit; and
- (e) In addition to any other power granted to the Trustee under this deed, the Trustee may issue Units as part of Stapled Securities issued in connection with the July 2009 Offer at an issue price of \$0.90 per Stapled Security.

## 5.6A Financial Instruments

- (a) Subject to the Corporations Act and Listing Rules the Trustee may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (**Financial Instruments**)).
- (b) Subject to the Corporations Act, Financial Instruments may be issued on such terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Trustee determines.

## 5.7 Other issues

- (a) Subject to compliance with any instrument issued by ASIC, the Listing Rules and this clause 5.7, the Trustee may issue Units Stapled Securities or Options (including Units Stapled Securities on the exercise of an Option)

at a price determined by the Trustee in accordance with the following provisions.

(b) Stapled Securities may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where the issue of the Stapled Securities is not to the Trustee or any person associated with it, and, in the case where:

(1) the issue (together with any other issue of Stapled Securities up to one year previously, at a consideration determined by the Trustee other than an issue approved or ratified by Stapled Security Holders in accordance with subparagraphs (3) to (8) and issues in accordance with other provisions of this deed) is of Stapled Securities that would, immediately after the issue, comprise more than 15% of either:

(A) all of the Stapled Securities on issue; or

(B) the Stapled Securities on issue of which the Units of that class form a component part are in the same class as the Units comprised in the issue;

or

(2) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the current Market Price for those Stapled Securities exceeds 10%,

the following requirements are also satisfied:

(3) Stapled Security Holders approve the issue;

(4) if the Units which form a component part of the Stapled Securities to be issued are in a particular class, Stapled Security Holders in that class approve the issue;

(5) unless the Trustee reasonably consider that the issue will not adversely affect the interests of Stapled Security Holders in another class, Stapled Security Holders in that other class approve the issue;

(6) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;

(7) an approval for the purposes of subparagraphs (3), (4) or (5) is given by special resolution of Stapled Security Holders where Stapled Security Holders with at least 25% of the total value of all the interests of Stapled Security Holders entitled to vote on the question vote on the question at the meeting; and

(8) if in making the calculations referred to in subparagraph (7) any vote of a person to whom the Stapled Securities are to be issued or

any vote of any associate of that person were not counted, the resolutions would be passed.

- (c) Stapled Securities in the Trust may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where:
- (1) the issue of the Stapled Securities is not to the Trustee or any person associated with it;
  - (2) the Stapled Securities are issued pursuant to offers made at substantially the same time; and
  - (3) the sum of the prices of the Unit and the Attached Securities which make up the Stapled Security is to equal the current Market Price for the Stapled Security at the time the offers are made.
- (d) Stapled Securities in the Trust, but not an Option, may be issued at a price determined by the Trustee, pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders of the Trust if:
- (1) all of the Units offered are in the same class;
  - (2) the price of all the Stapled Securities offered is the same;
  - (3) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%; and
  - (4) the amount of Stapled Securities offered to each Stapled Security Holder is proportionate to the value of that Stapled Security Holder's interest,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of a sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (e) An Option in respect of a Stapled Security may be issued, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee, if the Options are issued pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders in proportion to the value of their interests if:
- (1) all of the Units offered are in the same class;
  - (2) the price of all the Stapled Securities offered is the same;

- (3) the means of calculating the exercise price is set out in the terms of issue of the Option; and
- (4) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Options to foreign Stapled Security Holders if each Option, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (f) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee under an arrangement where:
  - (1) the whole or part of any money payable to a Stapled Security Holder under this deed, by way of distribution of capital or income, is applied in payment for the subscription for Stapled Securities in the Trust;
  - (2) each Stapled Security Holder of the Trust may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distributions which are, or would otherwise be, payable to that Stapled Security Holder;
  - (3) all the Stapled Securities issued under the arrangement are of the same class;
  - (4) the price of each Stapled Security issued pursuant to that arrangement at substantially the same time is the same;
  - (5) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue the Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of the sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (g) Where Stapled Securities are quoted on the financial market operated by the Australian Stock Exchange Limited and not suspended from quotation, Units may be sold by the Trustee or its agent, at a price determined by the Trustee, where:
  - (1) part of the issue price of the Stapled Security has not been paid when called and, in accordance with the terms of this deed, the

Stapled Security has consequently been forfeited to the Trustee on trust for Stapled Security Holders; and

- (2) the sale of the Stapled Security occurs in the context of a sale of the Stapled Security conducted in accordance with section 254Q of the Act other than subsections 254Q(1), 254Q(10), 254Q(13) and 254Q(14) as if the Stapled Security was a share, the Trust was the company and the Trustee was the directors of the company.
- (h) The Trustee may (subject to the terms of any applicable ASIC relief instrument) issue Options to subscribe for a Stapled Security, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee provided that:
- (1) all Stapled Security Holders are offered Options at the same price on a pro rata basis;
  - (2) the exercise price of all Options offered is the same;
  - (3) the amount by which the exercise price is less than the Issue Price of Stapled Securities that would otherwise apply, does not exceed 50% on the date of exercise of the Option,

but, subject to the Listing Rules and any applicable ASIC relief instrument, the Trustee is not required to offer or issue Options under this clause to persons whose address on a Register is in a place other than Australia.

Any offer made under this clause (h) must be made to Stapled Security Holders in proportion to the value of their respective holdings on the date determined by the Trustee, provided that 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 Options or Stapled Securities, as the case requires. Any Stapled Security Holder may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable. Any Options offered under this clause which are not subscribed for within the relevant period for acceptance set by the Trustee, may be offered for subscription by the Trustee to any person, provided that the price payable in relation to such further offer is not less than that at which the Options were originally offered to the Stapled Security Holders, and otherwise complies with any applicable ASIC relief instrument. An underwriter may take up any Options not subscribed for by Stapled Security Holders.

- (i) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited and the Stapled Securities are in a class of interests which is quoted on that financial market and trading in the class is not suspended, under an arrangement where:
- (1) an offer for the issue of Stapled Securities is made to each registered Stapled Security Holder;
  - (2) each offer is made on the same terms and conditions and on a non-renounceable basis;



- (3) the issue price is less than the market price during a specified period in the 30 days prior to either date of the offer or the date of the issue; and
- (4) no registered Stapled Security Holder may be issued with Stapled Securities with an application price (including, for the avoidance of doubt, the application price for any Attached Securities) totalling more than \$5,000 in any consecutive 12 month period,

provided that an offer need not be made to any registered Stapled Security Holder whose address is in a place where the Trustee reasonably considers that it is not lawful or not practical for that entity to offer and issue Stapled Securities to the person under the arrangement.

- (j) Subject to clause 5.7(b), the Trustee may issue the Exchange Number of Stapled Securities at a price determined in accordance with subparagraph (1) for each TAPS Exchanged.

- (1) Subject to the adjustments in subparagraphs (2), (3) and (4), for the purposes of determining the number of Stapled Securities to be issued on Exchange the **Exchange Number** is to be calculated for each TAPS according to the following formula:

$$\text{Exchange Number} = \frac{\text{Realisation Amount}}{\text{RV} \times (1 - \text{Exchange Discount})}$$

- (2) If the total number of Stapled Securities to be issued to a former TAPS holder, as calculated under subparagraph (1), includes a fraction, that fraction will be disregarded.
- (3) If the Stapled Securities are de-stapled, then the TAPS Issuer will make all calculations in relation to Exchange as if a separate interest in each of the formerly Stapled Entities were each a Stapled Security and as if each TAPS was split into separate TAPS with face values equal in aggregate to the Face Value or make such other adjustment as the TAPS Issuer reasonably considers appropriate or necessary to maintain that relativity. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.
- (4) In this clause 5.7(j):

**Change of Control Event** means:

- (A) a takeover bid under Chapter 6 of the Corporations Act to acquire all or some of the Stapled Securities and the offer under such takeover bid is, or becomes, unconditional and the bidder has acquired at any time during the offer period a relevant interest in more than 50% of the Stapled Securities on issue; or
- (B) the Stapled Security Holders approve, and if necessary a court approves, an informal or formal scheme of arrangement which if implemented, will result in a person having a relevant interest in more than 50% of the Stapled

Securities that will be on issue after the scheme is implemented;

**Exchange Discount** (expressed as a decimal) means the exchange discount being 2.5% or as changed by the TAPS Issuer pursuant to the TAPS Constitution;

**Exchange** means the redemption by the TAPS Issuer of TAPS for the Realisation Amount and the application of that Realisation Amount by the TAPS Issuer in payment for the Exchange Number of Stapled Securities, calculated in accordance with subparagraph (1), to be issued to the former holder of TAPS;

**Exchange Number** means the number of Stapled Securities to be issued calculated in accordance with subparagraph (1);

**Face Value** means the face value of TAPS being \$100;

**Realisation Amount** means the amount for which TAPS may be realised in accordance with the terms of the TAPS Constitution;

**RV** (expressed as a dollar value) means:

- (A) if Exchange has resulted other than from a Change of Control Event, the VWAP (expressed as a dollar value) calculated in respect of the period of 20 Business Days on which trading in Stapled Securities took place immediately preceding (but excluding) the relevant date for Exchange as determined in accordance with the TAPS Constitution; or
- (B) if Exchange has resulted from a Change of Control Event, the offer price under the takeover bid or the consideration under the scheme of arrangement or, in the case of non-cash consideration, the value of the offer price as reasonably determined by the TAPS Issuer. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.

**VWAP** is the average of the daily volume weighted average sale prices per Stapled Security sold on ASX on each Business Day during the relevant periods specified elsewhere in these Terms (so that if there are 20 Business Days in such period, the volume weighted average sale price per Stapled Security on each of those Business Days shall be determined, and then those volume weighted average sale prices shall be averaged to give the VWAP), but in determining such daily volume weighted average sale prices there shall not be included any transaction defined in the ASX market rules as a “special”, crossings prior to the commencement of normal trading, crossings during the after hours adjust phase, crossings during the closing phase, overnight crossings or any overseas trades or trades under the exercise of options over Stapled Securities or other trades which the TAPS Issuer reasonably considers are not fairly reflective of normal market supply and demand.

For the purposes of calculating VWAP, if, on some or all of the Business Days in the relevant period, Stapled Securities have been

quoted on ASX as cum dividend, or cum any other distribution or entitlement, but Stapled Securities will be issued under this clause 5.7(j) ex such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted cum dividend, other distribution or entitlement shall be reduced by an amount equal to:

- (A) in the case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of the recipient of the dividend or other distribution who is a natural person;
- (B) in the case of an entitlement which is traded on ASX on any of those Business Days, the average of the daily volume weighted average sale price for such entitlement sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
- (C) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the TAPS Issuer.

Conversely, where on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as ex dividend or any other distribution or entitlement, but Stapled Securities will be issued under this clause 5.7(j) cum such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted ex dividend, other distribution or entitlement shall be increased under paragraphs (A), (B) and (C) above in this definition of VWAP (with the necessary changes).

For the purposes of calculating VWAP, if, Stapled Securities are reconstructed, de-stapled, consolidated, divided or reclassified into a lesser or greater number of securities during the period in which VWAP is being calculated, the VWAP shall be adjusted by the Trustee as it reasonably consider appropriate.

Where a specified period is stated in relation to the determination of VWAP and on any of the Business Days during that period Stapled Securities were subject to a trading halt or suspended, the period shall be extended by the number of Business Days on which the Stapled Securities were not able to be traded or were suspended.

## 5.8 Redemption Price

- (a) A Unit must only be redeemed at a Redemption Price calculated as:

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

- (b) Each of the variables in clause 5.8(a) must be determined:

- (1) while the Trust is Liquid, as at the close of business on the day before payment of the Redemption Price; or
  - (2) while the Trust is not Liquid, at the time the withdrawal offer closes.
- (c) The Redemption Price must be rounded down to the nearest whole cent.

## **5.9 Redemption Procedures**

- (a) While Units are Officially Quoted, none of the provisions of this clause 5.9 apply except clause 5.9(d).

### ***Request for redemption***

- (b) A Unit Holder may request redemption of some or all of their Units in any manner approved by the Trustee and, while the Trust is Liquid, the Trustee must give effect to that request at the time and in the manner set out in this clause 5.9.
- (c) A Unit Holder may not withdraw a redemption request unless the Trustee agrees.

### ***When Trust is Liquid***

- (d) Clauses 5.9(e) to 5.9(k) apply only while the Trust is Liquid.
- (e) The Trustee must satisfy a redemption request in respect of Unit by payment from the assets of the Redemption Price calculated in accordance with clause 5.8. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 5.9(f). The day of receipt of the redemption request is:
- (1) the day of actual receipt if the redemption request is received before 3.00 pm on a Business Day; or
  - (2) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00 pm on a Business Day.
- (f) If the Trustee has taken all reasonable steps to realise sufficient assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- (g) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time unless the redemption request relates to the balance of the Unit Holder's holding.
- (h) The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.
- (i) If compliance with a redemption request would result in the Unit Holder holding Units with an aggregate Redemption Price which is less than the

then current minimum holding amount, the Trustee may treat the redemption request as relating to the balance of the Unit Holder's holding.

- (j) If the Trustee increases the minimum holding amount, the Trustee may after given 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption price less than the then current minimum holding amount redeem that Unit Holder's holding without the need for a redemption request.

***Discretionary redemption***

- (k) Subject to the Corporations Act and the Listing Rules, if the Trustee is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

***When Trust is not Liquid***

- (l) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provision of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (m) The Trustee is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
  - (1) publishing it by any means (for example in a newspaper or on the internet); or
  - (2) giving a copy to all Unit Holders.
- (n) If the Trustee receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

***Clauses applicable whether or not the Trust is Liquid***

- (o) Clause 5.9(p) applies whether or not the Trust is Liquid.

***Sums owed to Trustee***

- (p) The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Unit Holder.

***Buy-back***

- (q) Subject to the Corporations Act, the Trustee may buy-back Units in the Trust.

**5.10 Effect of Stapling**

While Stapling applies the Trustee must not redeem a Unit unless the Attached Securities to which the Unit is Stapled is also redeemed, bought back or otherwise cancelled by each Stapled Entity.

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## **6 Trustee's Powers**

### **6.1 General powers**

- (a) Subject to this constitution, the Responsible Entity 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.
- (b) The Trustee may, in accordance with the terms of this deed, determine that the Units should be un-Stapled from the Attached Securities and effect that un-Stapling.

### **6.2 Contracting powers**

Without limiting clause 6.1, the Responsible Entity in its capacity as trustee of the Trust has power to borrow or raise money, to grant security and to incur all types of obligations and liabilities.

### **6.3 Investment powers**

Without limiting clause 6.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

### **6.4 Power of delegation**

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- (c) The agent or delegate may be an Associate of the Responsible Entity.

### **6.5 Exercise of discretion**

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

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## **7 Trustee's responsibilities and indemnities**

### **7.1 No limitation of other undertakings**

This clause 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

### **7.2 Limitation of liability**

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the Assets actually vested in the Trustee in respect of the Trust.

### **7.3 Indemnities**

- (a) The Trustee is not responsible for:
  - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,except where the Corporations Act expressly provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
  - (1) any provision of any present or future law or statute of Australia or any State or Territory; or
  - (2) of any decree, order or judgement of any competent court,the Trustee is prevented, forbidden or hindered from doing or performing.
- (c) 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 Trust. This indemnity is in addition to any indemnity allowed by law and continues to apply after the Trustee ceases to be trustee of the Trust.

### **7.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers 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,

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

## **7.5 Interested dealings by Trustee**

Subject to the provisions in Part 5C.7 of the Corporations Act, the Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;
  - (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, underwriter, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
  - (c) have an interest in or enter into a contract or transaction with:
    - (1) the Trustee or an Associate of the Trustee;
    - (2) any Holder; or
    - (3) any other person, including one whose shares or other securities form an Asset; or
  - (d) hold or deal in or have any other interest in an Asset,
- and may retain and is not required to account for any benefit derived by doing so.

## **7.6 Effect of Stapling**

While Stapling applies, the Trustee may in exercising any power or discretion have regard to the interests of the Holders and the members of each Stapled Entity as a whole and not only to the interests of the Holders alone. This is the case notwithstanding any other provision of this deed, or any rule of law or equity to the contrary, other than any relevant provision of the Corporations Act.

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# **8 Valuation of Assets**

## **8.1 Valuation of assets**

- (a) The Trustee may at any time, cause the valuation of any Asset.
- (b) In determining whether a valuation accurately reflects the current value of an Asset, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of Assets.
- (c)
  - (1) Each Asset must be valued at its market value unless the Trustee determines:
    - (A) there is no market in respect of the Asset; or
    - (B) the market value does not represent the fair value of the Asset.
  - (2) Where the Trustee makes a determination under clause 8.1(c) the Trustee must at the same time determine the method of valuation for the Asset.
- (d) Where a valuation is to be performed of any Asset or the determination of the Net Asset Value of the Trust and the number of Units on Issue is to be



made it is to be performed or determined as at a time determined by the Trustee.

- (e) Where the calculation of the Issue Price is to be made at a particular date, the Trustee need not cause a valuation of the Assets to be performed at that date but may rely on the most recent valuations for the purposes of that calculation.

## 8.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

## 8.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

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# 9 Income and Distributions

## 9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

## 9.2 Distribution of income

Subject to section 601FC(1)(d) of the Corporations Act, this deed and the Terms of Issue applicable to each class of Unit, for each Distribution Period the Trustee must calculate and pay to each Unit Holder its Distribution Entitlement on or before the Distribution Date.

## 9.3 Distribution Entitlement

- (a) The **Distributable Amount** for a period is to be determined by applying the following formula:

$$DA = I + C - R - ID$$

where:

DA is the amount of Distributable Amount

I is the Income of the Trust

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

R is the sum of amounts which the Trustee has determined are to be distributed to redeeming Unit Holders in accordance with clause 9.3(e)

ID is the sum of the amounts which have been distributed to Unit Holders under clause 9.3(f)

- (b) Subject to the Terms of Issue for any Unit each Unit Holder's **Distribution Entitlement** is to be determined in accordance with the

following formula subject to the Terms of Issue applicable to each class of Unit:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement

DA is the Distributable Amount

UH is the aggregate of the Paid-up Proportion of each Unit Holder's Unit Holding, at the close of business on the Distribution Calculation Date

UI is the aggregate Paid-up Proportion of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

- (c) The Trustee may retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as Income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this deed or are required to be deducted by law.
- (e) If the Trustee determines, it may notify a Unit Holder in respect of a Unit redeemed by the Unit Holder during the Distribution Period, that the Redemption Price paid in respect of that Unit includes that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder equal to:

$$\frac{A}{B}$$

where:

A is that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder

B is the number of units redeemed by that Unit Holder

- (f) The Trustee may make an interim distribution of income on account of Distributable Income at such intervals as it determines. On such an interim distribution, the entitlement of each Unit Holder to any income is determined as if the date of the interim distribution were midnight on the last day of the distribution period to which the interim distribution relates.

#### **9.4 Present entitlement**

At the end of each Distribution Period each Unit Holder is presently entitled to its Distribution Entitlement.

## **9.5 Composition of Distribution Entitlements**

At the end of each financial year the Trustee must notify each Unit Holder of the extent to which its Distribution Entitlements throughout that financial year are composed of, and the type of, income and capital.

## **9.6 Distribution reinvestment arrangements**

- (a) The Trustee may advise Unit Holders from time to time in writing that Unit Holders may on terms specified in the notice participate in an arrangement under which Unit Holders may reinvest all or a proportion of their Distribution Entitlements by subscribing for additional Units.
- (b) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units the Unit Holder subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units in question.
- (c) While Stapling applies, the Trustee may make provision for and may make payment for the subscription of Attached Securities to be Stapled to Units out of any distribution of income which is otherwise available for investment in Units.

## **9.7 Trust taxed as a company**

Notwithstanding clauses 9.3 and 9.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act because the Trust is a public trading trust under section 102R(1) of the Tax Act:

- (a) subject to any specific provisions to the contrary in the Terms of Issue of any class of Units, the Trustee has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unit Holders on the Distribution Date.
- (b) Each Unit Holder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.7(a)) is to be determined in accordance with clause 9.3(a).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.7(c)) to Unit Holders on the record date for that Distribution Period.

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# **10 Remuneration of Trustee**

## **10.1 Trustee's Remuneration**

The Trustee is entitled to receive out of the Assets of the Trust the remuneration (including the Management Fee and the Incentive Fee) specified in schedule 3, and any other fees specified in schedule 3 in relation to the proper performance of its duties.

## **10.2 Waiver of remuneration**

The Trustee may waive or defer the whole or any part of the fees to which it would otherwise be entitled and may defer the due date for payment of such remuneration.

## **10.3 Form of remuneration**

The Trustee may elect to be issued Units in any class at the greater of:

- (a) the then Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable); and
- (b) the price at which the Units are issued in the Trust's initial capital raising, as contemplated by clause 5.6(a)(2),

in lieu of some or all of any fee to which it is entitled under this deed.

## **10.4 Priority of Trustee's remuneration**

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Assets of the Trust.

## **10.5 Indemnity**

In addition to any other right of indemnity which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of the Assets for, or entitled to have paid from the Assets, all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust. Without limitation this includes the amounts specified in schedule 1.

## **10.6 Effect of Stapling**

While Stapling applies the Trustee may in its absolute discretion agree the apportionment of expenses incurred in connection with both the Trust and the issuers of the Attached Securities or with Stapled Securities, as between the Trust and the issuers of the Attached Securities. Any such apportionment could result in the Trust bearing the entirety of the expenses or it being shared with the issuers of the Attached Securities or borne totally by the issuers of the Attached Securities.

## **10.7 Proper performance of duties**

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

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# **11 Indemnity and insurance**

## **11.1 Persons to whom clauses 11.2 and 11.4 apply**

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee.

## **11.2 Indemnity**

The Trustee must, from the Assets of the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

## **11.3 Extent of indemnity**

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

## **11.4 Insurance**

The Trustee may, from the Assets of the Trust and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

## **11.5 Savings**

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

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# **12 Transfers**

## **12.1 Transfer**

- (a) Before the Trust is admitted to the Official List or at any time after the Trust has ceased to be admitted, all transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by

the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:

- (1) is duly stamped; and
  - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor.
- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

## **12.2 Effect of Stapling**

- (a) While Stapling applies:
- (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 3, the transfer is accompanied by a transfer of each Attached Security to which the Unit is Stapled in favour of the same transferee;
  - (2) a transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee;
  - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Securities to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee;
  - (4) any provision of this deed which contemplates the transfer of a Unit will be taken to be a reference to the transfer of a Stapled Security unless the contrary intention expressly applies; and
  - (5) the same rules as for the transfer of Units and Attached Securities apply to Options over Stapled Securities.

## **12.3 Transaction advice after transfer**

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

## **12.4 No General Restriction on Transfer**

- (a) There is no restriction on the transfer of Units and, subject to clause 12.5, the Trustee may not do anything which may prevent, delay or in any way

interfere with, the registration of a transfer of Units effected under clause 12.1(b).

- (b) Except as otherwise set out in this clause 12, there is no restriction on any other transfer of Units or Options.

## **12.5 Restricted Securities**

Despite any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASTC Settlement Rules in respect of Approved Financial Product, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Units which are restricted securities, the Holder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units for so long as the breach subsists.

## **12.6 Death, legal disability**

If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the survivor (in the case of joint Holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name.

The Trustee need not register any transfer or transmission under this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.

## **12.7 Recognition of Holder**

The Trustee:

- (a) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
- (b) except as required by law or this deed, need not recognise any claim or interest in any Unit or Option by any other person.

## **12.8 Participation in Transfer Systems**

The Trustee may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 12.

## **12.9 Sale by majority of Unit Holders**

Subject to any law or Listing Rule to the contrary, where 90% or more of Unit Holders in a particular class (**Majority Unit Holders**) agree to sell all their Units in that class to a third person, the remaining Unit Holders must sell their Units on the same terms and conditions as those agreed to by the Majority Unit Holders and the Unit Holders hereby irrevocably appoint the Trustee as their attorney for the purposes of effecting such sale and giving effect to the terms of this clause 12.9.

