

ABACUS INCOME TRUST

CONSTITUTION

THIS DEED POLL is made by **ABACUS FUNDS MANAGEMENT LIMITED** (ACN 007 415 590) of Level 34, 264-278 George Street, Sydney, New South Wales (“Responsible Entity”).

BACKGROUND:

The Responsible Entity wishes to establish a trust to be known as **Abacus Income Trust** on the terms and conditions contained in this Deed.

OPERATIVE PROVISIONS:

1. OPERATION OF THIS DEED

This Deed shall take effect immediately upon registration of the Trust as a managed investment scheme pursuant to Part 5C.1 of the Corporations Act. The Trust, however, will commence as provided in **Clause 4.1**.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Deed and in all instruments issued under this Deed, the following expressions, in the absence of contrary intention, have the following meanings:

Accounting Income: for any period, all the net income of the Trust as determined by the Responsible Entity;

Acquisition Costs: stamp duty, legal and ancillary expenses incurred in connection with the acquisition of any Real Property;

AGHL: Abacus Group Holdings Limited ACN 080 604 619;

AGHL Share: an ordinary share in AGHL;

AGPL: Abacus Group Projects Limited ACN 104 066 104;

AGPL Share: an ordinary share in AGPL;

ASIC: the Australian Securities and Investments Commission, including its delegates;

ASX: Australian Stock Exchange Limited;

Associate: an associate as defined in Division 2 of Part 1.2 of the Corporations Act and *Associated* has a corresponding meaning;

Attached Securities: Attached Units, Attached Shares and any other financial products which are from time to time Stapled or to be Stapled to a Unit;

Attached Shares: ordinary shares in AGHL and AGPL;

Attached Units: Units in the Stapled Trust;

Auditor: the Auditor of the Trust;

Benchmark Rate: is 3% per annum over the average of the 90 day Bank Bill Swap Reference Rate (source: Bloomberg) reported in the Australian Financial Review on the last business day of each month in the Financial Year under review;

Business Day: a day other than a Saturday or Sunday or public holiday in Sydney on which trading banks in Sydney are generally open for business and the Australian Stock Exchange Limited is open in Sydney;

Circumstance: any circumstance set out in subsections (2) to (8), inclusive, of section 601GAA as notionally inserted in the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief;

Compliance Committee: the compliance committee for the purposes of Part 5C.5 of the Corporations Act;

Corporations Act: the Corporations Act 2001 (Cth);

Current Market Value: on any day for Stapled Securities that are Officially Quoted:

- (a) the average of the daily weighted average of all sale prices for each day on which fully paid Stapled Securities were sold on the ASX during the last 10 Business Days immediately preceding the relevant day;
- (b) should there be no sales during that period, the last bid price for such Stapled Securities during that period;

Current Unit Value: an amount equal to the Net Asset Value of the Trust divided by the number of Units in issue;

Deed: this Deed as amended from time to time;

Derivative: a contract whose value depends on or derives from the value of an underlying asset, reference rate or index and includes, without limitation, options, futures, swaps and forward contracts;

Disclosure Document: a product disclosure statement as defined in the Corporations Act or any other offer document comprising an offer of Units in the Trust;

Distributable Income: the distributable income of the Trust determined in accordance with 18.1;

Distribution Date: the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period, being not later than 90 days after the end of a Distribution Period;

Distribution Period: a period of not more than 12 months as determined by the Responsible Entity and notified to the Unit Holders or specified in a Disclosure

Document or other offer document. Where the termination of the Trust occurs during a Distribution Period, the last Distribution Period will end on the date of termination. The Responsible Entity may change the duration or dates of the commencement or end of Distribution Periods;

Executive Award Plan: the Abacus Property Group Executive Performance Award Plan as approved by the Responsible Entity from time to time;

Financial Year: a period of 12 months ending on 30 June or on such other date determined by the Responsible Entity. The period from the commencement of the Trust to the next succeeding 30 June will be the first financial year of the Trust. Where the Trust is terminated, the last Financial Year of the Trust will end on the date the Trust is wound up pursuant to **Clause 16**;

Income Tax Assessment Act: the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997, as may be applicable;

Issue Price: the price at which Units or Options are issued or sold;

Listed: admitted to and not removed from the Official List of the ASX and **Listing** has a corresponding meaning;

Listing Rules: the Listing Rules of the ASX and any other rules of the ASX which are applicable whilst the Trust is admitted to the Official List of the ASX, each as amended or replaced from time to time, subject to the extent of any written waiver by the ASX;

Market Value: the current market value of an investment calculated in a manner determined by the Responsible Entity, in consultation with the Auditor or such other person independent of the Responsible Entity approved by the Compliance Committee;

Month: calendar month;

Net Asset Value: the Total Asset Value of the Trust, less liabilities and provisions which the Responsible Entity considers appropriate (including provisions for the costs of acquiring or realising investments);

Net Sale Proceeds: the sale price of any Real Property after deduction of all selling costs and expenses, including (but not limited to) advertising costs and agents' commissions;

Official List: the Official List of the ASX;

Official Quotation: quotation on the Official List and **Officially Quoted** has a corresponding meaning;

Option: an option to acquire a Unit by way of subscription (including a Performance Right);

Option Holder: a person registered as the holder of an Option and includes persons jointly registered;

Partly Paid Unit: a Unit on which the Issue Price has not been paid in full (whether or not called);

Person: includes, corporation, trust, fund, firm, body or individual;

Performance Right: a right granted or issued to be provided with a Unit by way of issue upon satisfaction of relevant conditions under the Executive Award Plan;

Purchase Price: in respect of any Real Property, the purchase price payable to the vendor of that Real Property;

Real Property: real property or an interest in real property;

Register: the register of Unit Holders or Option Holders maintained in accordance with **Clause 12**;

Relevant VWAP: has the meaning given in **Clause 7.1(c)**.

Relief: a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Responsible Entity or the Trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument;

Responsible Entity: Abacus Funds Management Limited or other responsible entity for the time being of the Trust for the purposes of Part 5C.2 of the Corporations Act;

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

Stapled: the linking together of Units and Attached Securities so that, subject to their terms of issue, none of them may be dealt with without the others, and the word *Stapling* has a corresponding meaning;

Stapled Entity: the Stapled Trust, AGHL, AGPL and any other corporation or registered managed investment scheme whose financial products are Stapled to the Units;

Stapled Security: a Unit and each Attached Security that are Stapled together and registered in the name of the Unit Holder;

Stapled Trust: the registered managed investment scheme known as Abacus Trust ARSN 096 572 128;

Stapled Trust Constitution: the constitution dated 18 April 2001 in relation to the Stapled Trust, as amended;

Stapled Trust Manager: Abacus Funds Management Limited ABN 66 007 415 590 as responsible entity of the Stapled Trust;

Sub-Trust: a trust in which all issued units are owned (directly or through another trust or trusts) by the Trust or a trust which the Trust controls (as that term is defined in section 50AA of the Corporations Act);

Tax: includes any tax, duty (including financial institutions duty and stamp duty), impost and the like and includes any interest or penalty or the like imposed on those amounts;

Total Asset Value: the aggregate of:

- (a) the Market Value of all the assets of the Trust, including cash and amounts owing to the Trust;
- (b) any prepayment of expenditure;
- (c) any unpaid amounts;
- (d) such other increments or decrements as the Auditor approves be included; and
- (e) any capital expenditure not included in the Market Value of the assets of the Trust;

Transaction costs: an amount (if any) as determined by the Responsible Entity accruing to the Trust in respect of the actual or anticipated expenses associated with an issue or redemption of Units or the investment of application moneys, or the acquisition or disposal of assets to fund the redemption;

Trust: the trust governed by this Deed called Abacus Income Trust;

Trust Fund: all investments and property held by or on behalf of the Responsible Entity on the trusts of this Deed from time to time but excluding such Distributable Income as has been credited to a distribution account in accordance with **Clause 18**;

Unit : an interest in the Trust Fund in accordance with this Deed;

Unit Holder: a person for the time being registered as the holder of a Unit, and includes persons jointly registered;

Unstapled: a Unit and each Attached Security not, or no longer, being Stapled;

Unstapling Date: has the meaning ascribed to that expression in **Clause 6.7**; and

Withdrawal Offer: an offer made by the Responsible Entity in accordance with Part 5C.6 of the Corporations Act to allow for redemption of Units.

