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**CONSTITUTION FOR
PENGANA DIVERSIFIED PRIVATE CREDIT FUND**

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PARTY

Pengana Capital Limited ACN 103 800 568 of Suite 1, Level 27, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000 Australia (**Pengana**).

OPERATIVE PROVISIONS

1 THE TRUST

Creation of Trust

- 1.1 The Trust to be known as the 'Pengana Diversified Private Credit Fund' is taken to have been established under this document.
- 1.2 The Responsible Entity is the trustee of the Trust established under this document and must hold the Assets of the Trust on trust for the Unitholders of the Trust.
- 1.3 The Responsible Entity must perform its obligations in accordance with this document and the applicable laws. The Responsible Entity has absolute discretion in doing so.

Period of the Trust

- 1.4 The Trust commences on the day on which Application Money is first Accepted by the Responsible Entity in relation to the Trust until the Trust is terminated in accordance with clause 10.1.

Badged Disclosure Documents

- 1.5 The Responsible Entity may enter into arrangements with a person (**Sponsor**) for the Offer by the Sponsor to other persons of participation in the Trust. Any Disclosure Document in respect of such an arrangement may, with the approval of the Responsible Entity, carry the name of the Sponsor or the name chosen by the Sponsor and approved by the Responsible Entity.

2 UNITS IN THE TRUST

Creation of Units in the Trust

- 2.1 The beneficial interest in the Trust is divided into Units. Each Unitholder has a beneficial interest in the Trust as a whole but not in any specific part or assets of the Trust.
- 2.2 Where Units are taken to be issued under clause 2.15 and the issue has not yet been recorded in the Register of Unitholders, the person to whom the Units are taken to have been issued has an interest of the kind referred to in clause 2.1 based on the net amount of Application Money (net of any Entry Fee) that person has contributed to acquire the Units, divided by the relevant issue price for those Units, whether or not the issue price for those Units has been ascertained at the time.
- 2.3 The Responsible Entity may create Units and Offer them for subscription or sale in accordance with applicable law.



- 2.4 The Responsible Entity may create parts of Units. The holder of a part of a Unit has rights appropriate to the proportion of the Unit he or she holds. The Responsible Entity may also round, up or down to any number of decimal places which the Responsible Entity determines, the number of Units to be issued or withdrawn from time to time under the terms of this document.
- 2.5 The Responsible Entity may consolidate, determine or divide, including reconsolidate and divide post issue of Units, the Trust into any number of Units, including of different Classes, but the consolidation, determination or division, including reconsolidation and division, must not affect the relativity between Unitholders of the Trust.

Classes of Units

- 2.6 The Responsible Entity may issue and divide Units into Classes. Each Class carries such rights and entitlements as set out in this document and in any Disclosure Document under which the Unit was applied for or any replacement Disclosure Documents thereof. Subject to this document, each Unit confers on its holder identical rights to those conferred by each other Unit of that Class.

Applications

- 2.7 The Responsible Entity may create forms to assist in making Applications.
- 2.8 A person may apply to the Responsible Entity to be issued Units. If an applicable law requires it, an Application must be made on an application form. The manner in which an Application may be given is to be determined by the Responsible Entity.
- 2.9 Unless an applicable law provides otherwise, application forms for the issue of Units must be accompanied by either:
- 2.9.1 the appropriate Application Money; or
 - 2.9.2 an effective transfer to the Responsible Entity of the other consideration the Responsible Entity proposes to Accept as Application Money (including an amount to cover any expenses the Responsible Entity may incur in respect of the transfer).
- 2.10 An Application may not be withdrawn without the consent of the Responsible Entity.
- 2.11 The Responsible Entity may Accept or reject an Application, either partly or completely, at its absolute discretion. The Responsible Entity must make that decision as soon as practicable after receiving the Application.
- 2.12 The Responsible Entity must record an applicant's name in the Register of Unitholders on the day the Responsible Entity Accepts the Application, or as soon as practicable afterwards.
- 2.13 If the Responsible Entity Accepts an Application for the issue of Units and the Responsible Entity does not receive clear title to the Application Money, an issue of Units made on the basis of the Application is void.
- 2.14 The Responsible Entity may set a minimum or maximum amount (or both) for an Application to be made. The Responsible Entity may also set a minimum or maximum amount (or both) for the number of Units, or the percentage of Units on issue, which may



be issued to or held by any one Unitholder. The Responsible Entity may waive any minimum or maximum amount which it has set in its discretion.

Issue of Units

- 2.15 Except in the case of a reinvestment of Distribution in accordance with this document, Units are taken to be issued to a person at the time which is the earlier of:
- 2.15.1 the time the issue of Units is recorded in the Register of Unitholders; and
- 2.15.2 the later of the time when:
- (a) the Responsible Entity Accepts the Application; and
- (b) the Responsible Entity receives Application Money (even if the moneys are paid or to be paid in to the Application Account) or any property forming part of the Application Money against which Units are to be issued is vested in the Responsible Entity.
- 2.16 At the time when Units are taken to be issued to a person under clauses 2.15 or 2.18:
- 2.16.1 the person becomes a Unitholder in respect of the Units, which are taken to be issued even though the number of Units may not yet have been ascertained and the issue has not yet been entered into the Register of Unitholders; and
- 2.16.2 the person becomes entitled to be recorded in the Register of Unitholders as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

Reinvestment plan

- 2.17 A Unitholder may make Application to the Responsible Entity, or the Responsible Entity may determine, for the Responsible Entity to apply any Distribution to the issue of further Units to that Unitholder.
- 2.18 Where the Responsible Entity agrees or determines to apply any Unitholder's Distribution to the issue of Units to that Unitholder, such Units are taken to be issued on the first Business Day after the end of the relevant Distribution Period to which the Distribution relates or such other date.

Issue Price of Units

- 2.19 The price at which the initial Units are to be issued will be AUD\$1.00 per Unit.
- 2.20 The price at which initial Units of any new Class issued after the initial Class will be equal to the highest issue price of any existing Classes of the Trust determined in accordance with clause 2.21 as at the Valuation Time after receipt of the Application for the Units, as determined by the Responsible Entity in accordance with and subject to clause 2.22.
- 2.21 The price at which subsequent Units of a Class are to be issued is:
- 2.21.1 the Value of that Class;
- 2.21.2 divided by the number of Units of that Class on issue,
- plus Transaction Costs expressed on a per Unit basis, the result being rounded up to the next 1/100th of a cent (e.g. 0.005 of a cent being rounded up) and calculated as at the next



Valuation Time after receipt of the Application, as determined by the Responsible Entity in accordance with and subject to clause 2.22.

2.22 The Responsible Entity may designate or vary a Designated Time for the purposes of determining when an Application is received by the Responsible Entity for the purposes of clause 2.21. The Designated Time may be different for given methods of communication or payment. Accordingly if an Application is received:

2.22.1 prior to the applicable Designated Time, it will be taken to have been received at the Designated Time; and

2.22.2 after the applicable Designated Time, it will be taken to have been received at the following Designated Time.

2.23 The Responsible Entity may issue a receipt for Application Money the Responsible Entity receives. However, that receipt is no evidence that a Unit has been issued or that the applicant is entitled to it.

2.24 If an Application is not Accepted at all or in full, the Responsible Entity must refund the Application Money not Accepted. The Responsible Entity may deduct reasonable expenses from the Application Money that is not Accepted.

Becoming a Unitholder

2.25 Subject to clause 2.16, a person becomes the holder of a Unit when his or her name is recorded on the Register of Unitholders in relation to that Unit. A person ceases to be the holder of a Unit when his or her name ceases to be recorded on the Register of Unitholders in relation to that Unit.

2.26 The recording of a person's name on the Register of Unitholders in relation to Units is the sole evidence of title to those Units.

2.27 The Responsible Entity must keep a Register of Unitholders and record in it the name of each person to whom Units are issued, the number of Units issued to each of those persons, the Class and any other matters the Responsible Entity considers necessary or desirable. The Register may be maintained in one or more separate parts at different locations. The Responsible Entity may maintain other Registers.

2.28 The Responsible Entity may treat the registered Unitholder of a Unit as the absolute owner of the Unit for all purposes. The Responsible Entity is not required to record any trust or equitable interest on any Register.

Withdrawals

2.29 The Responsible Entity may create forms to assist in Withdrawal Requests.

2.30 If the Responsible Entity consents a Unitholder may apply to the Responsible Entity to withdraw Units. Notwithstanding any other terms of this document, a Unitholder may only apply to withdraw Units if the Responsible Entity provides its consent. If an applicable law requires it, a Withdrawal Request must be made on a withdrawal form. The manner in which a Withdrawal Request may be given is to be determined by the Responsible Entity.

2.31 A Withdrawal Request may not be withdrawn without the consent of the Responsible Entity.



- 2.32 Where requested by a Unitholder and agreed to by the Responsible Entity, the Responsible Entity will purchase or buy-back, out of its own funds, Units the subject of a Withdrawal Request, in which case:
- 2.32.1 it is not a condition precedent to the transfer of the right, title and interest in the Units to the Responsible Entity that the Responsible Entity has paid the Unitholder the purchase price for the transferred Units; and
- 2.32.2 the Responsible Entity may deduct from the purchase price for the Units transferred all Expenses, costs, losses and damages of whatever kind incurred or payable by the Responsible Entity, in any capacity, in connection with or as a consequence (direct or indirect) of the purchase or buy-back.
- 2.33 The Responsible Entity may refuse to register a transfer of Units and need not provide any reasons. Where the Responsible Entity refuses to register a transfer of Units, it may redeem those Units in accordance with this clause 2 as if a Withdrawal Request had been lodged in respect of them.
- 2.34 The Responsible Entity may set a minimum or maximum amount (or both) for a Withdrawal Request to be made. The Responsible Entity may also set a minimum or maximum amount (or both) for the number of Units, or the percentage of Units on issue, which may be withdrawn by any one Unitholder. The Responsible Entity may waive any such minimum or maximum amount which it has set at its discretion.
- 2.35 The Responsible Entity must in respect of a Withdrawal Request, within twenty-one (21) days of the Valuation Time on which the unit price of the Units are determined in accordance with clause 2.36 (or any longer time as is permitted by virtue of the operation of clauses 2.46 to 2.49), cause the redemption of such part of the Unitholder's interest in the Trust as equals the amount of the withdrawal (including effect the payment of the withdrawal proceeds or effect a transfer in accordance with clause 2.43), subject to clause 2.42.
- 2.36 The price of a Unit of a Class at which a Withdrawal Request from the Trust is effected (**Withdrawal Price**) will be:
- 2.36.1 the Value of that Class;
- 2.36.2 divided by the number of Units of that Class on issue,
- less Transaction Costs expressed on a per Unit basis, the result being rounded down to the next 1/100th of a cent (e.g. 0.005 of a cent being rounded up) calculated as at the next Valuation Time after receipt of the Withdrawal Request, as determined by the Responsible Entity in accordance with and subject to clause 2.38.
- 2.37 Upon receipt of a Withdrawal Request:
- 2.37.1 the Responsible Entity may at its discretion determine that a portion of the withdrawal amount to be paid to that Unitholder represents a share of the Divisible Income;
- 2.37.2 where the Responsible Entity makes a determination under clause 2.37.1, the portion of the withdrawal amount representing Divisible Income will be determined by reference to:



- (a) the withdrawing Unitholder's pro rata share of the undistributed Divisible Income of the relevant Class as at the Valuation Time for the relevant Withdrawal Request, determined in accordance with clause 3; and
 - (b) the increase in the Divisible Income as a result of the Responsible Entity realising sufficient Assets to satisfy the Withdrawal Request; and
- 2.37.3 where the Responsible Entity makes a determination under clause 2.37.1, the Responsible Entity must notify the Unitholder of the composition of the withdrawal amount so determined.
- 2.38 The Responsible Entity may designate or vary a Designated Time for the purposes of determining when a Withdrawal Request is received by the Responsible Entity for the purposes of clause 2.36. The Designated Time may be different for given methods of communications or payment. Accordingly if a Withdrawal Request is received:
 - 2.38.1 prior to the applicable Designated Time, it will be taken to have been received at the Designated Time; and
 - 2.38.2 on or after the applicable Designated Time, it will be taken to have been received at the following Designated Time.
- 2.39 The Responsible Entity may reimburse itself for any costs properly incurred in effecting a Withdrawal Request. This may include paying the proceeds of a Withdrawal Request to the Unitholder net of such costs.
- 2.40 Despite anything to the contrary in this document and where the Trust is a Registered Scheme, while the Trust is not Liquid:
 - 2.40.1 neither part nor all of a Unitholder's interest in the Trust may be redeemed except in accordance with terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act 2001 regulating offers of that kind;
 - 2.40.2 no Withdrawal Request issued under a withdrawal offer may be satisfied while the offer is still open;
 - 2.40.3 if there is no withdrawal offer currently open for acceptance by Unitholders, neither part nor all of a Unitholder's interest in the Trust may be redeemed.
- 2.41 If compliance with a Withdrawal Request would result in a Unitholder having less Units than the then current minimum amount, the Responsible Entity may either treat the Withdrawal Request as relating to the entire interest of the Unitholder in that Class or refuse the Withdrawal Request.
- 2.42 The Responsible Entity may refuse or delay the processing of the Withdrawal Request if it suspects or is advised that the payment of the withdrawal may result in a contravention of applicable AML Requirements.
- 2.43 If a Unitholder requests or if the Responsible Entity considers that it is in the best interests of the Unitholder who made the Withdrawal Request or Unitholders as a whole, the Responsible Entity may transfer Assets to a Unitholder, or hold Assets on trust solely for



a Unitholder, rather than pay cash on withdrawal. These Assets must be of a Value equal to the proceeds of a Withdrawal Request due to a Unitholder and be valued as at the same Valuation Time with which the Withdrawal Request is being processed in accordance with clause 2.36 and in the same manner provided for in clause 3.4 (including being valuations consistent with the range of ordinary commercial practice for valuing assets of the relevant type and being reasonably current).

- 2.44 Without limiting any other provision of this document, the Responsible Entity can determine to redeem Units without a request in these circumstances and if it does so, the Withdrawal Price is the next calculated after it so determines:
- 2.44.1 if the Unitholder has breached its obligations to the Responsible Entity;
 - 2.44.2 to satisfy any amount of money due to it (as trustee or in any other capacity) by the Unitholder;
 - 2.44.3 to satisfy any amount of money it (as trustee or in any other capacity) owes someone else relating to the Unitholder (for example, to the tax office);
 - 2.44.4 if this document otherwise allows (for example, where a minimum holding is or will be breached);
 - 2.44.5 where the Responsible Entity suspects that the law prohibits the person from legally being a Unitholder;
 - 2.44.6 to prevent the Trust being subject to income tax on the same basis as if it were a company under the Income Tax Assessment Act 1936;
 - 2.44.7 where the Responsible Entity determines it will avoid other consequences which are detrimental to the Unitholders of the Trust; or
 - 2.44.8 where the Responsible Entity determines it is appropriate or necessary for administrative or other reasons.
- 2.45 Where, as a matter of law or as the Responsible Entity determines, a Unitholder has a right under the Cooling-Off Provisions and the Unitholder exercises that right:
- 2.45.1 despite clause 2.36, the amount to be repaid to the Unitholder shall be calculated in accordance with the Cooling-Off Provisions; and
 - 2.45.2 the Responsible Entity shall be entitled to recover from the Trust any expenses associated with the Unitholder exercising their right under the Cooling-Off Provisions and the redemption amount.

Suspensions

- 2.46 Notwithstanding anything expressed or implied to the contrary in this document with the exception of clause 2.40, if the Responsible Entity considers or determines that:
- 2.46.1 it is desirable for the protection of the Trust or in the interests of the Unitholders as a whole including if any relevant financial, stock, bond, note, derivative or foreign exchange market is closed or trading on any such market is restricted;
 - 2.46.2 an emergency (including an emergency caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the



Responsible Entity to acquire or dispose of the Assets or to determine fairly the issue or Withdrawal Price of a Unit;

- 2.46.3 any state of affairs exists as a result of which the Responsible Entity considers or determines that it is not or may not be reasonably practicable for the Responsible Entity to acquire or dispose of Assets or to determine fairly the amount of the issue or Withdrawal Price of a Unit (including any moratorium declared by a government of any country), the state of affairs will or may affect to a significant degree the ability of the Responsible Entity to acquire or dispose of Assets or the prices at which the Responsible Entity may acquire or dispose of Assets;
- 2.46.4 sufficient Assets of the Trust cannot be realised at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside the control of the Responsible Entity;
- 2.46.5 the redemption or issue of any interest in an underlying fund has been suspended or reduced or the calculation of net asset value of the underlying fund has been suspended; or
- 2.46.6 the Operating Standards otherwise permit,

the Responsible Entity may suspend for a reasonable period (**Suspension Period**) the redemption or issue or both of Units, or the payment for the redemption of Units or the determination of a new Value of a Class or Trust during the Suspension Period. The issue and Withdrawal Price for Units the subject of an Application or a Withdrawal Request received or deemed received during the Suspension Period shall be the value of the issue or Withdrawal Price next determined after the end of the Suspension Period. A Unitholder's Withdrawal Request lodged during the Suspension Period is deemed lodged immediately after the end of the Suspension Period.

Reduction of Withdrawal Requests

- 2.47 Notwithstanding anything expressed or implied to the contrary in this document, with the exception of clause 2.40, if the Responsible Entity receives Withdrawal Requests in respect of any Designated Time equal to more than 25% (or such other percentage as the Responsible Entity in its discretion may determine) of the Value of a Class or the Trust as at the relevant Valuation Time, the Responsible Entity may at its sole discretion reduce each Withdrawal Request pro-rata based on the value of each Withdrawal Request, so that only Units with aggregate value equal to 25% (or such other percentage as the Responsible Entity in its discretion may determine) of the Value of the Class or the Trust, as applicable, are redeemed at the relevant Valuation Time. The unredeemed portion of the relevant Withdrawal Requests are carried forward to the next Designated Time.
- 2.48 Notwithstanding anything expressed or implied to the contrary in this document, with the exception of clause 2.40, the Responsible Entity may reduce each Withdrawal Request on a pro-rata basis where it cannot for any reason fund all Withdrawal Requests as a result of not being able to effect sufficient redemption of interests in an underlying fund. The unredeemed portion of the relevant Withdrawal Requests are carried forward to the next relevant Designated Time.



- 2.49 Notwithstanding anything expressed or implied to the contrary in this document and in the circumstance that the Responsible Entity has determined that the Designated Time shall be each Business Day, where:
- 2.49.1 in respect of any single Business Day, the Responsible Entity receives Withdrawal Requests from Unitholders in respect of a Designated Time equal to more than 25% (or such other percentage as the Responsible Entity in its discretion may determine) of the Value of a Class or the Trust as at the relevant Valuation Time, the Responsible Entity may at its sole discretion determine that the Withdrawal Request is to be treated as 5 separate Withdrawal Requests of that Class or the Trust as applicable, for one-fifth of the original Withdrawal Requests determined by value, and that each of the separate Withdrawal Requests is deemed to be received by the Responsible Entity on each of the 5 successive Business Days commencing with the Business Day on which the Responsible Entity received the original Withdrawal Request; and
- 2.49.2 in respect of any period of 5 consecutive Business Days, Unitholders, including any Unitholders mentioned in paragraph 2.49.1, request the withdrawal of a number of Units that in aggregate represent more than 25% (or such other percentage as the Responsible Entity in its discretion may determine) of the Value of a Class or the Trust over that period, the Responsible Entity may in its discretion:
- (a) determine that each original Withdrawal Request made in that period (each an "**original Withdrawal Request**") must be and be deemed to be 5 separate Withdrawal Requests (each a "**deemed Withdrawal Request**") each for a one-fifth portion by value of the relevant original Withdrawal Request; and
 - (b) one of each of the deemed Withdrawal Requests must be deemed to be received by the Responsible Entity on each of the following days:
 - (i) the Business Day on which the aggregate representing more than 25% (or such other percentage as the Responsible Entity in its discretion may determine) of the Value of the Class or the Trust on a Designated Time was reached;
 - (ii) the fifth Business Day after the Business Day referred to in sub-paragraph (i) above;
 - (iii) the fifth Business Day after the Business Day referred to in sub-paragraph (ii) above;
 - (iv) the fifth Business Day after the Business Day referred to in sub-paragraph (iii) above;
 - (v) the fifth Business Day after the Business Day referred to in sub-paragraph (iv) above.

Compulsory Withdrawal by Responsible Entity

- 2.50 The Responsible Entity may (without the consent of a Unitholder) redeem any or all of a Unitholder's Units in the Trust at the Withdrawal Price for Units calculated in accordance



with clause 2.36 (except that the price is not to be adjusted for Transaction Costs) at that time and invest the withdrawal proceeds as an Application for additional Units in the Trust in a Class of Units determined by the Responsible Entity but which have equivalent rights. Such Units will be taken to be issued contemporaneously with redemption and will be issued at the issue price for that Class calculated in accordance with clause 2.21 (except that the price is not to be adjusted for Transaction Costs) immediately prior to the redemption.