## **12.10 Exchange of Units deemed accepted**

(a) If, with the approval of the Trustee, an offer is made to Unit Holders or any of them to transfer some or all of their Units to a third party in return for any of:

- (1) the issue or transfer of units in another trusts or other interests in any entity;
- (2) cash; and
- (3) a transfer of Assets,

and at least 21 days notice is given to unit Holders to accept the offer, then at the end of the notice period, if no election has been communicated by the Unit Holder, they will be deemed to have accepted the Offer. Where the offer is of cash and one or more other alternatives, the Unit Holder is deemed to have accepted the cash alternative. In all other cases, the Trustee will determine the alternative deemed to be accepted.

(b) The Trustee is authorised to complete any application for units, transfer forms or other documents required to give effect to this clause 12.10 on behalf of and in the name of each relevant Unit Holder as their agent or attorney.

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# **13 Options**

## **13.1 Terms and Subscription**

- (a) This clause 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

## **13.2 Nominees**

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Option Holder unless the Terms of Issue provide otherwise.



### **13.3 Exercise**

- (a) An Option Holder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Option Holder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

### **13.4 Option Holder's Rights and Interest**

- (a) An Option does not confer on the Option Holder any particular interest in the Assets. Option Holders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules.
- (b) Option Holders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Option Holders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to,Unit Holders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

### **13.5 Redemption or Repurchase**

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX if required) whereupon the Trustee must make any payment to an Option Holder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) form part of the Assets and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

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## **14 Retirement or Removal of Trustee**

### **14.1 Retirement of Trustee**

- (a) Despite any other law, the Trustee may only retire as Trustee of the Trust in accordance with section 601FL of the Corporations Act.
- (b) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.
- (c) Subject to the law, the Trustee may agree to be paid a benefit by another entity who proposes to be the trustee of the Trust (**Proposed Trustee**) in consideration for retiring as trustee or agreeing to convene a meeting of Unit Holders to consider the replacement of the Trustee with the Proposed Trustee. The Trustee is not required to account to Unit Holders for the benefit received.

### **14.2 Name of Trust to be changed**

- (a) If Australian Pipeline Limited has retired or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Australian Pipeline Limited or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trusts and this deed.
- (b) Clause 14.2(a) does not apply if the new Trustee obtains the consent of Australian Pipeline Limited not to take the action set out in that clause.

### **14.3 Payment of outstanding or deferred fees**

Immediately upon the retirement or removal of the Trustee, all fees or amounts owing to the Trustee and all amounts deferred by the Trustee pursuant to clause 10.2 become due and payable to the Trustee from the Assets of the Trust and the new Trustee must take such action as is necessary to promptly effect all such payments.

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## **15 Alterations to Trust**

### **15.1 Variation of this deed**

Subject to section 601GC of the Corporations Act (if applicable) and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

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## **16 Term of Trust and termination of Trust**

### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) the date determined by an extraordinary resolution of Unit Holders at a meeting of the Trust, convened by the Trustee in accordance with clause 17.1; and
- (b) the date on which the Trust is terminated under this deed or by law.

## **16.2 Procedure on winding up of Trust**

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Assets;
  - (2) pay any amount due to it under clause 16.2(c);
  - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unit Holder who is a creditor of the Trust; and
  - (4) subject to any special rights or restrictions attached to or the Terms of Issue of any Unit or the direction in writing of all Unit Holders, distribute the net proceeds of realisation among the Unit Holders pro rata in accordance with the Paid-Up Proportion of Units held by Unit Holders.
- (b) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may distribute an asset of the Trust to a Unit Holder in specie. The Trustee must determine the value of the Asset to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unit Holder before the distribution is made.
- (c) The Trustee is entitled to:
  - (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unit Holders all Costs incurred or which it establishes will be incurred:
    - (A) by it before the winding up of the Trust which it has not recouped;
    - (B) by it in connection with the winding up of the Trust and the realisation of the Assets of the Trust;
    - (C) by or on behalf of any creditor of the Trustee in relation to the Trust;
    - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
  - (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; and
  - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 10.
- (d) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may postpone the realisation of the Assets for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.

- (e) The Trustee may retain for as long as it thinks fit any part of the Assets which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 16.2(c).
- (f) The Trustee must distribute among the Unit Holders in accordance with clause 16.2(a) anything retained under clause 16.2(e) which is subsequently not required.

### **16.3 Audit of accounts of Trust**

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a Registered Company Auditor, or a firm at least one of whose members is a Registered Company Auditor, who is independent of the Trustee.

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## **17 Meetings**

### **17.1 Meetings**

- (a) The Trustee may convene a meeting at any time.
- (b) Part 2G.4 of the Corporations Act, the Listing Rules and the provisions of schedule 2 apply to a meeting.

### **17.2 Resolutions in writing**

- (a) A resolution of Holders of the Trust may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution each Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total holding must be determined at such time as the Trustee specifies.

### **17.3 Passing of resolution**

A resolution passed:

- (a) at a meeting of Holders held in accordance with this deed and the Corporations Act; or
- (b) under clause 17.2,

is binding on all Holders in their capacity as Holders.

### **17.4 Effect of Stapling**

- (a) While Stapling applies, the directors or other representatives of the Responsible Entity may attend and speak at any meeting of Members, or invite any other person to attend and speak.
- (b) While Stapling applies, if permitted by the Corporations Act and any applicable ASIC relief, any meeting of Holders may be held with and as

part of a meeting of the members of the Attached Security. If such a joint meeting is permitted:

- (1) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Holders and the members of the Attached Security, with such modifications as the Trustee decides; and
- (2) any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Holders.

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## **18 Complaints**

### **18.1 Complaints handling**

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling.

### **18.2 Holder Complaints**

- (a) A Unit Holder in a Trust may by notice in writing, or orally to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
  - (1) record the complaint and the date it was received in a register maintained for that purpose; and
  - (2) send the Holder an acknowledgment of receipt of the complaint.

### **18.3 Handling of Complaint**

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.2 in accordance with this clause 18, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must deal with and resolve the complaint within 60 days of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
  - (1) its decision in relation to the complaint;
  - (2) the remedies available to the Holder in relation to the complaint; and
  - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.
- (d) The Trustee is not required to give the Holder the reasons for its decision in relation to a complaint.

## **18.4 Assistance and Information**

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.
- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

## **18.5 Effect of Stapling**

While Stapling applies the Trustee may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 18 to ensure an efficient and equitable resolution of the complaint.

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# **19 Small holdings**

## **19.1 Sale or redemption of small holdings**

- (a) Subject to the provisions of this clause 19, the Trustee may in its discretion from time to time sell or redeem any Units held by a Holder without request by the Holder where:
  - (1) the market value of Units (together with any Attached Securities Stapled to those Units) held by a Holder is less than \$2000; or
  - (2) while the Trust is Listed, the Units (together with any Attached Securities Stapled to those Units) held by a Holder comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Trustee may only sell or redeem Units (together with any Attached Securities Stapled to those Units) on one occasion in any 12 month period.

## **19.2 Procedure**

- (a) The Trustee must notify the Holder in writing of its intention to sell or redeem Units (together with any Attached Securities Stapled to those Units) under this clause 19.
- (b) The Trustee will not sell or redeem the relevant Units (together with any Attached Securities Stapled to those Units):
  - (1) before the expiry of 6 weeks from the date of notice given under clause 19.2(a); or
  - (2) if, within the 6 weeks allowed by clause 19.2(b)(1):
    - (A) the Holder advised the Trustee that the Holder wishes to retain the Units (together with any Attached Securities Stapled to those Units); or
    - (B) the market value of the Units (together with any Attached Securities Stapled to those Units) held by the Holder increases to \$2000 or more.

- (c) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (d) The Trustee or the purchaser of the Units (together with any Attached Securities Stapled to those Units) must pay the costs of the sale or redemption as the Trustee decided.
- (e) The proceeds of the sale or redemption will not be sent to the Holder until the Trustee has received the certificate (if any) relating to the Units (together with any Attached Securities Stapled to those Units), or is satisfied that the certificate has been lost or destroyed.
- (f) The Trustee is entitled to execute on behalf of a Holder any transfer of Units (together with any Attached Securities Stapled to those Units) under this clause 19.

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## **20 Stapling**

### **20.1 Power to staple Securities**

The Trustee may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, there is an equal number of Attached Securities of every kind Stapled to each Unit.

### **20.2 Distributions in specie**

- (a) For the purposes of Stapling, the Trustee may make an in specie distribution of Securities to all Unitholders. Notwithstanding clause 9.4, the trustee must transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution in specie and 10am the following day.
- (b) The Trustee must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (c) Where Securities are to be transferred to Unitholders, each Unitholder authorises the Trustee to act as the Unitholder's agent:
  - (1) to agree to obtain the Securities; and
  - (2) to become a member of the relevant Stapled Entity.

### **20.3 Operation of Stapling provisions**

Clause 20.4 applies from such a time as determined by the Trustee, and only for so long as, a Unit continues to be a component of a Stapled Security.

## 20.4 Units to be Stapled

- (a) Each Unit is Stapled to an Attached Security in each Stapled Entity to form a Stapled Security and each Stapled Security must be registered in the stapled security register as required by clause 20.8. The intention being that a Unit and each Attached Security which are Stapled together are treated as one security to the extent possible at law.
- (b) The Trustee may at any time staple an Unstapled Unit to an Attached Security which is not Stapled.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to an Attached Security to form a Stapled Security.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security. In particular:
  - (1) the Trustee must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Attached Securities for issue or sale;
  - (2) any offer of Units for subscription or sale must require each offeree to subscribe for or buy a number of Attached Securities equal to the number of Units subscribed for or bought;
  - (3) the Trustee must not issue or sell any Units to any person unless an identical number of Attached Securities are also issued or sold to the same person at the same time;
  - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of Attached Securities; and
  - (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of a corresponding number of each Attached Security,

but nothing in this sub-clause (d) prohibits the Trustee from determining the Unstapling Date.

## 20.5 Paramountcy of Stapling

- (a) While Stapling applies, the Trustee and the Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security.
- (b) While Stapling applies, the Trustee must use every endeavour to procure that the Stapled Securities are Listed as one joint security and that Units are dealt with under this deed in a manner consistent with the provisions of the Attached Entity's Constitution as regards Attached Securities Stapled with those Units.



## **20.6 Unstapling Date**

- (a) Subject to the Corporations Act, the Listing Rules and approval by a special resolution of the Unit Holders and the members of each Attached Entity respectively, the Trustee may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to each Attached Security and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 20.6, this does not prevent the Trustee from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to each Attached Security which is not Stapled.

## **20.7 Transfer of Stapled Securities**

- (a) Until the Unstapling Date:
  - (1) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12, the transfer is accompanied by a transfer of each Attached Security to which the Unit is stapled in favour of the same transferee.
  - (2) A transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee.
  - (3) A transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Unit Holder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

## **20.8 Stapled Security Register**

The Trustee must cause to be kept and maintained a stapled security register which:

- (a) may incorporate or form part of the Register; and

- (b) records the names of the members, the number of Units held, the number of Stapled Attached Securities held by the members to which each member's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the directors.

## **20.9 Variation of Stapling provisions**

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

- (a) directly affects the terms on which Units are Stapled to the Attached Securities; or
- (b) removes any restriction on the transfer of an Attached Security unless that restriction also exists for Unstapled Units and is simultaneously removed for Unstapled Units.

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# **21 General**

## **21.1 Service of notices**

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
  - (1) must be in legible writing and in English addressed:
    - (A) if to the Trustee, to its registered office;
    - (B) if to a Holder, to the Holder's address specified in the register of Unit Holders or Option Holders,  
or as specified to the sender by any party by notice;
  - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender;
  - (3) is regarded as being given by the sender and received by the addressee:
    - (A) if by delivery in person, when delivered to the addressee;
    - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee;
    - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received; or
    - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 3.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint Holder whose name appears first on the Register.

## **21.2 GST**

- (a) Any reference in this clause to a term defined or used in the GST Act is to be taken as a reference to that term as defined or used in the GST Act.
- (b) Except as provided in clause 21.2(c), any amount referred to in this deed (including the Trustee's remuneration and any Costs) which is relevant in determining the amount of any payment to be made to the Trustee is exclusive of any GST component.
- (c) Any payment to be made to the Trustee by way of indemnification or reimbursement for losses, damages or Costs must include any GST component of the losses, damages or Costs for which an input tax credit is not available to the Trustee.
- (d) If GST is levied or imposed on or in respect of any supply made under this deed or in relation to the administration or management of the Trust then the consideration payable for that supply is increased by the rate at which the GST is levied or imposed on that supply. The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.
- (e) The recipient of any consideration must issue a GST tax invoice to the recipient of the supply as required by the GST Act.

## **21.3 Method of payment, repayment or redemption**

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Holder and posted to the Holder's registered address or, if the Trustee determines, by electronic transfer.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person. The Trustee may adopt procedures limiting the type of accounts which are eligible to receive such payments.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units. The reinvestment is taken to be made on the day the cheque is cancelled.

#### **21.4 Binding conditions**

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

#### **21.5 Governing law and jurisdiction**

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Victoria.

#### **21.6 Severability**

If any provision of this deed is void, illegal or unenforceable it may be severed without affecting the enforceability of the other provisions of this deed.

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## Schedule 1 - Establishment and Administrative Costs

(Clause 10.4)

- 1 All Costs (including, without limitation, travel expenses and accommodation) in connection with:
- (a) the preparation, approval, registration, execution, stamping, interpretation and enforcement of this deed and any amending deeds and the Trust;
  - (b) the underwriting of any issues of Units or Options;
  - (c) the preparation, registration, printing, promotion and distribution of any prospectus or marketing material issued by the Trustee in respect of the Trust, Units or Stapled Securities and the preparation, registration, printing, promotion and distribution of any document required by law the Listing Rules or this deed to be prepared in respect of the Trust;
  - (d) the investigation, negotiation, acquisition, development, registration, custody, holding, management, supervision, repair, maintenance, valuation, insurance, sale of or other dealing with an Asset (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
  - (e) raising money or otherwise obtaining financial accommodation, including but not limited to, interest on borrowings and discounts and fees in respect of bill facilities and any Taxes payable in respect of such raising of money or obtaining financial accommodation;
  - (f) convening and holding meetings and carrying out the directions of the meetings;
  - (g) the retirement or removal of the Trustee and the appointment of another (including a temporary responsible entity) in its place;
  - (h) the establishment and maintenance of accounts (including bank accounts in respect of the Trust) and the Register and registry services;
  - (i) calculations and determinations under this deed;
  - (j) the establishment and administration of the Trust including:
    - (1) computer operation and development and data processing;
    - (2) computer experts' fees and expenses;
    - (3) office expenses including the cost of postage, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder or Option Holder under this deed;
    - (4) expenses in connection with any dealings with Units or Stapled Securities'
    - (5) holding meetings of the directors of the Trustee, without regard to where any director may reside; and
    - (6) holding meetings of the members of the Trust's Compliance Committee, without regard to where any member may reside;
  - (k) any custodian, actuary, adviser, expert, agent, delegate, lawyer (on a full indemnity basis), contractor, valuer, accountant or auditor (including the auditor of the Trust's Compliance Plan, including any who is an associate of the Trustee;

- (l) fees, remuneration and expenses of members of the Compliance Committee;
- (m) the indemnity referred to in clause 11.2;
- (n) any insurance purchased or maintained or premium for insurance paid or agreed to be paid as contemplated by clause 11.4;
- (o) all Taxes;
- (p) all fees payable to the ASIC, ASX, or other regulatory authority in respect of the Trust, Units or Options and other expenses incurred by the Trustee in respect of the admission of the Trust to the Official List of ASX or in respect of the Official Quotation of any Units or Options;
- (q) in anticipation of any action, suit or proceeding relating to the interpretation and construction of this deed or any provision of this deed or against the Trustee;
- (r) preparation and lodgement of tax returns;
- (s) termination of the Trust;
- (t) the assigning and maintaining of a credit rating to the Trust;
- (u) communications with Holders;
- (v) costs of responding to enquiries in respect of Unitholdings, preparing and printing accounts, causing the preparation and distribution of accounts, distribution statements, reports, confirmations and cheques in respect of the Trust;
- (w) the establishment of the Trust, the admission of the Trust to the Official List of the ASX or in respect of the Official Quotation of any Units or Options;
- (x) maintaining the Trust on the Official List of ASX or any ability to trade Units or Options or in connection with or arising out of any removal of the Trust from the Official list or suspension of any Units or Options from trading by ASX;
- (y) the services of asset managers, property managers, project managers and collection agents appointed in relation to Assets, despite such asset managers, property managers project managers and collection agents may be the Trustee or a Related Body Corporate of the Trustee;
- (z) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Asset; and
- (aa) underwriting of any subscription or purchase of Units or Stapled Securities, including underwriting fees, handling fees, cost and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amount becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement.

2 All like amounts or amounts incidental thereto.

---

## Schedule 2 - Meetings of Holders

(Clause 17)

### 1 **Notice of meeting**

If the Trustee omits to give a Holder notice of a meeting or if a Holder does not receive notice, the meeting is still valid.

### 2 **Who may attend and address meeting of Unit Holders**

The Trustee, the directors of the Trustee, the Auditor, the auditor of a Trust's Compliance Plan, the members of the Trust's Compliance Committee and any person invited by any of them is entitled to attend and address a meeting or adjourned meeting.

### 3 **Quorum**

- (a) No business may be transacted at any meeting unless a quorum of Holders is present at the time when the meeting proceeds to business.
- (b) The quorum for a meeting convened to consider a special resolution to modify, repeal or replace this deed under section 601GC(1)(a) of the Corporations Act is 2 Holders.
- (c) The quorum for a meeting convened to consider any special or extraordinary resolution (other than the special resolution referred to in paragraph 3(b)(1)) is 2 Holders.
- (d) The quorum for any meeting (other than the meetings referred to in paragraphs 3(b) and (c)) is 2 Holders.
- (e) Where a meeting of a particular class of Unit Holders is required, the quorum for that meeting is the number of Holders specified in paragraphs 3(b), (c) and (d) having Units in the relevant class.
- (f) If a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be adjourned as the chairman directs.
- (g) At an adjourned meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

### 4 **Adjournments**

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

### 5 **Proxies**

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if any);

- (2) under the hand of an officer or attorney who has been authorised by the corporation;
  - (3) under the hand of any 2 directors or a director and a secretary; or
  - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the meeting at which the proxy proposes to vote.
  - (e) If paragraph 5(d) is not complied with, the proxy is invalid.
  - (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
  - (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time of the vote, has died or has revoked the proxy or the authority under which the proxy was executed.
  - (h) Paragraph 7(a) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the meeting at which the proxy is to be used.

## 6 **Voting**

- (a) A poll is to be conducted as directed by the Chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the meeting.
- (d) A poll may not be demanded on any resolution concerning:
  - (1) the election of the chairman of a meeting; or
  - (2) the adjournment of a meeting.
- (e) If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a meeting as if the committee, trustee or other person were the Holder.

## 7 **Joint Unit Holders**

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.



8 **Class Meetings**

The provisions of Part 2G.4 of the Corporations Act, clause 17, and this schedule 2 relating to meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options in a class of Units or Options.

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## Schedule 3 – The Trust

- 1 The **Management Fee** payable to the Trustee under clause 10.1 of this deed is an amount up to 1.00% per annum of the Market Capitalisation of the Trust excluding the value of any distributions payable to Unit Holders of the Trust. This fee is to be calculated quarterly and must be paid quarterly in arrears.
- 2 The **Incentive Fee** (which accrues periodically) payable to the Trustee under clause 10.1 of this deed is calculated and payable as follows:

The Incentive Fee equals 20% of the Fund Return for a Period above the Benchmark Return for the Period. If the Fund Return for a Period is less than the Benchmark Return for that Period, the amount of the deficit (“Previous Shortfall” as defined below) is carried forward and taken into account in calculating whether the Fund Return exceeds the Benchmark Return in subsequent Periods.

The **Incentive Fee** for each Period is the greater of:

- (a) \$0; and
- (b)  $20\% \times (\text{Fund Return} - \text{Benchmark Return} - \text{Previous Shortfall})$ , where

**Fund Return** for a Period equals:

- (1) the average of the daily Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period, where it is the number of Stapled Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (2) the movement in the Securities Index over the relevant Period expressed as a fraction, where:
  - (A) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period minus the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities); and
  - (B) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities).

The **Securities Index** is the accumulation index for the Group which calculates the accumulated total return received by Security Holders, including all distributions from the date on which unconditional trading in Stapled Securities commences on ASX. It will be specifically calculated for the Group by an Approved Valuer. The opening value of the Securities Index will be one. The value of the Securities Index at any particular time subsequently will be:

$$\frac{\text{TP x (one plus A)}}{\text{IP}}$$

where:

**TP** means the price at which Stapled Securities were most recently traded on ASX (excluding any special crossings or other trades which the Approved Valuer considers have not occurred in the ordinary course of trading);

**A** means the number (or fractions of numbers) of Stapled Securities which would notionally have been issued if each distribution in respect of a Stapled Security (and any other Stapled Securities (or fractions of Stapled Securities) issued pursuant to the reinvestment of distributions prior to the distribution in question) was reinvested at the closing price of Stapled Securities on the date of payment of the relevant distribution.

**IP** means the aggregate issue price of a Stapled Security in an initial capital raising as contemplated by clause 5.6(a)(2) of this deed and the equivalent provisions of the constitutions of any other Group members.

In the case of any bonus issues, security splits or consolidations, or other reconstructions, the value of TP and IP will be adjusted to take into account these changes as the Approved Valuer considers appropriate.

**Group** means the Trust and any entities whose securities are Stapled to Units in the Trust.

**Benchmark Return** for a Period equals:

- (a) the average of the Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period where it is the number of Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (b) the movement in the Benchmark Index over the relevant Period expressed as a fraction, where:
  - (1) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period compared with the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX); and
  - (2) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX).

**Benchmark Index** means ASX/S&P 200 Industrials Accumulation Index (or such other equivalent index as may replace that index from time to time, as determined by an Approved Valuer) as reported by Bloomberg (or such other appropriate reporting agency as may be selected from time to time by an Approved Valuer).

**Period** means:

- (a) subject to paragraphs (b) and (c) below, each six month period ending 30 June and 31 December;
- (b) for the first period, the period commencing on the date on which unconditional trading in Stapled Securities commences on ASX and concluding on 30 June 2005; and
- (c) in the case of the last period, the period which ends on the date of termination of the Trust or the date on which the Trustee ceases to be responsible entity of the Trust (whichever occurs first) and which commences on 30 June or 31 December which occurs last before this event.

**Previous Shortfall** means:

- (a) for the first Period, \$0;
- (b) for the second Period, the amount (if any) by which the Fund Return for the first Period was less than the Benchmark Return for the first Period; and
- (c) for each subsequent Period, the amount (if any) by which:
  - (1) the Fund Return for the immediately previous Period; minus
  - (2) the Benchmark Return for that immediately previous Period; minus
  - (3) the Previous Shortfall applicable to that immediately previous Period,produces an amount which is less than \$0.

The Incentive Fees calculated pursuant to this paragraph 2 represent the aggregate incentive fees payable to the Trustee by the Group in respect of the performance by the Trustee of its duties in relation to the Group members.

If an Incentive Fee is payable in respect of any Period, then it will be apportioned between the Group members as follows:

- (a) if, on the last day of the Period, there are no Group members other than the Trust, then 100% of any Incentive Fee for that Period will be paid out of the assets of the Trust;
- (b) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of one (but not more than one) of the Group members is a positive amount, then 100% of the Incentive Fee will be paid out of the assets of that Group member;
- (c) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Values of more than one of the Group members is a positive amount, then an amount equal in aggregate to 100% of the Incentive Fee will be paid out of the

assets of those Group members in the proportions which their Net Asset Values bear to each other; and

- (d) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of none of the Group members is a positive amount, then the Group members will pay an amount equal to 100% of the Incentive Fee out of their respective assets in the proportions which their Gross Asset Values bear to each other.

# **Consolidated Constitution**

Incorporating all amendments up to 13 December 2012

## **APA Sub Trust No 2**

ARSN 109 770 961

## **Responsible Entity: Australian Pipeline Limited**

ACN 091 344 704

Complete and up to date as at 13 December 2012

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# This Constitution

is made on 1 June 2004 by the trustee of the Trust.

This consolidated constitution comprises:

- (a) the Constitution dated 1 June 2004;
- (b) the first supplemental constitution dated 27 October 2004;
- (c) the second supplemental constitution dated 15 March 2005;
- (d) the third supplemental constitution dated 30 June 2005;
- (e) the fourth supplemental constitution dated 8 January 2007;
- (f) the fifth supplemental constitution dated 5 January 2009;
- (g) the sixth supplemental constitution dated 1 July 2009; and
- (h) the seventh supplemental constitution dated 13 December 2012.