2.2 Interpretation

References to statutes or other laws include all regulations and other instruments and amendments, regulations, replacements and consolidations.

Unless the context otherwise requires, definitions in the Corporations Act are used with the same meaning.

Singular includes the plural and vice versa. A gender includes the other genders. Headings do not affect the interpretation of this Deed.

References to “including” and “for example” mean “including without limitation” and “include” and “includes” have corresponding meanings.

A reference to ‘relevant day’ in the definition of Current Market Value means, for the purpose of clause 5.5(c)(i)(B), the earlier of the day on which the intention to offer or issue the Stapled Securities is announced to the ASX, and the date of the agreement to issue the Stapled Securities.

2.3 Rounding

All calculations under this Deed may be rounded up or down and to the nearest whole number.

2.4 Record date

Subject to the Listing Rules, the Responsible Entity will determine the record date for determining Unit Holders’ entitlements including their entitlements to participate in new issues and distributions of income and capital.

3. CORPORATIONS ACT RELIEF

3.1 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief, the provisions of this Deed operate subject to the Relief.

3.2 Subject to **Clause 3.3**, where relief from, or a modification to, the provisions of the Corporations Act is given or made by a Relief if this Deed includes specified provisions, then the provisions:

- (a) are taken to be included in this Deed; and
- (b) prevail over the other provisions of this Deed to the extent of any inconsistency.

3.3 If the relief is granted by class order (rather than specifically in relation to the Trust), the Relief applies, and the specified provisions referred to in **Clause 3.2** are taken to be included in this Deed, unless the Responsible Entity states in writing that that is not the case.

4. CONSTITUTION AND DURATION OF THE TRUST AND EFFECT OF THIS DEED

4.1 Commencement and duration of Trust

Subject to this Deed, the Trust will commence on such date as the Responsible Entity determines and will terminate in accordance with this Deed, the Corporations Act 2001 (Cth) or any rule of law or equity.

4.2 Constitution and its enforceability

This Deed is the constitution of the Trust for the purposes of the Corporations Act and its provisions shall be legally enforceable by the Unit Holders against the

Responsible Entity and by the Responsible Entity against each Unit Holder and all persons claiming through a Unit Holder as if they were parties to this Deed.

4.3 Vesting of Trust Fund

The Trust Fund is and will be vested in and held by the Responsible Entity on trust for the Unit Holders on the terms of this Deed.

4.4 Binding effect of Deed

This Deed will be binding on the Responsible Entity and each Unit Holder and Option Holder and all persons claiming through them as if they are parties to this Deed.

5. CREATION AND SALE OF UNITS

5.1 Units

The beneficial interest in the Trust will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Trust but not an interest in any particular part of the Trust.

5.2 Transaction Costs

In each case where an Issue Price is determined under this **Clause 5** or **Clause 7** there will be added to the Issue Price such transaction costs (if any) as the Responsible Entity determines and is permitted to include pursuant to any Relief.

5.3 Issue Price for rights issue

In the case of Units offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date:

- (a) where the Units form part of Stapled Securities, are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer is announced to the ASX; and
- (b) have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:

- (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made; or
- (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the offer is made.

5.4 Issue Price for income reinvestment

In the case of reinvestment of any income or capital entitlement:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:
 - (i) the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Market Value of Stapled Securities on the Business Day preceding the record date for the determination of Unit Holder entitlements; and
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
 - (i) the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements; or
 - (ii) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the record date for the determination of Unit Holder entitlements.

5.5 Issue Price for placements

In the case of any Units not issued under any other provision of this Deed:

- (a) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of the Attached Securities to which those Units will be Stapled, will be:

- (i) the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the offer or issue is announced to the ASX; or
 - (ii) subject to **Clause 5.5(c)**, where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion;
- (b) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be:
- (i) the Current Unit Value of those Units on the Business Day preceding the day on which the offer or issue is made; or
 - (i) where permitted by, and subject to the conditions of, any Relief or if any Circumstance applies, such other price as the Responsible Entity determines in its discretion.
- (c) Where Units are to be issued in the Circumstance set out in subsection 601GAA(2A) of the Corporations Act as notionally inserted into the Corporations Act by Class Order [CO 05/26] as modified or varied by any Relief, the Responsible Entity must ensure that either of the following applies:
- (i) both of the following applies:
 - (A) the issue, together with any Related Issue, in the previous year does not, immediately before the issue, comprise more than 15% of the Units in that class;
 - (B) the amount by which the issue price of the Stapled Securities of which the Units form a component part is less than the Current Market Value of Stapled Securities does not exceed 10% of the Current Market Value; or
 - (ii) all of the following apply:
 - (A) Unit Holders who hold Stapled Securities of which the Units form a component part approve the issue by a Placement Resolution;
 - (B) unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of members in another class – members in that other class approve the issue by a Placement Resolution;
 - (C) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue.

In this **Clause 5.5(c)**:

Placement Resolution: in relation to the approval of an issue of Units, a special resolution where both of the following apply:

- (a) votes are only cast in respect of Units (the **eligible Units**):
 - (i) that are held by a Unit Holder who will not acquire any of the Units that are to be issued; or
 - (ii) that are held by a Unit Holder for the benefit of another person who will not obtain beneficial ownership of any of the Units that are to be issued;
- (b) the value of the eligible Units held by the Unit Holders who vote represents at least 25% of the total value of eligible Units;

Related Issue: in relation to an issue of Units, an issue of Units in the same class at a price set by the Responsible Entity, which has not been approved or ratified by Unit Holders in accordance with **Clause 5.5(c)(ii)** or issued in accordance with other provisions of this Deed.

5.6 Satisfaction of Issue Price

The Issue Price may be satisfied in such manner as the Responsible Entity determines including by payment of cash or by transfer to the Responsible Entity of investments acceptable to the Responsible Entity, or by a combination of these methods. Any expenses incurred in respect of a transfer of investments must be paid by the Unit Holder.

5.7 Apportionment of Issue Price

Subject to the terms of any Relief, where:

- (a) a Unit forms part of a Stapled Security and, as a consequence, a Unit is to be issued as part of a Stapled Security; and
- (b) pursuant to this Deed (including **Clause 7**), the Issue Price of the Unit, when aggregated with the issue price of the Attached Securities, is the Current Market Value or the Relevant VWAP (as the case may be) as at the relevant date,

the Issue Price of the Unit will be determined as follows:

- (c) the Responsible Entity, the Stapled Trust Manager, AGPL and AGHL will determine what part of the amount payable for the issue of a Stapled Security is to represent the issue prices of the Unit and each Attached Security, respectively;
- (d) unless otherwise determined by the Responsible Entity, the Stapled Trust Manager, AGPL and AGHL, the allocation is to be done on the basis of the relative fair value of each component of the Stapled Security as at immediately prior to the issue of the Stapled Security; and

- (e) if the Responsible Entity, the Stapled Trust Manager, AGPL and AGHL are unable to reach agreement within a reasonable time then the allocation must be determined by a chartered accountant of not less than ten years' standing appointed by agreement between them or, failing agreement, by the President for the time being of the Institute of Chartered Accountants in Australia. The independent accountant must determine the allocation based on fair value as determined by the accountant having regard to the respective net tangible asset backing of each of the component securities immediately before the issue and anything else the accountant considers relevant. The independent accountant will act as an expert not as an arbitrator and the decision is final and binding on the parties. The costs of the resolution of the dispute must be borne in accordance with the determination of the independent accountant.

5.8 Issue of Units to the Responsible Entity

- (a) Subject to the Corporations Act and the conditions of any Relief, the Responsible Entity may hold and be issued Units in the Trust.
- (b) The Issue Price for Units issued to the Responsible Entity may be satisfied, in addition to the manner specified in **Clause 5.6** and without limitation, by a waiver or abatement of the fees the Responsible Entity is entitled to receive pursuant to **Clause 19.1** or by the provision of services by the Responsible Entity to the Trust for the balance (or part of the balance) of the term of the Trust.
- (c) Where the Issue Price of Units issued to the Responsible Entity is satisfied by a waiver or abatement of the fees of the Responsible Entity or otherwise in accordance with paragraph (b), the Responsible Entity will amend this Deed to reflect the reduction in fees payable to the Responsible Entity.