Death, bankruptcy of a Unitholder

- 2.51 In the case of the death of a Unitholder who is not subject to a legal disability, the Responsible Entity is only required to recognize any surviving joint Unitholder or the legal personal representative of the Unitholder as having any rights in relation to the Units of that Unitholder. In the case of bankruptcy, liquidation or administration of a Unitholder, the Responsible Entity is only required to recognize the person legally entitled to the Units of that Unitholder.

No certificates

- 2.52 The Responsible Entity is not required to issue a certificate of Unit holding to any Unitholder. However, the Responsible Entity may, and if required by the Operating Standards, must, provide a Unitholder with a statement of his or her Unit holding after Accepting an Application or a Withdrawal Request and at any later time on request from a Unitholder. A statement of Unit holding is no evidence of title to those Units.
- 2.53 Any fractions of a cent remaining after rounding for the purposes of an Application or a Withdrawal Request becomes an Asset.

Rights of Unitholders

- 2.54 This document is legally enforceable as between each Unitholder and the Responsible Entity.
- 2.55 Each Unitholder has the benefit of and is entitled to enforce this document even though the Unitholder is not a party to or may not be a Unitholder at the time of execution and delivery of this document.
- 2.56 Each Unitholder (and all persons and claims through the Unitholder) will be bound by this document as if they were a party to this document.
- 2.57 A Unitholder is not entitled to do any of the following:
- 2.57.1 interfere with the exercise of the powers of the Responsible Entity; or
 - 2.57.2 exercise a right or claim an interest in respect of an Asset (including lodging a caveat or other notice affecting an Asset); or
 - 2.57.3 require the transfer to it of an Asset of the Trust.
- 2.58 A Unitholder must pay any expenses that are referable to his or her Application, Withdrawal Request, Application Money and Units. The Responsible Entity may refuse to act in relation to that Unitholder if those expenses are not paid.
- 2.59 A Unitholder is not, merely because he or she is a Unitholder:



- 2.59.1 liable to make any payment to the Responsible Entity except the unpaid part of the issue price for each Unit issued to the Unitholder; and
- 2.59.2 under an obligation to indemnify the Responsible Entity or any creditor of it for any liabilities that arise in connection with the Trust.
- 2.60 A Unitholder must give the Responsible Entity each of the following:
 - 2.60.1 details of any inaccuracy in anything stated in an application form or Register, and of any change to any of that information, of which he or she becomes aware; and
 - 2.60.2 on request by the Responsible Entity all reasonable information concerning his or her interest in the Trust.
- 2.61 A Unitholder may transfer a Unit in the way and on the conditions the Responsible Entity decides. A condition will not impose an additional duty on the Responsible Entity.

3 INVESTMENTS, INCOME AND DISTRIBUTIONS

Investment strategy

- 3.1 The Investment Strategy for a Class and the Trust will be the strategy determined by the Responsible Entity and notified to Unitholders of the relevant Class (**Investment Strategy**) and if a Disclosure Document has been issued to a Unitholder of that Class, the Investment Strategy will be that set out in the Disclosure Document or any replacement Disclosure Document thereof. The Responsible Entity may vary the Investment Strategy from time to time in accordance with the Operating Standards.

Valuation of Assets

- 3.2 The Responsible Entity may Value an Asset, or appoint an adviser or service provider to Value the Asset at any time, and must do so as and when required by the Corporations Act 2001.
- 3.3 The Responsible Entity may determine, or instruct an adviser or service provider to determine, the Value of a Class or the Trust at such times (**Valuation Time**) as it considers necessary or desirable.
- 3.4 The Value of an Asset for the purpose of calculating the Value of a Class or the Trust will be its market value determined in accordance with Australian accounting principles. Where there is no market value, the valuation methods and policies applied by the Responsible Entity must:
 - 3.4.1 produce valuations that are:
 - (a) consistent with the range of ordinary commercial practice for valuing assets of the relevant type;
 - (b) reasonably current (based on the type of asset) where used to calculate the issue price for Units (in accordance with clause 2.21) and calculate the Withdrawal Price for Units (in accordance with clause 2.36); and
 - 3.4.2 be in accordance with Australian accounting principles.

**Responsible Entity to collect income**

- 3.5 The Responsible Entity must collect all dividends, interest, rents and other income from the Assets of the Trust.

Determination of Divisible Income

- 3.6 Subject to clause 3.15, a person who at any time during the Year is or has been a Unitholder of the Trust has a vested and indefeasible interest in, and is presently entitled to, the Divisible Income of the Trust for the Year in the proportion that the aggregate of their share of the Divisible Income for all Distribution Periods within the Year bear to the aggregate of the Divisible Income of all Unitholders at any time in respect of the Year for all Distribution Periods within the Year.
- 3.7 The Responsible Entity may determine the amount of the Divisible Income of the Trust as at the end of a Distribution Date to be distributed to Unitholders. If no determination is made by the Responsible Entity within the time period allowed by the ATO for the determining of Divisible Income, the Divisible Income of the Trust for a Year will be equal to Net Income. The Responsible Entity must determine the share of that Divisible Income to which each Class of Units is entitled. The Divisible Income of a Class is the portion of the Divisible Income of the Trust determined by the Responsible Entity as attributable to the Class. For the purposes of determining Divisible Income, the Responsible Entity may in its discretion determine whether any receipt of money or other property, whether actually received or receivable, or any outgoing or charge on profit or loss is treated as being on income or capital account.
- 3.8 The Responsible Entity must determine the share of the Divisible Income to which each Unitholder in a Class is entitled by dividing the Divisible Income of the Class (less any amounts previously distributed pursuant to clause 2.37) by the number of Units on issue in that Class and multiplying that number by the number of Units held by the Unitholder.
- 3.9 The Divisible Income for each Distribution Period must be allocated to the holders of Units in accordance with their entitlement in accordance with this clause 3.
- 3.10 The Responsible Entity may require the withholding from the Divisible Income of the Trust distributed for any Distribution Date (other than the last Distribution Date in respect of a Year) an amount which the Responsible Entity estimates is necessary to equalise as far as possible income distributions for the Year or to provide for capital losses.
- 3.11 The Responsible Entity may distribute or cause to be distributed any amount (capital or income) by way of cash or in specie at any time on a pro-rata basis according to the number of Units held by each Unitholder as a proportion of all Units on issue as at a time determined by the Responsible Entity.
- 3.12 The Responsible Entity shall distribute or cause to be distributed the Divisible Income for the Trust which has arisen in respect of each Distribution Period (**Distributions**) no later than 60 days after the relevant Distribution Date less any amounts of Divisible Income previously distributed pursuant to clause 2.37 and/or clause 3.11 during the Distribution Period.



- 3.13 Subject to the Corporations Act 2001, if the Responsible Entity exercises a power to transfer Assets to a Unitholder as a distribution, the Responsible Entity may as it sees fit in its absolute discretion either:
- 3.13.1 require the Unitholder receiving the Asset as a distribution, or another Unitholder receiving Assets or cash as a distribution, to pay some or all of any GST on any supply arising from the distribution (and any Unitholder so required must then indemnify the Responsible Entity against that GST, and pay to the Responsible Entity an amount equal to that GST); or
- 3.13.2 itself pay some or all of that GST and recover the amount of that GST out of the Assets.
- 3.14 Subject to clause 3.13, the Responsible Entity will pay Distributions or cause them to be paid by cheque posted to the Unitholder, by direct credit to an account nominated by the Unitholder or as otherwise directed by the Unitholder.
- 3.15 The Responsible Entity must maintain a distribution account. The Responsible Entity may also maintain separate accounts in relation to different categories and sources of income and may allocate income to particular Unitholders from those accounts.
- 3.16 The Responsible Entity may transfer any capital of the Trust to the distribution account to avoid the Responsible Entity being assessable or liable to pay any Tax.
- 3.17 The Responsible Entity may arrange for all cheques for Payments to be prepared. The Responsible Entity may require the Auditor to certify their correctness.
- 3.18 The Responsible Entity may decide that a cheque that is not presented within 6 months may be cancelled. Where a cheque is so cancelled or where money paid by the Responsible Entity into an account with a bank or other financial institution nominated by a Unitholder is returned, the money may be reinvested in Units for the benefit of the Unitholder at the issue price determined under clause 2.21 at the next Valuation Time after the date of cancellation or return, or be paid by the Responsible Entity in accordance with the legislation relating to unclaimed money.
- 3.19 Payments of whole cents need only be made and any balance is to remain an Asset.
- 3.20 The Responsible Entity may deduct from any amount dealt with under this clause any Tax that is required by law to deduct from such amount.
- AMIT Choice**
- 3.21 If the Trust is eligible to be an AMIT, the Responsible Entity may make the choice that the Trust be an AMIT for the Year. Where the Responsible Entity has made a choice for the Trust to be an AMIT it will prepare the tax returns and the AMMA Statements of the Trust on the basis that the Trust is an AMIT.
- 3.22 If the Responsible Entity makes a choice under clause 3.21, and the Trust is an AMIT during the Year, the provisions of Schedule 2 will apply to the Trust and shall override any inconsistent clauses in this document.
- 3.23 Nothing in clause 3.21 imposes an obligation on the Responsible Entity to:
- 3.23.1 enter into or facilitate the entry of the Trust into the AMIT Regime;



- 3.23.2 make any changes to this document; or
 - 3.23.3 make a choice under paragraph 3.21.
- 3.24 The Responsible Entity may make a choice to treat each separate Class of Units in the Trust as a separate AMIT where the requirements of the AMIT Regime to treat each Class of Units as a separate AMIT are met.

4 FEES AND EXPENSES

Management fee / Trustee fee

- 4.1 Subject to the Disclosure Document, the Responsible Entity is entitled to be paid a management fee and / or trustee fee calculated daily (or where the Value of the Trust is determined less frequently than daily, at the Valuation Time that the Value of the Trust is determined) at a rate not exceeding 3% per annum of the Value of the Trust.
- 4.2 The management fee and / or trustee fee is payable on the last day of each month or at such other times as the Responsible Entity in its discretion may determine.

Fees generally

- 4.3 The Responsible Entity may waive, reduce, refund or defer any part of the fees that the Responsible Entity is entitled to pursuant to this document, which may vary between different Classes of Units and between Unitholders in the same Class subject to the Operating Standards. Where payment is deferred, the fees continue to accrue daily until paid.
- 4.4 The Responsible Entity's fees in respect of the Trust are payable first out of income of the Trust, then out of capital of the Trust. The entitlement continues until the Trust is wound up. Neither the termination nor the winding up of the Trust affects the right of the Responsible Entity to unpaid fees in relation to it.
- 4.5 The right of the Responsible Entity to its fees is available only in relation to the proper performance of its duties.
- 4.6 The fees payable to the Responsible Entity under clauses 4.1 are exclusive of GST.