---

## 1 Meaning of words and interpretation

### 1.1 Definitions

- (a) In this deed, unless the context otherwise requires:

**Application** means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;  
or
- (3) an application for Options;

**Application Moneys** means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units or Options;

**Approved Financial Product** means a Financial Product in respect of which approval has been given by ASTC in accordance with the ASTC Settlement Rules;

**Approved Valuer** means a valuer appointed by the Trustee;

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

**Asset Benchmark Value** or **ABV** means, with respect to any Asset at any time (**relevant time**), the Cost Base for that Asset increased in the case of each amount paid for that Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment for that Asset to the relevant time;

**Asset Realised Value** or **ARV** means, with respect to any Asset at any time, the aggregate of each amount paid to the Trustee for or in respect of

that Asset including dividends, distributions, sale proceeds and the value of franking credits increased in the case of the amount paid for each Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time;

**Assets** means all the cash, investments, rights and other property of the Trust;

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

**ASTC** means the ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

**ASX** means the ASX Limited;

**Attached Security** means a Security which is from time to time Stapled or to be Stapled to a Unit;

**Auditor** means the auditor from time to time appointed by the Trustee to audit the Trust

**Benchmark Rate** means 4% per annum over the 10 year government bond return;

**Business Day** has the meaning given to that term in the Listing Rules;

**Compliance Committee** means the compliance committee for the Trust as required by section 601JA of the Corporations Act;

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

**Corporations Act** means Corporations Act 2001;

**Costs** includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

**Cost Base** means in the case of any Asset, the cost of acquisition of that Asset, including the purchase price;

**Current Unit Value** means the amount obtained by dividing the Net Asset Value applicable to a particular class of Units by the number of Units on Issue in that class of Units;

**Distributable Amount** means the amount determined in accordance with clause 9.3(a);

**Distribution Calculation Date** means the day or days in each year or such other dates as the Trustee may determine;

**Distribution Date** means 30 days after the Distribution Calculation Date for the relevant Distribution Period or such other date determined by the Trustee;

**Distribution Entitlement** means a Unit Holder's entitlement to the Distributable Amount determined in accordance with clause 9.3(b);

**Distribution Period** means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

**Financial Product** has the meaning given in the ASTC Settlement Rules;

**Financial Year** means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

**Foreign Interests** means the Units or Options a Foreign Unit Holder would have been entitled to but for clause 4.7(a);

**Foreign Unit Holder** means a Unit Holder whose address appearing in the Register is in a country outside Australia;

**Forfeited Unit** means a Partly Paid Unit which is forfeited under clause 3.8(c) by non-payment of an Instalment;

**Fully Paid Unit** means a Unit on which the whole of the Issue Price has been paid;

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

**Gross Asset Value** means the sum of:

- (1) the value of all Assets; and
- (2) any other amounts which, in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

**GST** means any goods and services tax or similar value added tax imposed in relation to a supply of any goods, property, service or any other thing;

**GST Act** means A New Tax System (Goods and Services Tax) GST Act 1999;

**Holder** means a Unit Holder or Option Holder (as the context may require);

**Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to interest and other borrowing costs, fees paid to the Trustee and any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust;

**Incentive Fee** means the incentive fee payable to the Trustee calculated in accordance with schedule 3;

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

**Issue Price** means the price determined in accordance with clause 5, or the Terms of Offer or Terms of Issue;

**July 2009 Offer** means the fundraising described in an announcement to the ASX on or about 1 July 2009 consisting of:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional securityholders and the second being the offer of Stapled Securities to eligible retail securityholders. The securityholders (other than Foreign Unit Holders) will be invited to participate in the offer on a pro-rata basis according to their existing securityholding as at the record date determined by the Trustee; and
- (b) an institutional placement of Stapled Securities.

**Liabilities** mean liabilities of the Trust including any provision the Trustee decides should be taken into account but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust and excluding any amount relating to derivative instruments used for hedging;

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

**Listed** means:

- (1) in respect of the Trust, the Trust being admitted to the official list of ASX; and
- (2) in the case of Stapled Securities or Units, being Officially Quoted;

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Trust, including any variation, consolidation or replacement of those rules and is to be taken subject to any waiver or exemption granted to the Trust from compliance with those rules;

**Management Fee** means the management fee payable to the Trustee calculated in accordance with schedule 3;

**Market Capitalisation** means, in respect of any particular day, the market capitalisation of the Trust as determined by multiplying the Market Price of Units in each class on that day by the number of Units in that class on issue on that day and aggregating the results (if there is more than one class of Units on issue on that day);

**Market Price** has the meaning given in clause 1.3;

**Marketable Parcel** has the meaning given to that expression in the Listing Rules;

**Meeting** means a meeting of Holders convened in accordance with this deed;

**Minimum Holding** means:

- (1) if Units are not admitted to the Official List, such number as the Trustee from time to time determines; or
- (2) if Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; and
- (3) in relation to Options, such number of Options (if any) as is specified in the Terms of Offer or Terms of Issue;

**month** means calendar month;

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

- (1) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

**Net Taxable Income** means, for any Distribution Period, the net income for that period determined in accordance with the principles applicable under section 95(1) of the Tax Act;

**Non-Cash Income** means for any period, the sum of:

- (1) the amount (if any) that in relation to the foreign income (as defined in the Tax Act) of the Trust for the Distribution Period, is equal to the amount of foreign tax (as defined in the Tax Act) paid or deemed to be paid under the Tax Act; and
- (2) the amount (if any) that in relation to the Distribution Period is included in the assessable income of the Trust under section 160AQT of the Tax Act;

**Official List** means the official list of ASX;

**Official Quotation** or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

**Option** means an option granted by the Trustee in respect of unissued Stapled Securities;

**Option Holder** means the person for the time being registered as a holder of an Option, including any persons jointly registered;

**Ordinary Unit** means a Unit that has not been issued in a specific class of units;

**Ordinary Unit Holder** means a holder of an Ordinary Unit;

**Paid-up Proportion** in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

**Partly Paid Unit** means a Unit in respect of which any portion of its Issue Price remains unpaid;

**Portfolio Benchmark Value** or **PBV** means the aggregate sum of the ABV for each Asset of the Trust;

**Portfolio Market Value** or **PMV** means the aggregate of each amount paid to the Trustee for, or in respect of, all Assets including dividends, distributions and the value of franking credits increased in the case of each amount paid to the Trustee for each Asset by:

- (1) the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time; and
- (2) the most recent valuation undertaken in accordance with clause 8 for each Asset;

**Prospectus** means a product disclosure statement for the purposes of the Corporations Act in respect of an issue or offer of Units or Options;

**Quarter** means each 3 month period ending on the last day of March, June, September and December in each year;

**Redemption Price** means the amount calculated under clause 5.8;

**Register** means the register of Unit Holders or Option Holders maintained by the Trustee under Chapter 2C of the Corporations Act, as the context requires;

**Responsible Entity** means the Trustee;

**Security** has the meaning given to that term in section 92(1) of the Corporations Act;

**Staple, Stapled** or **Stapling** means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others;

**Stapled Entity** means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;

**Stapled Entity's Constitution** means the constitution of a Stapled Entity;

**Stapled Security** means a Unit and each Attached Security which are Stapled together;



**Stapled Security Register** means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 19.4;

**Stapling Date** means the date determined by the Trustee to be the day on which all Units on issue in the Trust will be Stapled to an Attached Security or Attached Securities;

**TAPS** means Trust-issued Adjustable Preferred Securities issued by the TAPS Issuer pursuant to the TAPS Constitution which provides that in specified circumstances TAPS may, in accordance with the terms of the TAPS Constitution, be exchanged for Units which form part of a Stapled Security;

**TAPS Constitution** means the constitution of the TAPS Trust dated 18 February 2005 as amended;

**TAPS Issuer** means Hastings Funds Management Limited ACN 058 693 388 as responsible entity of the TAPS Trust;

**TAPS Trust** means the TAPS Trust ARSN 113 037 317;

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

**Tax Act** means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

**Terms of Issue** in relation to a Stapled Security, Unit or an Option means the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed);

**Terms of Offer** in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

**Transaction Costs** means:

- (1) when calculating the Issue Price of a Unit, the Trustee's estimate of the total cost of acquiring the Assets; and
- (2) when calculating the Redemption Price of a Unit, the Trustee's estimate of the total cost of selling the Assets,

as described in the current Prospectus;

**Trust** means the APA Sub Trust No 2 constituted under this deed;

**Trustee** means Australian Pipeline Limited ACN 091 344 704 or any other company named in the ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

**Unit** means an undivided interest in the Trust as provided for in this deed and includes all classes of units on issue at the relevant time;

**Unit Holder** means a person registered as the holder of a Unit, including any persons jointly registered;

**Unit Holding** means the total number of Units held by a Unit Holder;

**Units on Issue** means the number of Units created under this deed and not cancelled;

**Unstapled** means, in relation to a Unit, not being Stapled to each Attached Security;

**Unstapling Date** means the date determined by the Trustee to be the unstapling date pursuant to clause 20.3;

**Weighted Average NAV per Unit** means the Weighted Average Net Asset Value divided by the Weighted Average Units on Issue;

**Weighted Average Net Asset Value** means the average Net Asset Value weighted according to the daily Net Asset Value; and

**Weighted Average Units on Issue** means the average number of total Units on issue weighted according to the daily number of Units on issue.

- (b) Unless otherwise specified in this deed, terms defined for the purposes of the Corporations Act are used in this deed with the same meaning.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document; and
- (f) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

## 1.3 Market Price

- (a) The **Market Price** for a Stapled Security in a class or an Option (as the case requires), on any Business Day is:
  - (1) the daily weighted average traded price for a Stapled Security in that class or Option in that class for all sales on ASX for the period of the lesser of:
    - (A) 15 Business Days immediately preceding the relevant Business Day; or

- (B) the number of Business Days immediately preceding the relevant Business Day during which the Stapled Security was quoted on ASX,

in either case whether or not a sale was recorded on any particular day (apportioned between the Unit and any Attached Securities as the Trustee determines); or

- (2) if the Trustee believes that the calculation in clause 1.3(a)(1) does not provide a fair reflection of the market price of a Stapled Security or Option, an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security or Option;
- (b) Despite clause 1.3(a), for the purposes of clause 5.7(h), the Market Price for a Stapled Security or Option means an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of a Stapled Security or Option at or around the relevant date.
  - (c) The “Market Price” of an Option on any Business Day must be determined in the same manner as the Market Price for a Stapled Security is determined.

#### **1.4 General compliance provision**

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Act, or the terms of any applicable ASIC instrument (including a class order) or any ASX Waiver from time to time does not operate to the extent of, and for the duration of, the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this deed.
- (c) This clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.
- (d) If the terms of any current ASIC instrument of relief or exemption (including a class order) are applicable on the basis that this deed contains certain provisions, then such provisions are deemed to be contained in this deed.

#### **1.5 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4.
- (b) If the Trust is admitted to the Official List of ASX, the following clauses apply:
  - (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;

- (3) 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);
- (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
- (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
- (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of, and for the duration of, the inconsistency.

## 1.6 Additional Listing Rule requirements

At all times that the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under clause 3.8 has not been paid;
  - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with schedule 2;
  - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined Corporations Act as the “specified time” for deciding who held the Unit or Option for the purpose of the meeting;
  - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
  - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;

- (4) the divestment is under a court order; or
- (5) the divestment is under clause 3.9; and
- (c) unless the law and relevant ASTC Settlement Rules permit otherwise at the time, the Trustee must not divest a Unit Holder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASTC Settlement Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASTC Settlement Rule 5.12.

## **1.7 Accounting Standards**

To the extent to which

- (a) the calculation of the Issue Price;
- (b) the extent of any limitation on borrowings; or
- (c) the calculation of the Distributable Amount,

may involve the application of generally accepted accounting principles or accounting standards, the principles or standards to be applied are those as generally accepted or in force immediately before 1 January 2005.

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## **2 The Trust**

### **2.1 Trustee**

Australian Pipeline Limited is appointed and agrees to act as trustee of the Trust.

### **2.2 Declaration of Trust**

- (a) Westpac Investment Vehicle Pty Limited ACN 093 721 423 (**Westpac**) applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (b) Jim Hallam applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (c) The Trustee issues 1 Ordinary Unit to Westpac and 1 Ordinary Unit to Jim Hallam.

### **2.3 Name of Trust**

The name of the Trust is the APA Sub Trust No 2. The Trustee may change the name of the Trust in accordance with the Corporations Act.

### **2.4 Assets**

The Trustee must hold the Assets on trust for the Unit Holders.

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## **3 Interest of Unit Holder**

### **3.1 Division into Units**

- (a) The beneficial interest in the Assets is divided into Units. The Unit Holders are beneficially entitled to the Assets, however, no Unit confers an interest in a particular part of the Trust or in particular Assets except that, if any Units are issued relating to a particular class of Asset, those Units confer an interest in the class of Asset described but in no particular part of that class of Asset.
- (b) A Holder may not:
  - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
  - (2) claim or exercise any right in respect of any Asset or lodge any caveat or other notice affecting any Asset; or
  - (3) require that any Asset be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
  - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
  - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

### **3.2 Fractions and splitting**

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit. However, while Stapling applies, a fraction of a Unit may only be issued if a fraction of an Attached Security stapled to the fraction of Unit is also issued.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unit Holder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

While Stapling applies, Units may only be consolidated or split if the related Attached Securities are also consolidated or split at the same time and to the same extent.

- (d) Subject to any law or Listing Rule or the ASTC Settlement Rules, the Trustee may split Units pursuant to clause (c) to create additional Units of the same class or to split the Units according to rights or characteristics attaching to those Units so that 2 or more additional classes of Units are created comprising a sub-set of rights attaching to the split Units.

### **3.3 Issue of Partly Paid Units**

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust and the Trustee must ensure that this is stated in the Terms of Issue.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.
- (e) While Stapling applies:
  - (1) Partly Paid Units may not be issued unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid and are to be Stapled to the Partly Paid Units; and
  - (2) any issue of Partly Paid Units must be on the basis that 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 Stapled to those Units is also paid.

### **3.4 Joint Holders**

Where two or more persons are registered as the Holders of a Unit or an Option (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and

- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is taken to be given to all the joint holders.

### **3.5 Classes of Units**

- (a) The Trustee may at any time issue Units in two or more classes (including income and capital units) and, subject to law and the Listing Rules, subject to any terms or conditions and having such rights as the Trustee determines.
- (b) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee may convert any class of a Unit Holder's Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unit Holder.

### **3.6 Benefits and obligations of Unit Holders and Option Holders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unit Holder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Option Holder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Option Holders where expressly provided in this deed. Where the interests of Option Holders and Unit Holders conflict, the Trustee must prefer the interests of Unit Holders.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unit Holder and the Trustee and to any call on Partly Paid Units which the Trustee is entitled to make under clauses 3.3 and 3.8 to 3.15.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the Assets of the Trust.

### **3.8 Failure to pay instalment on Partly Paid Unit**

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.



- (b) If a Unit Holder does not pay an Instalment on the due date, the Trustee must serve the Unit Holder with a notice not later than 7 days after the due date containing:
- (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
  - (2) a statement that interest:
    - (A) runs from the due date of the Instalment until the date the Trustee receives payment of the overdue amount in full; and
    - (B) is payable at a fair market rate determined by the Trustee;
  - (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice;
  - (4) a warning that if payment in full is not received by the due date specified in the notice, the Partly Paid Unit is forfeited and the Trustee may offer the Forfeited Unit for sale; and
  - (5) if Stapling applies, a statement that an equal number of each Attached Security will also be liable to be forfeited.

The omission to give such notice by the Trustee or the non-receipt of such notice by the Unit Holder does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (c) If payment in full is not received by the due date specified in the notice issued under clause 3.8(b), the Partly Paid Unit is forfeited (concurrently with the forfeiture of the same number of each Attached Security if Stapling applies) and the Trustee may offer the Forfeited Unit for sale.

### **3.9 Sale of Forfeited Unit**

- (a) Despite clause 3.9(d), if the Trustee offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit (and while Stapling applies as agent for the holder of the Attached Security Stapled to the forfeited Unit).
- (b) If the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee. Any such sale must also be with respect to the same number of Attached Security while Stapling applies.
- (c) The Trustee must ensure that the auction is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unit Holder for any loss suffered by the Unit Holder as a result of the sale.

### **3.10 Income and Capital of a Forfeited Unit**

Distribution of income and capital under clause 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.9(b), the Trustee must give notice of the sale of a Forfeited Unit:

- (a) to all Unit Holders in writing; and
- (b) by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### **3.12 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.8(b) and any other amount payable in respect of the forfeiture (provided that this clause 3.12 will not apply where the Trustee is already under an obligation to sell such Units to a third party).

### **3.13 Consequences of sale and continuing liability**

- (a) On completion of the sale of the Forfeited Unit, the Holder ceases to be the Holder of that Unit but remains liable to the Trustee for the total amount set out in the notice served under clause 3.8(b).
- (b) The Unit Holder's liability under this clause ceases as soon as the Trustee receives:
  - (1) payment in full of the amount set out in the notice under clause 3.8(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unit Holder to recover the amount due (including any amounts due in respect of the same number of Attached Securities Stapled to those Units if Stapling applies).
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (1) that a Partly Paid Unit has been forfeited (and referring to the same number of Attached Securities if Stapling applies); and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) If the Trustee executes a transfer of a Forfeited Unit (which transfer must include the same number of Attached Securities if Stapling applies), the Trustee must register the transferee as the Holder of the Forfeited Unit.

- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

### **3.14 Proceeds of sale of Forfeited Unit**

- (a) If a Forfeited Unit is sold under clause 3.9, the Trustee must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments (such Costs are to be appropriately weighted between the Trust and the Attached Security if Stapling applies);
  - (3) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(b);
  - (4) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying the balance to the Unit Holder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

### **3.15 Lien for Amounts Owing**

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unit Holder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unit Holders. The lien extends to distributions from time to time declared in respect of such Units but if the Trustee registers any transfer of any Units upon which it has a lien, those Units are freed and discharged from the lien.

### **3.16 Trustee Units**

The Trustee may issue and receive Units on arm's length terms in lieu of fees which are payable to it for the proper performance of its functions and duties under this deed.

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## **4 Application Procedures**

### **4.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units in a class of Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Money by the Issue Price of Units in that class of Units.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Money by the amount of the Issue Price for a Unit in that class which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

### **4.2 Application for Units or Options**

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee;
- (c) include with the Application the Application Money in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee; and
- (d) while Stapling applies, make an application for an identical number of Attached Securities to be Stapled to those Units.

### **4.3 Payments to the Trustee**

- (a) If on Application for Units or Options the payment received or property to be transferred to the Trustee is such that the number of Units or Options which would otherwise be issued would be less than the Minimum Holding the Trustee must hold the payment or property received on trust for the applicant until the Trustee has accepted or rejected the Application.
- (b) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (c) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee before the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (d) If Units or Options are issued and:

- (1) the Trustee has not received the Application Money in accordance with the Terms of Issue; or
- (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Money for the Units or Options.

- (e) Subject to clause 4.3(a), all income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Assets of the Trust.
- (f) Application Money for Units or Options issued under a Prospectus must be paid to the Trustee, to be placed by the Trustee in a special trust account until the earlier of:
  - (1) the minimum subscription, if any (to be specified in the Prospectus) has been reached and the Trustee decides to proceed to allotment of Units; or
  - (2) the date by which the Application Money would need to be repaid under the Corporations Act.

Until the Trustee decides to proceed to the allotment of Units in accordance with this clause 4, it holds such Application Money upon bare trust for the applicant and the Trustee must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. No interest is payable on that money.

#### **4.4 Allotment**

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or to an Option until it is granted.

#### **4.5 Trustee's discretion on Application**

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). If Stapling applies, the Trustee must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units. Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

#### **4.6 Certificates**

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

## 4.7 Foreign Unit Holders

- (a) The Trustee may determine that Foreign Unit Holders are not to be offered Units or Options under a pro rata issue or on reinvestment of all or part of a Unit Holder's Distribution Entitlement where it reasonably considers that it would:
- (1) be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unit Holders.
- (b) If the Trustee makes a determination under clause 4.7(a), the Trustee must sell the Foreign Interests and pay to each Foreign Unit Holder the amount calculated as follows:

$$\text{where: } AF = NP \times \frac{NF}{N}$$

AF is the amount to be paid to that Foreign Unit Holder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unit Holder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unit Holder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unit Holder under clause 4.7(b).

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## 5 Issues and Redemptions

### 5.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this clause 5, the Listing Rules, current applicable laws and subject to this deed.
- (b) No sub-clause of this clause 5 (other than this clause 5.1) limits any other sub-clause.

## **5.2 Underwriting of Issue**

- (a) The Trustee may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units;
  - (3) if Stapling applies, an offer for sale, subscription or issue of Stapled Securities or Options; or
  - (4) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may, subject to applicable laws and the Listing Rules:
  - (1) be the Trustee or a Related Body Corporate of the Trustee; and
  - (2) take up any Units (or Stapled Securities, if Stapling applies) or Options not subscribed for.
- (c) The Trustee may issue Units (or Stapled Securities, if Stapling applies) and Options to an underwriter under this clause 5.2 at an Issue Price equal to the Issue Price at which the underwritten Units (or Stapled Securities, if Stapling applies) or Options were or would have been issued to persons other than the underwriter or underwriters.

## **5.3 Issues of Options**

The Trustee may issue Options for any consideration (including nil consideration) in accordance with the Terms of Offer and Terms of Issue.

## **5.4 Stapled Securities**

While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Attached Securities, or Options over unissued Attached Securities on the same terms as the Options, on the basis that Units are to be Stapled to Attached Securities and Options are to be Stapled with options in respect of unissued Attached Securities.

## **5.5 Issue of Units under Options**

- (a) The Trustee may issue Units upon the exercise of Options in accordance with the Terms of Offer and Terms of Issue.
- (b) While Stapling applies an Option may only be exercised if at the same time as Units are acquired under the Option the same person contemporaneously acquires on exercise of an option over Attached Securities an identical number of Attached Securities which are then Stapled to the Units.

## **5.6 Issue at fixed price**

In addition to any other power the Trustee has to issue Units (or Stapled Securities, if Stapling applies) under this deed, the Trustee may issue Units (or Stapled Securities, if Stapling applies) or Options at any time to any person as follows:

- (a) before the Trust being admitted to the Official List:

- (1) for the initial issue, Units at \$1.00;
- (2) for an initial capital raising of the Trust, Units at \$0.001;
- (3) for subsequent issues, units in accordance with the following formula:

Net Asset Value + Transaction Costs

Number of Units in issue

at the time determined by the Trustee;

- (b) where the Trust has been admitted to the Official List and the Units (or Stapled Securities, if Stapling applies) or Options are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at the Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable);
- (c) where the Trust has been admitted to the Official List and Units (or Stapled Securities, if Stapling applies) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Options at the consideration for the issue of the Option in accordance with the Terms of Offer and Terms of Issue, where the Units to be issued under those Options are to be issued at Market Price of a Unit (or Stapled Securities, if Stapling applies) immediately before the date upon which the Option is issued, and Units under any such Option;
- (d) where Units (or Stapled Securities, if Stapling applies) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, Stapled Securities at the Market Value on the Business Day before the day the offer to issue the Stapled Securities is made, less the value of the Attached Securities Stapled to the Unit; and
- (e) In addition to any other power granted to the Trustee under this deed, the Trustee may issue Units as part of Stapled Securities issued in connection with the July 2009 Offer at an issue price of \$0.90 per Stapled Security.

## 5.6A Financial Instruments

- (a) Subject to the Corporations Act and Listing Rules the Trustee may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (**Financial Instruments**)).
- (b) Subject to the Corporations Act, Financial Instruments may be issued on such terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Trustee determines.

## 5.7 Other issues

- (a) Subject to compliance with any instrument issued by ASIC, the Listing Rules and this clause 5.7, the Trustee may issue Units Stapled Securities or Options (including Units Stapled Securities on the exercise of an Option)



at a price determined by the Trustee in accordance with the following provisions.