5.9 Different classes of Units

The Responsible Entity may issue Units with special rights or restrictions and those rights and restrictions will prevail over any inconsistent provisions of this Deed.

6. STAPLING OF UNITS

- 6.1 The Responsible Entity may make it a term of issue of Units that they be Stapled, with the Stapling to occur either immediately after the issue of Units or a specified time after the issue of Units. The terms and conditions applicable to the Stapling will be:
 - (a) determined by the Responsible Entity;
 - (b) agreed between the Responsible Entity, the Stapled Trust Manager, AGHL and AGPL; and
 - (c) where the Responsible Entity deems it appropriate, will be set out in any Disclosure Documents or other materials issued by the Responsible Entity.

- 6.2 Without limiting **Clause 6.1**, the terms and conditions applicable to Stapling will, unless the Responsible Entity determines otherwise, include the requirements set out in the following provisions of this **Clause 6**.
- 6.3 The Responsible Entity may at any time staple an Unstapled Unit to an Attached Security which is not Stapled.
- 6.4 Until the Unstapling Date:
- (a) subject to **Clause 6.1** and **Clause 6.2**, Units must not be issued unless comprised in a Stapled Security;
 - (b) the Responsible Entity must not offer a Unit for subscription or sale unless an offer is made at the same time and to the same person for one of each Attached Security for issue or sale;
 - (c) any offer of Units for subscription or sale must require each offeree to subscribe for or buy a number of each Attached Security equal to the number of Units subscribed for or bought;
 - (d) the Responsible Entity must not issue or sell any Units to any person unless an identical number of each Attached Security is also issued to or otherwise acquired by the same person at the same time; and
 - (e) the Responsible Entity must not consolidate, subdivide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of Attached Securities.

Paragraphs (a) to (e) inclusive apply, with necessary modifications, to the issue, offer, sale or reorganisation of Options.

- 6.5 Until the Unstapling Date:
- (a) subject to paragraph (b), a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the other requirements of this Deed, the transfer relates to or is accompanied by a transfer of each Attached Security to which the Unit is Stapled in favour of the same transferee;
 - (b) if the Responsible Entity receives a transfer of a Unit which is not accompanied by a transfer of each Attached Security to which it is Stapled:
 - (i) the Responsible Entity is authorised as attorney for the transferor to effect a transfer of each Attached Security to which the Unit is Stapled to the same transferee and must use reasonable endeavours to effect the transfer of the Stapled Security;
 - (ii) if the Responsible Entity does not so effect the transfers of each Attached Security, the Responsible Entity must reject the transfer of the Unit;

- (c) if the Responsible Entity receives a transfer of an Attached Security which is not accompanied by a transfer of the Unit to which it is Stapled or transfers of the other Attached Securities to which the Unit is Stapled, the Responsible Entity is authorised as attorney for the holder to effect a transfer to the same transferee of that Unit or those other Attached Securities (as the case may be).

6.6 The Stapled Securities will become Unstapled:

- (a) if AGHL is liquidated or otherwise ceases to exist;
- (b) if AGPL is liquidated or otherwise ceases to exist;
- (c) on termination of the Trust for any reason;
- (d) on termination of the Stapled Trust for any reason;
- (e) if the Unit Holders resolve by special resolution that they be Unstapled and the AGPL, AGHL, the Stapled Trust Manager and the Responsible Entity enter into a written agreement to Unstaple,

whichever occurs first. On and from the Unstapling Date, each Unit ceases to be Stapled to Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.

6.7 The Unstapling Date is:

- (a) where **Clause 6.6(a)** applies, the date on which AGHL is liquidated or otherwise ceases to exist;
- (b) where **Clause 6.6(b)** applies, the date on which AGPL is liquidated or otherwise ceases to exist;
- (c) where **Clause 6.6(c)** applies, the date of termination of the Trust;
- (d) where **Clause 6.6(d)** applies, the date of termination of the Stapled Trust; and
- (e) where **Clause 6.6(e)** applies, the date specified as the Unstapling Date in the written agreement to Unstaple.

6.8 Prior to the Unstapling Date, the consent of AGHL, AGPL and the Stapled Trust Manager must be obtained to any amendment to this Constitution which:

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

6.9 This **Clause 6** has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with this **Clause 6** does not operate to the extent of any inconsistency.

6.10 The Responsible Entity must cause to be kept a Stapled Security Register which:

- (a) may incorporate or form part of the Register; and
- (b) records the names of the Unit Holders, the numbers of Units held, the numbers of Attached Securities to which each Unit Holder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the Responsible Entity.

7. OPTIONS

7.1 Issue of Options

The Responsible Entity may issue Options on such terms and conditions as it determines, provided that:

- (a) subject to paragraph (b), the Issue Price of Options shall, if permitted under the Corporations Act or any Relief (and subject to the conditions of that Relief), be such price (including nil) as the Responsible Entity determines in its discretion, but if not so permitted, the Issue Price shall be nil;
- (b) subject to paragraph (c), the Issue Price of a Unit issued pursuant to the exercise of an Option, shall be determined as follows:
 - (i) subject to paragraph (iii), where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) - the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be equal to the Current Market Value of Stapled Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX; and
 - (ii) where the Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted (whether or not they form part of Stapled Securities) – the Issue Price of those Units will be where permitted by, and subject to the conditions of, any Relief, such price as the Responsible Entity determines in its discretion, but not less than 50% of the Current Unit Value of those Units on the Business Day preceding the day on which the issue of Options is made; and
 - (iii) where the Units form part of Stapled Securities and are Officially Quoted and have not been suspended from Official Quotation (other than temporarily) – in the case of Options offered to all Unit Holders registered on a date determined by the Responsible Entity, as nearly as possible pro rata to the number of Units held by them on that date, the Issue Price of those Units, when aggregated with the issue prices of each of the Attached Securities to which those Units will be Stapled, will be where permitted by, and subject to the conditions of, any Relief, not less than 50% of the Current Market Value of Stapled

Securities on the Business Day preceding the day on which the intention to make the issue of Options is announced to the ASX;

- (c) subject to paragraph (d), the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of an Option issued under the Executive Award Plan) shall be, when aggregated with the issue prices of each Attached Security, an amount equal to the daily volume weighted average price per Stapled Security sold on the market operated by the ASX (excluding any special crossings and overnight sales) for the period of 7 ASX trading days immediately preceding the issue of the Options (whether or not a sale was recorded on any particular day) (Relevant VWAP);
- (d) the Issue Price of a Unit (which forms part of a Stapled Security and is Officially Quoted and which is to be issued pursuant to the exercise of a Performance Right issued under the Executive Award Plan) shall be an amount equal to zero.

7.2 Interest of Option Holders

An Option shall not confer any interest in the Trust or any right to participate in the income or capital of the Trust.

7.3 Voting rights of Option Holders

Option Holders shall be entitled to receive notices of, and to attend meetings of Unit Holders but shall not, subject to the Corporations Act and to any Relief, be entitled to speak or vote at any such meeting.

8. PARTLY PAID UNITS

8.1 Terms of Issue

The Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines.

8.2 Calls

Each holder of a Partly Paid Unit shall be liable to pay the amount of a call in accordance with the terms and conditions of issue of the Unit.

8.3 Stapled Securities

A Partly Paid Unit which forms part of a Stapled Security will not be credited or treated as fully paid until:

- (a) the Responsible Entity has received all unpaid money in relation to that Unit;
- (b) the Stapled Trust Manager has received all unpaid money in relation to the Attached Unit; and
- (c) AGHL and AGPL have received all unpaid money in relation to the Attached Shares to which it is Stapled.

8.4 Interest on late payment of calls

If any call is not paid on or before the day appointed for payment, the holder of such Partly Paid Unit shall pay interest thereon (such interest to accrue for the benefit of the Trust) from the day appointed for the payment to the time of actual payment, at such rate as is from time-to-time determined by the Responsible Entity.

8.5 Non-receipt of notice of call

The non-receipt of a notice required to be given in respect of any call, or the accidental omission to give such a notice of a call, to any Unit Holder shall not invalidate the call.

