



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E

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IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP TABLE GRAPE
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT
(ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs


Prepared by:

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This is the exhibit marked '**PWK24**' now produced and shown to PAUL WILLIAM KIRK at the time of swearing his affidavit on 22 December 2010.

Before me



DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit 'PWK24'

**Copy of Andriske Licence
Agreement dated 12 November
2004**

THIS LICENCE AGREEMENT is made the 12 day of November 2004.

BY AND BETWEEN

ANDRISKE RESEARCH PTY. LTD. ACN 006 565 260
the registered office of which is situated at the office of Boyd
Partners Ltd., Level 10, 600 St. Kilda Road, Melbourne, Victoria,
("the Licensor")

AND

ORCHARD INVESTMENTS MANAGEMENT LIMITED
ACN 105 684 231 the registered office of which is situate at Level
2, 613 St Kilda Road, Melbourne, Victoria, as responsible entity of
THE TIMBERCORP ORCHARD TRUST constituted by a
Constitution dated 15th September, 2003, a copy of which is
annexed hereto and marked with the letter "A" ('OIM')

AND

TIMBERCORP LIMITED AC N 055 185 067 the registered
office of which is situate at Level 8, 461 Bourke Street, Melbourne,
Victoria ('Timbercorp')
(each severally a "Licensee")

RECITALS

- A The Licensor owns all right, title and interest in and to various plant patents, plant variety titles, plant breeders rights or similar forms of protection for the Licensed Products (listed in Part 3 of the Schedule to this Agreement) in Australia in respect of the vine cultivars designated in the Plant Breeders Rights Applications listed in Part 1 of the Schedule to this Agreement.
- B OIM desires the right to plant Vines (hereinafter defined) on those parts of the land designated in Part 4 of the Schedule hereto that it owns from time to time. Its primary income producing purpose is to derive rent. Accordingly, its primary purpose in entering into this Agreement is to secure all rights necessary to enable a tenant of the land (and not itself) to carry on a primary production business in consideration for which the tenant will pay rent to OIM.
- C Timbercorp desires the right to plant Vines (hereinafter defined) on those parts of the land designated in Part 4 of the Schedule hereto that it or a controlled entity of it owns from time to time and to process and sell Fruit to third parties pursuant to the terms and conditions of this Agreement.
- D Each Licensee represents it has the means and wherewithal to undertake diligently the planting of the Vines and sale of the Fruit pursuant to the terms and conditions of this Agreement.
- E The Licensor has agreed to grant a licence to each Licensee severally, on the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires:

"Agreement" means this licence agreement;

"Corporations Act" means the Corporations Act 2001(Cth) and the Corporations Regulation;

"**Earned Royalties**" means the royalties that accrue to the Licensor at the Royalty Rate (set out in Part 6 of the Schedule), when the Licensee receives payment of the prices payable by purchasers of the Fruit from time to time;

"**Essential Characteristics**" has the same meaning as is defined in the Plant Breeders' Rights Act, 1994.

"**Fruit**" means all grapes and produce grown on the Vines processed or unprocessed;

"**Gross Sales**" means the gross price charged (exclusive of GST) for Fruit sold on an arms' length basis at the Shed Door Price. In the case of any sale of Fruit by the Licensee at an invoice price less than that charged to persons negotiating at arms' length, there shall be substituted for the purpose of calculation of payments due under this Agreement, such invoice price as would be charged in any arms' length transaction;

"**GST**" has the same meaning as in the GST Act;

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

"**Hybrid**" shall have the same meaning as is defined in the Plant Breeders' Rights Act, 1994.

"**Licensee**" means each of OIM and Timbercorp, severally.

"**Licensed Products**" means the grape cultivars listed in Part 3 of the Schedule hereto;

"**Licensed Territory**" means the countries and/or geographical areas specified in Part 4 of the Schedule to this Agreement. Such territory shall be specified separately for the planting of Vines and for the sale of Fruit.

"**Plan**" means the plan attached as Annexure A specifying the Licensed Territory described in Part 4 of the Schedule for the Planting of the Vines;

"**Project**" means a project whereby a Related Body Corporate of Timbercorp establishes and/or manages a table grape vineyard and invites subscriptions for participation in the farming of the table grape vineyard, whether or not the project is a managed investment scheme under the Corporations Act;

"**Properties**" means the properties within the Licensed Territory specified in Part 4 of the Schedule;

"**Propagate**" means to grow, culture or multiply by sexual or asexual means including growing of any seeds produced, grafting, budding, hybridisation or any other means of reproduction.

"**Protected Products**" means the products described in Part 1 of the Schedule;

"**Related Body Corporate**" has the same meaning as in the Corporations Act;

"**Royalty Rate**" means the Royalty Rate for Fruit sold, such rate being specified in Part 6 of the Schedule to this Agreement;

"**Shed Door Price**" means the sale price of Fruit excluding any cost incurred in respect of the Fruit payable by the Licensee after the fruit leaves the installation where the Fruit is packed such cost including but not limited to freight, insurances, agents fees, cold storage charges, import duty, AQIS, but does not include any amount or amounts payable to the Sales Agent.