(b) Stapled Securities may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where the issue of the Stapled Securities is not to the Trustee or any person associated with it, and, in the case where:

(1) the issue (together with any other issue of Stapled Securities up to one year previously, at a consideration determined by the Trustee other than an issue approved or ratified by Stapled Security Holders in accordance with subparagraphs (3) to (8) and issues in accordance with other provisions of this deed) is of Stapled Securities that would, immediately after the issue, comprise more than 15% of either:

(A) all of the Stapled Securities on issue; or

(B) the Stapled Securities on issue of which the Units of that class form a component part are in the same class as the Units comprised in the issue;

or

(2) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the current Market Price for those Stapled Securities exceeds 10%,

the following requirements are also satisfied:

(3) Stapled Security Holders approve the issue;

(4) if the Units which form a component part of the Stapled Securities to be issued are in a particular class, Stapled Security Holders in that class approve the issue;

(5) unless the Trustee reasonably consider that the issue will not adversely affect the interests of Stapled Security Holders in another class, Stapled Security Holders in that other class approve the issue;

(6) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;

(7) an approval for the purposes of subparagraphs (3), (4) or (5) is given by special resolution of Stapled Security Holders where Stapled Security Holders with at least 25% of the total value of all the interests of Stapled Security Holders entitled to vote on the question vote on the question at the meeting; and

(8) if in making the calculations referred to in subparagraph (7) any vote of a person to whom the Stapled Securities are to be issued or

any vote of any associate of that person were not counted, the resolutions would be passed.

(c) Stapled Securities in the Trust may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where:

- (1) the issue of the Stapled Securities is not to the Trustee or any person associated with it;
- (2) the Stapled Securities are issued pursuant to offers made at substantially the same time; and
- (3) the sum of the prices of the Unit and the Attached Securities which make up the Stapled Security is to equal the current Market Price for the Stapled Security at the time the offers are made.

(d) Stapled Securities in the Trust, but not an Option, may be issued at a price determined by the Trustee, pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders of the Trust if:

- (1) all of the Units offered are in the same class;
- (2) the price of all the Stapled Securities offered is the same;
- (3) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%; and
- (4) the amount of Stapled Securities offered to each Stapled Security Holder is proportionate to the value of that Stapled Security Holder's interest,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of a sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

(e) An Option in respect of a Stapled Security may be issued, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee, if the Options are issued pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders in proportion to the value of their interests if:

- (1) all of the Units offered are in the same class;
- (2) the price of all the Stapled Securities offered is the same;

- (3) the means of calculating the exercise price is set out in the terms of issue of the Option; and
- (4) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Options to foreign Stapled Security Holders if each Option, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (f) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee under an arrangement where:
  - (1) the whole or part of any money payable to a Stapled Security Holder under this deed, by way of distribution of capital or income, is applied in payment for the subscription for Stapled Securities in the Trust;
  - (2) each Stapled Security Holder of the Trust may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distributions which are, or would otherwise be, payable to that Stapled Security Holder;
  - (3) all the Stapled Securities issued under the arrangement are of the same class;
  - (4) the price of each Stapled Security issued pursuant to that arrangement at substantially the same time is the same;
  - (5) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue the Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of the sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (g) Where Stapled Securities are quoted on the financial market operated by the Australian Stock Exchange Limited and not suspended from quotation, Units may be sold by the Trustee or its agent, at a price determined by the Trustee, where:
  - (1) part of the issue price of the Stapled Security has not been paid when called and, in accordance with the terms of this deed, the

Stapled Security has consequently been forfeited to the Trustee on trust for Stapled Security Holders; and

- (2) the sale of the Stapled Security occurs in the context of a sale of the Stapled Security conducted in accordance with section 254Q of the Act other than subsections 254Q(1), 254Q(10), 254Q(13) and 254Q(14) as if the Stapled Security was a share, the Trust was the company and the Trustee was the directors of the company.
- (h) The Trustee may (subject to the terms of any applicable ASIC relief instrument) issue Options to subscribe for a Stapled Security, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee provided that:
- (1) all Stapled Security Holders are offered Options at the same price on a pro rata basis;
  - (2) the exercise price of all Options offered is the same;
  - (3) the amount by which the exercise price is less than the Issue Price of Stapled Securities that would otherwise apply, does not exceed 50% on the date of exercise of the Option,

but, subject to the Listing Rules and any applicable ASIC relief instrument, the Trustee is not required to offer or issue Options under this clause to persons whose address on a Register is in a place other than Australia.

Any offer made under this clause (h) must be made to Stapled Security Holders in proportion to the value of their respective holdings on the date determined by the Trustee, provided that 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 Options or Stapled Securities, as the case requires. Any Stapled Security Holder may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable. Any Options offered under this clause which are not subscribed for within the relevant period for acceptance set by the Trustee, may be offered for subscription by the Trustee to any person, provided that the price payable in relation to such further offer is not less than that at which the Options were originally offered to the Stapled Security Holders, and otherwise complies with any applicable ASIC relief instrument. An underwriter may take up any Options not subscribed for by Stapled Security Holders.

- (i) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited and the Stapled Securities are in a class of interests which is quoted on that financial market and trading in the class is not suspended, under an arrangement where:
- (1) an offer for the issue of Stapled Securities is made to each registered Stapled Security Holder;
  - (2) each offer is made on the same terms and conditions and on a non-renounceable basis;

- (3) the issue price is less than the market price during a specified period in the 30 days prior to either date of the offer or the date of the issue; and
- (4) no registered Stapled Security Holder may be issued with Stapled Securities with an application price (including, for the avoidance of doubt, the application price for any Attached Securities) totalling more than \$5,000 in any consecutive 12 month period,

provided that an offer need not be made to any registered Stapled Security Holder whose address is in a place where the Trustee reasonably considers that it is not lawful or not practical for that entity to offer and issue Stapled Securities to the person under the arrangement.

(j) Subject to clause 5.7(b), the Trustee may issue the Exchange Number of Stapled Securities at a price determined in accordance with subparagraph (1) for each TAPS Exchanged.

- (1) Subject to the adjustments in subparagraphs (2), (3) and (4), for the purposes of determining the number of Stapled Securities to be issued on Exchange the **Exchange Number** is to be calculated for each TAPS according to the following formula:

$$\text{Exchange Number} = \frac{\text{Realisation Amount}}{\text{RV} \times (1 - \text{Exchange Discount})}$$

- (2) If the total number of Stapled Securities to be issued to a former TAPS holder, as calculated under subparagraph (1), includes a fraction, that fraction will be disregarded.
- (3) If the Stapled Securities are de-stapled, then the TAPS Issuer will make all calculations in relation to Exchange as if a separate interest in each of the formerly Stapled Entities were each a Stapled Security and as if each TAPS was split into separate TAPS with face values equal in aggregate to the Face Value or make such other adjustment as the TAPS Issuer reasonably considers appropriate or necessary to maintain that relativity. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.
- (4) In this clause 5.7(j):

**Change of Control Event** means:

- (A) a takeover bid under Chapter 6 of the Corporations Act to acquire all or some of the Stapled Securities and the offer under such takeover bid is, or becomes, unconditional and the bidder has acquired at any time during the offer period a relevant interest in more than 50% of the Stapled Securities on issue; or
- (B) the Stapled Security Holders approve, and if necessary a court approves, an informal or formal scheme of arrangement which if implemented, will result in a person having a relevant interest in more than 50% of the Stapled Securities that will be on issue after the scheme is implemented;

**Exchange Discount** (expressed as a decimal) means the exchange discount being 2.5% or as changed by the TAPS Issuer pursuant to the TAPS Constitution;

**Exchange** means the redemption by the TAPS Issuer of TAPS for the Realisation Amount and the application of that Realisation Amount by the TAPS Issuer in payment for the Exchange Number of Stapled Securities, calculated in accordance with subparagraph (1), to be issued to the former holder of TAPS;

**Exchange Number** means the number of Stapled Securities to be issued calculated in accordance with subparagraph (1);

**Face Value** means the face value of TAPS being \$100;

**Realisation Amount** means the amount for which TAPS may be realised in accordance with the terms of the TAPS Constitution;

**RV** (expressed as a dollar value) means:

- (C) if Exchange has resulted other than from a Change of Control Event, the VWAP (expressed as a dollar value) calculated in respect of the period of 20 Business Days on which trading in Stapled Securities took place immediately preceding (but excluding) the relevant date for Exchange as determined in accordance with the TAPS Constitution; or
- (D) if Exchange has resulted from a Change of Control Event, the offer price under the takeover bid or the consideration under the scheme of arrangement or, in the case of non-cash consideration, the value of the offer price as reasonably determined by the TAPS Issuer. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.

**VWAP** is the average of the daily volume weighted average sale prices per Stapled Security sold on ASX on each Business Day during the relevant periods specified elsewhere in these Terms (so that if there are 20 Business Days in such period, the volume weighted average sale price per Stapled Security on each of those Business Days shall be determined, and then those volume weighted average sale prices shall be averaged to give the VWAP), but in determining such daily volume weighted average sale prices there shall not be included any transaction defined in the ASX market rules as a “special”, crossings prior to the commencement of normal trading, crossings during the after hours adjust phase, crossings during the closing phase, overnight crossings or any overseas trades or trades under the exercise of options over Stapled Securities or other trades which the TAPS Issuer reasonably considers are not fairly reflective of normal market supply and demand.

For the purposes of calculating VWAP, if, on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as cum dividend, or cum any other distribution or entitlement, but Stapled Securities will be issued under this clause

5.7(j) ex such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted cum dividend, other distribution or entitlement shall be reduced by an amount equal to:

- (E) in the case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of the recipient of the dividend or other distribution who is a natural person;
- (F) in the case of an entitlement which is traded on ASX on any of those Business Days, the average of the daily volume weighted average sale price for such entitlement sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
- (G) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the TAPS Issuer.

Conversely, where on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as ex dividend or any other distribution or entitlement, but Stapled Securities will be issued under this clause 5.7(j) cum such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted ex dividend, other distribution or entitlement shall be increased under paragraphs (A), (B) and (C) above in this definition of VWAP (with the necessary changes).

For the purposes of calculating VWAP, if, Stapled Securities are reconstructed, de-stapled, consolidated, divided or reclassified into a lesser or greater number of securities during the period in which VWAP is being calculated, the VWAP shall be adjusted by the Trustee as it reasonably consider appropriate.

Where a specified period is stated in relation to the determination of VWAP and on any of the Business Days during that period Stapled Securities were subject to a trading halt or suspended, the period shall be extended by the number of Business Days on which the Stapled Securities were not able to be traded or were suspended.

## 5.8 Redemption Price

- (a) A Unit must only be redeemed at a Redemption Price calculated as:

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

- (b) Each of the variables in clause 5.8(a) must be determined:
  - (1) while the Trust is Liquid, as at the close of business on the day before payment of the Redemption Price; or
  - (2) while the Trust is not Liquid, at the time the withdrawal offer closes.

- (c) The Redemption Price must be rounded down to the nearest whole cent.

## **5.9 Redemption Procedures**

- (a) While Units are Officially Quoted, none of the provisions of this clause 5.9 apply except clause 5.9(d).

### ***Request for redemption***

- (b) A Unit Holder may request redemption of some or all of their Units in any manner approved by the Trustee and, while the Trust is Liquid, the Trustee must give effect to that request at the time and in the manner set out in this clause 5.9.
- (c) A Unit Holder may not withdraw a redemption request unless the Trustee agrees.

### ***When Trust is Liquid***

- (d) Clauses 5.9(e) to 5.9(k) apply only while the Trust is Liquid.
- (e) The Trustee must satisfy a redemption request in respect of Unit by payment from the assets of the Redemption Price calculated in accordance with clause 5.8. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 5.9(f). The day of receipt of the redemption request is:
  - (1) the day of actual receipt if the redemption request is received before 3.00 pm on a Business Day; or
  - (2) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00 pm on a Business Day.
- (f) If the Trustee has taken all reasonable steps to realise sufficient assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- (g) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time unless the redemption request relates to the balance of the Unit Holder's holding.
- (h) The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.
- (i) If compliance with a redemption request would result in the Unit Holder holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Trustee may treat the redemption request as relating to the balance of the Unit Holder's holding.
- (j) If the Trustee increases the minimum holding amount, the Trustee may after given 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption price less than the then current minimum holding



amount redeem that Unit Holder's holding without the need for a redemption request.

***Discretionary redemption***

- (k) Subject to the Corporations Act and the Listing Rules, if the Trustee is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

***When Trust is not Liquid***

- (l) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provision of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (m) The Trustee is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
  - (1) publishing it by any means (for example in a newspaper or on the internet); or
  - (2) giving a copy to all Unit Holders.
- (n) If the Trustee receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

***Clauses applicable whether or not the Trust is Liquid***

- (o) Clause 5.9(p) applies whether or not the Trust is Liquid.

***Sums owed to Trustee***

- (p) The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Unit Holder.

***Buy-back***

- (q) Subject to the Corporations Act, the Trustee may buy-back Units in the Trust.

## **5.10 Effect of Stapling**

While Stapling applies the Trustee must not redeem a Unit unless the Attached Securities to which the Unit is Stapled is also redeemed, bought back or otherwise cancelled by each Stapled Entity.

---

# **6 Trustee's Powers**

## **6.1 General powers**

- (a) Subject to this constitution, the Responsible Entity 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.

- (b) The Trustee may, in accordance with the terms of this deed, determine that the Units should be un-Stapled from the Attached Securities and effect that un-Stapling.

## **6.2 Contracting powers**

Without limiting clause 6.1, the Responsible Entity in its capacity as trustee of the Trust has power to borrow or raise money, to grant security and to incur all types of obligations and liabilities.

## **6.3 Investment powers**

Without limiting clause 6.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

## **6.4 Power of delegation**

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- (c) The agent or delegate may be an Associate of the Responsible Entity.

## **6.5 Exercise of discretion**

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

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# **7 Trustee's responsibilities and indemnities**

## **7.1 No limitation of other undertakings**

This clause 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

## **7.2 Limitation of liability**

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the Assets actually vested in the Trustee in respect of the Trust.

### **7.3 Indemnities**

- (a) The Trustee is not responsible for:
- (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,
- except where the Corporations Act expressly provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (1) any provision of any present or future law or statute of Australia or any State or Territory; or
  - (2) of any decree, order or judgement of any competent court,
- the Trustee is prevented, forbidden or hindered from doing or performing.
- (c) 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 Trust. This indemnity is in addition to any indemnity allowed by law and continues to apply after the Trustee ceases to be trustee of the Trust.

### **7.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers 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,

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

### **7.5 Interested dealings by Trustee**

Subject to the provisions in Part 5C.7 of the Corporations Act, the Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;

- (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, underwriter, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
  - (c) have an interest in or enter into a contract or transaction with:
    - (1) the Trustee or an Associate of the Trustee;
    - (2) any Holder; or
    - (3) any other person, including one whose shares or other securities form an Asset; or
  - (d) hold or deal in or have any other interest in an Asset,
- and may retain and is not required to account for any benefit derived by doing so.

## **7.6 Effect of Stapling**

While Stapling applies, the Trustee may in exercising any power or discretion have regard to the interests of the Holders and the members of each Stapled Entity as a whole and not only to the interests of the Holders alone. This is the case notwithstanding any other provision of this deed, or any rule of law or equity to the contrary, other than any relevant provision of the Corporations Act.

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# **8 Valuation of Assets**

## **8.1 Valuation of assets**

- (a) The Trustee may at any time, cause the valuation of any Asset.
- (b) In determining whether a valuation accurately reflects the current value of an Asset, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of Assets.
- (c)
  - (1) Each Asset must be valued at its market value unless the Trustee determines:
    - (A) there is no market in respect of the Asset; or
    - (B) the market value does not represent the fair value of the Asset.
  - (2) Where the Trustee makes a determination under clause 8.1(c) the Trustee must at the same time determine the method of valuation for the Asset.
- (d) Where a valuation is to be performed of any Asset or the determination of the Net Asset Value of the Trust and the number of Units on Issue is to be made it is to be performed or determined as at a time determined by the Trustee.
- (e) Where the calculation of the Issue Price is to be made at a particular date, the Trustee need not cause a valuation of the Assets to be performed at that date but may rely on the most recent valuations for the purposes of that calculation.

## 8.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

## 8.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

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# 9 Income and Distributions

## 9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

## 9.2 Distribution of income

Subject to section 601FC(1)(d) of the Corporations Act, this deed and the Terms of Issue applicable to each class of Unit, for each Distribution Period the Trustee must calculate and pay to each Unit Holder its Distribution Entitlement on or before the Distribution Date.

## 9.3 Distribution Entitlement

- (a) The **Distributable Amount** for a period is to be determined by applying the following formula:

$$DA = I + C - R - ID$$

where:

DA is the amount of Distributable Amount

I is the Income of the Trust

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

R is the sum of amounts which the Trustee has determined are to be distributed to redeeming Unit Holders in accordance with clause 9.3(e)

ID is the sum of the amounts which have been distributed to Unit Holders under clause 9.3(f).

- (b) Subject to the Terms of Issue for any Unit each Unit Holder's **Distribution Entitlement** is to be determined in accordance with the following formula subject to the Terms of Issue applicable to each class of Unit:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement

DA is the Distributable Amount

UH is the aggregate of the Paid-up Proportion of each Unit Holder's Unit Holding, at the close of business on the Distribution Calculation Date

UI is the aggregate Paid-up Proportion of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

- (c) The Trustee may retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as Income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this deed or are required to be deducted by law.
- (e) If the Trustee determines, it may notify a Unit Holder in respect of a Unit redeemed by the Unit Holder during the Distribution Period, that the Redemption Price paid in respect of that Unit includes that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder equal to:

$$\frac{A}{B}$$

where:

A is that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder

B is the number of units redeemed by that Unit Holder

- (f) The Trustee may make an interim distribution of income on account of Distributable Income at such intervals as it determines. On such an interim distribution, the entitlement of each Unit Holder to any income is determined as if the date of the interim distribution were midnight on the last day of the distribution period to which the interim distribution relates.

#### **9.4 Present entitlement**

At the end of each Distribution Period each Unit Holder is presently entitled to its Distribution Entitlement.

#### **9.5 Composition of Distribution Entitlements**

At the end of each financial year the Trustee must notify each Unit Holder of the extent to which its Distribution Entitlements throughout that financial year are composed of, and the type of, income and capital.

#### **9.6 Distribution reinvestment arrangements**

- (a) The Trustee may advise Unit Holders from time to time in writing that Unit Holders may on terms specified in the notice participate in an

arrangement under which Unit Holders may reinvest all or a proportion of their Distribution Entitlements by subscribing for additional Units.

- (b) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units the Unit Holder subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units in question.
- (c) While Stapling applies, the Trustee may make provision for and may make payment for the subscription of Attached Securities to be Stapled to Units out of any distribution of income which is otherwise available for investment in Units.

## **9.7 Trust taxed as a company**

Notwithstanding clauses 9.3 and 9.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act because the Trust is a public trading trust under section 102R(1) of the Tax Act:

- (a) subject to any specific provisions to the contrary in the Terms of Issue of any class of Units, the Trustee has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unit Holders on the Distribution Date.
- (b) Each Unit Holder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.7(a)) is to be determined in accordance with clause 9.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.7(c)) to Unit Holders on the record date for that Distribution Period.

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## **10 Remuneration of Trustee**

### **10.1 Trustee's Remuneration**

The Trustee is entitled to receive out of the Assets of the Trust the remuneration (including the Management Fee and the Incentive Fee) specified in schedule 3, and any other fees specified in schedule 3 in relation to the proper performance of its duties.

### **10.2 Waiver of remuneration**

The Trustee may waive or defer the whole or any part of the fees to which it would otherwise be entitled and may defer the due date for payment of such remuneration.

### **10.3 Form of remuneration**

The Trustee may elect to be issued Units in any class at the greater of:

- (a) the then Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable); and
  - (b) the price at which the Units are issued in the Trust's initial capital raising, as contemplated by clause 5.6(a)(2),
- in lieu of some or all of any fee to which it is entitled under this deed.

#### **10.4 Priority of Trustee's remuneration**

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Assets of the Trust.

#### **10.5 Indemnity**

In addition to any other right of indemnity which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of the Assets for, or entitled to have paid from the Assets, all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust. Without limitation this includes the amounts specified in schedule 1.

#### **10.6 Effect of Stapling**

While Stapling applies the Trustee may in its absolute discretion agree the apportionment of expenses incurred in connection with both the Trust and the issuers of the Attached Securities or with Stapled Securities, as between the Trust and the issuers of the Attached Securities. Any such apportionment could result in the Trust bearing the entirety of the expenses or it being shared with the issuers of the Attached Securities or borne totally by the issuers of the Attached Securities.

#### **10.7 Proper performance of duties**

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

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## **11 Indemnity and insurance**

### **11.1 Persons to whom clauses 11.2 and 11.4 apply**

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee.

### **11.2 Indemnity**

The Trustee must, from the Assets of the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:



- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

### **11.3 Extent of indemnity**

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **11.4 Insurance**

The Trustee may, from the Assets of the Trust and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **11.5 Savings**

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

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## **12 Transfers**

### **12.1 Transfer**

- (a) Before the Trust is admitted to the Official List or at any time after the Trust has ceased to be admitted, all transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
  - (1) is duly stamped; and
  - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor.
- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.

- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

## **12.2 Effect of Stapling**

- (a) While Stapling applies:
  - (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 3, the transfer is accompanied by a transfer of each Attached Security to which the Unit is Stapled in favour of the same transferee;
  - (2) a transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee;
  - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Securities to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee;
  - (4) any provision of this deed which contemplates the transfer of a Unit will be taken to be a reference to the transfer of a Stapled Security unless the contrary intention expressly applies; and
  - (5) the same rules as for the transfer of Units and Attached Securities apply to Options over Stapled Securities.

## **12.3 Transaction advice after transfer**

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

## **12.4 No General Restriction on Transfer**

- (a) There is no restriction on the transfer of Units and, subject to clause 12.5, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 12.1(b).
- (b) Except as otherwise set out in this clause 12, there is no restriction on any other transfer of Units or Options.

## 12.5 Restricted Securities

Despite any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASTC Settlement Rules in respect of Approved Financial Product, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Units which are restricted securities, the Holder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units for so long as the breach subsists.

## 12.6 Death, legal disability

If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the survivor (in the case of joint Holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name.

The Trustee need not register any transfer or transmission under this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.

## 12.7 Recognition of Holder

The Trustee:

- (a) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
- (b) except as required by law or this deed, need not recognise any claim or interest in any Unit or Option by any other person.

## 12.8 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 12.

## 12.9 Sale by majority of Unit Holders

Subject to any law or Listing Rule to the contrary, where 90% or more of Unit Holders in a particular class (**Majority Unit Holders**) agree to sell all their Units in that class to a third person, the remaining Unit Holders must sell their Units on the same terms and conditions as those agreed to by the Majority Unit Holders and the Unit Holders hereby irrevocably appoint the Trustee as their attorney for the purposes of effecting such sale and giving effect to the terms of this clause 12.9.

## **12.10 Exchange of Units deemed accepted**

- (a) If, with the approval of the Trustee, an offer is made to Unit Holders or any of them to transfer some or all of their Units to a third party in return for any of:
  - (1) the issue or transfer of units in another trusts or other interests in any entity;
  - (2) cash; and
  - (3) a transfer of Assets,and at least 21 days notice is given to unit Holders to accept the offer, then at the end of the notice period, if no election has been communicated by the Unit Holder, they will be deemed to have accepted the Offer. Where the offer is of cash and one or more other alternatives, the Unit Holder is deemed to have accepted the cash alternative. In all other cases, the Trustee will determine the alternative deemed to be accepted.
- (b) The Trustee is authorised to complete any application for units, transfer forms or other documents required to give effect to this clause 12.10 on behalf of and in the name of each relevant Unit Holder as their agent or attorney.

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## **13 Options**

### **13.1 Terms and Subscription**

- (a) This clause 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

### **13.2 Nominees**

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Option Holder unless the Terms of Issue provide otherwise.

### **13.3 Exercise**

- (a) An Option Holder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Option Holder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

### 13.4 Option Holder's Rights and Interest

- (a) An Option does not confer on the Option Holder any particular interest in the Assets. Option Holders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules.
- (b) Option Holders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Option Holders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to, Unit Holders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

### 13.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX if required) whereupon the Trustee must make any payment to an Option Holder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) form part of the Assets and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

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## 14 Retirement or Removal of Trustee

### 14.1 Retirement of Trustee

- (a) Despite any other law, the Trustee may only retire as Trustee of the Trust in accordance with section 601FL of the Corporations Act.
- (b) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.
- (c) Subject to the law, the Trustee may agree to be paid a benefit by another entity who proposes to be the trustee of the Trust (**Proposed Trustee**) in consideration for retiring as trustee or agreeing to convene a meeting of

Unit Holders to consider the replacement of the Trustee with the Proposed Trustee. The Trustee is not required to account to Unit Holders for the benefit received.