8.6 Deductions for unpaid calls

If all or part of a call is not paid on or before the date appointed for payment, then until such time as the call is paid, the Responsible Entity may deduct or set off such unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity by reason of the non-payment) from any amount payable to the relevant Unit Holder pursuant to **Clauses 15, 16** and **Clause 18**.

8.7 Forfeiture of Units

If a call is not paid on or before the day appointed for the payment, the Responsible Entity may in its discretion at any time thereafter before the payment of the amount of the call, interest accrued thereon and the costs and expenses incurred by the Responsible Entity by reason of non-payment, cause the Units in respect of which any such amount is payable, to be forfeited with effect from a date determined by the Responsible Entity. Such forfeiture shall include forfeiture of all distributions and other moneys payable to the Unit Holder in respect of the forfeited Units and not actually paid before the forfeiture.

8.8 Entry on Register

Where any Unit has been forfeited in accordance with the foregoing provisions, an entry of the forfeiture and the date thereof, shall forthwith be made in the Register.

8.9 Disposal of forfeited units

Where permitted by any Relief, a forfeited Unit may be sold by the Responsible Entity at any price.

8.10 Annulment of forfeiture

The Responsible Entity may, at any time before a forfeited Unit is sold, annul the forfeiture upon such conditions as the Responsible Entity determines.

8.11 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of a forfeited Unit, receive the selling price and effect in the name of the Unit Holder whose Unit has been forfeited, a transfer in favour of the transferee of the Unit.

- (b) Upon effecting the transfer, the transferee shall be registered as the holder of the Unit and the transferee's title to the Unit shall not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Unit.

8.12 Liability notwithstanding forfeiture

Any Unit Holder whose Units have been forfeited will, notwithstanding such forfeiture, be liable to pay to the Responsible Entity the amount not paid and all other moneys payable in accordance with the foregoing provisions of this **Clause 8**.

8.13 Responsible Entity's lien

The Responsible Entity shall have a first and paramount lien upon every Unit for amounts not paid and other moneys payable to the Responsible Entity by the Unit Holder in respect of a Unit and such lien shall extend to all distributions and other moneys from time to time payable in respect of that Unit.

8.14 Sale of units to enforce lien

The Responsible Entity may sell the Units subject thereto, in the same manner, mutatis mutandis, as if the Units had been forfeited.

8.15 Proceeds of sale

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien shall be applied:

- (a) firstly, in payment of all costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale;
- (b) secondly, in satisfaction of the amount of the unpaid call and interest thereon; and
- (c) the residue (if any) shall be paid to the person registered as the Unit Holder in respect of the subject Units immediately prior to the sale.

8.16 Underwriting of calls

- (a) Where:
 - (i) the Responsible Entity has appointed an underwriter to underwrite the payment of a call in respect of Partly Paid Units;
 - (ii) in discharging its obligations the underwriter has purchased Units at a public auction held under **Clause 8.9** (with the relevant call credited as paid) at a price which is more than the Current Market Value ; and
 - (iii) the Responsible Entity is liable to pay the underwriter in respect of each Unit purchased in accordance with paragraph (ii) of this clause, an amount equal to the amount by which the Current Market Value is less than the price paid by the underwriter for the Unit (up to the amount of the relevant call),

then the former holder of Partly Paid Units that were forfeited and sold at that public auction, is liable to the Responsible Entity in respect of those forfeited Units, and may be sued for:

- (iv) all monies payable by the Responsible Entity to the underwriter as contemplated by paragraph (iii) of this clause;
 - (v) interest (as provided in **Clause 8.4**); and
 - (vi) all costs incurred by the Responsible Entity in procuring payment from the former Unit Holder.
- (b) The Responsible Entity must ensure that where the Responsible Entity is liable to the underwriter as contemplated by paragraph (a)(iii) of this clause, the Responsible Entity's liability to the underwriter may be satisfied by the assignment of the Responsible Entity's right of action under **Clause 8.16(a)(iv)** against the former Unit Holder in full satisfaction of such liability of the Responsible Entity to the underwriter.
- (c) For the avoidance of doubt, a Unit Holder's liability under **Clauses 8.16(a)(v)** and **(vi)** will not be affected by the assignment by the Responsible Entity of its right of action under **Clause 8.16(a)(iv)**.
- (d) A Unit Holder's liability in respect of forfeited Units for the purposes of **Clause 8.12** will be satisfied to the extent that monies are paid by the Unit Holder in respect of those forfeited Units pursuant to **Clause 8.16**.

9. APPLICATION FOR AND ISSUE OF UNITS AND OPTIONS

9.1 Form of application

An application for Units or Options must be in such form as the Responsible Entity determines. Subject to the terms of any Relief, the Responsible Entity may determine that:

- (a) such application need not be in writing; and/or
- (b) such application need not be signed by the applicant for the Units or Options.

9.2 Refusal of applications

The Responsible Entity may, without giving any reason, refuse or accept all or part of an application.

9.3 Issue of Units and Options

Units and Options will be issued with effect from the date determined by the Responsible Entity.

9.4 Restriction on issue of Units

Units may not be issued 80 years after the commencement of the Trust if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

9.5 Overseas Unit Holders

Subject to the Listing Rules during such periods as the Trust is Listed, the Responsible Entity may, in relation to an offer of Units or Options to Unit Holders, elect to offer Units or Options only to Unit Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this Deed, such offer will be deemed to have been made to all Unit Holders.

9.6 Underwriting of Issue

- (a) The Responsible Entity may determine that any issue of Units or Options or payments of calls be underwritten and all expenses of the underwriter, underwriting fees and commissions, sub-underwriting fees, brokerage, handling fees and the like (including where payable to any Associate of the Responsible Entity) will be paid out of the Trust Fund.
- (b) The underwriter or its nominee may subscribe for such Units or Options in accordance with the relevant underwriting agreement at an Issue Price not less than that at which the Units or Options were offered under the relevant Disclosure Document.

9.7 Uncleared funds

Where uncleared funds representing application moneys are not cleared in the ordinary course, any Units or Options thus created are void.

10. INVESTMENT ADVICES

- 10.1 The Responsible Entity may determine whether or not investment advices or other forms of confirmation of investment will be issued for Units or Options.
- 10.2 The Responsible Entity may cancel or replace any investment advices in the circumstances and subject to the conditions determined by the Responsible Entity.
- 10.3 Investment advices may be prepared as the Responsible Entity determines and need not be signed.
- 10.4 Investment advices will not be evidence of ownership of Units or Options.

11. RIGHTS AND LIABILITIES OF UNIT HOLDERS

11.1 Rights of Unit Holders

A Unit Holder is entitled to a beneficial interest in the Trust Fund but may not:

- (a) interfere with the exercise of the Responsible Entity's powers; or
- (b) exercise any rights in respect of any investment or require the transfer of any property.

11.2 Limitation of Unit Holders' liability

- (a) The Responsible Entity may, in the absence of a separate agreement with a Unit Holder, only enforce any right of indemnity against the Trust Fund.
- (b) In the absence of such a separate agreement, no Unit Holder will be personally liable to the Responsible Entity or any creditor of the Trust.

12. REGISTER

A Register of Unit Holders and Option Holders (where required), whether loose-leaf or computer-stored and otherwise of the type determined by the Responsible Entity, will be kept by or on behalf of the Responsible Entity. The Responsible Entity will determine the information to be recorded in the Register. Entry of a person on the Register as the holder of a Unit or an Option shall be conclusive evidence of that person's ownership of that Unit or Option.

13. CONSOLIDATION AND SUBDIVISION OF UNITS

The Responsible Entity may consolidate or subdivide Units provided the consolidation or subdivision does not alter the ratio of Units held by any Unit Holder to the aggregate number of Units in issue.

14. TRANSFER AND TRANSMISSION OF UNITS

- 14.1 All transfers of Units and Options must be made in the manner and form (whether in writing or not) required by the Responsible Entity and, for so long as the Trust is Listed, the ASX or other exchange regulator.
- 14.2 Every transfer must be delivered to the Responsible Entity, together with the certificate or certificates (if issued) in respect of the Units or Options to be transferred.
- 14.3 The Responsible Entity may in its absolute discretion refuse to register any transfer of Units or Options, but where Units or Options are Officially Quoted, may only do so where permitted by the Listing Rules. The Responsible Entity is not required to give any reason for refusing to register a transfer.
- 14.4 If a Unit Holder or Option Holder dies or becomes subject to a legal disability, only the survivor or legal personal representatives (as the case may be) will be recognised as having any claim to Units or Options registered in the relevant holder's name.