"**Term**" means the unexpired life of the PBR which will lapse on 27th March, 2027

"**Timbercorp Asset Management**" means Timbercorp Asset Management Pty Ltd (ACN 105 888 364) of level 8, 461 Bourke Street, Melbourne, Victoria, 3000;

"**Timbercorp Group**" means Timbercorp Limited and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";

"Timbercorp Orchard Trust" means a managed investment scheme constituted under a constitution registered with ASIC (ARSN 106 557 297) and of which Orchard Investments Management Limited (ACN 105 684 231) is the responsible entity;

"Timbercorp Orchard Trust Management Agreement" means a management agreement made on or about the date of the Constitution of the Timbercorp Orchard Trust under which the Licensee has appointed Timbercorp Asset Management as manager to acquire, develop, manage and dispose of assets on behalf of the responsible entity of the Timbercorp Orchard Trust;

"Vines" means number of vines and plants of the vine cultivars listed in Parts 1 & 3 of the Schedule to this Agreement provided to the Licensee pursuant to this Agreement.

2. LICENCE GRANT

2.1 The Licensors grants the Licensee the following rights within the Licensed Territory for the Term, subject to the terms of this Agreement:

2.1.1 subject to this Agreement, the non-exclusive right to plant and grow the Vines in the Licensed Territory;

2.1.2 save as hereinafter provided, to the non-exclusive right to sell the Fruit in the Licensed Territory;

This Agreement and the rights granted herein will operate as a separate enforceable agreement in respect of each of OIM and Timbercorp severally in respect of those parts of the land designated in Part 4 of the Schedule hereto that it (in the case of OIM) or a Related Body Corporate (in the case of Timbercorp) owns from time to time.

OIM's primary income producing purpose is to derive rent from granting a lease of the lands on which the Vines are planted. Accordingly, it enters into this Agreement for the purpose of enabling a tenant of the lands to grow the Vines and sell the Fruit and not for the purpose of itself growing the Vines and selling the Fruit.

Timbercorp holds the benefit of this Agreement in trust for each entity in the Timbercorp Group from time to time and such entities are entitled to enforce this Agreement.

It is acknowledged by the Licensee that the Licensors or a third party authorised by the Licensors may grow Fruit outside the Licensed Territory (for planting) and sell such Fruit within the Licensed Territory (for sale).

2.2 Save as provided in this Agreement, the Licensors specifically withholds from the Licensee the following:

2.2.1 any right or licence to Propagate Vines;

2.2.2 the ownership of the Plant Breeders' rights or any other intellectual property in, or relating to Licensed Product.

2.3 Upon execution of this Agreement and for the duration of this Agreement; the Licensors shall make available to the Licensee such amount of bud wood of the Licensed Product as shall be reasonably requested for planting in the Licensed Territory. The Licensee shall bear the responsibility of obtaining all necessary permits to import the bud wood into the Licensed Territory. The Licensors shall be responsible for all costs of and incidental to cutting and transporting the budwood from its source to the nurseries referred to in Paragraph 2.5 hereof;

2.4 Licensee must use the cultivar name of Vines and Fruit given by the Licensors in its marketing.

- 2.5 Licensee shall at the Licensee's expense undertake the grafting of the bud wood to a stock of the Licensee's choice, in such nurseries as from time to time be approved by the Licensor.
- 2.6 It is understood between the parties that nothing contained in this Agreement shall be construed to mean that the Licensor or the Licensee are partners or joint venturers nor that the Licensee is the agent or employee of the Licensor. Licensee shall not have any right or authority to enter into any agreement on behalf of the Licensor other than the rights specifically granted herein, and shall not incur any obligation on behalf of nor commit the Licensor in any manner.