#### **14.2 Name of Trust to be changed**

- (a) If Australian Pipeline Limited has retired or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Australian Pipeline Limited or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trusts and this deed.
- (b) Clause 14.2(a) does not apply if the new Trustee obtains the consent of Australian Pipeline Limited not to take the action set out in that clause.

#### **14.3 Payment of outstanding or deferred fees**

Immediately upon the retirement or removal of the Trustee, all fees or amounts owing to the Trustee and all amounts deferred by the Trustee pursuant to clause 10.2 become due and payable to the Trustee from the Assets of the Trust and the new Trustee must take such action as is necessary to promptly effect all such payments.

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## **15 Alterations to Trust**

### **15.1 Variation of this deed**

Subject to section 601GC of the Corporations Act (if applicable) and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

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## **16 Term of Trust and termination of Trust**

### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) the date determined by an extraordinary resolution of Unit Holders at a meeting of the Trust, convened by the Trustee in accordance with clause 17.1; and
- (b) the date on which the Trust is terminated under this deed or by law.

### **16.2 Procedure on winding up of Trust**

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Assets;
  - (2) pay any amount due to it under clause 16.2(c);

- (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unit Holder who is a creditor of the Trust; and
  - (4) subject to any special rights or restrictions attached to or the Terms of Issue of any Unit or the direction in writing of all Unit Holders, distribute the net proceeds of realisation among the Unit Holders pro rata in accordance with the Paid-Up Proportion of Units held by Unit Holders.
- (b) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may distribute an asset of the Trust to a Unit Holder in specie. The Trustee must determine the value of the Asset to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unit Holder before the distribution is made.
- (c) The Trustee is entitled to:
- (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unit Holders all Costs incurred or which it establishes will be incurred:
    - (A) by it before the winding up of the Trust which it has not recouped;
    - (B) by it in connection with the winding up of the Trust and the realisation of the Assets of the Trust;
    - (C) by or on behalf of any creditor of the Trustee in relation to the Trust;
    - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
  - (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; and
  - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 10.
- (d) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may postpone the realisation of the Assets for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Assets which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 16.2(c).
- (f) The Trustee must distribute among the Unit Holders in accordance with clause 16.2(a) anything retained under clause 16.2(e) which is subsequently not required.

### **16.3 Audit of accounts of Trust**

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a Registered Company Auditor, or a firm at least one of whose members is a Registered Company Auditor, who is independent of the Trustee.

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## **17 Meetings**

### **17.1 Meetings**

- (a) The Trustee may convene a meeting at any time.
- (b) Part 2G.4 of the Corporations Act, the Listing Rules and the provisions of schedule 2 apply to a meeting.

### **17.2 Resolutions in writing**

- (a) A resolution of Holders of the Trust may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution each Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total holding must be determined at such time as the Trustee specifies.

### **17.3 Passing of resolution**

A resolution passed:

- (a) at a meeting of Holders held in accordance with this deed and the Corporations Act; or
- (b) under clause 17.2,

is binding on all Holders in their capacity as Holders.

### **17.4 Effect of Stapling**

- (a) While Stapling applies, the directors or other representatives of the Responsible Entity may attend and speak at any meeting of Members, or invite any other person to attend and speak.
- (b) While Stapling applies, if permitted by the Corporations Act and any applicable ASIC relief, any meeting of Holders may be held with and as part of a meeting of the members of the Attached Security. If such a joint meeting is permitted:
  - (1) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Holders and the members of the Attached Security, with such modifications as the Trustee decides; and



- (2) any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Holders.

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## **18 Complaints**

### **18.1 Complaints handling**

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling.

### **18.2 Holder Complaints**

- (a) A Unit Holder in a Trust may by notice in writing, or orally to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
  - (1) record the complaint and the date it was received in a register maintained for that purpose; and
  - (2) send the Holder an acknowledgment of receipt of the complaint.

### **18.3 Handling of Complaint**

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.2 in accordance with this clause 18, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must deal with and resolve the complaint within 60 days of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
  - (1) its decision in relation to the complaint;
  - (2) the remedies available to the Holder in relation to the complaint; and
  - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.
- (d) The Trustee is not required to give the Holder the reasons for its decision in relation to a complaint.

### **18.4 Assistance and Information**

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.

- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

### **18.5 Effect of Stapling**

While Stapling applies the Trustee may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 18 to ensure an efficient and equitable resolution of the complaint.

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## **19 Small holdings**

### **19.1 Sale or redemption of small holdings**

- (a) Subject to the provisions of this clause 19, the Trustee may in its discretion from time to time sell or redeem any Units held by a Holder without request by the Holder where:
  - (1) the market value of Units (together with any Attached Securities Stapled to those Units) held by a Holder is less than \$2000; or
  - (2) while the Trust is Listed, the Units (together with any Attached Securities Stapled to those Units) held by a Holder comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Trustee may only sell or redeem Units (together with any Attached Securities Stapled to those Units) on one occasion in any 12 month period.

### **19.2 Procedure**

- (a) The Trustee must notify the Holder in writing of its intention to sell or redeem Units (together with any Attached Securities Stapled to those Units) under this clause 19.
- (b) The Trustee will not sell or redeem the relevant Units (together with any Attached Securities Stapled to those Units):
  - (1) before the expiry of 6 weeks from the date of notice given under clause 19.2(a); or
  - (2) if, within the 6 weeks allowed by clause 19.2(b)(1):
    - (A) the Holder advised the Trustee that the Holder wishes to retain the Units (together with any Attached Securities Stapled to those Units); or
    - (B) the market value of the Units (together with any Attached Securities Stapled to those Units) held by the Holder increases to \$2000 or more.
- (c) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.

- (d) The Trustee or the purchaser of the Units (together with any Attached Securities Stapled to those Units) must pay the costs of the sale or redemption as the Trustee decided.
- (e) The proceeds of the sale or redemption will not be sent to the Holder until the Trustee has received the certificate (if any) relating to the Units (together with any Attached Securities Stapled to those Units), or is satisfied that the certificate has been lost or destroyed.
- (f) The Trustee is entitled to execute on behalf of a Holder any transfer of Units (together with any Attached Securities Stapled to those Units) under this clause 19.

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## **20 Stapling**

### **20.1 Power to staple Securities**

The Trustee may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, there is an equal number of Attached Securities of every kind Stapled to each Unit.

### **20.2 Distributions in specie**

- (a) For the purposes of Stapling, the Trustee may make an in specie distribution of Securities to all Unitholders. Notwithstanding clause 9.4, the trustee must transfer the Securities by way of distribution between 7pm and 10am the following day.
- (b) The Trustee must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (c) Where Securities are to be transferred to Unitholders, each Unitholder authorises the Trustee to act as the Unitholder's agent:
  - (1) to agree to obtain the Securities; and
  - (2) to become a member of the relevant Stapled Entity.

### **20.3 Operation of Stapling provisions**

Clause 20.4 applies from such a time as determined by the Trustee, and only for so long as, a Unit continues to be a component of a Stapled Security.

### **20.4 Units to be Stapled**

- (a) Each Unit is Stapled to an Attached Security in each Stapled Entity to form a Stapled Security and each Stapled Security must be registered in the stapled security register as required by clause 20.8. The intention being that a Unit and each Attached Security which are Stapled together are treated as one security to the extent possible at law.

- (b) The Trustee may at any time staple an Unstapled Unit to an Attached Security which is not Stapled.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to an Attached Security to form a Stapled Security.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security. In particular:
  - (1) the Trustee must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Attached Securities for issue or sale;
  - (2) any offer of Units for subscription or sale must require each offeree to subscribe for or buy a number of Attached Securities equal to the number of Units subscribed for or bought;
  - (3) the Trustee must not issue or sell any Units to any person unless an identical number of Attached Securities are also issued or sold to the same person at the same time;
  - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of Attached Securities; and
  - (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of a corresponding number of each Attached Security,

but nothing in this sub-clause (d) prohibits the Trustee from determining the Unstapling Date.

## **20.5 Paramountcy of Stapling**

- (a) While Stapling applies, the Trustee and the Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security.
- (b) While Stapling applies, the Trustee must use every endeavour to procure that the Stapled Securities are Listed as one joint security and that Units are dealt with under this deed in a manner consistent with the provisions of the Attached Entity's Constitution as regards Attached Securities Stapled with those Units.

## **20.6 Unstapling Date**

- (a) Subject to the Corporations Act, the Listing Rules and approval by a special resolution of the Unit Holders and the members of each Attached Entity respectively, the Trustee may determine that the Stapling provisions

of this deed will cease to apply and that a particular date is to be the Unstapling Date.

- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to each Attached Security and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 20.6, this does not prevent the Trustee from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to each Attached Security which is not Stapled.

## **20.7 Transfer of Stapled Securities**

- (a) Until the Unstapling Date:
  - (1) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12, the transfer is accompanied by a transfer of each Attached Security to which the Unit is stapled in favour of the same transferee.
  - (2) A transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee.
  - (3) A transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Unit Holder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

## **20.8 Stapled Security Register**

The Trustee must cause to be kept and maintained a stapled security register which:

- (a) may incorporate or form part of the Register; and
- (b) records the names of the members, the number of Units held, the number of Stapled Attached Securities held by the members to which each member's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the directors.

## 20.9 Variation of Stapling provisions

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

- (a) directly affects the terms on which Units are Stapled to the Attached Securities; or
- (b) removes any restriction on the transfer of an Attached Security unless that restriction also exists for Unstapled Units and is simultaneously removed for Unstapled Units.

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## 21 General

### 21.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
  - (1) must be in legible writing and in English addressed:
    - (A) if to the Trustee, to its registered office;
    - (B) if to a Holder, to the Holder's address specified in the register of Unit Holders or Option Holders,  
or as specified to the sender by any party by notice;
  - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender;
  - (3) is regarded as being given by the sender and received by the addressee:
    - (A) if by delivery in person, when delivered to the addressee;
    - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee;
    - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received; or
    - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,  
  
but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 3.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and
  - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint Holder whose name appears first on the Register.

## **21.2 GST**

- (a) Any reference in this clause to a term defined or used in the GST Act is to be taken as a reference to that term as defined or used in the GST Act.
- (b) Except as provided in clause 21.2(c), any amount referred to in this deed (including the Trustee's remuneration and any Costs) which is relevant in determining the amount of any payment to be made to the Trustee is exclusive of any GST component.
- (c) Any payment to be made to the Trustee by way of indemnification or reimbursement for losses, damages or Costs must include any GST component of the losses, damages or Costs for which an input tax credit is not available to the Trustee.
- (d) If GST is levied or imposed on or in respect of any supply made under this deed or in relation to the administration or management of the Trust then the consideration payable for that supply is increased by the rate at which the GST is levied or imposed on that supply. The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.
- (e) The recipient of any consideration must issue a GST tax invoice to the recipient of the supply as required by the GST Act.

## **21.3 Method of payment, repayment or redemption**

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Holder and posted to the Holder's registered address or, if the Trustee determines, by electronic transfer.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person. The Trustee may adopt procedures limiting the type of accounts which are eligible to receive such payments.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units. The reinvestment is taken to be made on the day the cheque is cancelled.

## **21.4 Binding conditions**

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

### **21.5 Governing law and jurisdiction**

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Victoria.

### **21.6 Severability**

If any provision of this deed is void, illegal or unenforceable it may be severed without affecting the enforceability of the other provisions of this deed.



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## Schedule 1 - Establishment and Administrative Costs

(Clause 10.4)

- 1 All Costs (including, without limitation, travel expenses and accommodation) in connection with:
- (a) the preparation, approval, registration, execution, stamping, interpretation and enforcement of this deed and any amending deeds and the Trust;
  - (b) the underwriting of any issues of Units or Options;
  - (c) the preparation, registration, printing, promotion and distribution of any prospectus or marketing material issued by the Trustee in respect of the Trust, Units or Stapled Securities and the preparation, registration, printing, promotion and distribution of any document required by law the Listing Rules or this deed to be prepared in respect of the Trust;
  - (d) the investigation, negotiation, acquisition, development, registration, custody, holding, management, supervision, repair, maintenance, valuation, insurance, sale of or other dealing with an Asset (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
  - (e) raising money or otherwise obtaining financial accommodation, including but not limited to, interest on borrowings and discounts and fees in respect of bill facilities and any Taxes payable in respect of such raising of money or obtaining financial accommodation;
  - (f) convening and holding meetings and carrying out the directions of the meetings;
  - (g) the retirement or removal of the Trustee and the appointment of another (including a temporary responsible entity) in its place;
  - (h) the establishment and maintenance of accounts (including bank accounts in respect of the Trust) and the Register and registry services;
  - (i) calculations and determinations under this deed;
  - (j) the establishment and administration of the Trust including:
    - (1) computer operation and development and data processing;
    - (2) computer experts' fees and expenses;
    - (3) office expenses including the cost of postage, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder or Option Holder under this deed;
    - (4) expenses in connection with any dealings with Units or Stapled Securities'
    - (5) holding meetings of the directors of the Trustee, without regard to where any director may reside; and
    - (6) holding meetings of the members of the Trust's Compliance Committee, without regard to where any member may reside;
  - (k) any custodian, actuary, adviser, expert, agent, delegate, lawyer (on a full indemnity basis), contractor, valuer, accountant or auditor (including the auditor of the Trust's Compliance Plan, including any who is an associate of the Trustee;

- (l) fees, remuneration and expenses of members of the Compliance Committee;
- (m) the indemnity referred to in clause 11.2;
- (n) any insurance purchased or maintained or premium for insurance paid or agreed to be paid as contemplated by clause 11.4;
- (o) all Taxes;
- (p) all fees payable to the ASIC, ASX, or other regulatory authority in respect of the Trust, Units or Options and other expenses incurred by the Trustee in respect of the admission of the Trust to the Official List of ASX or in respect of the Official Quotation of any Units or Options;
- (q) in anticipation of any action, suit or proceeding relating to the interpretation and construction of this deed or any provision of this deed or against the Trustee;
- (r) preparation and lodgement of tax returns;
- (s) termination of the Trust;
- (t) the assigning and maintaining of a credit rating to the Trust;
- (u) communications with Holders;
- (v) costs of responding to enquiries in respect of Unitholdings, preparing and printing accounts, causing the preparation and distribution of accounts, distribution statements, reports, confirmations and cheques in respect of the Trust;
- (w) the establishment of the Trust, the admission of the Trust to the Official List of the ASX or in respect of the Official Quotation of any Units or Options;
- (x) maintaining the Trust on the Official List of ASX or any ability to trade Units or Options or in connection with or arising out of any removal of the Trust from the Official list or suspension of any Units or Options from trading by ASX;
- (y) the services of asset managers, property managers, project managers and collection agents appointed in relation to Assets, despite such asset managers, property managers project managers and collection agents may be the Trustee or a Related Body Corporate of the Trustee;
- (z) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Asset; and
- (aa) underwriting of any subscription or purchase of Units or Stapled Securities, including underwriting fees, handling fees, cost and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amount becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement.

2 All like amounts or amounts incidental thereto.

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## Schedule 2 - Meetings of Holders

(Clause 17)

### 1 Notice of meeting

If the Trustee omits to give a Holder notice of a meeting or if a Holder does not receive notice, the meeting is still valid.

### 2 Who may attend and address meeting of Unit Holders

The Trustee, the directors of the Trustee, the Auditor, the auditor of a Trust's Compliance Plan, the members of the Trust's Compliance Committee and any person invited by any of them is entitled to attend and address a meeting or adjourned meeting.

### 3 Quorum

- (a) No business may be transacted at any meeting unless a quorum of Holders is present at the time when the meeting proceeds to business.
- (b) The quorum for a meeting convened to consider a special resolution to modify, repeal or replace this deed under section 601GC(1)(a) of the Corporations Act is 2 Holders.
- (c) The quorum for a meeting convened to consider any special or extraordinary resolution (other than the special resolution referred to in paragraph 3(b)(1)) is 2 Holders.
- (d) The quorum for any meeting (other than the meetings referred to in paragraphs 3(b) and (c)) is 2 Holders.
- (e) Where a meeting of a particular class of Unit Holders is required, the quorum for that meeting is the number of Holders specified in paragraphs 3(b), (c) and (d) having Units in the relevant class.
- (f) If a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be adjourned as the chairman directs.
- (g) At an adjourned meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

### 4 Adjournments

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

### 5 Proxies

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if any);

- (2) under the hand of an officer or attorney who has been authorised by the corporation;
  - (3) under the hand of any 2 directors or a director and a secretary; or
  - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the meeting at which the proxy proposes to vote.
  - (e) If paragraph 5(d) is not complied with, the proxy is invalid.
  - (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
  - (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time of the vote, has died or has revoked the proxy or the authority under which the proxy was executed.
  - (h) Paragraph 7(a) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the meeting at which the proxy is to be used.

## 6 **Voting**

- (a) A poll is to be conducted as directed by the Chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the meeting.
- (d) A poll may not be demanded on any resolution concerning:
  - (1) the election of the chairman of a meeting; or
  - (2) the adjournment of a meeting.
- (e) If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a meeting as if the committee, trustee or other person were the Holder.

## 7 **Joint Unit Holders**

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.

8 **Class Meetings**

The provisions of Part 2G.4 of the Corporations Act, clause 17, and this schedule 2 relating to meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options in a class of Units or Options.

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## Schedule 3 – The Trust

- 1 The **Management Fee** payable to the Trustee under clause 10.1 of this deed is an amount up to 1.00% per annum of the Market Capitalisation of the Trust excluding the value of any distributions payable to Unit Holders of the Trust. This fee is to be calculated quarterly and must be paid quarterly in arrears.
- 2 The **Incentive Fee** (which accrues periodically) payable to the Trustee under clause 10.1 of this deed is calculated and payable as follows:

The **Incentive Fee** equals 20% of the Fund Return for a Period above the Benchmark Return for the Period. If the Fund Return for a Period is less than the Benchmark Return for that Period, the amount of the deficit (“Previous Shortfall” as defined below) is carried forward and taken into account in calculating whether the Fund Return exceeds the Benchmark Return in subsequent Periods.

The **Incentive Fee** for each Period is the greater of:

- (a) \$0; and
- (b)  $20\% \times (\text{Fund Return} - \text{Benchmark Return} - \text{Previous Shortfall})$ , where

**Fund Return** for a Period equals:

- (1) the average of the daily Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period, where it is the number of Stapled Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (2) the movement in the Securities Index over the relevant Period expressed as a fraction, where:
  - (A) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period minus the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities); and
  - (B) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities).

The **Securities Index** is the accumulation index for the Group which calculates the accumulated total return received by Security Holders, including all distributions from the date on which unconditional trading in Stapled Securities commences on ASX. It will be specifically calculated for the Group by an Approved Valuer. The opening value of the Securities Index will be one. The value of the Securities Index at any particular time subsequently will be:

$$\frac{\text{TP x (one plus A)}}{\text{IP}}$$

where:

**TP** means the price at which Stapled Securities were most recently traded on ASX (excluding any special crossings or other trades which the Approved Valuer considers have not occurred in the ordinary course of trading);

**A** means the number (or fractions of numbers) of Stapled Securities which would notionally have been issued if each distribution in respect of a Stapled Security (and any other Stapled Securities (or fractions of Stapled Securities) issued pursuant to the reinvestment of distributions prior to the distribution in question) was reinvested at the closing price of Stapled Securities on the date of payment of the relevant distribution.

**IP** means the aggregate issue price of a Stapled Security in an initial capital raising as contemplated by clause 5.6(a)(2) of this deed and the equivalent provisions of the constitutions of any other Group members.

In the case of any bonus issues, security splits or consolidations, or other reconstructions, the value of TP and IP will be adjusted to take into account these changes as the Approved Valuer considers appropriate.

**Group** means the Trust and any entities whose securities are Stapled to Units in the Trust.

**Benchmark Return** for a Period equals:

- (a) the average of the Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period where it is the number of Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (b) the movement in the Benchmark Index over the relevant Period expressed as a fraction, where:
  - (1) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period compared with the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX); and
  - (2) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX).

**Benchmark Index** means ASX/S&P 200 Industrials Accumulation Index (or such other equivalent index as may replace that index from time to time, as determined by an Approved Valuer) as reported by Bloomberg (or such other appropriate reporting agency as may be selected from time to time by an Approved Valuer).

**Period** means:

- (a) subject to paragraphs (b) and (c) below, each six month period ending 30 June and 31 December;
- (b) for the first period, the period commencing on the date on which unconditional trading in Stapled Securities commences on ASX and concluding on 30 June 2005; and
- (c) in the case of the last period, the period which ends on the date of termination of the Trust or the date on which the Trustee ceases to be responsible entity of the Trust (whichever occurs first) and which commences on 30 June or 31 December which occurs last before this event.

**Previous Shortfall** means:

- (a) for the first Period, \$0;
- (b) for the second Period, the amount (if any) by which the Fund Return for the first Period was less than the Benchmark Return for the first Period; and
- (c) for each subsequent Period, the amount (if any) by which:
  - (1) the Fund Return for the immediately previous Period; minus
  - (2) the Benchmark Return for that immediately previous Period; minus
  - (3) the Previous Shortfall applicable to that immediately previous Period,

produces an amount which is less than \$0.

The Incentive Fees calculated pursuant to this paragraph 2 represent the aggregate incentive fees payable to the Trustee by the Group in respect of the performance by the Trustee of its duties in relation to the Group members.

If an Incentive Fee is payable in respect of any Period, then it will be apportioned between the Group members as follows:

- (a) if, on the last day of the Period, there are no Group members other than the Trust, then 100% of any Incentive Fee for that Period will be paid out of the assets of the Trust;
- (b) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of one (but not more than one) of the Group members is a positive amount, then 100% of the Incentive Fee will be paid out of the assets of that Group member;
- (c) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Values of more than one of the Group members is a positive amount, then an amount equal in aggregate to 100% of the Incentive Fee will be paid out of the



assets of those Group members in the proportions which their Net Asset Values bear to each other; and

- (d) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of none of the Group members is a positive amount, then the Group members will pay an amount equal to 100% of the Incentive Fee out of their respective assets in the proportions which their Gross Asset Values bear to each other.

# Consolidated Constitution

Incorporating all amendments up to 13 December 2012

## APA Sub Trust No 3

ARSN 109 897 921

## Responsible Entity:

### Australian Pipeline Limited

ACN 091 344 704

Complete and up to date as at 13 December 2012

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# This Constitution

is made on 25 June 2004 by the trustee of the Trust.

This consolidated constitution comprises:

- (a) the Constitution dated 25 June 2004;
- (b) the first supplemental constitution dated 27 October 2004;
- (c) the second supplemental constitution dated 15 March 2005;
- (d) the third supplemental constitution dated 30 June 2005;
- (e) the fourth supplemental constitution dated 8 January 2007;
- (f) the fifth supplemental constitution dated 5 January 2009;
- (g) the sixth supplemental constitution dated 1 July 2009; and
- (h) the seventh supplemental constitution dated 13 December 2012.