Reimbursement of GST

- 4.7 Any reference in clauses 4.1 to 4.11 to terms defined or used in the GST Act should be taken to be a reference to that term as defined or used in that GST Act.
- 4.8 Any amount referred to in this document which is relevant in determining a payment to be made to or by the Responsible Entity is exclusive of any GST unless indicated otherwise.
- 4.9 If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this document (including, without limitation, the supply of any goods, services, rights, benefits or things), and the consideration for that supply is not GST inclusive then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Trust an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable



supply for GST purposes by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Trust.

- 4.10 If the Trust is not entitled to an input tax credit in respect of the amount of any GST charged to or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this document, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax credit, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Responsible Entity to the Trust (treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act). This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Trust for other purposes of this document and the Corporations Act 2001.
- 4.11 Where an Expense covered by clause 4.12 is paid from the Trust to the Responsible Entity, the payment shall comprise part of the consideration for a supply by the Responsible Entity to the Trust (treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act). This does not affect the character of the payment as an exercise of the Responsible Entity's right of indemnity from the Trust for other purposes of this document and the Corporations Act 2001.

Expenses

- 4.12 The Responsible Entity may pay, or reimburse itself for, all Expenses properly incurred in respect of the Trust from the Assets of the Trust. The Responsible Entity may waive or defer its entitlement to reimbursement of any Expenses for any period.
- 4.13 The right of the Responsible Entity to pay or reimburse itself from the Assets of the Trust for any Expenses the Responsible Entity incurs in respect of the Trust is available only in relation to the proper performance of its duties.

5 MEETINGS OF UNITHOLDERS

Meetings

- 5.1 The Responsible Entity may convene a meeting of Unitholders at a reasonable time and place as it thinks fit.
- 5.2 The Unitholders of the Trust may convene a meeting of Unitholders in accordance with the Operating Standards.
- 5.3 The Responsible Entity must convene a meeting of Unitholders of the Trust as often as required by the Operating Standards.
- 5.4 A notice of a meeting of Unitholders may not be sent out unless it contains the information the Operating Standards require. A notice of meeting may contain any other reasonable information the convenor considers necessary or desirable.
- 5.5 A meeting of Unitholders is not invalidated by an accidental omission or by a Unitholder not receiving notice of that meeting.



- 5.6 At least 21 days notice must be given of a meeting of Unitholders, unless a longer period is required by the Operating Standards. The 21 day period may be reduced if the Operating Standards allow it and the Responsible Entity agrees to a lesser period.

Voting

- 5.7 Questions put to a meeting of Unitholders are to be decided either on a show of hands or on a poll in accordance with the Operating Standards. However, in accordance with the Operating Standards, the chairperson or Unitholders may demand a poll. In that case, the resolution of the poll is the resolution of the meeting.
- 5.8 For a question decided on a show of hands, each Unitholder has one vote.
- 5.9 For a question decided by poll, each Unitholder has one vote for each dollar of the value of the total interests they have in the Trust. Unless the Corporations Act 2001 provides otherwise, the value of an interest in the Trust for the purposes of this clause is the amount the Responsible Entity determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the Business Day immediately before the day on which the poll is taken.
- 5.10 If a Unit is held by joint Unitholders, only the Unitholder who is named first in the Register of Unitholders is entitled to a vote.
- 5.11 Whether voting is by a show of hands or by poll, votes may be given personally or by proxy, attorney or Representative.
- 5.12 If a Unitholder wants to object to a vote cast at a meeting of Unitholders, he or she must do so before the close of the meeting. The decision of the chairperson on an objection is final.

Proxies, attorneys, representatives

- 5.13 A Unitholder may appoint another person as his or her proxy, attorney or Representative in relation to a vote at a meeting of Unitholders in the manner provided by the Operating Standards. The Unitholder must give notice of that appointment to the Responsible Entity or its nominee in accordance with directions contained in the notice of meeting of Unitholders.
- 5.14 The appointment of a proxy is valid for the period stated in the notice of meeting of Unitholders. It remains valid even if the Unitholder dies, becomes subject to a legal disability, becomes bankrupt or goes into liquidation, unless the Responsible Entity or its nominee has received written notice of that fact before the meeting.
- 5.15 The appointment of a proxy must be in the form the Responsible Entity decides on.
- 5.16 The Responsible Entity does not have to enquire whether the appointment of a proxy, attorney or Representative has been validly made. An appointment is valid even if it does not contain all the information required by the Operating Standards.

Chairperson

- 5.17 Unless the Corporations Act 2001 provides otherwise, the chairperson of meetings of Unitholders shall be an individual appointed in writing by the Responsible Entity.



Quorum

- 5.18 No business can be transacted at a meeting of Unitholders unless a quorum is present.
- 5.19 Any 2 or more Unitholders present in person or by proxy constitutes a quorum for a meeting.
- 5.20 If there is only 1 Unitholder in the Trust, that person is the quorum.
- 5.21 If a quorum is still not present half an hour after the time for commencement of the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the Responsible Entity specifies. If the Responsible Entity does not specify one or more of those things, the meeting is adjourned to:
- 5.21.1 if the date is not specified – the same day in the next week;
- 5.21.2 if the time is not specified – the same time; and
- 5.21.3 if the place is not specified – the same place.

At that meeting, the Unitholders present in person or by proxy, attorney or Representative will constitute a quorum.

Meeting procedures

- 5.22 The Responsible Entity may appoint a nominee to attend and address any meeting of Unitholders.
- 5.23 Before a meeting of Unitholders, the Responsible Entity may set the procedure for that meeting.
- 5.24 The chairperson must follow the procedure as far as practicable. In all other respects, the chairperson has an absolute discretion in conducting proceedings at the meeting.

Adjournments

- 5.25 The chairperson may, with the consent of the meeting by an Ordinary Resolution, adjourn any meeting of Unitholders to a time and place he or she thinks appropriate.

Signed resolutions

- 5.26 Subject to the Operating Standards, the Unitholders may pass a resolution without meeting. The resolution must be circulated to all Unitholders entitled to vote in respect of that resolution. It is effective if it is signed by Unitholders holding the required majority. The resolution will be taken to have been passed on the date specified in the resolution. If no date is specified, it will be taken to have been passed on the date on which the person appointed to evaluate the result of the resolution receives the signed resolution.

Procedure for meetings of a Class of Unitholders

- 5.27 Subject to the Operating Standards, the provisions of this document relating to meetings of Unitholders apply so far as they are capable of application mutatis mutandis to every meeting of a Class of Unitholders except that:
- 5.27.1 a quorum is constituted by 2 Unitholders who hold Units of the Class, except where there is only one such Unitholder in which case that Unitholder forms a quorum; and



- 5.27.2 any holder of Units of the Class or Classes, present in person or by proxy, may demand a poll.

6 THE RESPONSIBLE ENTITY

Compliance with law

- 6.1 The Responsible Entity must comply with each of the following in relation to the Trust:
- 6.1.1 the applicable requirements of the Corporations Act 2001, subject to any relief granted by ASIC; and
- 6.1.2 the terms of the conditions of any other relief from the Corporations Act 2001 granted by ASIC in relation to the Trust.

This clause prevails over all other clauses.

- 6.2 If ASIC grants an exemption from, or a modification of, the Corporations Act 2001 in respect of the Trust on condition that certain clauses are included in this document, those clauses are taken to have been included in respect of the Trust.

Powers of natural person and to borrow

- 6.3 In relation to the Trust, the Responsible Entity has all the powers of a natural person who is the absolute and beneficial owner of the property of the Trust.
- 6.4 In relation to the Trust, the Responsible Entity has all the powers of a natural person including without limitation, to:
- 6.4.1 borrow or raise money, securities and interests in managed investments schemes;
- 6.4.2 transfer Assets of the Trust to stock lenders and financiers as collateral for loans of money, securities and interests in managed investment schemes and grant security interest such as mortgages and charges to stock lenders and financiers as security for loans of money, securities and interests in managed investment schemes;
- 6.4.3 advance or lend the Assets of the Trust;
- 6.4.4 secure by mortgage or otherwise the payment of money, securities and interests in managed investment schemes to any person, firm, company, corporation or association and upon terms with or without security or interest as the Responsible Entity sees fit and to join with any of those persons in executing any mortgage or other document for the purposes of securing the payment of money to any or more of them.
- 6.5 The Responsible Entity has the power to give any guarantee or indemnity for the payment of money, securities and interests in managed investment schemes or the performance of any contract, obligation or undertaking by any person, firm, company, corporation, association or governmental or municipal body and to mortgage or charge the whole or any part of the Assets of the Trust to secure performance of a guarantee of indemnity.
- 6.6 The Responsible Entity may exercise any of its powers in relation to the Trust as it considers necessary or desirable.



- 6.7 The Responsible Entity does not have to do anything in relation to the Trust for which it considers it may not have a right of full indemnity from the Trust, other than to the extent to which it is required by law to do so.

Power to seek information

- 6.8 At any time, the Responsible Entity may request from Unitholders, and Unitholders must promptly provide to the Responsible Entity, any information (including personal information and details) reasonably required by the Responsible Entity for the purposes of administering the Trust or comply with any relevant laws.

Power to appoint agents and delegates

- 6.9 The Responsible Entity may appoint any person (including an Associate of the Responsible Entity) as its agent or delegate or otherwise engage any person to exercise or perform any of its duties, powers, discretions and obligations in connection with the Trust (and may include the power to appoint their own agent or delegate or otherwise engage another person for that purpose), including execute powers of attorney or other instruments necessary to effect such purpose. Any such appointment or other engagement may be on any terms that the Responsible Entity determines in its absolute discretion.
- 6.10 Subject to its obligations at law, the Responsible Entity may waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Responsible Entity in connection with the Trust.
- 6.11 The appointment of an agent or other person does not affect the responsibility of the Responsible Entity to carry out all its functions.

Payment of agents and delegates

- 6.12 The Responsible Entity must set the remuneration to be paid to an agent or other delegate. The remuneration shall be a liability of the Trust, unless the appointment relates to activities in respect of which, if they had been performed by the Responsible Entity personally, the Responsible Entity would have no right of reimbursement or indemnity under this document.