15. REDEMPTION

15.1 No obligation to redeem Units

Subject to this Deed, the Responsible Entity is not obliged to redeem or buy-back any Units.

15.2 Withdrawal Offers

- (a) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the

Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.

- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (c) If the Responsible Entity receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

15.3 Redeeming Unit Holder

Unless the Responsible Entity otherwise determines, the redemption amount paid to a Unit Holder consists of capital only. The Responsible Entity may, however, having regard to all relevant equitable obligations, determine that some or all of the redemption amount consists of Distributable Income (which may include net capital gains), rather than capital, of the Financial Year in which the redemption occurs and advise the Unit Holder accordingly (and in any event as soon as practicable after the end of the Financial Year in which the redemption occurred).

16. WINDING UP OF TRUST

16.1 Winding-up by Responsible Entity

In addition to the circumstances in which the Trust may be wound up under the Corporations Act or the Listing Rules, the Responsible Entity may wind up the Trust with the prior approval of a resolution of the Unit Holders.

16.2 Termination in accordance with Clause 4.1

The Responsible Entity must wind up the Trust when it has terminated pursuant to **Clause 4.1** or **Clause 16.1** or if it is terminated by the Responsible Entity with the prior approval of a resolution of the Unit Holders.

16.3 Procedure on winding-up

- (a) On winding-up of the Trust, and subject to paragraph (c), the Responsible Entity must realise the assets of the Trust as soon as reasonably practicable, rather than await an improvement in the Market Value of the investments of the Trust.
- (b) Subject to **Clause 8.6**, and to the rights of the holders of different classes of Units, the net proceeds of realisation, after discharging or providing for all liabilities and meeting the expenses (including anticipated expenses) of winding-up, must be distributed to Unit Holders in proportion to the number of Units of which they are the registered holders on the date the Trust is required to be wound-up in accordance with this clause or Part 5C.9 of the Corporations Act or on the date of termination of the Trust in accordance with **Clauses 4.1** and **16.1**.

- (c) The Responsible Entity may agree with a Unit Holder that the Unit Holder's entitlement in whole or in part on the winding-up of the Trust be satisfied by transferring assets of the Trust to that Unit Holder at their Market Value.
- (d) The Responsible Entity must arrange for an independent audit of the final accounts for the Trust after the winding-up of the Trust has been completed.

17. MANAGEMENT AND INVESTMENT OF THE TRUST FUND

17.1 Responsible Entity's powers

The Responsible Entity has the capacity and all the powers in respect of the Trust which it is possible for both a natural person and a body corporate to have if it were the absolute owner of the Trust Fund, including:

- (a) to invest the Trust Fund in any form of investment;
- (b) to deal with any asset of the Trust;
- (c) to borrow or obtain other financial accommodation;
- (d) to grant security over the Trust Fund (including, without limitation, third party security);
- (e) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (f) to make loans, including to associated or related entities;
- (g) to fetter future discretion;
- (h) to invest in Derivatives; and
- (i) to act as trustee of Sub-Trusts.

17.2 Appointment of Agents

The Responsible Entity may engage agents, consultants, experts, advisers or other persons and appoint delegates for any purpose in the exercise of its powers, and any such consultant, expert, person or delegate may be an Associate of the Responsible Entity.

17.3 Appointment of Custodian

Without limiting the Responsible Entity's power under this **Clause 17**, subject to the Corporations Act and the terms of any Relief the Responsible Entity may appoint one or more custodians to hold title to some or all of the assets of the Trust.

18. DISTRIBUTION OF INCOME AND CAPITAL

18.1 Determination of Distributable Income

- (a) The Distributable Income of the Trust for a Distribution Period will be such amount as the Responsible Entity determines in its discretion, provided that

the Distributable Income for a Distribution Period can be no less than the net income of the Trust (within the meaning of the Income Tax Assessment Act) for that period.

- (b) The Unit Holders will be entitled to the Distributable Income of the Trust for a Distribution Period in accordance with the proportions specified in **Clause 18.3**.

18.2 Time for distribution of income

The Distributable Income for a Distribution Period must be distributed by the Responsible Entity to Unit Holders no later than the applicable Distribution Date.

18.3 Income entitlement

- (a) The Distributable Income of the Trust Fund shall accrue in respect of a Unit immediately following the creation and allotment of the Unit and shall accrue from month to month and shall be apportionable in respect of time accordingly (*the Unit Distribution*).

The present entitlement in respect of a Partly Paid Unit shall be as follows:

- (i) the entitlement shall be that proportion of the Unit Distribution which the amount received by the Responsible Entity in respect of the Unit bears to the Issue Price of the Unit;
 - (ii) where the Issue Price of the Unit has been received by the Responsible Entity in instalments, each instalment shall (notwithstanding the date of actual receipt) be deemed to have been received on the first day of the month immediately following the receipt of the relevant instalment.
- (b) Subject to the terms of issue of any Units and to **Clause 8.6** and **Clause 18.3(a)**, the Distributable Income of the Trust for each Distribution Period that remains after deducting any distributions already made in relation to that Distribution Period pursuant to **Clause 15.3** will be credited to a distribution account and after payment of all taxes will be distributed to Unit Holders registered at the close of business on the last day of the Distribution Period, or, where Units are Officially Quoted, to Unit Holders registered, at the close of business on the date fixed for the closing of the Register to determine income entitlements for that Distribution Period, in proportion to the number of Units of which they are the registered holders at such time.

18.4 Present entitlement to Accounting Income of the Trust

Persons who were entitled to Distributable Income pursuant to **Clause 18.3** in respect of a Financial Year will be presently entitled (within the meaning of the Income Tax Assessment Act) to that income in the proportions set out in **Clause 18.3** on the last day of the Financial Year, but if the Responsible Entity does not make a determination for the purposes of **Clause 18.1** for the last Distribution Period in a Financial Year, then persons who are registered Unit Holders at the close of business on the last day of that Financial Year will be presently entitled

(within the meaning of the Income Tax Assessment Act) to that part of the Distributable Income of the Trust for that Financial Year to which no Unit Holder has been presently entitled in an earlier Distribution Period for that Financial Year by virtue of **Clause 18.3** and/or **Clause 15.3**.

18.5 Unit plans

- (a) The Responsible Entity may at any time adopt and implement any number of plans, on terms it determines, by which a Unit Holder may elect to receive Units as, or instead of, income or capital entitlements. Such plans may include:
 - (i) a plan under which a Unit Holder who elects to participate in respect of a Unit held by the Unit Holder is entitled to an issue of bonus Units instead of an income or capital entitlement distributed as money in respect of that Unit; and
 - (ii) a plan under which an income or capital entitlement to be distributed as money to a Unit Holder in respect of a Unit is, if the Unit Holder elects that the Unit participate in the plan, retained by the Trust and applied in subscription for fully paid Units pursuant to the terms of the plan.
- (b) The Responsible Entity has all powers necessary or desirable to implement and carry out fully any plan adopted under this **Clause 18.5** and may (without limitation) at any time:
 - (i) amend the terms of any plan as it considers desirable; and
 - (ii) suspend for any period or terminate the operation of any plan as it considers desirable.

18.6 Capital and other distributions

- (a) The Responsible Entity may at any time distribute capital to the Unit Holders (including without limitation as part of an income distribution) by the payment of cash, the issue of Units, the distribution of assets or in any other manner the Responsible Entity determines in proportion to the number of Units of which they are the registered holders at such time as is determined by the Responsible Entity.
- (b) In the case of an issue of Units, the terms of the issue of Units will be determined by the Responsible Entity.

18.7 Income categories

The Responsible Entity may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unit Holder.

19. REMUNERATION

19.1 Responsible Entity's fee

- (a) The Responsible Entity will be paid out of the income or capital of the Trust an annual fee of 1% of the Total Asset Value of the Trust.
- (b) Such fee is payable monthly and will accrue monthly.
- (c) The Responsible Entity's fee will continue to be paid up to the date of completion of the final winding up of the Trust.