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## 1 Meaning of words and interpretation

### 1.1 Definitions

- (a) In this deed, unless the context otherwise requires:

**Application** means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;  
or
- (3) an application for Options;

**Application Moneys** means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units or Options;

**Approved Financial Product** means a Financial Product in respect of which approval has been given by ASTC in accordance with the ASTC Settlement Rules;

**Approved Valuer** means a valuer appointed by the Trustee;

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

**Asset Benchmark Value** or **ABV** means, with respect to any Asset at any time (**relevant time**), the Cost Base for that Asset increased in the case of each amount paid for that Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment for that Asset to the relevant time;

**Asset Realised Value** or **ARV** means, with respect to any Asset at any time, the aggregate of each amount paid to the Trustee for or in respect of

that Asset including dividends, distributions, sale proceeds and the value of franking credits increased in the case of the amount paid for each Asset by the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time;

**Assets** means all the cash, investments, rights and other property of the Trust;

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

**ASTC** means the ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

**ASX** means the ASX Limited;

**Attached Security** means a Security which is from time to time Stapled or to be Stapled to a Unit;

**Auditor** means the auditor from time to time appointed by the Trustee to audit the Trust

**Benchmark Rate** means 4% per annum over the 10 year government bond return;

**Business Day** has the meaning given to that term in the Listing Rules;

**Compliance Committee** means the compliance committee for the Trust as required by section 601JA of the Corporations Act;

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

**Corporations Act** means Corporations Act 2001;

**Costs** includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

**Cost Base** means in the case of any Asset, the cost of acquisition of that Asset, including the purchase price;

**Current Unit Value** means the amount obtained by dividing the Net Asset Value applicable to a particular class of Units by the number of Units on Issue in that class of Units;

**Distributable Amount** means the amount determined in accordance with clause 9.3;

**Distribution Calculation Date** means the day or days in each year or such other dates as the Trustee may determine;

**Distribution Date** means 30 days after the Distribution Calculation Date for the relevant Distribution Period or such other date determined by the Trustee;

**Distribution Entitlement** means a Unit Holder's entitlement to the Distributable Amount determined in accordance with clause 9.3(b);



**Distribution Period** means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

**Financial Product** has the meaning given in the ASTC Settlement Rules;

**Financial Year** means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

**Foreign Interests** means the Units or Options a Foreign Unit Holder would have been entitled to but for clause 4.7(a);

**Foreign Unit Holder** means a Unit Holder whose address appearing in the Register is in a country outside Australia;

**Forfeited Unit** means a Partly Paid Unit which is forfeited under clause 3.8(c) by non-payment of an Instalment;

**Fully Paid Unit** means a Unit on which the whole of the Issue Price has been paid;

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

**Gross Asset Value** means the sum of:

- (1) the value of all Assets; and
- (2) any other amounts which, in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

**GST** means any goods and services tax or similar value added tax imposed in relation to a supply of any goods, property, service or any other thing;

**GST Act** means A New Tax System (Goods and Services Tax) GST Act 1999;

**Holder** means a Unit Holder or Option Holder (as the context may require);

**Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to interest and other borrowing costs, fees paid to the Trustee and any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust;

**Incentive Fee** means the incentive fee payable to the Trustee calculated in accordance with schedule 3;

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

**Issue Price** means the price determined in accordance with clause 5, or the Terms of Offer or Terms of Issue;

**July 2009 Offer** means the fundraising described in an announcement to the ASX on or about 1 July 2009 consisting of:

- (a) a non-renounceable entitlement offer conducted in two stages, the first stage being an offer of Stapled Securities to eligible institutional securityholders and the second being the offer of Stapled Securities to eligible retail securityholders. The securityholders (other than Foreign Unit Holders) will be invited to participate in the offer on a pro-rata basis according to their existing securityholding as at the record date determined by the Trustee; and
- (b) an institutional placement of Stapled Securities.

**Liabilities** means liabilities of the Trust including any provision the Trustee decides should be taken into account but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust and excluding any amount relating to derivative instruments used for hedging;

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

**Listed** means:

- (1) in respect of the Trust, the Trust being admitted to the official list of ASX; and
- (2) in the case of Stapled Securities or Units, being Officially Quoted;

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Trust, including any variation, consolidation or replacement of those rules and is to be taken subject to any waiver or exemption granted to the Trust from compliance with those rules;

**Management Fee** means the management fee payable to the Trustee calculated in accordance with schedule 3;

**Market Capitalisation** means, in respect of any particular day, the market capitalisation of the Trust as determined by multiplying the Market Price of Units in each class on that day by the number of Units in that class on issue on that day and aggregating the results (if there is more than one class of Units on issue on that day);

**Market Price** has the meaning given in clause 1.3;

**Marketable Parcel** has the meaning given to that expression in the Listing Rules;

**Meeting** means a meeting of Holders convened in accordance with this deed;

**Minimum Holding** means:

- (1) if Units are not admitted to the Official List, such number as the Trustee from time to time determines; or
- (2) if Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; and
- (3) in relation to Options, such number of Options (if any) as is specified in the Terms of Offer or Terms of Issue;

**month** means calendar month;

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

- (1) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

**Net Taxable Income** means, for any Distribution Period, the net income for that period determined in accordance with the principles applicable under section 95(1) of the Tax Act;

**Non-Cash Income** means for any period, the sum of:

- (1) the amount (if any) that in relation to the foreign income (as defined in the Tax Act) of the Trust for the Distribution Period, is equal to the amount of foreign tax (as defined in the Tax Act) paid or deemed to be paid under the Tax Act; and
- (2) the amount (if any) that in relation to the Distribution Period is included in the assessable income of the Trust under section 160AQT of the Tax Act;

**Official List** means the official list of ASX;

**Official Quotation** or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

**Option** means an option granted by the Trustee in respect of unissued Stapled Securities;

**Option Holder** means the person for the time being registered as a holder of an Option, including any persons jointly registered;

**Ordinary Unit** means a Unit that has not been issued in a specific class of units;

**Ordinary Unit Holder** means a holder of an Ordinary Unit;

**Paid-up Proportion** in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

**Partly Paid Unit** means a Unit in respect of which any portion of its Issue Price remains unpaid;

**Portfolio Benchmark Value** or **PBV** means the aggregate sum of the ABV for each Asset of the Trust;

**Portfolio Market Value** or **PMV** means the aggregate of each amount paid to the Trustee for, or in respect of, all Assets including dividends, distributions and the value of franking credits increased in the case of each amount paid to the Trustee for each Asset by:

- (1) the Benchmark Rate (compounded annually at the end of each Financial Year) over the period from the date of payment to the Trustee to the relevant time; and
- (2) the most recent valuation undertaken in accordance with clause 8 for each Asset;

**Prospectus** means a product disclosure statement for the purposes of the Corporations Act in respect of an issue or offer of Units or Options;

**Quarter** means each 3 month period ending on the last day of March, June, September and December in each year;

**Redemption Price** means the amount calculated under clause 5.8;

**Register** means the register of Unit Holders or Option Holders maintained by the Trustee under Chapter 2C of the Corporations Act, as the context requires;

**Responsible Entity** means the Trustee;

**Security** has the meaning given to that term in section 92(1) of the Corporations Act;

**Staple, Stapled** or **Stapling** means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others;

**Stapled Entity** means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;

**Stapled Entity's Constitution** means the constitution of a Stapled Entity;

**Stapled Security** means a Unit and each Attached Security which are Stapled together;

**Stapled Security Register** means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 19.4;

**Stapling Date** means the date determined by the Trustee to be the day on which all Units on issue in the Trust will be Stapled to an Attached Security or Attached Securities;

**TAPS** means Trust-issued Adjustable Preferred Securities issued by the TAPS Issuer pursuant to the TAPS Constitution which provides that in specified circumstances TAPS may, in accordance with the terms of the TAPS Constitution, be exchanged for Units which form part of a Stapled Security;

**TAPS Constitution** means the constitution of the TAPS Trust dated 18 February 2005 as amended;

**TAPS Issuer** means Hastings Funds Management Limited ACN 058 693 388 as responsible entity of the TAPS Trust;

**TAPS Trust** means the TAPS Trust ARSN 113 037 317;

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

**Tax Act** means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

**Terms of Issue** in relation to a Stapled Security, Unit or an Option means the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed);

**Terms of Offer** in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

**Transaction Costs** means:

- (1) when calculating the Issue Price of a Unit, the Trustee's estimate of the total cost of acquiring the Assets; and
- (2) when calculating the Redemption Price of a Unit, the Trustee's estimate of the total cost of selling the Assets,

as described in the current Prospectus;

**Trust** means the APA Sub Trust No 3 constituted under this deed;

**Trustee** means Australian Pipeline Limited ACN 091 344 704 or any other company named in the ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

**Unit** means an undivided interest in the Trust as provided for in this deed and includes all classes of units on issue at the relevant time;

**Unit Holder** means a person registered as the holder of a Unit, including any persons jointly registered;

**Unit Holding** means the total number of Units held by a Unit Holder;

**Units on Issue** means the number of Units created under this deed and not cancelled;

**Unstapled** means, in relation to a Unit, not being Stapled to each Attached Security;

**Unstapling Date** means the date determined by the Trustee to be the unstapling date pursuant to clause 20.3;

**Weighted Average NAV per Unit** means the Weighted Average Net Asset Value divided by the Weighted Average Units on Issue;

**Weighted Average Net Asset Value** means the average Net Asset Value weighted according to the daily Net Asset Value; and

**Weighted Average Units on Issue** means the average number of total Units on issue weighted according to the daily number of Units on issue.

- (b) Unless otherwise specified in this deed, terms defined for the purposes of the Corporations Act are used in this deed with the same meaning.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document; and
- (f) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

## 1.3 Market Price

- (a) The **Market Price** for a Stapled Security in a class or an Option (as the case requires), on any Business Day is:
- (1) the daily weighted average traded price for a Stapled Security in that class or Option in that class for all sales on ASX for the period of the lesser of:
- (A) 15 Business Days immediately preceding the relevant Business Day; or

- (B) the number of Business Days immediately preceding the relevant Business Day during which the Stapled Security was quoted on ASX,

in either case whether or not a sale was recorded on any particular day (apportioned between the Unit and any Attached Securities as the Trustee determines); or

- (2) if the Trustee believes that the calculation in clause 1.3(a)(1) does not provide a fair reflection of the market price of a Stapled Security or Option, an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security or Option;
- (b) Despite clause 1.3(a), for the purposes of clause 5.7(h), the Market Price for a Stapled Security or Option means an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of a Stapled Security or Option at or around the relevant date.
- (c) The “Market Price” of an Option on any Business Day must be determined in the same manner as the Market Price for a Stapled Security is determined.

#### **1.4 General compliance provision**

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Act, or the terms of any applicable ASIC instrument (including a class order) or any ASX Waiver from time to time does not operate to the extent of, and for the duration of, the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this deed.
- (c) This clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.
- (d) If the terms of any current ASIC instrument of relief or exemption (including a class order) are applicable on the basis that this deed contains certain provisions, then such provisions are deemed to be contained in this deed.

#### **1.5 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4.
- (b) If the Trust is admitted to the Official List of ASX, the following clauses apply:
- (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
- (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;

- (3) 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);
- (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
- (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
- (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of, and for the duration of, the inconsistency.

## **1.6 Additional Listing Rule requirements**

At all times that the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under clause 3.8 has not been paid;
  - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with schedule 2;
  - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined Corporations Act as the “specified time” for deciding who held the Unit or Option for the purpose of the meeting;
  - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
  - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;



- (4) the divestment is under a court order; or
- (5) the divestment is under clause 3.9; and
- (c) unless the law and relevant ASTC Settlement Rules permit otherwise at the time, the Trustee must not divest a Unit Holder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASTC Settlement Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASTC Settlement Rule 5.12.

## **1.7 Accounting Standards**

To the extent to which

- (a) the calculation of the Issue Price;
- (b) the extent of any limitation on borrowings; or
- (c) the calculation of the Distributable Amount,

may involve the application of generally accepted accounting principles or accounting standards, the principles or standards to be applied are those as generally accepted or in force immediately before 1 January 2005.

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## **2 The Trust**

### **2.1 Trustee**

Australian Pipeline Limited is appointed and agrees to act as trustee of the Trust.

### **2.2 Declaration of Trust**

- (a) Westpac Investment Vehicle Pty Limited ACN 093 721 423 (**Westpac**) applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (b) Jim Hallam applies for 1 Ordinary Unit to be issued by the Trustee and has paid the Trustee \$1.00.
- (c) The Trustee issues 1 Ordinary Unit to Westpac and 1 Ordinary Unit to Jim Hallam.

### **2.3 Name of Trust**

The name of the Trust is the APA Sub Trust No 3. The Trustee may change the name of the Trust in accordance with the Corporations Act.

### **2.4 Assets**

The Trustee must hold the Assets on trust for the Unit Holders.

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## **3 Interest of Unit Holder**

### **3.1 Division into Units**

- (a) The beneficial interest in the Assets is divided into Units. The Unit Holders are beneficially entitled to the Assets, however, no Unit confers an interest in a particular part of the Trust or in particular Assets except that, if any Units are issued relating to a particular class of Asset, those Units confer an interest in the class of Asset described but in no particular part of that class of Asset.
- (b) A Holder may not:
  - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
  - (2) claim or exercise any right in respect of any Asset or lodge any caveat or other notice affecting any Asset; or
  - (3) require that any Asset be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
  - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
  - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

### **3.2 Fractions and splitting**

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit. However, while Stapling applies, a fraction of a Unit may only be issued if a fraction of an Attached Security stapled to the fraction of Unit is also issued.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unit Holder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

While Stapling applies, Units may only be consolidated or split if the related Attached Securities are also consolidated or split at the same time and to the same extent.

- (d) Subject to any law or Listing Rule or the ASTC Settlement Rules, the Trustee may split Units pursuant to clause (c) to create additional Units of the same class or to split the Units according to rights or characteristics attaching to those Units so that 2 or more additional classes of Units are created comprising a sub-set of rights attaching to the split Units.

### **3.3 Issue of Partly Paid Units**

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust and the Trustee must ensure that this is stated in the Terms of Issue.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.
- (e) While Stapling applies:
  - (1) Partly Paid Units may not be issued unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid and are to be Stapled to the Partly Paid Units; and
  - (2) any issue of Partly Paid Units must be on the basis that 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 Stapled to those Units is also paid.

### **3.4 Joint Holders**

Where two or more persons are registered as the Holders of a Unit or an Option (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and

- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is taken to be given to all the joint holders.

### **3.5 Classes of Units**

- (a) The Trustee may at any time issue Units in two or more classes (including income and capital units) and, subject to law and the Listing Rules, subject to any terms or conditions and having such rights as the Trustee determines.
- (b) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee may convert any class of a Unit Holder's Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unit Holder.

### **3.6 Benefits and obligations of Unit Holders and Option Holders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unit Holder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Option Holder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Option Holders where expressly provided in this deed. Where the interests of Option Holders and Unit Holders conflict, the Trustee must prefer the interests of Unit Holders.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unit Holder and the Trustee and to any call on Partly Paid Units which the Trustee is entitled to make under clauses 3.3 and 3.8 to 3.15.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the Assets of the Trust.

### **3.8 Failure to pay instalment on Partly Paid Unit**

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (b) If a Unit Holder does not pay an Instalment on the due date, the Trustee must serve the Unit Holder with a notice not later than 7 days after the due date containing:
  - (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
  - (2) a statement that interest:
    - (A) runs from the due date of the Instalment until the date the Trustee receives payment of the overdue amount in full; and
    - (B) is payable at a fair market rate determined by the Trustee;
  - (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice;
  - (4) a warning that if payment in full is not received by the due date specified in the notice, the Partly Paid Unit is forfeited and the Trustee may offer the Forfeited Unit for sale; and
  - (5) if Stapling applies, a statement that an equal number of each Attached Security will also be liable to be forfeited.

The omission to give such notice by the Trustee or the non-receipt of such notice by the Unit Holder does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (c) If payment in full is not received by the due date specified in the notice issued under clause 3.8(b), the Partly Paid Unit is forfeited (concurrently with the forfeiture of the same number of each Attached Security if Stapling applies) and the Trustee may offer the Forfeited Unit for sale.

### **3.9 Sale of Forfeited Unit**

- (a) Despite clause 3.9(d), if the Trustee offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit (and while Stapling applies as agent for the holder of the Attached Security Stapled to the forfeited Unit).
- (b) If the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee. Any such sale must also be with respect to the same number of Attached Security while Stapling applies.
- (c) The Trustee must ensure that the auction is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unit Holder for any loss suffered by the Unit Holder as a result of the sale.

### **3.10 Income and Capital of a Forfeited Unit**

Distribution of income and capital under clause 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.9(b), the Trustee must give notice of the sale of a Forfeited Unit:

- (a) to all Unit Holders in writing; and
- (b) by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### **3.12 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.8(b) and any other amount payable in respect of the forfeiture (provided that this clause 3.12 will not apply where the Trustee is already under an obligation to sell such Units to a third party).

### **3.13 Consequences of sale and continuing liability**

- (a) On completion of the sale of the Forfeited Unit, the Holder ceases to be the Holder of that Unit but remains liable to the Trustee for the total amount set out in the notice served under clause 3.8(b).
- (b) The Unit Holder's liability under this clause ceases as soon as the Trustee receives:
  - (1) payment in full of the amount set out in the notice under clause 3.8(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unit Holder to recover the amount due (including any amounts due in respect of the same number of Attached Securities Stapled to those Units if Stapling applies).
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (1) that a Partly Paid Unit has been forfeited (and referring to the same number of Attached Securities if Stapling applies); and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) If the Trustee executes a transfer of a Forfeited Unit (which transfer must include the same number of Attached Securities if Stapling applies), the Trustee must register the transferee as the Holder of the Forfeited Unit.

- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

### **3.14 Proceeds of sale of Forfeited Unit**

- (a) If a Forfeited Unit is sold under clause 3.9, the Trustee must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments (such Costs are to be appropriately weighted between the Trust and the Attached Security if Stapling applies);
  - (3) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(b);
  - (4) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying the balance to the Unit Holder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

### **3.15 Lien for Amounts Owing**

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unit Holder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unit Holders. The lien extends to distributions from time to time declared in respect of such Units but if the Trustee registers any transfer of any Units upon which it has a lien, those Units are freed and discharged from the lien.

### **3.16 Trustee Units**

The Trustee may issue and receive Units on arm's length terms in lieu of fees which are payable to it for the proper performance of its functions and duties under this deed.

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## **4 Application Procedures**

### **4.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units in a class of Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Money by the Issue Price of Units in that class of Units.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Money by the amount of the Issue Price for a Unit in that class which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

### **4.2 Application for Units or Options**

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee;
- (c) include with the Application the Application Money in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee; and
- (d) while Stapling applies, make an application for an identical number of Attached Securities to be Stapled to those Units.

### **4.3 Payments to the Trustee**

- (a) If on Application for Units or Options the payment received or property to be transferred to the Trustee is such that the number of Units or Options which would otherwise be issued would be less than the Minimum Holding the Trustee must hold the payment or property received on trust for the applicant until the Trustee has accepted or rejected the Application.
- (b) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (c) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee before the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (d) If Units or Options are issued and:



- (1) the Trustee has not received the Application Money in accordance with the Terms of Issue; or
- (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Money for the Units or Options.

- (e) Subject to clause 4.3(a), all income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Assets of the Trust.
- (f) Applications Money for Units or Options issued under a Prospectus must be paid to the Trustee, to be placed by the Trustee in a special trust account until the earlier of:
  - (1) the minimum subscription, if any (to be specified in the Prospectus) has been reached and the Trustee decides to proceed to allotment of Units; or
  - (2) the date by which the Application Money would need to be repaid under the Corporations Act.

Until the Trustee decides to proceed to the allotment of Units in accordance with this clause 4, it holds such Application Money upon bare trust for the applicant and the Trustee must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. No interest is payable on that money.

#### **4.4 Allotment**

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or to an Option until it is granted.

#### **4.5 Trustee's discretion on Application**

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). If Stapling applies, the Trustee must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units. Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

#### **4.6 Certificates**

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

## 4.7 Foreign Unit Holders

- (a) The Trustee may determine that Foreign Unit Holders are not to be offered Units or Options under a pro rata issue or on reinvestment of all or part of a Unit Holder's Distribution Entitlement where it reasonably considers that it would:
- (1) be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unit Holders.
- (b) If the Trustee makes a determination under clause 4.7(a), the Trustee must sell the Foreign Interests and pay to each Foreign Unit Holder the amount calculated as follows:

$$\text{where: } AF = NP \times \frac{NF}{N}$$

AF is the amount to be paid to that Foreign Unit Holder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unit Holder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unit Holder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unit Holder under clause 4.7(b).

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## 5 Issues and Redemptions

### 5.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this clause 5, the Listing Rules, current applicable laws and subject to this deed.
- (b) No sub-clause of this clause 5 (other than this clause 5.1) limits any other sub-clause.

## **5.2 Underwriting of Issue**

- (a) The Trustee may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units;
  - (3) if Stapling applies, an offer for sale, subscription or issue of Stapled Securities or Options; or
  - (4) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may, subject to applicable laws and the Listing Rules:
  - (1) be the Trustee or a Related Body Corporate of the Trustee; and
  - (2) take up any Units (or Stapled Securities, if Stapling applies) or Options not subscribed for.
- (c) The Trustee may issue Units (or Stapled Securities, if Stapling applies) and Options to an underwriter under this clause 5.2 at an Issue Price equal to the Issue Price at which the underwritten Units (or Stapled Securities, if Stapling applies) or Options were or would have been issued to persons other than the underwriter or underwriters.

## **5.3 Issues of Options**

The Trustee may issue Options for any consideration (including nil consideration) in accordance with the Terms of Offer and Terms of Issue.

## **5.4 Stapled Securities**

While Stapling applies, there must be a contemporaneous and corresponding issue of the same number of Attached Securities, or Options over unissued Attached Securities on the same terms as the Options, on the basis that Units are to be Stapled to Attached Securities and Options are to be Stapled with options in respect of unissued Attached Securities.

## **5.5 Issue of Units under Options**

- (a) The Trustee may issue Units upon the exercise of Options in accordance with the Terms of Offer and Terms of Issue.
- (b) While Stapling applies an Option may only be exercised if at the same time as Units are acquired under the Option the same person contemporaneously acquires on exercise of an option over Attached Securities an identical number of Attached Securities which are then Stapled to the Units.

## **5.6 Issue at fixed price**

In addition to any other power the Trustee has to issue Units (or Stapled Securities, if Stapling applies) under this deed, the Trustee may issue Units (or Stapled Securities, if Stapling applies) or Options at any time to any person as follows:

- (a) before the Trust being admitted to the Official List:

- (1) for the initial issue, Units at \$1.00;
- (2) for an initial capital raising of the Trust, Units at \$0.001;
- (3) for subsequent issues, units in accordance with the following formula:

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

at the time determined by the Trustee;

- (b) where the Trust has been admitted to the Official List and the Units (or Stapled Securities, if Stapling applies) or Options are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at the Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable);
- (c) where the Trust has been admitted to the Official List and Units (or Stapled Securities, if Stapling applies) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Options at the consideration for the issue of the Option in accordance with the Terms of Offer and Terms of Issue, where the Units to be issued under those Options are to be issued at Market Price of a Unit (or Stapled Securities, if Stapling applies) immediately before the date upon which the Option is issued, and Units under any such Option;
- (d) where Units (or Stapled Securities, if Stapling applies) have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, Stapled Securities at the Market Value on the Business Day before the day the offer to issue the Stapled Securities is made, less the value of the Attached Securities Stapled to the Unit; and
- (e) In addition to any other power granted to the Trustee under this deed, the Trustee may issue Units as part of Stapled Securities issued in connection with the July 2009 Offer at an issue price of \$0.90 per Stapled Security.

## 5.6A Financial Instruments

- (a) Subject to the Corporations Act and Listing Rules the Trustee may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (**Financial Instruments**)).
- (b) Subject to the Corporations Act, Financial Instruments may be issued on such terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Trustee determines.

## 5.7 Other issues

- (a) Subject to compliance with any instrument issued by ASIC, the Listing Rules and this clause 5.7, the Trustee may issue Units Stapled Securities or Options (including Units Stapled Securities on the exercise of an Option)

at a price determined by the Trustee in accordance with the following provisions.

(b) Stapled Securities may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where the issue of the Stapled Securities is not to the Trustee or any person associated with it, and, in the case where:

(1) the issue (together with any other issue of Stapled Securities up to one year previously, at a consideration determined by the Trustee other than an issue approved or ratified by Stapled Security Holders in accordance with subparagraphs (3) to (8) and issues in accordance with other provisions of this deed) is of Stapled Securities that would, immediately after the issue, comprise more than 15% of either:

(A) all of the Stapled Securities on issue; or

(B) the Stapled Securities on issue of which the Units of that class form a component part are in the same class as the Units comprised in the issue;

or

(2) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the current Market Price for those Stapled Securities exceeds 10%,

the following requirements are also satisfied:

(3) Stapled Security Holders approve the issue;

(4) if the Units which form a component part of the Stapled Securities to be issued are in a particular class, Stapled Security Holders in that class approve the issue;

(5) unless the Trustee reasonably consider that the issue will not adversely affect the interests of Stapled Security Holders in another class, Stapled Security Holders in that other class approve the issue;

(6) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;

(7) an approval for the purposes of subparagraphs (3), (4) or (5) is given by special resolution of Stapled Security Holders where Stapled Security Holders with at least 25% of the total value of all the interests of Stapled Security Holders entitled to vote on the question vote on the question at the meeting; and

(8) if in making the calculations referred to in subparagraph (7) any vote of a person to whom the Stapled Securities are to be issued or

any vote of any associate of that person were not counted, the resolutions would be passed.