3. QUALITY ASSURANCE

- 3.1 The Licensee agrees to ensure that all Fruit it sells to others:
- 3.1.1 is true to cultivar;
 - 3.1.2 has been grown and handled in a manner consistent with good viticultural practice; and
 - 3.1.3 has been handled with reasonable precaution taken to avoid preventable infestation by disease causing or transmitting organisms or by other pests harmful to the commercial quality of Fruit;
 - 3.1.4 is packed according to best table grape packing practice; and
 - 3.1.5 is presented for sale in the best possible manner.
- 3.2 Subject to the Licensor giving the Licensee reasonable notice in writing, the Licensee agrees that the Licensor's designated employee or agent may inspect any or all growing facilities, fields and/or storage facilities at any time during normal business hours to ensure that the Vines and the Fruit contained therein are being grown pursuant to Paragraph 3.1 above.
- 3.3 The Licensor or its authorised agent shall have the right to seek and discover and examine all the Vines or Fruit licensed pursuant to this Agreement, and while accompanied by the Licensee or its employees or agents, take away for inspection a reasonable number of samples sufficient for examination of the Vines or Fruit, or part thereof, and for that purpose, subject to the Licensor giving the Licensee reasonable notice in writing, the Licensor is authorised to enter the land designated for the growing of Vines set out in Part 4 of the Schedule and shall take reasonable care in so doing.
- 3.4 Licensee agrees that it will abide by all mandatory local, regional and/or national government laws, rules and/or regulations that govern the growing of Vines and sale and/or distribution of Fruit.
- 3.5 Licensee must take all reasonable steps to ensure that no Vines or parts of Vines or Fruit is misappropriated by any third parties.
- 3.6 Licensee shall not challenge the validity of any intellectual property rights, including Plant Breeder's Rights, in relation to the Vines or Fruit.
- 3.7 Licensee shall not breach or encourage or permit any breach of any intellectual property rights, including Plant Breeder's Rights, in relation to the Vines or Fruit.
- 3.8 Licensee acknowledges that all rights to variations or mutations arising from the Vines or the Fruit or any vines or fruit demonstrating Essential Characteristics of the Protected Product or any Hybrid thereof will be the property of the Licensor notwithstanding that the same may constitute a new cultivar. Licensee must notify the Licensor immediately it becomes aware of the existence of any such variation or mutation or Hybrid thereof.
- 3.9 Where the Licensor enters upon any Property of the Licensee to carry out its rights under this Agreement, it must comply with the OH&S requirements of the Licensee.

4. LABELLING AND PACKAGING

- 4.1 Licensee agrees that, prior to the delivery of Fruit sold to any third party, Licensee shall attach, in a form reasonably approved by the Licensor, to each package, bundle or container of fruit, a durable and legible label or tag denoting:
- 4.1.1 the correct cultivar name;
 - 4.1.2 any plant variety protection number or identifier (if applicable); and
 - 4.1.3 a warning that unlicensed sale or propagation is prohibited.
- 4.2 Licensee agrees to give notice to the Licensor of its intention to use any of the cultivar names of Fruit in any of its catalogues, advertisements, brochures or merchandise lists.
- 4.3 Licensee shall ensure that all Fruit is properly classified, packaged and boxed in accordance with all relevant statutes and regulations affecting the same, and otherwise as may be nominated by the Licensor, acting reasonably, from time to time, in consultation with the Licensee.

5. LICENCE FEE

In respect of all Vines planted in accordance with this Agreement, the Licensee will pay the Licensor \$9.00 per Vine within 30 days of the planting of Vines from time to time.

The Licensee will not pay the Licensor licence fees in respect of Vines, which are planted as replacements for Vines in respect of which licence fees have previously been paid.

6. EARNED ROYALTIES AND REPORTS

- 6.1 Earned Royalties shall accrue to the Licensor at the rate specified in Part 6 of the Schedule to this agreement. The Licensee shall pay Earned Royalties to the Licensor quarterly in arrears for the periods:
- 1 July to 30 September;
 - 1 October to 31 December;
 - 1 January to 31 March;
 - 1 April to 30 June.
- Payment of the Earned Royalties shall be made to the Licensor in respect of each quarter within 30 days of the end of each quarter.
- 6.2 Without prejudice to the Licensor's rights of termination pursuant to paragraph 12, in the event payment of the total amount of Earned Royalties is not received by the Licensor when due, and such delay in payment is not due to any act or fault of the Licensor, Licensee shall pay interest charges on the amount still due from the date such payment was due until fully paid. Interest charges shall be at the rates from time to time prescribed by Section 2 of the *Penalty Interest Rates Act, 1983 (Vic)*.

7. PLANTING OF VINES AND DEVELOPMENT OF VINEYARDS

- 7.1 In connection with the planting of Vines, the Licensor may appoint a representative to assist and supervise the planting and to check and count Vines planted. Within 30 days of completing the planting of the Vines, the Licensee shall provide Licensor with an accurate map showing the quantity and location of the Vines planted.
- 7.2 The Licensee must plant all of the Vines by 30 July 2006 or such later date agreed by the parties where horticultural conditions are not appropriate for planting to be completed by 30

July 2006. If the Licensee plants less than all of the Vines by that date, the license will expire in relation to the unplanted Vines.

7A PROPERTY IN VINES PLANTED

The Licenser acknowledges and accepts that, as between the Licenser and the Licensee, the Vines planted by the Licensee on the Property described in Part 4 of the Schedule is vested in and is the exclusive property of the Licensee or any person claiming through the Licensee, subject to the rights granted under this Agreement.