19.2 Performance fee

- (a) In relation to the assets of the ADIF Investment Trust (*the Fund*), the Responsible Entity will be entitled to receive a performance fee in respect of each Financial Year determined as follows:
 - (i) The performance fee is 25% of the amount by which net returns of the Fund exceed an amount determined by multiplying the average funds employed by the Benchmark Rate.
 - (ii) Where the net returns of the Fund for any Financial Year fail to exceed an amount determined by multiplying the average funds employed by the Benchmark Rate, no performance fee is payable for that year.

The performance fee will be payable by the Trust and will not be taken into account in calculating the net returns of the Fund.

- (b) On the sale of any Real Property of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive a performance fee calculated at 10% of the excess of the Net Sale Proceeds over the Purchase Price plus Acquisition Costs subject to the following conditions:
 - (i) the performance fee will not be payable unless the Net Sale Proceeds exceed 110% of the Purchase Price plus Acquisition Costs;
 - (ii) the maximum performance fee payable under this paragraph shall be 4.5% of the Net Sale Proceeds;
 - (iii) the performance fee will be reduced to the extent necessary to ensure that the return derived is not reduced below 110% of the Purchase Price plus Acquisition Costs.

19.3 Real Property Acquisition Fee

In consideration of sourcing and conducting due diligence in acquiring Real Property on behalf of the Trust or any Sub-Trust, the Responsible Entity will be entitled to receive an acquisition fee of \$150,000 or up to 2% of the Purchase Price of any Real Property purchased by the Trust or any Sub-Trust, whichever is the greater.

19.4 Capital Raising Fee

In consideration of procuring and conducting due diligence in respect of any capital raising for the Trust, the Responsible Entity will be entitled to receive a

capital raising fee of 0.75 cents for each Stapled Security issued, whether pursuant to public offer, private placement, rights issue or any other method or combination used for that capital raising.

19.5 Reimbursement and indemnity

The Responsible Entity will be paid or reimbursed out of the Trust Fund on a full indemnity basis for all expenses and liabilities which it may incur in connection with the Trust or in performing its obligations or exercising its powers under this Deed including in connection with the following matters:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) registers, accounting and other records;
- (c) Unit Holder meetings;
- (d) any transaction or proposed transaction in relation to the Fund, including, without limitation, the acquisition, disposition, development and management of assets of the Fund;
- (e) accounts;
- (f) taxes, rates, charges, duties and other imposts, including any goods and services or similar tax collectable from, or incurred or payable by, the Responsible Entity in connection with the Trust, or the management or administration of the Trust (including taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (g) regulatory compliance, including conversion of the Trust to a managed investment scheme;
- (h) any restructuring or Listing of the Trust;
- (i) offers of invitations, to apply for, or issues or transfers of, Units or Options;
- (j) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including without limitation, members of any Compliance Committee;
- (k) researching property and securities markets;
- (l) this Deed;
- (m) custody of the Trust Fund (including custodian's fees);
- (n) computer hardware and software and other equipment;
- (o) any court proceedings, arbitration or dispute;
- (p) retirement or removal of the Responsible Entity;
- (q) Compliance Committees;

- (r) preparing documentation in relation to the Trust and the Trust Fund;
- (s) insurances, including insurance premiums payable in respect of insurance policies for the Responsible Entity, its directors, and Compliance Committee members;
- (t) audit fees, including compliance plan audit fees;
- (u) promoting the Trust to, or communicating with, Unit Holders, potential investors and their advisers; and
- (v) travel and accommodation expenses.

19.6 Payments to Associates

Payments under **Clauses 19.1, 19.2, 19.3, 19.4** and **19.5** may be made to an Associate of the Responsible Entity.

19.7 Compliance Committee

Subject to the Corporations Act, the Responsible Entity may reimburse or indemnify out of the Trust Fund any member of the Compliance Committee for any cost, expense or liability incurred in connection with the Trust or such membership.

19.8 Waiver or postponement

The Responsible Entity may waive or postpone payment of all or part of its fee under **Clauses 19.1, 19.2, 19.3** and **19.4** (respectively) or reimbursement under **Clause 19.6** on such terms and conditions as it determines in its absolute discretion.

19.9 Rebate

The Responsible Entity may waive, assign or rebate all or part of its fee under **Clauses 19.1, 19.2, 19.3** and **19.4** in favour of any person (including one or more Unit Holders) on such terms and conditions as it determines in its absolute discretion.

If the payment of the Responsible Entity's fees under **Clauses 19.1, 19.2, 19.3** and **19.4** or the Responsible Entity's reimbursement under **Clause 19.5** is unable to be made when such fees or amounts are due and payable due to there being insufficient liquid assets in the Trust, then the Responsible Entity will be entitled to receive interest at the rate of 10% per annum on unpaid fees and amounts until such fees or amounts are paid.

19.10 Goods and Services Tax ('GST')

- (a) If any GST becomes payable in respect of any taxable supply by the Responsible Entity in connection with its rights and obligations under this Deed, the Responsible Entity is entitled to increase the consideration for that supply by the amount of the GST on that supply (less, in the case of a reimbursement of expenses, the amount of any input tax credit it is entitled to in relation to the reimbursement payment). The Responsible Entity is

entitled to be paid or reimbursed that GST out of the assets of the Trust. For the avoidance of doubt, the Responsible Entity is entitled to determine the amount of the GST for which it may be liable on the percentage fees and reimbursement and to adjust the percentage accordingly.

- (b) If the Responsible Entity makes a taxable supply in connection with its rights and obligations under this Deed, the Responsible Entity must issue the recipient of that taxable supply a tax invoice prior to:
 - (i) the date payment for the taxable supply is due; or
 - (ii) if there is no due date for payment for the taxable supply, the date the Responsible Entity is paid or reimbursed out of the Trust Fund for the taxable supply.
- (c) Any invoice issued by the Responsible Entity to the Trust under this Deed must be a tax invoice.
- (d) Words or expressions used in this **Clause 19** which are defined in the *A New Tax System (Goods and Services) Tax Act 1999 (Cth)* have the same meaning in this clause.

20 RETIREMENT AND REMOVAL OF RESPONSIBLE ENTITY

20.1 Removal of Responsible Entity

The Responsible Entity must retire as responsible entity in any of the circumstances specified in the Corporations Act or, for as long as the Trust is Listed, the Listing Rules.

20.2 Retirement of Responsible Entity

The Responsible Entity may retire as responsible entity subject to compliance with the requirements of the Corporations Act.

20.3 Appointment of new Responsible Entity

On the retirement of the Responsible Entity pursuant to **Clause 20.2**, the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the Responsible Entity.

20.4 Retirement Payment

The Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Unit Holders for such remuneration or benefit.

21. RESPONSIBLE ENTITY'S POWERS, LIABILITIES AND INDEMNITIES

21.1 General Provisions

- (a) Without prejudice to its rights under **Clause 19.5**, the Responsible Entity shall be indemnified out of the Trust Fund for all liabilities incurred by it, or

on its behalf, to the extent to which such liabilities are incurred in relation to the proper performance of the Responsible Entity's duties.

- (b) The Responsible Entity may rely on the validity of any document (including any electronic communication) unless it reasonably believes the document not to be genuine.
- (c) The Responsible Entity shall not be under any liability for failure to perform any act if prevented by law.
- (d) The Responsible Entity shall be not liable to account for any payment or retention of moneys made in good faith, or to meet a liability, to a duly empowered fiscal authority.
- (e) The Responsible Entity may rely upon the advice of counsel or solicitors in relation to any matter in connection with the Trust (including the interpretation of this Deed).
- (f) The Responsible Entity may rely on advice or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who is believed in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Responsible Entity.
- (g) The Responsible Entity is not obliged to enter into any transaction unless its personal liability is excluded or limited as required by it.

21.2 Recovery of duties, charges etc

The Responsible Entity will not be required to undertake any transaction in respect of a Unit Holder unless the Unit Holder has paid or provided for to the Responsible Entity's satisfaction all duties, taxes and the like in respect of such transaction.