Appointment of Custodian

- 6.13 The Responsible Entity may (or if required by law, must) appoint a custodian of the Assets of the Trust. The Responsible Entity will satisfy any Operating Standards in respect of the appointment of a Custodian. The appointment may be in a form the Responsible Entity and Custodian choose (including permitting the Custodian to appoint a sub-custodian, their own agent or delegate or otherwise engage another person for that purpose). The Responsible Entity may include in the appointment document any provisions the Responsible Entity thinks fit to protect and assist those dealing with the Custodian.
- 6.14 The Responsible Entity is liable for the acts or omissions of the Custodian in relation to any Assets as if they were the acts or omissions of the Responsible Entity.
- 6.15 The Responsible Entity must set the remuneration to be paid to the Custodian. Remuneration paid to the Custodian will be an Expense.

**Responsible Entity's indemnity**

- 6.16 The Responsible Entity and its officers and agents are entitled to be continually indemnified against all expenses, losses and liabilities (whether actual, contingent, prospective or otherwise) that are incurred as a direct or indirect result of anything done or not done under this document. This indemnity:
- 6.16.1 survives the termination of this document; and
 - 6.16.2 may be claimed from or paid only out of the Assets.
- 6.17 The entitlement to an indemnity in clause 6.16 does not exist in relation to an expense, loss or liability attributable to a failure by a person to properly perform the duties of the Responsible Entity under this document or under the Corporations Act 2001. Nor does it apply in relation to anything against which the Responsible Entity is not permitted to be indemnified under the Operating Standards.
- 6.18 The indemnity in clause 6.16 continues to apply after the Responsible Entity retires or is removed as trustee of the Trust in relation to Expenses, losses or liabilities incurred or things done or not done:
- 6.18.1 prior to the date of the retirement or removal of that person as the Responsible Entity; and
 - 6.18.2 after the date of the retirement or removal of that person as the Responsible Entity to the extent that the Expenses, losses or liabilities relate to things done or not done in the discharge of the obligations of the Responsible Entity in connection with the appointment of or transition to a new Responsible Entity.

Responsible Entity limitation of liability

- 6.19 Subject to the Operating Standards, the Responsible Entity is not liable to the Unitholders in contract, tort or otherwise for any loss suffered in relation to the Trust except to the extent to which the loss is caused by the failure of the Responsible Entity to properly perform its duties.
- 6.20 Subject to the Operating Standards, the liability of the Responsible Entity to any person not a Unitholder is limited to the extent to which the Responsible Entity is actually indemnified out of the Assets for that liability.
- 6.21 In particular, to the extent permitted by the Operating Standards, the Responsible Entity is not liable for any loss to any person not a Unitholder arising out of any matter where, in respect of that matter:
- 6.21.1 to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity; or
 - 6.21.2 it acted or refrained from acting as required by law; or
 - 6.21.3 it relied in good faith upon any signature, marking or documents.
- 6.22 The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) where it



reasonably anticipates that such liability will not be limited in the manner set out in clause 6.20.

The Responsible Entity's indemnity by Unitholders for Tax liability

- 6.23 The Responsible Entity is entitled to be indemnified by a Unitholder or a former Unitholder to the extent that it incurs any liability for Tax as a result of the Unitholder's or former Unitholder's action or inaction or as a result of an act or omission requested by the Unitholder or former Unitholder (including in relation to the sale or transfer of a Unit).
- 6.24 In relation to any sale or transfer of a Unit, if there is a Tax liability to which clause 6.23 relates, the Responsible Entity is not obliged to process that sale or transfer until such time as it has received full payment of the amount of the Tax liability.
- 6.25 Joint Unitholders are jointly and severally liable in respect of all payments including payments of Tax to which clauses 6.23 and 6.24 apply.

Conflict of interest

- 6.26 The Responsible Entity and any Associate of the Responsible Entity may do any of the following and is not liable to account to the Unitholders or any other person for doing so:
- 6.26.1 deal with themselves (as trustee of the Trust or in any other capacity), its or their Associates, the Trust or any Unitholders including acquire or deal with any interest in, or an asset of, a fund, scheme or trust of which the Responsible Entity or any of its Associates is the manager, trustee or responsible entity;
 - 6.26.2 be interested in any contract or transaction with its Associates, the Trust or any Unitholder and retain for its own benefit any profits or benefits derived from any such contract or transaction;
 - 6.26.3 act for other persons in a similar capacity to which it acts under this document or in any other capacity;
 - 6.26.4 hold Units;
 - 6.26.5 except for the Responsible Entity, in its capacity as trustee of the Trust, act for or represent individual Unitholders;
 - 6.26.6 buy Assets of the Trust in its own right or any other capacity; and
 - 6.26.7 sell any Assets held by it in its own right or in any other capacity to the Trust.

7 COMPLIANCE PLAN AND ACCOUNTS

Compliance plan and committee

- 7.1 The Responsible Entity must ensure that if required by the Operating Standards:
- 7.1.1 the Trust has a compliance plan which complies with the requirements of the Operating Standards; and
 - 7.1.2 there is a compliance committee in respect of the compliance plan.



Accounts

- 7.2 The Responsible Entity must keep proper books of account for the Trust to enable the preparation of true and fair accounts of the Trust and the convenient and proper auditing of the accounts of the Trust.
- 7.3 If required by the Operating Standards, the Responsible Entity must prepare the accounts of the Trust as at the end of each Year. If the Operating Standards require it, the Responsible Entity must also prepare accounts as at the end of each Half-Year.

Audits

- 7.4 If required by the Operating Standards, the Responsible Entity must appoint an auditor to audit the accounts of the Trust. If required by the Operating Standards the auditor must be a registered company auditor. The Responsible Entity must agree the Auditor's remuneration. It will be an Expense.
- 7.5 The Responsible Entity must give the Auditor any information or copies of documents regarding the Trust that the Auditor reasonably requests.

8 CONFIDENTIALITY

Confidentiality

- 8.1 The Responsible Entity must not disclose any information that it acquires under this document or in connection with the Trust or use it for a purpose not contemplated by this document, except in any of the following circumstances:
- 8.1.1 the disclosure is required by the Operating Standards;
 - 8.1.2 the disclosure is required under this document;
 - 8.1.3 the disclosure is necessary in connection with performing obligations under this document;
 - 8.1.4 the disclosure is to an officer, employee, agent or contractor of the Responsible Entity, to the extent that he or she needs to know the confidential information;
 - 8.1.5 the disclosure is reasonably made to a professional adviser;
 - 8.1.6 the person to whom the disclosure is to be made enters into a separate confidentiality agreement with the Responsible Entity.

9 RETIREMENT AND REPLACEMENT OF RESPONSIBLE ENTITY

Voluntary retirement of Responsible Entity

- 9.1 Subject to the Operating Standards, the Responsible Entity may retire at such time as it thinks fit and may appoint another company to be the new Responsible Entity. For the purposes of the Operating Standards, the Responsible Entity is entitled to nominate another company that meets the requirements of the Operating Standards, for submission to the Unitholders' meeting.

Forced retirement of Responsible Entity

- 9.2 The Responsible Entity must retire if any of the following events occurs in relation to it:



- 9.2.1 the Responsible Entity ceases to carry on business;
- 9.2.2 the Responsible Entity is placed in liquidation, except for the purpose of amalgamation, reconstruction or a purpose of a similar nature;
- 9.2.3 the Responsible Entity has a receiver, a receiver and manager or an administrator appointed to it or any of its assets for a continuous period of 30 days;
- 9.2.4 the Responsible Entity ceases to have power to act as Responsible Entity under this document;
- 9.2.5 the Responsible Entity indicates that it is not able to meet its debts when they fall due;
- 9.2.6 the Responsible Entity has or elects to have any necessary approval or licence granted to them under the Corporations Act 2001 revoked.
- 9.3 The Responsible Entity must retire if required by the Operating Standards.
- 9.4 Subject to the Operating Standards, when it retires or is removed, the Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed.

10 TERMINATION

Termination of the Trust

- 10.1 The Trust will terminate on the earlier of any of the following occurrences:
 - 10.1.1 a period of 80 years (less one day) after the date the Trust commences;
 - 10.1.2 subject to the Operating Standards, if the Responsible Entity, in a notice to the Unitholders, specifies that the Trust is to be terminated;
 - 10.1.3 subject to the Operating Standards, if the Responsible Entity gives notice under section 601NC of the Corporations Act 2001 and no meeting of Unitholders is called in accordance with that section;
 - 10.1.4 subject to the Operating Standards, where the court makes an order directing the Responsible Entity to wind up the Trust;
 - 10.1.5 if the Trust is a Registered Scheme, where the Operating Standards require the Responsible Entity to terminate the Trust; or
 - 10.1.6 if required by the Operating Standards.

Procedure on termination of the Trust

- 10.2 On or, if practicable, before the termination of the Trust, the Responsible Entity must notify the Unitholders that the Trust has been or is to be terminated and will be wound up.
- 10.3 When the Trust is terminated, the Responsible Entity must realise the Assets of the Trust. If required by the Operating Standards, the Responsible Entity must then arrange for an independent audit by a registered company auditor, which may be the Auditor, of the accounts of the Trust up to the date of its winding up.



Effect of termination

- 10.4 When the Trust is terminated, the Responsible Entity must do each of the following (according to priorities at law in respect of secured and unsecured liabilities of the Trust and not necessarily in the order specified below):
- 10.4.1 not accept any Withdrawal Requests, Applications or issue any Units;
 - 10.4.2 make a call for any unpaid Application Money or other unpaid amounts due in respect of any Units;
 - 10.4.3 call in and sell the Assets of the Trust;
 - 10.4.4 apply the Assets of the Trust, or their proceeds, to pay any Expenses;
 - 10.4.5 retain whatever part the Responsible Entity reasonably thinks appropriate of the Assets of the Trust or their proceeds for contingent or prospective Expenses;
 - 10.4.6 distribute any remaining Assets of the Trust or their proceeds to Unitholders of the Trust pro rata to their holdings in a particular class of Units at the date of termination of the Trust or a later date selected by the Responsible Entity; and
 - 10.4.7 with the distribution to Unitholders, send to Unitholders a copy of any audit report.

Right to postpone realisation of Assets

- 10.5 The Responsible Entity may postpone the sale, calling in and conversion of any part of the Trust for such time as it thinks it desirable to do so in the interest of the Unitholders and shall not be responsible for any loss attributable to such postponement.

Responsible Entity's decision final and binding

- 10.6 The decision of the Responsible Entity as to the amount available to be distributed to Unitholders is final and binding upon all Unitholders.

Fees to the Responsible Entity

- 10.7 All fees and Expenses to which the Responsible Entity is entitled continue to accrue and to be payable to it until its duties and responsibilities under this document finally come to an end.