8. SALE AGENT

The Licensee agrees to appoint the person set out in Part 10 as the initial exclusive sales agent of Licensee for all Fruit grown by Licensee ("Sales Agent"). The Sales Agent shall act as agent for Licensee in connection with all such sales, shall be authorised to make sales on behalf of Licensee and arrange transport for Fruit at Licensee's cost. The Licensee shall be bound to supply Fruit in accordance with orders solicited by the Sales Agent on behalf of the Licensee. The Licensee must notify the Licenser immediately of any change in the appointment of a Sale Agent.

9. BOOKS AND RECORDS

- 9.1 The Licensee shall keep books and records relating to receipt and sale of Fruit for a period of 5 years from the year in which such receipt or sale occurred to accurately show the following information:
 - 9.1.1 the amount of Vines and Fruit on hand; and
 - 9.1.2 the amount and price of Fruit sold to each third party (identified by name and business location) in the Licensed Territory together with the date of sale.
- 9.2 Licensee will provide a signed and dated royalty report specifying the Fruit sold, Fruit on hand and Fruit on Vines by the end of each quarter specified in paragraph 6.1. Should the Licensee have had no activities pursuant to the reports, the Licensee shall provide a signed and dated statement to that effect.
- 9.3 The Licensee's books and records, including those of any subsidiary or related Body Corporate (as that term is defined in the Corporations Act), which relate to the sale of Fruit, and the prices received for such sale, under this Agreement, shall be open for inspection and audit by the Licenser or its designated employees or agents during regular business hours for the purpose of verifying the accuracy of Licensee's gross sales of the Fruit. Upon giving reasonable notice, the books and records relating to the sale of Fruit, and the price received for such sale, under this Agreement shall be made available for inspection by the Licenser or its designated employees or agents. The Licensee shall provide such verification of any matter disclosed in the books and records which relate to the sale of Fruit, and the price received for such sale, under this Agreement as may be reasonably required by the Licenser or its designated employees or agents.
- 9.3. The Licensee shall cause the books and records of any manager employed by it and/or any Sales Agent, including those of any subsidiary or related Body Corporate (as that term is defined in the Corporations Act) which relate to the sale of Fruit, and the price received for such sale, under this Agreement, to be open for inspection and audit by the Licenser or its designated employees or agents during regular business hours for the purpose of verifying the accuracy of the Licensee's gross sales of the Fruit. Upon giving reasonable notice, the

books and records of any Manager and/or Sales Agent relating to the sale of Fruit and the price received for such sale, under this Agreement shall be made available for inspection by the Licensor or its designated employees or agents. The manager and or any Sales Agent shall provide such verification of any matter disclosed in the books and records which relate to the sale of Fruit and the price received for such sale under this Agreement as may be reasonably required by the Licensor or its designated employees or agents.-

- 9.4 Licensee agrees to provide Licensor or its representatives or agents, upon receiving prior and reasonable written notice, with the location of each of the greenhouses, screen houses, laboratories, cold storage and/or field plantings used by or for the benefit of the Licensee containing Vines or Fruit and agrees to permit the Licensor and/or its designated employees or agents, during ordinary business hours, to inspect and audit such facilities and/or plantings for the purpose of verifying the Licensee's reports, books and records concerning Vines and Fruit.

10. INDEMNITY AND INFRINGEMENT

- 10.1 Licensee agrees to indemnify, hold harmless, and defend the Licensor, its officers, employees and/or agents against any and all claims, suits, losses, damages, costs, fees, and/or expenses suffered by the Licensor resulting from or arising out of Licensee's negligence or breach of this Agreement.
- 10.2 Without limiting the generality of paragraph 10.1 above, the Licensee shall not make or publish or cause to be made or published any false, misleading, deceptive or mis-descriptive statement or information in relation to the Vines or Fruit which may give rise to liability of the Licensor, and indemnifies the Licensor against any claim, liability, cost and expense which may be incurred or sustained by the Licensor arising or by reason of any false, misleading, deceptive or misdescriptive statement or information made by the Licensee in relation to the Vines or Fruit.
- 10.3 The Licensor will at all times indemnify and keep indemnified the Licensee and its sub-licensees and the officers, employees and agents of the Licensee and its sub-licensees (in this paragraph 10.3 referred to as "those indemnified") from and against any loss (including legal costs and expenses on a full indemnity basis) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of in connection with or in respect of:
- (a) any breach of this Agreement by the Licensor; or
 - (b) any of the warranties given by the Licensor under paragraph 16.1 proving to have been false, misleading or inaccurate when made.
- 10.4 Licensee and the Licensor agree to notify each other promptly of any suspected propagation, sale or use of Vines or Fruit, or any use of Vines or Fruit from essentially derived varieties, by firms or persons not duly licensed to propagate or sell or use such material. Notification of such suspected infringement shall include all details known to the party providing the information, such as name and address of the person suspected of infringing, location, size of area planted, number of plants propagated or sold or any other information that would enable the other party to investigate such alleged infringement. Licensee agrees to co-operate with Licensor in any infringement proceedings instituted hereunder provided the Licensor pays or reimburses the Licensee's reasonable costs and expenses of doing so.
- 10.5 Nothing herein shall be construed as conferring upon Licensee any right to bring suit for infringement relating to Vines or Fruit, and Licensee acknowledges that it shall not have

any rights relative to the control of any such litigation. Nothing in this Agreement shall be construed as an obligation for Licensor to bring or prosecute actions or suits against third parties for infringement of Licensor's rights.