21.3 Responsible Entity's interest in the Trust and in transactions

- (a) The Responsible Entity and its Associates may hold Units or Options;
- (b) Nothing in this Deed restricts the Responsible Entity or its Associates from:
 - (i) dealing with the Trust or any Unit Holder or Option Holder; or
 - (ii) being interested in any contract or transaction with the Trust or any Unit Holder or Option Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (iii) acting in the same or a similar capacity in relation to any other scheme.
- (c) Without limiting the effect of paragraph (b), the Responsible Entity may deal with itself in relation to the Trust Fund where in relation to such dealings it is acting in different capacities.

21.4 Extent of Responsible Entity's discretion

The Responsible Entity has absolute discretion as to how and when to exercise its powers.

21.5 Limitation of Responsible Entity's liability

Subject to the Corporations Act, except in the case of its own fraud, negligence, breach of duty or breach of trust, the Responsible Entity will not be liable to Unit Holders or Option Holders to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liability out of the Trust Fund.

22. MEETINGS

22.1 Convening and conducting of meeting

- (a) Subject to the Corporations Act, but without prejudice to this **Clause 22**, meetings of Unit Holders may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including without requirements in relation to proxies and their use.
- (b) If a poll is demanded it will be taken in such manner and at such time as the chairman directs.
- (c) In the case of equality of votes, the chairman shall have a casting vote.

22.2 Notice of general meeting

- (a) While the Trust is a registered managed investment scheme pursuant to Part 5C.1 of the Corporations Act notice of a meeting of Unit Holders must be given in accordance with the Corporations Act. Otherwise, notice may be given in the manner determined by the Responsible Entity.
- (b) Accidental omission to give notice to, or the non-receipt of notice of meeting by a Unit Holder will not invalidate the meeting.

22.3 Quorum

- (a) Subject to Clause 22.3(b) the quorum for a meeting of Unit Holders is:
 - (i) at least 2 Unit Holders present at all times during the meeting holding at least 10% of the votes that may be cast at the meeting; or
 - (ii) if the Trust has only one Unit Holder who may vote on a resolution, that Unit Holder.
- (b) Where a meeting is convened to pass a special resolution to remove the Responsible Entity the quorum shall be at least 2 Unit Holders present at all times during the meeting holding at least 51% of the votes that may be cast at the meeting.

22.4 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) adjourned to the same day in the following week at the same time and place; or
- (b) adjourned to such other day, time and place as the Responsible Entity may direct.

22.5 Notice of meeting adjourned under Clause 22.4(b)

If a meeting is adjourned in accordance with Clause 22.4(b), written notice must be given to the Unit Holders of the day, time and place to which the meeting has been postponed.

22.6 Quorum at meeting adjourned under Clause 22.4(b)

At any meeting adjourned under Clause 22.4(b) if a quorum is not present within 15 minutes of the time appointed for the adjourned meeting the meeting is dissolved.

22.7 Proxies

- (a) The instrument appointing a proxy must be in writing and signed by the appointor, the appointor's attorney or corporate representative and, in the case of a body corporate, in accordance with the Corporations Act.
- (b) Subject to Clause 22.7(c) the instrument appointing a proxy, and where applicable the original or certified copy of the power of attorney under which it is signed, must be received at least 48 hours before the time of the meeting.
- (c) The Responsible Entity may determine that proxies may be received less than 48 hours before the meeting.
- (d) No proxy is valid after the expiration of 12 months from the date of its execution.
- (e) Unless the Responsible Entity has received written notice of the matter before the start of the meeting at which a proxy votes, a vote cast by a proxy will be valid even if, before the proxy voted:
 - (i) the Unit Holder dies;
 - (ii) the Unit Holder revokes the proxy's appointment; or
 - (iii) the Unit Holder revokes the authority under which the proxy was appointed by a third party.

22.8 Attorney of Unit Holder

A Unit Holder may appoint an attorney to act on its behalf at a meeting (or meetings) of Unit Holders. Before the first meeting at which the attorney acts on

the Unit Holder's behalf, the power of attorney must be deposited at the place specified in the notice of meeting.

22.9 Representative of body corporate

A Unit Holder being a body corporate may, by resolution of its directors and in accordance with the Corporations Act, authorise any person to act as its representative at a meeting of Unit Holders. That representative will then have all the rights that could have been exercised by the authorising Unit Holder at the relevant meeting.

22.10 Form and effect of resolutions

- (a) A resolution passed at a meeting of Unit Holders shall be binding on all such members, whether or not present at such meeting. The decision of the chairman on any matter shall be final.
- (b) If all Unit Holders shall have signed a resolution, that resolution shall be deemed to have been passed by the requisite majority of members at a meeting of members on the day and at the time at which the resolution was last signed by a member. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders.

22.11 Cancellation or postponement of a meeting

Subject to the Corporations Act, the Responsible Entity may cancel or postpone a meeting of the Unit Holders at any time prior to the meeting for any reason.

22.12 Notice of cancellation

Notice of cancellation of a meeting must be given to every Unit Holder.

22.13 Notice of date, time and place of postponed meeting

Notice of the day, time and place to which the meeting has been postponed must be given to every Unit Holder at least 5 Business Days prior to the postponed meeting.

22.14 Proxy, attorney or corporate representative for postponed or cancelled meetings

Where

- (a) the terms of an instrument appointing a proxy, attorney or a corporate representative provide that such appointment is valid only for a meeting of Unit Holders held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument

then the date to which the meeting has been postponed is substituted for the date specified in the instrument unless the Unit Holder appointing the proxy, attorney or representative gives written notice specifying otherwise to the Responsible Entity 48 hours prior to the time to which the meeting has been postponed (and in that event the Unit Holder may at the same time appoint a new proxy, attorney or

representative in accordance with the relevant provisions of this Clause 22, with necessary modifications).

22.15 Adjournment of meeting

The chairman of a meeting of members at which a quorum is present may, and must if so directed by vote of the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

22.16 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for 30 days or more, in which event notice of the adjourned meeting must be given.

23. AMENDMENT TO DEED

Subject to the Corporations Act, the Responsible Entity may amend this Deed, including this **Clause 23**. Any such amendment may have prospective or retrospective effect. Where this Deed is amended by a resolution of Unit Holders the Responsible Entity may execute a supplementary deed incorporating those amendments.

24. NOTICES

Subject to the Corporations Act, the Responsible Entity may determine methods, including electronic methods, of giving notices to Unit Holders and may also determine corresponding rules relating to deemed service and proof of service.

25. MODE OF PAYMENT OF MONEYS TO UNIT HOLDERS

Moneys payable by the Responsible Entity to a Unit Holder may be paid in any manner determined by the Responsible Entity. Payment of moneys in such manner will be a good discharge to the Responsible Entity. Any joint Unit Holder may give an effective discharge to the Responsible Entity in respect of the payment.

26. CHANGE OF NAME OF TRUST

26.1 The Responsible Entity may in its absolute discretion change the name of the Trust without requiring any Unit Holder consent and take whatever action is necessary to effect the change in the name of the Trust.

26.2 Should the Responsible Entity cease to be, or to be a related body corporate of, Abacus Funds Management Limited, the title of the Trust must be changed to a name which does not contain the word Abacus and the new Responsible Entity must, without requiring any Unit Holder consent, take whatever action is necessary to ensure that that word is not used in connection with the Trust. Any current Disclosure Document must be withdrawn. This clause may not be amended without the prior written consent of Abacus Funds Management Limited.

27. COMPLAINTS RESOLUTION

- 27.1 The Responsible Entity must take all reasonable steps to ensure that there are at all times in force appropriate arrangements for the making and resolution of complaints by Unit Holders in connection with the Trust.
- 27.2 Complaints made must be properly considered and dealt with by the Responsible Entity as soon as reasonably practicable and in any event within 60 days after they are made, or such longer period as is reasonably necessary in the circumstances.
- 27.3 Upon receiving a complaint from a Unit Holder (in whatever form), the Responsible Entity must acknowledge receipt of the complaint to the Unit Holder within 15 Business Days, at the same time outlining the remedies available to the Unit Holder.
- 27.4 Within 15 Business Days of dealing with a complaint from a Unit Holder, the Responsible Entity will notify the Unit Holder of, and the reasons for, its proposed resolution of the dispute. At the same time, the Responsible Entity will inform the Unit Holder as to what further avenues of complaint are available to the Unit Holder, including notification of an independent external dispute resolution body of which the Responsible Entity is a member.
- 27.5 In considering a complaint, the Responsible Entity will take into account such of the following factors as are relevant to the complaint:
- (a) any alleged breach of the Corporations Act, this Deed or breach of trust;
 - (b) legal advice (if any) it has received in relation to that alleged breach;
 - (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
 - (d) any material held by the Responsible Entity in relation to the alleged breach; and
 - (e) any other relevant information.
- 27.6 If the Unit Holder reasonably requests, the Responsible Entity must provide the Unit Holder with an opportunity to inspect any relevant material relating to the complaint unless to do so would prejudice the Responsible Entity or the Trust.