11 UNITHOLDER COMPLAINTS

Internal complaints procedure

- 11.1 If a Unitholder makes a Complaint (whether written or not) in relation to the Trust, the Responsible Entity must observe and comply with each of the following rules:
- 11.1.1 the Responsible Entity must, as far as practicable, conduct its complaint handling procedures in accordance with ISO 10002-2006;
 - 11.1.2 the Responsible Entity must acknowledge the Complaint immediately or, where immediate acknowledgement of the Complaint is not possible, as soon as possible (and in any case within 10 Business Days of receipt of a complaint). It must do its best to ascertain what the Complaint relates to. It may ask the complainant for additional information;



- 11.1.3 the Responsible Entity must properly consider the Complaint and make a decision on it within a reasonable time after the Responsible Entity has ascertained what it is about;
- 11.1.4 the Responsible Entity must act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- 11.1.5 the Responsible Entity may in its discretion give certain remedies to the complainant, including the following:
- (a) information and explanation regarding the circumstances giving rise to the Complaint;
 - (b) an apology;
 - (c) compensation for loss incurred by the Unitholder as a direct result of the breach (if any); or
 - (d) payment of any money due to, and refund of any money paid by a complainant;
- 11.1.6 the Responsible Entity must inform the complainant of its decision as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint (**45 Day Period**). Oral Complaints may be answered orally, written Complaints must be answered in writing;
- 11.1.7 the Responsible Entity must outline to the complainant the other remedies open to the complainant, including making a Complaint under the external complaints resolution procedures; and
- 11.1.8 if the Responsible Entity is unable to respond to the Complaint within the 45 Day Period, the Responsible Entity must inform the complainant before the end of the 45 Day Period of:
- (a) the reasons for the delay in the Responsible Entity's response to the Complaint;
 - (b) the complainant's right to complain to the external complaints system, if any, included in or contemplated by the Responsible Entity's Australian financial services licence from ASIC; and
 - (c) if applicable, the name and contact details of the external complaints system in clause 11.1.8.

External complaints procedure

- 11.2 If the Complaint is not resolved to the satisfaction of the complainant, the complainant or the Responsible Entity may refer the matter to the external complaints system, if any, included in or contemplated by the Responsible Entity's Australian financial services licence from ASIC.



12 INFORMATION

Information to Unitholders

- 12.1 The Responsible Entity must provide Unitholders with any information or document it is required to provide by the Operating Standards. The Responsible Entity may provide Unitholders with any other information or document the Responsible Entity considers necessary or desirable.

Copy of this document

- 12.2 The Responsible Entity must make a copy of this document available for inspection by Unitholders at any reasonable time on any Business Day. A Unitholder is entitled to a copy of it on payment of the reasonable sum, if any, that the Responsible Entity decides to charge.

13 AMENDMENT OF THIS DOCUMENT

Responsible Entity ceasing to hold office

- 13.1 If a Responsible Entity ceases to hold office under this document in respect of the Trust, the new Responsible Entity must, on request by the former Responsible Entity, amend this document so that the current or any former name of the former Responsible Entity or any name similar to those names which implies a connection to that company does not appear in the name of the Trust.

Other amendments

- 13.2 Subject to the Corporations Act 2001, the Responsible Entity may vary, amend, add to, delete from or replace this document:
- 13.2.1 by a Special Resolution of the Unitholders; or
 - 13.2.2 by the Responsible Entity if the Responsible Entity reasonably considers that the change will not adversely affect Unitholders' rights.

14 NOTICES

Giving notices etc

- 14.1 A communication between the Responsible Entity and a Unitholder may be made in any of the following ways:
- 14.1.1 by personal delivery to the recipient;
 - 14.1.2 by being left at the recipient's address;
 - 14.1.3 by being sent to the recipient's address by pre-paid mail;
 - 14.1.4 by being sent by fax to the recipient's fax number;
 - 14.1.5 by email to the recipient's email address;
 - 14.1.6 by any other means permitted under an applicable law.



Change of address

- 14.2 The Responsible Entity may change its address by notice. A Unitholder may change its address by having the change noted in the Register of Unitholders.

Time communication is made

- 14.3 If a communication is made by post to an Australian address, it is to be treated as having been made 3 Business Days after it was posted. If a communication is made by post to another address, it is to be treated as having been made 5 Business Days after it was posted. If a communication is made by fax, it is to be treated as having been made when the sender receives an error free transmission report from the sender's fax machine. If a communication is made by email to the recipient's email address, it is to be treated as having been made 4 hours after being sent unless the sender receives an unsuccessful transmission notice.

Joint Unitholders

- 14.4 The Responsible Entity may give a notice or other communication to joint Unitholders by giving it to the Unitholder first named in the Register of Unitholders.

Death, Legal Disability, Bankruptcy, Liquidation or Administration

- 14.5 The Responsible Entity may give a notice or other communication to a person entitled to a Unit in consequence of the death, legal disability, bankruptcy, liquidation or administration of a Unitholder by giving the notice to the representatives or trustee of the Unitholder at the address supplied for such purpose by the representative or trustee. Until such an address has been provided to the Responsible Entity the notice or other communication may be given by sending the notice or other communication to the Unitholder's address as recorded on the Register of Unitholders.

15 MISCELLANEOUS

Governing law and jurisdiction

- 15.1 This document is governed by and must be construed in accordance with the laws of New South Wales.
- 15.2 Each party:
- 15.2.1 irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
 - 15.2.2 waives any right to object to proceedings being brought in those courts for any reason.

Headings and table of contents

- 15.3 Headings and any table of contents must be ignored in the interpretation of this document.

Joint and several liability

- 15.4 If a Unit is owned jointly by 2 or more Unitholders, their obligations are joint and several. This document binds each as if each Unitholder was a party to it.

**No partnership etc**

- 15.5 This document does not create a partnership or agency between the Responsible Entity on the one hand and the Unitholders on the other or between the Unitholders.

Presumptions of interpretation

- 15.6 Unless the context otherwise requires, a word which denotes:
- 15.6.1 the singular denotes the plural and vice versa;
 - 15.6.2 any gender denotes the other genders; and
 - 15.6.3 a person includes an individual, a body corporate, and a government.
- 15.7 Unless the context otherwise requires a reference to:
- 15.7.1 any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
 - 15.7.2 any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced; and
 - 15.7.3 a group of persons includes any one or more of them.
- 15.8 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

Severability

- 15.9 Any provision in this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

Operating Standards

- 15.10 While the Trust is a Registered Scheme, a clause which is inconsistent with the Operating Standards does not operate to the extent of the inconsistency.
- 15.11 If and for so long as the Trust is not a Registered Scheme, any reference to the Corporations Act 2001 and the Operating Standards will only apply to the Trust or the Responsible Entity to the extent that the Trust or the Responsible Entity (as applicable) is regulated by the Corporations Act 2001 and the Operating Standards.

Australian accounting principles

- 15.12 Except as required to comply with Chapter 2M of the Corporations Act 2001 or in respect of other statements or reports subject to audit pursuant to Australian accounting principles, standards or procedures, in carrying out any calculation or making any determination in respect of the Trust, the Responsible Entity need only apply Australian accounting principles, standards or procedures as generally accepted or in force immediately before 1 January 2005, or by applying any other method which is acceptable to the Commissioner of Taxation for the exercise of the discretion under section 272-5(3)



of Schedule 2F of the Income Tax Assessment Act 1936 or any other discretion that relates to the taxation of the Trust.

16 DEFINITIONS AND INTERPRETATION

Definitions

16.1 In this document the following definitions apply:

Accept means, in respect of an Application, the doing of any act by the Responsible Entity or its agent that constitutes an acceptance of the Application or evidence that the Application has been accepted, including notifying the person or recording a determination that the Application is accepted, transferring the Application Money into an account other than an Application Account, applying the Application Money to the purchase of investments for the Trust or recording in the Register of Unitholders the issue of Units in response to the Application.

AMIT has the meaning given in section 995-1 of the Tax Act.

AMIT Regime means the laws related to the taxation of AMITs in the Tax Act and related legislation, as were implemented by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth) and related Acts (being the *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth), *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth) and the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* (Cth).

AMIT Income Year means any Year that the Trust is an AMIT.

AML Requirements means the applicable provisions of:

- (a) the Anti- Money Laundering and Counter-Terrorism Financing Act 2006, including any regulations made under it and subject to any rules issued by AUSTRAC;
- (b) other relevant legislation including any regulations made under it and common law;

to which the Responsible Entity is subject.

AMMA Statement has the meaning given in section 995-1 of the Tax Act.

Application means any application for Units.

Application Account means an account in which the Responsible Entity or, if permitted, its agent holds Application Money on trust for a person applying for Units in accordance with section 1017E of the Corporations Act or otherwise.

Application Money means any form of valuable consideration received by the Responsible Entity for Units and any Entry Fee and other moneys paid upon Application for any Units.

ASIC means the Australian Securities and Investments Commission.

Asset means any property held by or on behalf of the Responsible Entity on trust for the Unitholders and includes any income accruing on and rights relating to that property.



Associate has the same meaning as that provided for in the Corporations Act 2001.

ATO means the Australian Taxation Office.

Auditor means the auditor of the Trust.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Business Day means a day other than Saturday, Sunday, a bank holiday or public holiday in Sydney or such other days as determined by the Responsible Entity from time to time, which may be different days for different purposes pursuant to this document.

Class means a class of Units.

Complaint means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Cooling-Off Provisions means provisions in Division 5 of Part 7.9 of the Corporations Act 2001 which give a Unitholder the right to return Units to the Responsible Entity.

Custodian means any person appointed as custodian of the Trust, or any agent of such custodian, as provided for in clauses 6.13 to 6.15.

Designated Time means, in respect of an Application or a Withdrawal Request (as the case may be), the time designated from time to time by the Responsible Entity pursuant to clause 2.22 or clause 2.38 (as the case may be). The Designated Time applicable to Applications and to Withdrawal Requests may be the same or different.

Determined Member Component has the meaning given in section 995-1 of the Tax Act.

Determined Trust Components has the meaning given in section 995-1 of the Tax Act.

Disclosure Document means a prospectus, product disclosure statement, an information memorandum or other disclosure document issued by the Responsible Entity in relation to the Trust.

Distributions means the term provided for in clause 3.12.

Distribution Date means the date fixed by the Responsible Entity for the calculation of Divisible Income of the Trust in respect of a Distribution Period, which date shall not be later than the last day of each Year.

Distribution Period means the period between 2 consecutive Distribution Dates.