- 10.6 Where litigation is commenced against the Licensee in respect of any matter involving any breach of the warranties referred to in paragraph 16 or any infringement or alleged infringement referred to in paragraph 16.1, the Licensee may, on leave being granted, withdraw from the litigation and the Licensor will, in its own name and at its own expense, conduct the litigation.

11. USE OF NAMES AND TRADE MARKS

- 11.1 The use of the names designated by the Licensor, contractions thereof or reference thereto by the Licensee in any advertisement, labelling or publicity release relating to the Vines or the Fruit shall be allowed only in the following manner :

11.1.1 "Name of Licensee" is licensed in Licensed Territory by Licensor for the sale of the Fruit variety "Name of Variety".

11.1.2 With respect to describing the origin and characteristics of Vines or Fruit for advertising purposes, the Licensee shall use the Licensor's name only to provide factual and truthful information and shall not use the name to imply endorsement by the Licensor of either Licensee nor endorsement of the performance of Vines or Fruit.

11.1.3 To ensure the Licensor's approval of proposed wording of Licensee's advertising text or use of Licensor's name, Licensee may submit such text to Licensor for prior written approval.

11.1.4 Should Licensee use any advertisement relating to Vines or Fruit or to Licensor, which Licensor, in good faith, finds objectionable on reasonable grounds, Licensee agrees promptly to stop the use of such advertisement upon written notification by Licensor.

11.1.5 The Licensor grants the Licensee a perpetual non exclusive licence to use any trade mark and other marks of the Licensor used in connection with the Protected Product and the Vines, whether such trade marks are:

- (a) registered or unregistered;
- (b) in existence at the date of this Agreement; or
- (c) created after the date of this Agreement.

This clause 11.1.5 will survive the termination or expiry of this Agreement.

11.1.6 If any trade mark of the Licensor is used on or in relation to the Vines or Fruit, then all representations of the trade mark shall be clearly marked or accompanied with a clear statement that the Licensor is the owner of the trade mark and the Licensee uses the trade mark under licence from the Licensor. All use of the trade mark will inure to the Licensor.

12. CANCELLATION BY LICENSOR

- 12.1 It is expressly agreed that if the Licensee should:

12.1.1 fail to well and truly cultivate manure farm and irrigate all the Vines in a good workmanlike and commercially responsible manner and to a standard consistent with best horticultural practice and industry practices for similar Vines AND in all

cases fail to adopt and pursue in the most prompt and careful manner a most effectual means for arresting combating reducing or eradicating pests or diseases having regard to best horticultural and industry practice AND fails to undertake all necessary trellising and pruning of the Vines at proper times and develop and protect and care for the Vines AND fails to comply in all respects with the terms and conditions as the case may be of the Plant Diseases act 1924 (N.S.W.), Phyloxera and Grape Industry Act 1995 (S.A.), Plant Health and Plant Products Act 1995 (Vic.) and Plant Diseases Act, 1914 (W.A.) or any statutory amendments thereof.

- 12.1.2 fail to exercise diligence in the growing of and sale of the Fruit in the Licensed Territory;
 - 12.1.3 fail to deliver any statement or report;
 - 12.1.4 fail to pay royalties at the time or times that the same should be made;
 - 12.1.5 use Vines or Fruit for purposes not herein expressly contemplated;
 - 12.1.6 violate or fail to keep or perform any obligation, term or condition of this Agreement;
 - 12.1.7 violate or induce or knowingly permit others to violate any country, state or other governmental laws, rules or regulations relative to the propagation, sale and or distribution of Vines or Fruit as may be in force in Licensed Territory;
 - 12.1.8 stop or suspend or threatens to stop or suspend payment of all or a class of its debts; then, and in such event, Licensor shall provide written notice of such breach or default to the Licensee specifying the default. If the Licensee shall fail to repair such breach or default or fail to pay reasonable compensation in money within ninety (90) days from receipt by it of such notice, Licensor shall have the right to cancel and terminate this Agreement as to any or all of the rights granted herein upon delivery of second written notice to the Licensee. Such termination shall not relieve the Licensee from its obligation to pay any Earned Royalties then due and owing or royalties that may accrue subsequent to such cancellation upon the Licensee's disposition of existing inventory of Fruit pursuant to the terms and conditions of this Agreement.
- 12.2 In the event of any breach or default of this Agreement by the Licensee which the Licensee fails to remedy or in respect of which the Licensee fails to pay reasonably compensation as provided in paragraph 12.1, subject to clause 13.1 the Licensee's rights under this agreement shall expire and the Licensor may sue for damages for breach of contract.