28. GOVERNING LAW

This Deed will be governed by the laws of the State of New South Wales.

29. SEVERABILITY

If any provision of this Deed is illegal or invalid because it offends any applicable law:

- (a) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and

- (b) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

30. LISTING RULES

Notwithstanding anything contained in this Deed, for so long as the Trust is Listed:

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

31. RESTRICTED SECURITIES

If the Trust is Listed and has on issue any Units which are classified under the Listing Rules or by the ASX as restricted securities, then despite any other provisions of this Deed:

- (a) the restricted securities cannot be disposed of during the escrow period, except as permitted by the Listing Rules or ASX;
- (b) the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period, except as permitted by the Listing Rules or ASX;
- (c) during a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

32. SMALL HOLDINGS

If the Trust is Listed and a Unit Holder holds an unmarketable parcel of Units, the provisions of schedule 1 apply to those Units. An "unmarketable parcel" is a number of Units which is less than that required for the time being to constitute a marketable parcel of Units, as defined by the Listing Rules.

33. ACCOUNTS

Subject to the provisions of the Corporations Act and any Relief, financial accounts will be prepared in respect of the Trust and forwarded to Unit Holders in the Trust.

34. ELECTRONIC DEALINGS

Notwithstanding any other provision of this Deed (except **Clause 1**), the Responsible Entity may facilitate dealings and transactions (including, without limitation applications and redemptions) by Unit Holders or prospective Unit Holders, on terms and conditions stipulated by the Responsible Entity, by Unit Holders or prospective Unit Holders by electronic or other means including telephone, computer, cheque book, credit card and other electronic, telecommunication or banking facilities.

SCHEDULE 1

UNMARKETABLE PARCELS

1. First notice

If at any time a Unit Holder holds an unmarketable parcel of Units (including Units held jointly with other Unit Holders) (*the Relevant Units*), the Responsible Entity may give a notice (*the First Notice*) to that Unit Holder stating that unless the Unit Holder gives notice to the Responsible Entity by a specified date (being not less than 45 days after the date of giving of the First Notice) requiring that the provisions of this Schedule are not to apply to the Relevant Units, then the Relevant Units are liable to be sold or disposed of under this Schedule but no First Notice may be given by the Responsible Entity in relation to the Relevant Units less than 12 calendar months after a previous First Notice given in relation to the Relevant Units.

2. Subsequent changes

Until the Unit Holder gives a notice under **Clause 6** of this Schedule, the provisions of this Schedule continue to apply to the Relevant Units despite the fact that they have, after the giving of the First Notice, ceased to comprise an unmarketable parcel of Units.

3. Power of Responsible Entity to sell

Subject to the following provisions of this Schedule, where a Unit Holder has been given a First Notice the Responsible Entity may sell or otherwise dispose of (*Divest*) the Relevant Units (together with all rights attaching to them including any dividends declared but unpaid).

4. Advertisement and second notice

Where the Responsible Entity propose to Divest any Relevant Units under this Schedule:

- (a) the Responsible Entity must publish in a newspaper circulating generally in the area in which the Unit Holder holding the Relevant Units has its address for the purposes of being given notices by the Responsible Entity, a notice specifying:
 - (i) the intention to Divest the Relevant Units;
 - (ii) the name of the relevant Unit Holder; and
 - (iii) the number of the Relevant Units; and
- (b) the Responsible Entity must give a notice of intention to Divest the Relevant Units (*the Second Notice*) to the Unit Holder advising the Unit Holder that the Relevant Units are liable to be Divested under this Schedule on a day which is not less than 25 days after the date of giving of the Second Notice.

5. Notice to all joint holders

Where a First Notice or a Second Notice is given in respect of Units which are held by Unit Holders jointly, that notice must be given to each of those joint holders.

6. Unit Holder may require sale not to proceed

Each Unit Holder to whom a First Notice or Second Notice has been given may, by notice in writing addressed to the secretary and delivered to the Responsible Entity prior to the Relevant Units being Divested, require the Responsible Entity not to Divest the Relevant Units, in which case the Relevant Units may not be Divested unless a new First Notice is given to that Unit Holder.

7. Jointly held Units

If a Unit Holder who gives notice under **Clause 6** of this Schedule is a joint holder of a parcel of Relevant Units, that notice only prevents those Relevant Units being Divested but does not prevent other Relevant Units held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Units applies only to those other Relevant Units.

8. Terms of sale

Any Relevant Units to be Divested may be Divested on the terms and in the manner and at the time the Responsible Entity determines (including by means of the Units being bought back by the Responsible Entity) provided that the Responsible Entity should use best endeavours to Divest the Relevant Units for market price. For the purpose of the Units being Divested:

- (a) the Unit Holder appoints the Responsible Entity as its agent; and
- (b) the Unit Holder appoints the Responsible Entity and each of its directors for the time being jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Units.

9. Costs of Sale

The Responsible Entity must pay all costs and expenses in connection with the Divestiture of any Relevant Units under this Schedule to the extent permitted under the Corporations Act.

10. Validity of sale

The transferee of any Relevant Units Divested under this Schedule is not required to see to the regularity of the Divestiture or the application of the purchase money. After the transferee's name has been entered in the register in respect of the Relevant Units, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is in damages only and against the Responsible Entity exclusively, subject to this Deed.

11. Receipt of proceeds

Where the Responsible Entity receives any consideration as a result of the Divestiture of any Relevant Units, the Responsible Entity's receipt is a good

discharge to the transferee of those Relevant Units and any person claiming through that transferee.

12. Title of transferee

The title of the transferee to any Relevant Units Divested under this Schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Units to the transferee.

13. Application of proceeds

The proceeds of Divestiture of Relevant Units under this Schedule (following deduction of any unpaid calls and interest and expenses) (*the Sale Consideration*) must be dealt with as follows:

- (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Responsible Entity for that purpose only;
- (b) the Sale Consideration must be held in trust for the Unit Holder whose Relevant Units were Divested;
- (c) the Responsible Entity must, immediately following the receipt of the Sale Consideration, notify the Unit Holder in writing that the Sale Consideration in respect of the Relevant Units has been received by the Responsible Entity and is being held by the Responsible Entity pending instructions from the Unit Holder as to how it is to be dealt with;
- (d) the Responsible Entity must deal with the Sale Consideration as instructed by the Unit Holder on whose behalf it is held, provided that the Unit Holder accompanies that instruction with the certificate for the Relevant Units (unless the Relevant Units are uncertificated securities under the Listing Rules) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D(5) of the Corporations Act;
- (e) any interest earned on the Sale Consideration is for the benefit of the Responsible Entity; and
- (f) where the Sale Consideration has been held in trust for more than 2 years, the Responsible Entity may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Evidence

Where a certificate in writing under the hand of any director or the secretary states that:

- (a) any notice required to be served by or on the Responsible Entity was or was not served, as the case may be;
- (b) any advertisement required to be published was published; or
- (c) any resolution of the Responsible Entity required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Units affected by that certificate and of the right and title of the Responsible Entity to Divest the same.

15. Cancellation of certificates

Except where the Relevant Units are uncertificated securities, the Responsible Entity must cancel the Unit certificates for all Relevant Units Divested.

16. Takeovers

The Responsible Entity may not proceed with the Divestiture of any Relevant Units where a takeover bid has been announced but the Divestiture of those Relevant Units may be recommenced, without serving new notices or repeating any actions previously taken, after the end of the bid period in respect of the takeover bid.

**ABACUS FUNDS MANAGEMENT LIMITED
(ACN 007 415 590)
(‘Responsible Entity’)**

**ABACUS INCOME TRUST
CONSTITUTION**

14 November 2008