(c) Stapled Securities in the Trust may be issued, at a price determined by the Trustee, while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations 2001 and Stapled Securities of which the Units form a component part, or if the Units to be issued are in a class of Units, Stapled Securities of which the Units of that class form a component part are not suspended from quotation, where:

- (1) the issue of the Stapled Securities is not to the Trustee or any person associated with it;
- (2) the Stapled Securities are issued pursuant to offers made at substantially the same time; and
- (3) the sum of the prices of the Unit and the Attached Securities which make up the Stapled Security is to equal the current Market Price for the Stapled Security at the time the offers are made.

(d) Stapled Securities in the Trust, but not an Option, may be issued at a price determined by the Trustee, pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders of the Trust if:

- (1) all of the Units offered are in the same class;
- (2) the price of all the Stapled Securities offered is the same;
- (3) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%; and
- (4) the amount of Stapled Securities offered to each Stapled Security Holder is proportionate to the value of that Stapled Security Holder's interest,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of a sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

(e) An Option in respect of a Stapled Security may be issued, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee, if the Options are issued pursuant to offers made at substantially the same time to only and all the then Stapled Security Holders in proportion to the value of their interests if:

- (1) all of the Units offered are in the same class;
- (2) the price of all the Stapled Securities offered is the same;

- (3) the means of calculating the exercise price is set out in the terms of issue of the Option; and
- (4) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue Options to foreign Stapled Security Holders if each Option, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (f) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee under an arrangement where:
  - (1) the whole or part of any money payable to a Stapled Security Holder under this deed, by way of distribution of capital or income, is applied in payment for the subscription for Stapled Securities in the Trust;
  - (2) each Stapled Security Holder of the Trust may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distributions which are, or would otherwise be, payable to that Stapled Security Holder;
  - (3) all the Stapled Securities issued under the arrangement are of the same class;
  - (4) the price of each Stapled Security issued pursuant to that arrangement at substantially the same time is the same;
  - (5) the amount by which the price of the Stapled Securities is less than the issue price of Stapled Securities that would otherwise apply, does not exceed 50%,

where if the Trustee reasonably considers that it would be in the best interests of Stapled Security Holders to exclude certain Stapled Security Holders that are connected to a place outside this jurisdiction (**foreign Stapled Security Holders**) and not unfair to those Stapled Security Holders, the Trustee need not offer or issue the Stapled Securities to foreign Stapled Security Holders if each Unit is sold in the context of the sale of a Stapled Security, taking reasonable steps to maximise the sale price net of expenses of the sale and foreign Stapled Security Holders are promptly paid the net sale price.

- (g) Where Stapled Securities are quoted on the financial market operated by the Australian Stock Exchange Limited and not suspended from quotation, Units may be sold by the Trustee or its agent, at a price determined by the Trustee, where:
  - (1) part of the issue price of the Stapled Security has not been paid when called and, in accordance with the terms of this deed, the

Stapled Security has consequently been forfeited to the Trustee on trust for Stapled Security Holders; and

- (2) the sale of the Stapled Security occurs in the context of a sale of the Stapled Security conducted in accordance with section 254Q of the Act other than subsections 254Q(1), 254Q(10), 254Q(13) and 254Q(14) as if the Stapled Security was a share, the Trust was the company and the Trustee was the directors of the company.
- (h) The Trustee may (subject to the terms of any applicable ASIC relief instrument) issue Options to subscribe for a Stapled Security, and a Stapled Security may be issued on exercise of the Option, at a price determined by the Trustee provided that:
- (1) all Stapled Security Holders are offered Options at the same price on a pro rata basis;
  - (2) the exercise price of all Options offered is the same;
  - (3) the amount by which the exercise price is less than the Issue Price of Stapled Securities that would otherwise apply, does not exceed 50% on the date of exercise of the Option,

but, subject to the Listing Rules and any applicable ASIC relief instrument, the Trustee is not required to offer or issue Options under this clause to persons whose address on a Register is in a place other than Australia.

Any offer made under this clause (h) must be made to Stapled Security Holders in proportion to the value of their respective holdings on the date determined by the Trustee, provided that 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 Options or Stapled Securities, as the case requires. Any Stapled Security Holder may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable. Any Options offered under this clause which are not subscribed for within the relevant period for acceptance set by the Trustee, may be offered for subscription by the Trustee to any person, provided that the price payable in relation to such further offer is not less than that at which the Options were originally offered to the Stapled Security Holders, and otherwise complies with any applicable ASIC relief instrument. An underwriter may take up any Options not subscribed for by Stapled Security Holders.

- (i) A Stapled Security in the Trust, but not an Option, may be issued at a price determined by the Trustee while the Trust is included in the official list of the financial market operated by Australian Stock Exchange Limited and the Stapled Securities are in a class of interests which is quoted on that financial market and trading in the class is not suspended, under an arrangement where:
- (1) an offer for the issue of Stapled Securities is made to each registered Stapled Security Holder;
  - (2) each offer is made on the same terms and conditions and on a non-renounceable basis;



- (3) the issue price is less than the market price during a specified period in the 30 days prior to either date of the offer or the date of the issue; and
- (4) no registered Stapled Security Holder may be issued with Stapled Securities with an application price (including, for the avoidance of doubt, the application price for any Attached Securities) totalling more than \$5,000 in any consecutive 12 month period,

provided that an offer need not be made to any registered Stapled Security Holder whose address is in a place where the Trustee reasonably considers that it is not lawful or not practical for that entity to offer and issue Stapled Securities to the person under the arrangement.

(j) Subject to clause 5.7(b), the Trustee may issue the Exchange Number of Stapled Securities at a price determined in accordance with subparagraph (1) for each TAPS Exchanged.

- (1) Subject to the adjustments in subparagraphs (2), (3) and (4), for the purposes of determining the number of Stapled Securities to be issued on Exchange the **Exchange Number** is to be calculated for each TAPS according to the following formula:

$$\text{Exchange Number} = \frac{\text{Realisation Amount}}{\text{RV} \times (1 - \text{Exchange Discount})}$$

- (2) If the total number of Stapled Securities to be issued to a former TAPS holder, as calculated under subparagraph (1), includes a fraction, that fraction will be disregarded.
- (3) If the Stapled Securities are de-stapled, then the TAPS Issuer will make all calculations in relation to Exchange as if a separate interest in each of the formerly Stapled Entities were each a Stapled Security and as if each TAPS was split into separate TAPS with face values equal in aggregate to the Face Value or make such other adjustment as the TAPS Issuer reasonably considers appropriate or necessary to maintain that relativity. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.
- (4) In this clause 5.7(j):

**Change of Control Event** means:

- (A) a takeover bid under Chapter 6 of the Corporations Act to acquire all or some of the Stapled Securities and the offer under such takeover bid is, or becomes, unconditional and the bidder has acquired at any time during the offer period a relevant interest in more than 50% of the Stapled Securities on issue; or
- (B) the Stapled Security Holders approve, and if necessary a court approves, an informal or formal scheme of arrangement which if implemented, will result in a person having a relevant interest in more than 50% of the Stapled Securities that will be on issue after the scheme is implemented;

**Exchange Discount** (expressed as a decimal) means the exchange discount being 2.5% or as changed by the TAPS Issuer pursuant to the TAPS Constitution;

**Exchange** means the redemption by the TAPS Issuer of TAPS for the Realisation Amount and the application of that Realisation Amount by the TAPS Issuer in payment for the Exchange Number of Stapled Securities, calculated in accordance with subparagraph (1), to be issued to the former holder of TAPS;

**Exchange Number** means the number of Stapled Securities to be issued calculated in accordance with subparagraph (1);

**Face Value** means the face value of TAPS being \$100;

**Realisation Amount** means the amount for which TAPS may be realised in accordance with the terms of the TAPS Constitution;

**RV** (expressed as a dollar value) means:

- (C) if Exchange has resulted other than from a Change of Control Event, the VWAP (expressed as a dollar value) calculated in respect of the period of 20 Business Days on which trading in Stapled Securities took place immediately preceding (but excluding) the relevant date for Exchange as determined in accordance with the TAPS Constitution; or
- (D) if Exchange has resulted from a Change of Control Event, the offer price under the takeover bid or the consideration under the scheme of arrangement or, in the case of non-cash consideration, the value of the offer price as reasonably determined by the TAPS Issuer. The TAPS Issuer may rely on the advice of an investment bank, accounting firm or other professional financial adviser in this regard.

**VWAP** is the average of the daily volume weighted average sale prices per Stapled Security sold on ASX on each Business Day during the relevant periods specified elsewhere in these Terms (so that if there are 20 Business Days in such period, the volume weighted average sale price per Stapled Security on each of those Business Days shall be determined, and then those volume weighted average sale prices shall be averaged to give the VWAP), but in determining such daily volume weighted average sale prices there shall not be included any transaction defined in the ASX market rules as a “special”, crossings prior to the commencement of normal trading, crossings during the after hours adjust phase, crossings during the closing phase, overnight crossings or any overseas trades or trades under the exercise of options over Stapled Securities or other trades which the TAPS Issuer reasonably considers are not fairly reflective of normal market supply and demand.

For the purposes of calculating VWAP, if, on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as cum dividend, or cum any other distribution or entitlement, but Stapled Securities will be issued under this clause

5.7(j) ex such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted cum dividend, other distribution or entitlement shall be reduced by an amount equal to:

- (E) in the case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of the recipient of the dividend or other distribution who is a natural person;
- (F) in the case of an entitlement which is traded on ASX on any of those Business Days, the average of the daily volume weighted average sale price for such entitlement sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
- (G) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the TAPS Issuer.

Conversely, where on some or all of the Business Days in the relevant period, Stapled Securities have been quoted on ASX as ex dividend or any other distribution or entitlement, but Stapled Securities will be issued under this clause 5.7(j) cum such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those Stapled Securities have been quoted ex dividend, other distribution or entitlement shall be increased under paragraphs (A), (B) and (C) above in this definition of VWAP (with the necessary changes).

For the purposes of calculating VWAP, if, Stapled Securities are reconstructed, de-stapled, consolidated, divided or reclassified into a lesser or greater number of securities during the period in which VWAP is being calculated, the VWAP shall be adjusted by the Trustee as it reasonably consider appropriate.

Where a specified period is stated in relation to the determination of VWAP and on any of the Business Days during that period Stapled Securities were subject to a trading halt or suspended, the period shall be extended by the number of Business Days on which the Stapled Securities were not able to be traded or were suspended.

## 5.8 Redemption Price

- (a) A Unit must only be redeemed at a Redemption Price calculated as:

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

- (b) Each of the variables in clause 5.8(a) must be determined:

- (1) while the Trust is Liquid, as at the close of business on the day before payment of the Redemption Price; or
- (2) while the Trust is not Liquid, at the time the withdrawal offer closes.

- (c) The Redemption Price must be rounded down to the nearest whole cent.

## **5.9 Redemption Procedures**

- (a) While Units are Officially Quoted, none of the provisions of this clause 5.9 apply except clause 5.9(d).

### ***Request for redemption***

- (b) A Unit Holder may request redemption of some or all of their Units in any manner approved by the Trustee and, while the Trust is Liquid, the Trustee must give effect to that request at the time and in the manner set out in this clause 5.9.
- (c) A Unit Holder may not withdraw a redemption request unless the Trustee agrees.

### ***When Trust is Liquid***

- (d) Clauses 5.9(e) to 5.9(k) apply only while the Trust is Liquid.
- (e) The Trustee must satisfy a redemption request in respect of Unit by payment from the assets of the Redemption Price calculated in accordance with clause 5.8. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 5.9(f). The day of receipt of the redemption request is:
  - (1) the day of actual receipt if the redemption request is received before 3.00 pm on a Business Day; or
  - (2) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00 pm on a Business Day.
- (f) If the Trustee has taken all reasonable steps to realise sufficient assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- (g) Subject to section 601FC(1)(d) of the Corporations Act, the Trustee need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Trustee from time to time unless the redemption request relates to the balance of the Unit Holder's holding.
- (h) The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.
- (i) If compliance with a redemption request would result in the Unit Holder holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Trustee may treat the redemption request as relating to the balance of the Unit Holder's holding.
- (j) If the Trustee increases the minimum holding amount, the Trustee may after given 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption price less than the then current minimum holding

amount redeem that Unit Holder's holding without the need for a redemption request.

***Discretionary redemption***

- (k) Subject to the Corporations Act and the Listing Rules, if the Trustee is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

***When Trust is not Liquid***

- (l) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provision of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (m) The Trustee is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
  - (1) publishing it by any means (for example in a newspaper or on the internet); or
  - (2) giving a copy to all Unit Holders.
- (n) If the Trustee receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

***Clauses applicable whether or not the Trust is Liquid***

- (o) Clause 5.9(p) applies whether or not the Trust is Liquid.

***Sums owed to Trustee***

- (p) The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Unit Holder.

***Buy-back***

- (q) Subject to the Corporations Act, the Trustee may buy-back Units in the Trust.

**5.10 Effect of Stapling**

While Stapling applies the Trustee must not redeem a Unit unless the Attached Securities to which the Unit is Stapled is also redeemed, bought back or otherwise cancelled by each Stapled Entity.

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**6 Trustee's Powers**

**6.1 General powers**

- (a) Subject to this constitution, the Responsible Entity 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.

- (b) The Trustee may, in accordance with the terms of this deed, determine that the Units should be un-Stapled from the Attached Securities and effect that un-Stapling.

## **6.2 Contracting powers**

Without limiting clause 6.1, the Responsible Entity in its capacity as trustee of the Trust has power to borrow or raise money, to grant security and to incur all types of obligations and liabilities.

## **6.3 Investment powers**

Without limiting clause 6.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

## **6.4 Power of delegation**

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- (c) The agent or delegate may be an Associate of the Responsible Entity.

## **6.5 Exercise of discretion**

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

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# **7 Trustee's responsibilities and indemnities**

## **7.1 No limitation of other undertakings**

This clause 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

## **7.2 Limitation of liability**

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the Assets actually vested in the Trustee in respect of the Trust.

### **7.3 Indemnities**

- (a) The Trustee is not responsible for:
- (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,
- except where the Corporations Act expressly provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (1) any provision of any present or future law or statute of Australia or any State or Territory; or
  - (2) of any decree, order or judgement of any competent court,
- the Trustee is prevented, forbidden or hindered from doing or performing.
- (c) 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 Trust. This indemnity is in addition to any indemnity allowed by law and continues to apply after the Trustee ceases to be trustee of the Trust.

### **7.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers 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,

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

### **7.5 Interested dealings by Trustee**

Subject to the provisions in Part 5C.7 of the Corporations Act, the Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;

- (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, underwriter, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
  - (c) have an interest in or enter into a contract or transaction with:
    - (1) the Trustee or an Associate of the Trustee;
    - (2) any Holder; or
    - (3) any other person, including one whose shares or other securities form an Asset; or
  - (d) hold or deal in or have any other interest in an Asset,
- and may retain and is not required to account for any benefit derived by doing so.

## **7.6 Effect of Stapling**

While Stapling applies, the Trustee may in exercising any power or discretion have regard to the interests of the Holders and the members of each Stapled Entity as a whole and not only to the interests of the Holders alone. This is the case notwithstanding any other provision of this deed, or any rule of law or equity to the contrary, other than any relevant provision of the Corporations Act.

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# **8 Valuation of Assets**

## **8.1 Valuation of assets**

- (a) The Trustee may at any time, cause the valuation of any Asset.
- (b) In determining whether a valuation accurately reflects the current value of an Asset, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of Assets.
- (c)
  - (1) Each Asset must be valued at its market value unless the Trustee determines:
    - (A) there is no market in respect of the Asset; or
    - (B) the market value does not represent the fair value of the Asset.
  - (2) Where the Trustee makes a determination under clause 8.1(c) the Trustee must at the same time determine the method of valuation for the Asset.
- (d) Where a valuation is to be performed of any Asset or the determination of the Net Asset Value of the Trust and the number of Units on Issue is to be made it is to be performed or determined as at a time determined by the Trustee.
- (e) Where the calculation of the Issue Price is to be made at a particular date, the Trustee need not cause a valuation of the Assets to be performed at that date but may rely on the most recent valuations for the purposes of that calculation.



## 8.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

## 8.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

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# 9 Income and Distributions

## 9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

## 9.2 Distribution of income

Subject to section 601FC(1)(d) of the Corporations Act, this deed and the Terms of Issue applicable to each class of Unit, for each Distribution Period the Trustee must calculate and pay to each Unit Holder its Distribution Entitlement on or before the Distribution Date.

## 9.3 Distribution Entitlement

- (a) The **Distributable Amount** for a period is to be determined by applying the following formula:

$$DA = I + C - R - ID$$

where:

DA is the amount of Distributable Amount

I is the Income of the Trust

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

R is the sum of amounts which the Trustee has determined are to be distributed to redeeming Unit Holders in accordance with clause 9.3(e)

ID is the sum of the amounts which have been distributed to Unit Holders under clause 9.3(f).

- (b) Subject to the Terms of Issue for any Unit each Unit Holder's **Distribution Entitlement** is to be determined in accordance with the following formula subject to the Terms of Issue applicable to each class of Unit:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement

DA is the Distributable Amount

UH is the aggregate of the Paid-up Proportion of each Unit Holder's Unit Holding, at the close of business on the Distribution Calculation Date

UI is the aggregate Paid-up Proportion of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

- (c) The Trustee may retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as Income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this deed or are required to be deducted by law.
- (e) If the Trustee determines, it may notify a Unit Holder in respect of a Unit redeemed by the Unit Holder during the Distribution Period, that the Redemption Price paid in respect of that Unit includes that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder equal to:

$$\frac{A}{B}$$

where:

A is that part of income which the Trustee has determined is to be distributed to the redeeming Unit Holder

B is the number of units redeemed by that Unit Holder

- (f) The Trustee may make an interim distribution of income on account of Distributable Income at such intervals as it determines. On such an interim distribution, the entitlement of each Unit Holder to any income is determined as if the date of the interim distribution were midnight on the last day of the distribution period to which the interim distribution relates.

#### **9.4 Present entitlement**

At the end of each Distribution Period each Unit Holder is presently entitled to its Distribution Entitlement.

#### **9.5 Composition of Distribution Entitlements**

At the end of each financial year the Trustee must notify each Unit Holder of the extent to which its Distribution Entitlements throughout that financial year are composed of, and the type of, income and capital.

#### **9.6 Distribution reinvestment arrangements**

- (a) The Trustee may advise Unit Holders from time to time in writing that Unit Holders may on terms specified in the notice participate in an

arrangement under which Unit Holders may reinvest all or a proportion of their Distribution Entitlements by subscribing for additional Units.

- (b) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units the Unit Holder subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units in question.
- (c) While Stapling applies, the Trustee may make provision for and may make payment for the subscription of Attached Securities to be Stapled to Units out of any distribution of income which is otherwise available for investment in Units.

## **9.7 Trust taxed as a company**

Notwithstanding clauses 9.3 and 9.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act because the Trust is a public trading trust under section 102R(1) of the Tax Act:

- (a) subject to any specific provisions to the contrary in the Terms of Issue of any class of Units, the Trustee has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unit Holders on the Distribution Date.
- (b) Each Unit Holder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.7(a)) is to be determined in accordance with clause 9.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.7(c)) to Unit Holders on the record date for that Distribution Period.

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## **10 Remuneration of Trustee**

### **10.1 Trustee's Remuneration**

The Trustee is entitled to receive out of the Assets of the Trust the remuneration (including the Management Fee and the Incentive Fee) specified in schedule 3, and any other fees specified in schedule 3 in relation to the proper performance of its duties.

### **10.2 Waiver of remuneration**

The Trustee may waive or defer the whole or any part of the fees to which it would otherwise be entitled and may defer the due date for payment of such remuneration.

### **10.3 Form of remuneration**

The Trustee may elect to be issued Units in any class at the greater of:

- (a) the then Market Price of Stapled Securities less the issue price of the Attached Securities Stapled to the Units in question or the Units (as applicable); and
  - (b) the price at which the Units are issued in the Trust's initial capital raising, as contemplated by clause 5.6(a)(2),
- in lieu of some or all of any fee to which it is entitled under this deed.

#### **10.4 Priority of Trustee's remuneration**

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Assets of the Trust.

#### **10.5 Indemnity**

In addition to any other right of indemnity which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of the Assets for, or entitled to have paid from the Assets, all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust. Without limitation this includes the amounts specified in schedule 1.

#### **10.6 Effect of Stapling**

While Stapling applies the Trustee may in its absolute discretion agree the apportionment of expenses incurred in connection with both the Trust and the issuers of the Attached Securities or with Stapled Securities, as between the Trust and the issuers of the Attached Securities. Any such apportionment could result in the Trust bearing the entirety of the expenses or it being shared with the issuers of the Attached Securities or borne totally by the issuers of the Attached Securities.

#### **10.7 Proper performance of duties**

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

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## **11 Indemnity and insurance**

### **11.1 Persons to whom clauses 11.2 and 11.4 apply**

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee.

### **11.2 Indemnity**

The Trustee must, from the Assets of the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

### **11.3 Extent of indemnity**

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **11.4 Insurance**

The Trustee may, from the Assets of the Trust and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **11.5 Savings**

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

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## **12 Transfers**

### **12.1 Transfer**

- (a) Before the Trust is admitted to the Official List or at any time after the Trust has ceased to be admitted, all transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
  - (1) is duly stamped; and
  - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor.
- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.

- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

## **12.2 Effect of Stapling**

- (a) While Stapling applies:
  - (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 3, the transfer is accompanied by a transfer of each Attached Security to which the Unit is Stapled in favour of the same transferee;
  - (2) a transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee;
  - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Securities to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee;
  - (4) any provision of this deed which contemplates the transfer of a Unit will be taken to be a reference to the transfer of a Stapled Security unless the contrary intention expressly applies; and
  - (5) the same rules as for the transfer of Units and Attached Securities apply to Options over Stapled Securities.

## **12.3 Transaction advice after transfer**

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

## **12.4 No General Restriction on Transfer**

- (a) There is no restriction on the transfer of Units and, subject to clause 12.5, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 12.1(b).
- (b) Except as otherwise set out in this clause 12, there is no restriction on any other transfer of Units or Options.

## 12.5 Restricted Securities

Despite any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASTC Settlement Rules in respect of Approved Financial Product, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Units which are restricted securities, the Holder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units for so long as the breach subsists.

## 12.6 Death, legal disability

If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the survivor (in the case of joint Holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name.

The Trustee need not register any transfer or transmission under this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.

## 12.7 Recognition of Holder

The Trustee:

- (a) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
- (b) except as required by law or this deed, need not recognise any claim or interest in any Unit or Option by any other person.

## 12.8 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 12.

## 12.9 Sale by majority of Unit Holders

Subject to any law or Listing Rule to the contrary, where 90% or more of Unit Holders in a particular class (**Majority Unit Holders**) agree to sell all their Units in that class to a third person, the remaining Unit Holders must sell their Units on the same terms and conditions as those agreed to by the Majority Unit Holders and the Unit Holders hereby irrevocably appoint the Trustee as their attorney for the purposes of effecting such sale and giving effect to the terms of this clause 12.9.

## **12.10 Exchange of Units deemed accepted**

- (a) If, with the approval of the Trustee, an offer is made to Unit Holders or any of them to transfer some or all of their Units to a third party in return for any of:
  - (1) the issue or transfer of units in another trusts or other interests in any entity;
  - (2) cash; and
  - (3) a transfer of Assets,and at least 21 days notice is given to unit Holders to accept the offer, then at the end of the notice period, if no election has been communicated by the Unit Holder, they will be deemed to have accepted the Offer. Where the offer is of cash and one or more other alternatives, the Unit Holder is deemed to have accepted the cash alternative. In all other cases, the Trustee will determine the alternative deemed to be accepted.
- (b) The Trustee is authorised to complete any application for units, transfer forms or other documents required to give effect to this clause 12.10 on behalf of and in the name of each relevant Unit Holder as their agent or attorney.