13. DISPOSITION OF INVENTORY AND FORFEITURE OF OTHER RIGHTS

- 13.1 Upon the lawful termination of this Agreement by either party hereto regarding any or all of the rights granted to the Licensee herein, the Licensee shall provide the Licensor with a written inventory listing the quantity of Vines and Fruit in the possession of Licensee. Licensee shall dispose of the existing inventory of such Fruit within three (3) calendar months from the date of notice of cancellation provided however that such disposition be subject to all terms of this Agreement. Licensee shall not sell or dispose of any Fruit after the three month period has expired.
- 13.2 Should this Agreement be lawfully terminated pursuant to the terms hereof by either Licensor or Licensee, the Licensee shall forfeit all right to use, and agrees to cease all such use, of the Licensor's name and forfeit all other rights granted under this Agreement other than for the purpose of complying with paragraph 13.1.

14. ASSIGNABILITY AND SUB-CONTRACTS

- 14.1 This Agreement is binding upon and shall inure to the benefit of the Licensor and its successors and assigns but subject to this Agreement and in particular paragraphs 17 and 17A, is personal to Licensee and assignable by Licensee only with the express prior written consent of Licensor which consent shall not be unreasonably withheld and provided the assignee agrees to be bound by the terms imposed on the Licensee under this Agreement. PROVIDED ALWAYS it is acknowledged:
- 14.1.1 that the responsible entity from time to time of Timbercorp Orchard Trust or any entity that holds the office of manager of the Timbercorp Orchard Trust from time to time is an acceptable assignee and provided the assignee agrees to be bound by the terms of this Agreement:
- 14.1.2 the Licensee may sub-license all rights under this Agreement to Timbercorp or any company in the Timbercorp Group or to the responsible entities or managers of Projects and to any growers or participants in any such Projects or projects.
- 14.2 Subject to paragraph 14.3, the Licensee may sub-contract to any third party the performance of any of its obligations under this Agreement with the prior consent of the Licensor which consent shall not be unreasonably withheld.
- 14.3 The Licensor consents to the appointment of Grape House Pty Ltd and Costa Management Pty Ltd by the Licensee to sub contract the performance of the obligations of the Licensee in whole or in part for the term of this Agreement.

15. WAIVER

It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach of default.

16. WARRANTY AND ACKNOWLEDGEMENT

- 16.1 The Licensor warrants that:
- (i) it owns the rights to the Protected Products (including the trade marks) and has the right, authority and capacity to grant the licence and rights granted under this Agreement;
- (ii) the exercise by the Licensee of its rights under this Agreement will not infringe the rights and intellectual property rights of any other person.
- 16.2 To the extent permitted by law, Licensor makes no express or implied warranties or merchantability, trueness to type, or fitness of Vines or Fruit for a particular purpose and shall have no liability to Licensee or of its third party customers on account of any defect or failure of Vines or Fruit.
- 16.3 All other conditions and warranties which would, or may, but for this provision, be implied (whether by Statute, law, trade usage or otherwise howsoever) into this Agreement are expressly excluded.
- 16.4 Nothing in this Agreement shall be construed as:
- 16.4.1 conferring by implication, estoppel or otherwise any licence or rights under any other patents, plant variety titles, or variety protection certificates belonging to Licensor other than such limited rights granted to Licensee in this Agreement; or
- 16.4.2 an obligation to furnish any know-how in relation to Vines or Fruit, save as expressly provided in this Agreement.

- 16.5 The Licensee acknowledges that it has relied on its own viticultural knowledge and has taken expert advice as to the suitability, fitness of the Vines or the Fruit, the suitability of the district and soil in which the Vines are to be planted or otherwise and that no representations whatsoever other than are set out in this Agreement, have been made by the Licensor as to the suitability or fitness for the purpose of trueness of type or merchantability of the Vines or Fruit. The Licensee further acknowledges that the cultivars the subject of this Agreement have not been viticulturally assessed and the genetic stability thereof has not been established.

17. DEALING WITH PROPERTIES

The Licensee must not sell, transfer, let, license or otherwise dispose of the Properties referred to in Part 4 of the Schedule on which the Vines are planted, unless the Licensee procures the purchaser, transferee, lessee, licensee or other party proposed to obtain rights over the land ("the third party"):

- 17.1 to enter into an agreement with the Licensor to assume and observe the prohibition against the Propagation of the Vines or Fruit; and
- 17.2 to enter into an agreement with the Licensor to restrict the third party's right to sell, transfer, lease or otherwise dispose of the Vines or Fruit other than on the terms imposed on the Licensee under this Agreement.