Divisible Income means the amount equal to:

- (a) for a Non-AMIT Income Year, the aggregate of:
 - (i) the 'Net Income' of the Trust for the applicable Year; and
 - (ii) any additional part of the Trust that the Responsible Entity decides is appropriate to be included as Divisible Income; or
- (b) for a Non-AMIT Income Year, for the purpose of determining a Unitholder's entitlement to Divisible Income in respect of a Distribution Period ending on a Distribution Date other than the last day of a Year, the aggregate of:



- (i) an amount which represents the Responsible Entity's estimate of the 'Net Income' of the Trust as if the Distribution Period were a Year and adjusted to take account of the anticipated:
 - (A) realised capital gains; and
 - (B) expenses, including fees payable to the Responsible Entity; and
 - (C) accrued income (excluding realised capital gains), for the Trust for the Year; and
 - (ii) any additional part of the Trust that the Responsible Entity decides is appropriate to be included as Divisible Income.
- (c) for an AMIT Income Year, the amount determined by the Responsible Entity under clause 1.13 of Schedule 2.

Expenses of the Trust means all expenses and liabilities of, including those incidental to, the Trust or the Offer of Units in the Trust, whether paid, contingent or otherwise, and includes all expenses set out in Schedule 1.

Expert includes solicitors, barristers, accountants, bankers, financial advisers and other professionally qualified consultants instructed by the Responsible Entity from time to time.

GST has the meaning ascribed to that term in the A New Tax System (Goods and Services Tax) Act 1999.

GST Act means A New Tax System (Goods and Services Tax) Act 1999, including any regulations made under it.

Half-Year of the Trust means each 6 month period from 1 July and 1 January (inclusive), but:

- (a) the first will be the period between the commencement date of the Trust and the next occurring 30 June or 31 December, whichever is the first; and
- (b) the last will be the period between the last occurring 1 July or 1 January, whichever is the later, and finishing on the final distribution of the Trust.

Liabilities in relation to the Value of a Class or the Trust, means all present liabilities of the Class or the Trust (as applicable), including all Taxes, liabilities accrued but not yet paid, borrowings, unpaid costs, charges, expenses, outgoings, fees, contingent liabilities, unpaid amounts due to a Unitholder, unpaid remuneration due to the Responsible Entity and any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Class or the Trust (as applicable).

Liquid has the same meaning as in the Corporations Act 2001.

Member Component has the meaning given in section 995-1 of the Tax Act.

Net Income of the Trust means the amount determined in accordance with section 95(1) of the Income Tax Assessment Act 1936 less any Non-Cash Income.

Non-AMIT Income Year means any Year that is not an AMIT Income Year.



Non-Cash Income of the Trust means any amount not received which is nevertheless regarded as included in the Net Income of the Trust.

Offer includes making available, issuing, offering for subscription or purchase and inviting to subscribe for or buy.

Operating Standards means the applicable provisions of:

- (a) Corporations Act 2001 including any regulations made under it and subject to any relevant ASIC modifications and exemptions;
- (b) other relevant legislation including any regulations made under it and common law;

to which the Responsible Entity is subject.

Ordinary Resolution means a resolution passed by at least 50% of votes cast by present Unitholders in person or by proxy, attorney or Representative.

Over has the meaning given in section 995-1 of the Tax Act.

Payment means any form of consideration paid or transferred to a Unitholder or their nominee by the Responsible Entity under this document and includes a Distribution.

Register means any register established and maintained under this document or an applicable law.

Registered Scheme has the same meaning as the term defined in the Corporations Act 2001.

Representative means the representative of a Unitholder appointed:

- (c) in accordance with the Operating Standards; or
- (d) subject to the Operating Standards, in such manner and on such terms as the Responsible Entity determines.

Responsible Entity means Pengana or any person replacing Pengana as the trustee of the Trust.

Special Resolution has the meaning given to that term in the Corporations Act 2001 as if the Trust is a Registered Scheme.

Tax in relation to the Trust or Units means income tax, tax on the acquisition of any authorised investment, tax on the disposal of any Asset, debits tax, land tax, withholding tax, GST, financial institutions duty, stamp duty and other taxes, duties, levies, imposts and charges payable by the Responsible Entity to any person, referable to the Trust or those Units, and includes related interest, penalties and other amounts, but does not include tax referable to the Responsible Entity in respect of income or gains for performing its functions as the Responsible Entity of the Trust, as the case may be.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both, as appropriate.

Transaction Costs when calculating as at any date:



- (a) the issue price for Units calculated in accordance with clause 2.21, the amount (which may be calculated as a percentage of the Value of the Class) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Expenses that would be incurred to buy the Assets on that date (excluding the purchase price of the investments); and
- (b) the Withdrawal Price for Units calculated in accordance with clause 2.36 (which may be calculated as a percentage of the Value of the Class) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Expenses that would be incurred to sell the Assets on that date,

provided that in connection with any particular Application or Withdrawal Request and subject to the Corporations Act 2001, the Responsible Entity may determine a reasonable estimate of the actual amount necessary to avoid an adverse impact on other Unitholders due to the acquisition or disposal of Assets carried out because of a particular Application or Withdrawal Request (as applicable). The Responsible Entity may also determine that the Transaction Costs will be zero for the purposes of any Applications made under a reinvestment plan as referred in clauses 2.17 and 2.18.

Trust means the 'Pengana Diversified Private Credit Fund'.

Trust Component has the meaning given in section 995-1 of the Tax Act.

Under has the meaning given in section 995-1 of the Tax Act.

Unit means a unit in the Trust issued under this document.

Unitholder means a person recorded on the Register of Unitholders as a holder of Units from time to time or otherwise stated to be a Unitholder in accordance with clause 2.16 or any other provision of this document.

Valuation Time means the time the Responsible Entity has determined in accordance with clause 3.3 to determine the Value of a Class or the Trust.

Value, in relation to an Asset, means the value of the Asset as determined in accordance with the Responsible Entity's valuation methods and policies in clause 3.4.

Value, in relation to a Class, means the Value of the Assets allocated to the Units of the Class less the Liabilities allocated to Units of the Class.

Value, in relation to the Trust, means the Value of the Assets of the Trust less the Liabilities of the Trust.

Withdrawal Price means the term provided for in clause 2.36.

Withdrawal Request means an application for a withdrawal of Units.

Year of the Trust means each 12 month period from 1 July, but:

- (c) the first will commence on the day on which the Trust commences and shall last for 12 months or the period determined by the Responsible Entity being not longer than 18 months; and



- (d) the last will be the period between the last occurring 1 July and finishing on final distribution in respect of the Trust.



EXECUTION AND DATE

Executed as a deed.

Date: 13 June 2023

Executed by **Pengana Capital Limited**
acting by the following persons or, if the
seal is affixed, witnessed by the following
persons:

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (print)

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (print)



SCHEDULE 1

1 EXPENSES

- 1.1 Expenses includes (but is not limited to) all remuneration, expenses, liabilities, outgoings, fees, losses, damages, charges, Taxes, costs and disbursements which the Responsible Entity may pay or incur, in respect of:
- 1.1.1 the establishment of the Trust;
 - 1.1.2 registering the Trust as a managed investment scheme under the Corporations Act 2001;
 - 1.1.3 the Trust, Assets or the Liabilities, the Custodian and the administrator's remuneration;
 - 1.1.4 the administration, management, promotion, listing or restructuring of the Trust, its accounts, or of its Assets and Liabilities;
 - 1.1.5 the preparation, execution, stamping and amendment of this document and any deed or proposed deeds supplemental to this document;
 - 1.1.6 the cost of auditing accounts and all other services of the Auditor required by this document or the Corporations Act 2001 and all systems for the purposes of the Trust, including in calculating the value of any item or amount for the purposes of this document;
 - 1.1.7 the cost of establishing and maintaining the Register of Unitholders (including the fees and expenses of a registry manager notwithstanding that it may be the Responsible Entity's agent);
 - 1.1.8 disbursements incurred in connection with the actual, attempted or proposed acquisition or sale of Assets (including investigating and making inquiries into property intended to be acquired for the Trust), the investment, development, maintenance, valuation, registration, custody, disposal of or other dealing with any Assets or Liabilities, including legal fees, stamp duties, brokerage and commission;
 - 1.1.9 the receipt, collection or distribution of income or other Assets;
 - 1.1.10 disbursements incurred in connection with any re-arrangement of the capital structure of the Trust;
 - 1.1.11 expenditure made on the Assets for the purpose of maintaining or enhancing their value;
 - 1.1.12 disbursements incurred in connection with convening or holding any meeting of Unitholders and implementing any resolutions passed by Unitholders and communications with Unitholders;
 - 1.1.13 any Experts including auditors, valuers, actuaries, bankers, lawyers, managers, accountants, real estate agents, computer experts, including legal costs and expenses on either a full indemnity basis or solicitor/client basis, whichever is



the higher, and audit costs and disbursements relating to the audit of the compliance plan for the Trust and audit of financial reports and accounts in respect of the Trust;

- 1.1.14 appointing or engaging any agent, delegate, custodian, nominee, investment manager, adviser or other person in relation to the Trust and work done by such a person in relation to the Trust, whether or not the person is an Associate of the Responsible Entity;
- 1.1.15 any contract or proposed contract relating to the Trust;
- 1.1.16 provision of guarantees and indemnities by the Responsible Entity (including any indemnity given to a retiring responsible entity of the Trust);
- 1.1.17 costs and disbursements incurred in any issue, or offer, or transfer of Units including, without limitation, costs and disbursements incurred in the preparation, verification, registration, printing, distribution and promotion of a Disclosure Document;
- 1.1.18 marketing and promoting the Trust;
- 1.1.19 having the Trust rated by any ratings agency;
- 1.1.20 underwriting fees payable to an underwriter of any issue of Units pursuant to an underwriting agreement and commission, trailing commission, procurement or other fees or brokerage as the Responsible Entity may determine to any person applying or obtaining subscriptions for or underwriting the issue or purchase of Units;
- 1.1.21 borrowings or raisings and other financial accommodation (including capital repayments, interest on borrowings, Units and discount and other bank fees) and any bank account or services offered by any financial institution (including electronic funds transfer and other electronic banking or payment services) including for the avoidance of doubt, any method of making payments to Unitholders;
- 1.1.22 all income tax, capital gains tax, goods and services tax, stamp duties, financial institutions duties and bank account debit taxes and fines and penalties relating to any of these and any other tax, duty, or imposition payable by, or paid by, the Responsible Entity on account of or on behalf of the Trust or Unitholders (including any goods and services tax in relation to the Responsible Entity's fees);
- 1.1.23 costs of preparing, printing and posting and despatching of all statements, cheques, accounts, notices, reports, distribution statements and other documents sent to Unitholders (whether or not expressly required to be sent by law of this document);
- 1.1.24 costs and disbursements incurred by or on behalf of the Responsible Entity in connection with its retirement or removal and the appointment of a substitute, including costs associated with the preparation, execution and stamping of any deed of retirement and release, and including the vesting of property in a new Responsible Entity;