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## **13 Options**

### **13.1 Terms and Subscription**

- (a) This clause 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

### **13.2 Nominees**

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Option Holder unless the Terms of Issue provide otherwise.

### **13.3 Exercise**

- (a) An Option Holder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Option Holder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.



### 13.4 Option Holder's Rights and Interest

- (a) An Option does not confer on the Option Holder any particular interest in the Assets. Option Holders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules.
- (b) Option Holders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Option Holders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to, Unit Holders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

### 13.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX if required) whereupon the Trustee must make any payment to an Option Holder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) form part of the Assets and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

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## 14 Retirement or Removal of Trustee

### 14.1 Retirement of Trustee

- (a) Despite any other law, the Trustee may only retire as Trustee of the Trust in accordance with section 601FL of the Corporations Act.
- (b) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.
- (c) Subject to the law, the Trustee may agree to be paid a benefit by another entity who proposes to be the trustee of the Trust (**Proposed Trustee**) in consideration for retiring as trustee or agreeing to convene a meeting of

Unit Holders to consider the replacement of the Trustee with the Proposed Trustee. The Trustee is not required to account to Unit Holders for the benefit received.

#### **14.2 Name of Trust to be changed**

- (a) If Australian Pipeline Limited has retired or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Australian Pipeline Limited or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trusts and this deed.
- (b) Clause 14.2(a) does not apply if the new Trustee obtains the consent of Australian Pipeline Limited not to take the action set out in that clause.

#### **14.3 Payment of outstanding or deferred fees**

Immediately upon the retirement or removal of the Trustee, all fees or amounts owing to the Trustee and all amounts deferred by the Trustee pursuant to clause 10.2 become due and payable to the Trustee from the Assets of the Trust and the new Trustee must take such action as is necessary to promptly effect all such payments.

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## **15 Alterations to Trust**

### **15.1 Variation of this deed**

Subject to section 601GC of the Corporations Act (if applicable) and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

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## **16 Term of Trust and termination of Trust**

### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) the date determined by an extraordinary resolution of Unit Holders at a meeting of the Trust, convened by the Trustee in accordance with clause 17.1; and
- (b) the date on which the Trust is terminated under this deed or by law.

### **16.2 Procedure on winding up of Trust**

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Assets;
  - (2) pay any amount due to it under clause 16.2(c);

- (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unit Holder who is a creditor of the Trust; and
  - (4) subject to any special rights or restrictions attached to or the Terms of Issue of any Unit or the direction in writing of all Unit Holders, distribute the net proceeds of realisation among the Unit Holders pro rata in accordance with the Paid-Up Proportion of Units held by Unit Holders.
- (b) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may distribute an asset of the Trust to a Unit Holder in specie. The Trustee must determine the value of the Asset to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unit Holder before the distribution is made.
- (c) The Trustee is entitled to:
  - (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unit Holders all Costs incurred or which it establishes will be incurred:
    - (A) by it before the winding up of the Trust which it has not recouped;
    - (B) by it in connection with the winding up of the Trust and the realisation of the Assets of the Trust;
    - (C) by or on behalf of any creditor of the Trustee in relation to the Trust;
    - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
  - (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; and
  - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 10.
- (d) Subject to sections 601FC(1)(c) and 601FC(1)(d) of the Corporations Act, the Trustee may postpone the realisation of the Assets for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Assets which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 16.2(c).
- (f) The Trustee must distribute among the Unit Holders in accordance with clause 16.2(a) anything retained under clause 16.2(e) which is subsequently not required.

### **16.3 Audit of accounts of Trust**

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a Registered Company Auditor, or a firm at least one of whose members is a Registered Company Auditor, who is independent of the Trustee.

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## **17 Meetings**

### **17.1 Meetings**

- (a) The Trustee may convene a meeting at any time.
- (b) Part 2G.4 of the Corporations Act, the Listing Rules and the provisions of schedule 2 apply to a meeting.

### **17.2 Resolutions in writing**

- (a) A resolution of Holders of the Trust may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution each Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total holding must be determined at such time as the Trustee specifies.

### **17.3 Passing of resolution**

A resolution passed:

- (a) at a meeting of Holders held in accordance with this deed and the Corporations Act; or
- (b) under clause 17.2,

is binding on all Holders in their capacity as Holders.

### **17.4 Effect of Stapling**

- (a) While Stapling applies, the directors or other representatives of the Responsible Entity may attend and speak at any meeting of Members, or invite any other person to attend and speak.
- (b) While Stapling applies, if permitted by the Corporations Act and any applicable ASIC relief, any meeting of Holders may be held with and as part of a meeting of the members of the Attached Security. If such a joint meeting is permitted:
  - (1) the joint meeting will be convened and held in accordance with the procedures that apply to the holding of meetings of Holders and the members of the Attached Security, with such modifications as the Trustee decides; and

- (2) any decision made by or resolution passed by the joint meeting will be taken for all purposes as a decision made by or resolution passed by the Holders.

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## **18 Complaints**

### **18.1 Complaints handling**

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling.

### **18.2 Holder Complaints**

- (a) A Unit Holder in a Trust may by notice in writing, or orally to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
  - (1) record the complaint and the date it was received in a register maintained for that purpose; and
  - (2) send the Holder an acknowledgment of receipt of the complaint.

### **18.3 Handling of Complaint**

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.2 in accordance with this clause 18, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must deal with and resolve the complaint within 60 days of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
  - (1) its decision in relation to the complaint;
  - (2) the remedies available to the Holder in relation to the complaint; and
  - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.
- (d) The Trustee is not required to give the Holder the reasons for its decision in relation to a complaint.

### **18.4 Assistance and Information**

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.

- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

### **18.5 Effect of Stapling**

While Stapling applies the Trustee may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 18 to ensure an efficient and equitable resolution of the complaint.

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## **19 Small holdings**

### **19.1 Sale or redemption of small holdings**

- (a) Subject to the provisions of this clause 19, the Trustee may in its discretion from time to time sell or redeem any Units held by a Holder without request by the Holder where:
  - (1) the market value of Units (together with any Attached Securities Stapled to those Units) held by a Holder is less than \$2000; or
  - (2) while the Trust is Listed, the Units (together with any Attached Securities Stapled to those Units) held by a Holder comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Trustee may only sell or redeem Units (together with any Attached Securities Stapled to those Units) on one occasion in any 12 month period.

### **19.2 Procedure**

- (a) The Trustee must notify the Holder in writing of its intention to sell or redeem Units (together with any Attached Securities Stapled to those Units) under this clause 19.
- (b) The Trustee will not sell or redeem the relevant Units (together with any Attached Securities Stapled to those Units):
  - (1) before the expiry of 6 weeks from the date of notice given under clause 19.2(a); or
  - (2) if, within the 6 weeks allowed by clause 19.2(b)(1):
    - (A) the Holder advised the Trustee that the Holder wishes to retain the Units (together with any Attached Securities Stapled to those Units); or
    - (B) the market value of the Units (together with any Attached Securities Stapled to those Units) held by the Holder increases to \$2000 or more.
- (c) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.

- (d) The Trustee or the purchaser of the Units (together with any Attached Securities Stapled to those Units) must pay the costs of the sale or redemption as the Trustee decided.
- (e) The proceeds of the sale or redemption will not be sent to the Holder until the Trustee has received the certificate (if any) relating to the Units (together with any Attached Securities Stapled to those Units), or is satisfied that the certificate has been lost or destroyed.
- (f) The Trustee is entitled to execute on behalf of a Holder any transfer of Units (together with any Attached Securities Stapled to those Units) under this clause 19.

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## **20 Stapling**

### **20.1 Power to staple Securities**

The Trustee may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, there is an equal number of Attached Securities of every kind Stapled to each Unit.

### **20.2 Distributions in specie**

- (a) For the purposes of Stapling, the Trustee may make an in specie distribution of Securities to all Unitholders. Notwithstanding clause 9.4, the trustee must transfer the Securities by way of distribution between 7pm and 10am the following day.
- (b) The Trustee must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (c) Where Securities are to be transferred to Unitholders, each Unitholder authorises the Trustee to act as the Unitholder's agent:
  - (1) to agree to obtain the Securities; and
  - (2) to become a member of the relevant Stapled Entity.

### **20.3 Operation of Stapling provisions**

Clause 20.4 applies from such a time as determined by the Trustee, and only for so long as, a Unit continues to be a component of a Stapled Security.

### **20.4 Units to be Stapled**

- (a) Each Unit is Stapled to an Attached Security in each Stapled Entity to form a Stapled Security and each Stapled Security must be registered in the stapled security register as required by clause 20.8. The intention being that a Unit and each Attached Security which are Stapled together are treated as one security to the extent possible at law.

- (b) The Trustee may at any time staple an Unstapled Unit to an Attached Security which is not Stapled.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to an Attached Security to form a Stapled Security.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security. In particular:
  - (1) the Trustee must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Attached Securities for issue or sale;
  - (2) any offer of Units for subscription or sale must require each offeree to subscribe for or buy a number of Attached Securities equal to the number of Units subscribed for or bought;
  - (3) the Trustee must not issue or sell any Units to any person unless an identical number of Attached Securities are also issued or sold to the same person at the same time;
  - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of Attached Securities; and
  - (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of a corresponding number of each Attached Security,

but nothing in this sub-clause (d) prohibits the Trustee from determining the Unstapling Date.

## **20.5 Paramountcy of Stapling**

- (a) While Stapling applies, the Trustee and the Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security.
- (b) While Stapling applies, the Trustee must use every endeavour to procure that the Stapled Securities are Listed as one joint security and that Units are dealt with under this deed in a manner consistent with the provisions of the Attached Entity's Constitution as regards Attached Securities Stapled with those Units.

## **20.6 Unstapling Date**

- (a) Subject to the Corporations Act, the Listing Rules and approval by a special resolution of the Unit Holders and the members of each Attached Entity respectively, the Trustee may determine that the Stapling provisions



of this deed will cease to apply and that a particular date is to be the Unstapling Date.

- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to each Attached Security and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 20.6, this does not prevent the Trustee from:
  - (1) subsequently determining that the Stapling provisions should recommence; and
  - (2) stapling an Unstapled Unit to each Attached Security which is not Stapled.

## **20.7 Transfer of Stapled Securities**

- (a) Until the Unstapling Date:
  - (1) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12, the transfer is accompanied by a transfer of each Attached Security to which the Unit is stapled in favour of the same transferee.
  - (2) A transfer of a Unit which is not accompanied by a transfer of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee.
  - (3) A transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Unit Holder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

## **20.8 Stapled Security Register**

The Trustee must cause to be kept and maintained a stapled security register which:

- (a) may incorporate or form part of the Register; and
- (b) records the names of the members, the number of Units held, the number of Stapled Attached Securities held by the members to which each member's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the directors.

## 20.9 Variation of Stapling provisions

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

- (a) directly affects the terms on which Units are Stapled to the Attached Securities; or
- (b) removes any restriction on the transfer of an Attached Security unless that restriction also exists for Unstapled Units and is simultaneously removed for Unstapled Units.

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## 21 General

### 21.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
  - (1) must be in legible writing and in English addressed:
    - (A) if to the Trustee, to its registered office;
    - (B) if to a Holder, to the Holder's address specified in the register of Unit Holders or Option Holders,  
or as specified to the sender by any party by notice;
  - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender;
  - (3) is regarded as being given by the sender and received by the addressee:
    - (A) if by delivery in person, when delivered to the addressee;
    - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee;
    - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received; or
    - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,  
  
but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 3.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and
  - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint Holder whose name appears first on the Register.

## **21.2 GST**

- (a) Any reference in this clause to a term defined or used in the GST Act is to be taken as a reference to that term as defined or used in the GST Act.
- (b) Except as provided in clause 21.2(c), any amount referred to in this deed (including the Trustee's remuneration and any Costs) which is relevant in determining the amount of any payment to be made to the Trustee is exclusive of any GST component.
- (c) Any payment to be made to the Trustee by way of indemnification or reimbursement for losses, damages or Costs must include any GST component of the losses, damages or Costs for which an input tax credit is not available to the Trustee.
- (d) If GST is levied or imposed on or in respect of any supply made under this deed or in relation to the administration or management of the Trust then the consideration payable for that supply is increased by the rate at which the GST is levied or imposed on that supply. The additional consideration is payable at the same time and in the same manner as the consideration to which it relates.
- (e) The recipient of any consideration must issue a GST tax invoice to the recipient of the supply as required by the GST Act.

## **21.3 Method of payment, repayment or redemption**

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Holder and posted to the Holder's registered address or, if the Trustee determines, by electronic transfer.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person. The Trustee may adopt procedures limiting the type of accounts which are eligible to receive such payments.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units. The reinvestment is taken to be made on the day the cheque is cancelled.

## **21.4 Binding conditions**

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

### **21.5 Governing law and jurisdiction**

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Victoria.

### **21.6 Severability**

If any provision of this deed is void, illegal or unenforceable it may be severed without affecting the enforceability of the other provisions of this deed.

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## Schedule 1 - Establishment and Administrative Costs

(Clause 10.4)

- 1 All Costs (including, without limitation, travel expenses and accommodation) in connection with:
  - (a) the preparation, approval, registration, execution, stamping, interpretation and enforcement of this deed and any amending deeds and the Trust;
  - (b) the underwriting of any issues of Units or Options;
  - (c) the preparation, registration, printing, promotion and distribution of any prospectus or marketing material issued by the Trustee in respect of the Trust, Units or Stapled Securities and the preparation, registration, printing, promotion and distribution of any document required by law the Listing Rules or this deed to be prepared in respect of the Trust;
  - (d) the investigation, negotiation, acquisition, development, registration, custody, holding, management, supervision, repair, maintenance, valuation, insurance, sale of or other dealing with an Asset (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
  - (e) raising money or otherwise obtaining financial accommodation, including but not limited to, interest on borrowings and discounts and fees in respect of bill facilities and any Taxes payable in respect of such raising of money or obtaining financial accommodation;
  - (f) convening and holding meetings and carrying out the directions of the meetings;
  - (g) the retirement or removal of the Trustee and the appointment of another (including a temporary responsible entity) in its place;
  - (h) the establishment and maintenance of accounts (including bank accounts in respect of the Trust) and the Register and registry services;
  - (i) calculations and determinations under this deed;
  - (j) the establishment and administration of the Trust including:
    - (1) computer operation and development and data processing;
    - (2) computer experts' fees and expenses;
    - (3) office expenses including the cost of postage, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder or Option Holder under this deed;
    - (4) expenses in connection with any dealings with Units or Stapled Securities'
    - (5) holding meetings of the directors of the Trustee, without regard to where any director may reside; and
    - (6) holding meetings of the members of the Trust's Compliance Committee, without regard to where any member may reside;
  - (k) any custodian, actuary, adviser, expert, agent, delegate, lawyer (on a full indemnity basis), contractor, valuer, accountant or auditor (including the auditor of the Trust's Compliance Plan, including any who is an associate of the Trustee;

- (l) fees, remuneration and expenses of members of the Compliance Committee;
- (m) the indemnity referred to in clause 11.2;
- (n) any insurance purchased or maintained or premium for insurance paid or agreed to be paid as contemplated by clause 11.4;
- (o) all Taxes;
- (p) all fees payable to the ASIC, ASX, or other regulatory authority in respect of the Trust, Units or Options and other expenses incurred by the Trustee in respect of the admission of the Trust to the Official List of ASX or in respect of the Official Quotation of any Units or Options;
- (q) in anticipation of any action, suit or proceeding relating to the interpretation and construction of this deed or any provision of this deed or against the Trustee;
- (r) preparation and lodgement of tax returns;
- (s) termination of the Trust;
- (t) the assigning and maintaining of a credit rating to the Trust;
- (u) communications with Holders;
- (v) costs of responding to enquiries in respect of Unitholdings, preparing and printing accounts, causing the preparation and distribution of accounts, distribution statements, reports, confirmations and cheques in respect of the Trust;
- (w) the establishment of the Trust, the admission of the Trust to the Official List of the ASX or in respect of the Official Quotation of any Units or Options;
- (x) maintaining the Trust on the Official List of ASX or any ability to trade Units or Options or in connection with or arising out of any removal of the Trust from the Official list or suspension of any Units or Options from trading by ASX;
- (y) the services of asset managers, property managers, project managers and collection agents appointed in relation to Assets, despite such asset managers, property managers project managers and collection agents may be the Trustee or a Related Body Corporate of the Trustee;
- (z) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Asset; and
- (aa) underwriting of any subscription or purchase of Units or Stapled Securities, including underwriting fees, handling fees, cost and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amount becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement.

2 All like amounts or amounts incidental thereto.

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## Schedule 2 - Meetings of Holders

(Clause 17)

### 1 **Notice of meeting**

If the Trustee omits to give a Holder notice of a meeting or if a Holder does not receive notice, the meeting is still valid.

### 2 **Who may attend and address meeting of Unit Holders**

The Trustee, the directors of the Trustee, the Auditor, the auditor of a Trust's Compliance Plan, the members of the Trust's Compliance Committee and any person invited by any of them is entitled to attend and address a meeting or adjourned meeting.

### 3 **Quorum**

- (a) No business may be transacted at any meeting unless a quorum of Holders is present at the time when the meeting proceeds to business.
- (b) The quorum for a meeting convened to consider a special resolution to modify, repeal or replace this deed under section 601GC(1)(a) of the Corporations Act is 2 Holders.
- (c) The quorum for a meeting convened to consider any special or extraordinary resolution (other than the special resolution referred to in paragraph 3(b)(1)) is 2 Holders.
- (d) The quorum for any meeting (other than the meetings referred to in paragraphs 3(b) and (c)) is 2 Holders.
- (e) Where a meeting of a particular class of Unit Holders is required, the quorum for that meeting is the number of Holders specified in paragraphs 3(b), (c) and (d) having Units in the relevant class.
- (f) If a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be adjourned as the chairman directs.
- (g) At an adjourned meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

### 4 **Adjournments**

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

### 5 **Proxies**

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if any);

- (2) under the hand of an officer or attorney who has been authorised by the corporation;
  - (3) under the hand of any 2 directors or a director and a secretary; or
  - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the meeting at which the proxy proposes to vote.
  - (e) If paragraph 5(d) is not complied with, the proxy is invalid.
  - (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
  - (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time of the vote, has died or has revoked the proxy or the authority under which the proxy was executed.
  - (h) Paragraph 7(a) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the meeting at which the proxy is to be used.

## 6 **Voting**

- (a) A poll is to be conducted as directed by the Chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the meeting.
- (d) A poll may not be demanded on any resolution concerning:
  - (1) the election of the chairman of a meeting; or
  - (2) the adjournment of a meeting.
- (e) If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a meeting as if the committee, trustee or other person were the Holder.

## 7 **Joint Unit Holders**

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.



8 **Class Meetings**

The provisions of Part 2G.4 of the Corporations Act, clause 17, and this schedule 2 relating to meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options in a class of Units or Options.

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## Schedule 3 – The Trust

- 1 The **Management Fee** payable to the Trustee under clause 10.1 of this deed is an amount up to 1.00% per annum of the Market Capitalisation of the Trust excluding the value of any distributions payable to Unit Holders of the Trust. This fee is to be calculated quarterly and must be paid quarterly in arrears.
- 2 The **Incentive Fee** (which accrues periodically) payable to the Trustee under clause 10.1 of this deed is calculated and payable as follows:

The **Incentive Fee** equals 20% of the Fund Return for a Period above the Benchmark Return for the Period. If the Fund Return for a Period is less than the Benchmark Return for that Period, the amount of the deficit (“Previous Shortfall” as defined below) is carried forward and taken into account in calculating whether the Fund Return exceeds the Benchmark Return in subsequent Periods.

The **Incentive Fee** for each Period is the greater of:

- (a) \$0; and
- (b)  $20\% \times (\text{Fund Return} - \text{Benchmark Return} - \text{Previous Shortfall})$ , where

**Fund Return** for a Period equals:

- (1) the average of the daily Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period, where it is the number of Stapled Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (2) the movement in the Securities Index over the relevant Period expressed as a fraction, where:
  - (A) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period minus the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities); and
  - (B) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the initial accumulation index figure ascribed to the Stapled Securities).

The **Securities Index** is the accumulation index for the Group which calculates the accumulated total return received by Security Holders, including all distributions from the date on which unconditional trading in Stapled Securities commences on ASX. It will be specifically calculated for the Group by an Approved Valuer. The opening value of the Securities Index will be one. The value of the Securities Index at any particular time subsequently will be:

$$\frac{\text{TP x (one plus A)}}{\text{IP}}$$

where:

**TP** means the price at which Stapled Securities were most recently traded on ASX (excluding any special crossings or other trades which the Approved Valuer considers have not occurred in the ordinary course of trading);

**A** means the number (or fractions of numbers) of Stapled Securities which would notionally have been issued if each distribution in respect of a Stapled Security (and any other Stapled Securities (or fractions of Stapled Securities) issued pursuant to the reinvestment of distributions prior to the distribution in question) was reinvested at the closing price of Stapled Securities on the date of payment of the relevant distribution.

**IP** means the aggregate issue price of a Stapled Security in an initial capital raising as contemplated by clause 5.6(a)(2) of this deed and the equivalent provisions of the constitutions of any other Group members.

In the case of any bonus issues, security splits or consolidations, or other reconstructions, the value of TP and IP will be adjusted to take into account these changes as the Approved Valuer considers appropriate.

**Group** means the Trust and any entities whose securities are Stapled to Units in the Trust.

**Benchmark Return** for a Period equals:

- (a) the average of the Market Price of Stapled Securities, multiplied by the number of Stapled Securities on issue, in respect of each of the last 15 Business Days of the Period (except for the first Period where it is the number of Securities on issue on the date on which unconditional trading in Stapled Securities commences on ASX, multiplied by the issue price of those Stapled Securities); multiplied by
- (b) the movement in the Benchmark Index over the relevant Period expressed as a fraction, where:
  - (1) the numerator is the average daily closing value of this index over the last 15 Business Days of the Period compared with the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX); and
  - (2) the denominator is the average daily closing value of this index over the last 15 Business Days of the previous Period (except for the first Period where it is the average daily closing value of this index over the last 15 Business Days immediately prior to the date on which unconditional trading in Stapled Securities commences on ASX).

**Benchmark Index** means ASX/S&P 200 Industrials Accumulation Index (or such other equivalent index as may replace that index from time to time, as determined by an Approved Valuer) as reported by Bloomberg (or such other appropriate reporting agency as may be selected from time to time by an Approved Valuer).

**Period** means:

- (a) subject to paragraphs (b) and (c) below, each six month period ending 30 June and 31 December;
- (b) for the first period, the period commencing on the date on which unconditional trading in Stapled Securities commences on ASX and concluding on 30 June 2005; and
- (c) in the case of the last period, the period which ends on the date of termination of the Trust or the date on which the Trustee ceases to be responsible entity of the Trust (whichever occurs first) and which commences on 30 June or 31 December which occurs last before this event.

**Previous Shortfall** means:

- (a) for the first Period, \$0;
- (b) for the second Period, the amount (if any) by which the Fund Return for the first Period was less than the Benchmark Return for the first Period; and
- (c) for each subsequent Period, the amount (if any) by which:
  - (1) the Fund Return for the immediately previous Period; minus
  - (2) the Benchmark Return for that immediately previous Period; minus
  - (3) the Previous Shortfall applicable to that immediately previous Period,

produces an amount which is less than \$0.

The Incentive Fees calculated pursuant to this paragraph 2 represent the aggregate incentive fees payable to the Trustee by the Group in respect of the performance by the Trustee of its duties in relation to the Group members.

If an Incentive Fee is payable in respect of any Period, then it will be apportioned between the Group members as follows:

- (a) if, on the last day of the Period, there are no Group members other than the Trust, then 100% of any Incentive Fee for that Period will be paid out of the assets of the Trust;
- (b) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of one (but not more than one) of the Group members is a positive amount, then 100% of the Incentive Fee will be paid out of the assets of that Group member;
- (c) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Values of more than one of the Group members is a positive amount, then an amount equal in aggregate to 100% of the Incentive Fee will be paid out of the

assets of those Group members in the proportions which their Net Asset Values bear to each other; and

- (d) if, on the last day of the Period to which the Incentive Fee relates, the Net Asset Value of none of the Group members is a positive amount, then the Group members will pay an amount equal to 100% of the Incentive Fee out of their respective assets in the proportions which their Gross Asset Values bear to each other.