17A PERMITTED DEALINGS

Subject to compliance with paragraph 17, the Licensor consents to the Licensee entering into leases, sub-leases and licenses granted for the purpose of a Project, on any part of the Properties referred to in Part 4 of the Schedule to and by any company in the Timbercorp Group, responsible entities or managers of Projects which are not part of the Timbercorp Group and to any growers or participants in the Projects whether those leases, sub-leases and licenses exist at the date of this Agreement, or arise subsequently.

18. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof but this Agreement shall be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

19. DUE DILIGENCE

Subject to clause 7.2, the Licensee agrees that either it or any lessee or licensee of the Properties referred to in Part 4 of the Schedule will diligently proceed with the growing of the Vines and sale of Fruit to third parties in the Licensed Territory and will use best endeavours to sell Fruit in quantities sufficient to meet the market demands therefor.

20. FORCE MAJEURE

The Licensee shall be excused from any performance required hereunder if such performance is frustrated due to any catastrophes or other major events beyond its reasonable control. Such catastrophes or major events include, but are not limited to, war, riot and insurrection, laws, proclamations, edicts, ordinances or regulations, strikes, lockouts or other serious labour disputes;

and floods, fires, explosions or other natural disasters. When such events have abated, the parties' respective obligations hereunder shall resume.

21. CHOICE OF LAW AND JURISDICTION

- 21.1 This Agreement and its validity, construction, enforcement and interpretation shall be governed by the laws of Victoria provided that where a matter is governed by the law of a jurisdiction outside Victoria which cannot be excluded or negated in respect of its application to such matter, then this Agreement shall, in respect of such matter, be construed and interpreted subject to such law.
- 21.2 The parties hereby agree that venue and jurisdiction with respect of any matter arising under this Agreement shall be exclusively in the State or Federal Courts, as applicable, located in Victoria, Australian and Courts of Appeal therefrom.
- 21.3 Each of the parties hereby irrevocably and unconditionally waives any objections it may now or hereafter have to the laying of venue or any action or proceeding in any of the Courts referred to in Paragraph 21.2 hereof and any claim that they may now or hereafter have that any such action or proceeding has been brought in an inconvenient forum or place.

22. NOTICES

- 22.1 Any notice, demand, consent or other communication to be given by a party to another party under this Agreement must:
 - 22.1.2 be in writing;
 - 22.1.3 give the address of the recipient as set out in Part 9 of the Schedule to this Agreement or as varied by notice from the relevant party; and
 - 22.1.4 be given or served by facsimile, or left at or sent by prepaid registered post to that address or facsimile number.
- 22.2 In the absence of proof to the contrary, a notice is deemed to have been given or served on the party to whom it was sent:
 - 22.2.1 in the case of hand delivery, upon delivery during Business Hours of the recipient;
 - 22.2.2 in the case of pre-paid registered post, 3 Business Days after the date of dispatch; and
 - 22.2.3 in the case of facsimile transmission, at the time of dispatch if that dispatch is during Business Hours; or at 9.00am on the next Business Day following the day of dispatch, if the dispatch is outside Business Hours.
- 22.3 In this clause, 'Business Hours' means from 9.00am to 5.00pm on a Business Day.

23. MISCELLANEOUS

The attachment and Exhibits attached are part of this Agreement as if contained herein.

24. LIFE OF AGREEMENT

Unless sooner lawfully terminated by either party to this Agreement with respect to any or all rights granted herein, this Agreement shall remain in full force and effect from the effective date of this Agreement until the expiry of the PBR on 27th March, 2027.

25. COMPLETE AGREEMENT

It is understood and agreed between the parties hereto that this Agreement constitutes all of the Agreements, both written and oral between the Licensor and the Licensee and that all prior Agreements respecting the subject matter hereof, either written or oral, expressed or implied, between the parties hereto shall be abrogated, cancelled and are null and void and of no effect.

26. AMENDMENT

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

27. GST

- 27.1 If any supply made under or in connection with this Agreement is a Taxable Supply (as defined in the GST Act), then the purchaser of that supply will pay the GST in respect of that supply to the supplier of that supply, where the GST is calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this Agreement is the value of the Taxable Supply.
- 27.2 The supplier of that supply must provide a Tax Invoice to the purchaser of that supply prior to the due date for payment of the consideration due in respect of the supply.

28. COSTS

- 28.1 The parties bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.
- 28.2 Except to the extent it is otherwise expressly provided in this Agreement, the Licensee pays all stamp duty on this agreement and on any instrument or other document executed to give effect to any provision of this Agreement.

29. DAY OF PAYMENT

If any day appointed or specified by this Agreement for the payment of money falls on a Saturday, Sunday or a day on which banks (as defined in the *Banking Act 1959 (Cth)*) are not open for business ('Non Business Day'), the day so appointed or specified is deemed to be the next day which is not a Non Business Day.