- 1.1.25 costs and disbursements incurred in connection with the retirement of the Trust auditor or compliance plan auditor and the appointment of a substitute, including costs associated with the preparation, execution and stamping of any deed of retirement and release;
- 1.1.26 the termination or winding up of the Trust;
- 1.1.27 except where the court otherwise directs, costs and disbursements incurred in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) made or brought by the Responsible Entity in respect of any breach or default under this document;
- 1.1.28 costs and disbursements incurred by the Responsible Entity in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) to enforce any provision of this document, in respect of the Trust or any part of it or otherwise to protect the interest of Unitholders;
- 1.1.29 costs and disbursements incurred in the conduct and settlement of any court proceedings, arbitration or other dispute concerning the Trust (including proceedings against the Responsible Entity, but to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been negligent, the Responsible Entity must repay any expenses paid or reimbursed to it under this item 1.1.29);
- 1.1.30 Unitholder complaints resolution;
- 1.1.31 rates, taxes, charges, assessments and impositions, whether parliamentary, governmental, municipal or otherwise, assessed, charged, levied or imposed in respect of the Assets;
- 1.1.32 premiums and other disbursements incurred in insuring an investment or Assets as specified in this document;
- 1.1.33 that proportion of the premium for professional indemnity insurance taken out by the Responsible Entity that the Value of Assets bears to the total value of property in relation to which the Responsible Entity is the responsible entity or manager and in relation to which the activities of the Responsible Entity are covered under the policy;
- 1.1.34 insurances, including insurance premiums payable in respect of insurance policies for directors of the Responsible Entity;
- 1.1.35 costs and disbursements incurred in preparing and lodging returns, notices or statements under the Corporations Act 2001 or the Corporations Regulations 2001 or any other statute binding on the Responsible Entity;
- 1.1.36 regulatory and legislative compliance in respect of the Trust (including complying with any request or requirement of ASIC) including (without limitation) in connection with any compliance committee and officers of that committee engaged or appointed by the Responsible Entity to carry out the functions of that committee;



- 1.1.37 the costs of acquiring, establishing, maintaining and developing computer hardware and computer software systems required for the administration of the Trust;
- 1.1.38 all costs and disbursements incurred by or in relation to the compliance plan (including amending, maintaining and auditing), the fees, the setting up and operation of any compliance committee, the remuneration and expenses of members of any compliance committee and any compliance officer in respect of the Trust and the expenses of the committee;
- 1.1.39 the setting up and operation of any credit risk, investment or other committee (including any fees paid to, or insurance premiums in respect of, the committee members), whether or not engaged by the Responsible Entity;
- 1.1.40 travel and accommodation expenses relating to the Trust;
- 1.1.41 the fees, remuneration, costs and expenses of agents of the Responsible Entity not otherwise provided for, which would normally fall outside the normal expertise of a responsible entity of a trust similar to the Trust; and
- 1.1.42 all other costs and disbursements in connection with the management and administration of the Trust, the management and administration of the Assets, researching property and securities markets, the performance of the functions and duties of the Responsible Entity under this document and under the law and the performance of the Custodian together with all related costs and disbursements of the Custodian.



SCHEDULE 2

1 AMIT CLAUSES

Responsible Entity Powers

1.1 The Responsible Entity has all of the powers and rights which are necessary and desirable to ensure compliance with and the effective operation of the Trust as an AMIT for the purposes of the AMIT Regime, including any steps necessary to:

- 1.1.1 determine and attribute each Unitholder's Determined Member Component; and
- 1.1.2 deal with Unders and Overs in accordance with Subdivision 276-F of the Tax Act.

Identifying the Trust Components

- 1.2 The Responsible Entity must identify and allocate into their separate components the whole of the Trust Components of the Trust for each Year.
- 1.3 The Responsible Entity must set out the Determined Trust Components of the Trust in a document that meets the requirements of section 276-255(2) of the Tax Act prior to issuing AMMA Statements in accordance with clause 1.8 of this Schedule.

Allocating Determined Trust Components to Unitholders

- 1.4 For each Year, the Responsible Entity must calculate and allocate to Unitholders the Member Components for each particular character of Determined Trust Component in accordance with clauses 1.5, 1.6 and 1.7 of this Schedule.
- 1.5 For each Year, the Responsible Entity must allocate the entire amount of each Determined Trust Component to the Unitholders.
- 1.6 Subject to clause 1.7 of this Schedule:
 - 1.6.1 If the Trust only has one Class of Units and the Responsible Entity has not otherwise allocated the Determined Trust Components in accordance with clauses 1.4 and 1.5 of this Schedule before the end of 3 months after the end of the Year, the Responsible Entity must allocate the Determined Trust Components to the Unitholders for each Year in the proportion that the aggregate of their share of the Divisible Income for all Distribution Periods within the Year bear to the aggregate of the Divisible Income of all Unitholders at any time in respect of the Year for all Distribution Periods within the Year.
 - 1.6.2 If the Trust has more than one Class of Units the Responsible Entity must, before the end of 3 months after the end of the Year, allocate the Determined Trust Components of each Class to the Unitholders of that Class for each Year in the proportion that the aggregate of their share of the Divisible Income for that Class for all Distribution Periods within the Year bear to the aggregate of the Divisible Income of all Unitholders for that Class at any time in respect of the Year for all Distribution Periods within the Year.



- 1.7 The allocation must be done on a fair and reasonable basis and without regard to a Unitholder's tax characteristics. For the avoidance of doubt, the Responsible Entity may allocate Determined Trust Components in accordance with subsections 276-210(5), (6) or (7) of the Tax Act. If allocation in accordance with clause 1.6 of this Schedule is not fair and reasonable within the meaning of section 276-210, the Responsible Entity must make such adjustments to the allocation so that it is fair and reasonable within the meaning of section 276-210.

AMMA Statements

- 1.8 The Responsible Entity must issue an AMMA Statement to each Unitholder in respect of the Year. The AMMA Statement must set out the Unitholder's Member Component in respect of each Determined Trust Component that was allocated to each Unitholder under clause 1.5, 1.6 or 1.7 of this Schedule (as applicable) as well as all of the other information required under the AMIT Regime to be included in the statement. The AMMA Statement must be given to each Unitholder no later than three months after the end of the Year to which the AMMA Statement relates. The requirements in this clause are subject to clause 1.9 of this Schedule.
- 1.9 The Responsible Entity may re-issue revised AMMA Statements to a Unitholder in respect of a Year which effectively replaces the previous AMMA Statement(s) issued in respect of that Year. A revised AMMA Statement must be issued by the Responsible Entity no later than four years after the end of the Year to which the AMMA Statement relates.
- 1.10 An AMMA Statement will be properly issued if it meets the relevant notice requirements in clause 14 of this document.

Unitholder Objections to AMMA Statements

- 1.11 If a Unitholder objects to the amounts in its AMMA statement and intends to make a choice in accordance with section 276-205 of the Tax Act:
- 1.11.1 the Unitholder must:
- (a) before providing notice of such objection or choice to the Commissioner of Taxation, provide to the Responsible Entity not less than 10 Business Days before 4 months after the end of the Year, written notice of its intention to do so and the reasons why the Unitholder objects to the Determined Member Component in the AMMA Statement;
 - (b) provide to the Responsible Entity all information the Responsible Entity reasonably requests in relation to any act, matter or thing relating to the objection or choice;
 - (c) be responsible for all costs and liabilities incurred by the Responsible Entity as a result of any choice under section 276-205 of the Tax Act; and
- 1.11.2 the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other



Unitholders or former Unitholders of the Trust to be protected, including in dealings with the Commissioner of Taxation, including through the Trustee:

- (a) amending its attribution of the Determined Trust Components of the Trust to Unitholders based on the Responsible Entity's determination of what attribution is appropriate; and
- (b) taking such actions as the Responsible Entity determines is necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Unitholders.

Divisible Income clauses

1.12 Clause 3.6 of this document will cease to have effect.

1.13 Clause 3.7 of this document will cease to have effect and the following will apply:

The Responsible Entity may determine the amount of the Divisible Income of the Trust as at the end of a Distribution Date to be distributed to Unitholders. If no determination is made by the Responsible Entity within 3 months after the end of the Year, the Divisible Income for that Year will be equal to the AMIT cost base increase amount as defined in section 104-107E of the Tax Act for all Units on issue at the end of the Year. The Responsible Entity must determine the share of that Divisible Income to which each Class of Units is entitled. The Divisible Income of a Class is the portion of the Divisible Income of the Trust determined by the Responsible Entity as attributable to the Class. For the purposes of determining Divisible Income, the Responsible Entity may in its discretion determine whether any receipt of money or other property, whether actually received or receivable, or any outgoing or charge on profit or loss is treated as being on income or capital account.

1.14 Clause 3.8 of this document will cease to have effect and the following will apply:

The Responsible Entity must determine the share of the Divisible Income to which each Unitholder in a Class is entitled.

1.15 Clause 3.9 of this document will cease to have effect, and the following will apply:

The Divisible Income for each Distribution Period must be allocated to the holders of Units in accordance with their entitlement in accordance with clause 3 of this document and this Schedule (if applicable).

1.16 Clause 3.11 of this document will cease to have effect and the following will apply:

The Responsible Entity may distribute or cause to be distributed any amount (capital or income) by way of cash or in specie at any time to the Unitholders.

Responsible Entity may accumulate amounts

1.17 The Responsible Entity may, at any time during a Year for which this Schedule applies, determine that all or part of any Divisible Income of a Class for that Year will be accumulated, provided that the Divisible Income:

- 1.17.1 has not already been distributed to Unitholders; and
- 1.17.2 is not attributable to a withdrawal amount under clause 2.37.



When Distribution Amount is paid

1.18 Clause 3.12 of this document will cease to have effect and the following will apply:

The Responsible Entity shall distribute or cause to be distributed the Divisible Income for the Trust which has arisen in respect of each Year (**Distributions**) no later than 3 months after the end of the Year less:

- 1.18.1 any amounts of Divisible Income for that Year previously distributed pursuant to clause 2.37 of this document and/or clause 1.16 of this Schedule;
and
- 1.18.2 any amounts accumulated under clause 1.17 of this Schedule.