30. GOODWILL

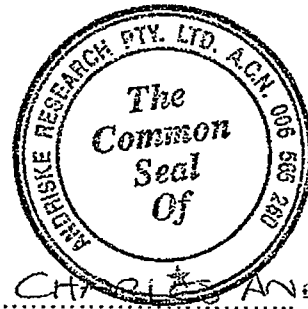
Any goodwill in, or in relation to, the Protected Products or the Licensed Products arising by virtue of this agreement shall remain the property of the Licensor. The Licensee shall not be entitled to any compensation or payment in respect of any such goodwill upon lawful termination of this agreement.

IN WITNESS WHEREOF the parties have hereto set their hands and seals the day and year first hereinbefore referred to.

THE COMMON SEAL of ANDRISKE RESEARCH PTY.)

LTD. A.C.N. 006 565 260 was affixed in the presence of)

authorised persons)



Director C.C. [Signature] Full Name GARY CHARLES ANDRISKE
Usual Address : Paringi, N.S.W.

Secretary [Signature] Full Name PAMELA JANETE WHITE
Usual Address: Paring, N.S.W.

EXECUTED by ORCHARD INVESTMENTS MANAGE-)

MENT LTD. ACN 105 684 231 in accordance with Sec. 127.1)

of the Corporations Act)

Director [Signature] Full Name MICHAEL KIMLEY
Usual Address SUITE 604 505 ST KILPA ROAD, MELBOURNE

Director [Signature] Full Name TREVOR WOTTE
Secretary [Signature] Full Name TREVOR WOTTE
Usual Address 6 WHEAT COVEY JERMONT SOUTH VIC 3133

EXECUTED by TIMBERCORP LIMITED ACN)

055 185 067 in accordance with section 127(1) of the)

Corporations Act)

Director [Signature] Full Name John Vaughan
Usual Address 6 Cavendish Place, Brighton 3186

Secretary [Signature] Full Name Mark Ayn
Usual Address [Signature]

SCHEDULE

PART 1 : PROTECTED PRODUCTS

Plant Breeders Rights Application No. 1996/018 in respect of the White Seeded Grape Cultivar known as "BW41/5" and granted 27th March, 2002, and Numbered 1910 as recorded by the Certificate, a true copy of which is annexed hereto and marked with the letters "BW41/5".

PART 2 : LICENSEE

Name : ORCHARD INVESTMENTS MANAGEMENT LTD.
A.C.N. 105 684 231 as responsible entity of the Timbercorp
Orchard Trust

and

TIMBERCORP LIMITED
A.C.N. 055 185 067

PART 3 : LICENSED PRODUCTS

45,000 White Seeded Grape Cultivar known as "BW41/5" Vines and Grapes therefrom (Plant Breeder's Rights Application No. 1996/018 and granted 27th March, 2002, and Numbered 19102010).

PART 4 : LICENSED TERRITORY :

For planting of Vines:

South of Latitude 32-54 degrees South in all of Australia, save in Western Australia, it shall be South of Latitude 30 degrees South including but not limited to the following Properties:

1. a property known as Bella Vista consisting of Lots 1 and 2 on Proposed Subdivision of Lot 4378 in DP 767245 and Part W.L.L. 9829 (a copy of which is annexed hereto and marked "Property 1")
2. Such other land notified by the Licensee to the Licensor from time to time.

For Sale of Fruit:

1. For export quality - The World
2. For less than export quality - Australia.

PART 5 LICENCE FEE

INTENTIONALLY DELETED

PART 6 EARNED ROYALTY

Royalty Rate: 3% of the Gross Sales (as defined) of the Fruit

PART 7 QUANTITIES OF VINES AND DATES BY WHICH PLANTING IS TO BE COMPLETED

INTENTIONALLY DELETED

PART 8: REPORTS

INTENTIONALLY DELETED

PART 9: ADDRESS FOR NOTICES

Licensor: ANDRISKE RESEARCH PTY. LTD.
Box 5053, P.O.,
MILDURA. VIC. 3502.
Fax: (03) 5024 0336

Licensee: ORCHARD INVESTMENTS MANAGEMENT
LIMITED,
Level 2, 613 St Kilda Road,
MELBOURNE. VIC. 3004.

and a copy to:
TIMBERCORP ASSET MANAGEMENT PTY
LTD
Level 8, 461 Bourke Street,
MELBOURNE, VIC. 3000

TIMBERCORP LIMITED
Level 8, 461 Bourke Street,
MELBOURNE, VIC. 3000

PART 10: SALES AGENT

The initial Sales Agent shall be THE GRAPE HOUSE PTY. LTD.

"A"

Constitution
Timbercorp Orchard Trust

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Details of this Constitution

Date: 15 September 2003

By:

Tekton One Managed Investments Limited
(ACN 105 684 231)
of Level 2, 613 St Kilda Road,
Melbourne, Victoria 3004
(the Responsible Entity)

Background to the Constitution

- A. This document comprises the Constitution of the Trust and is made with the intent that it be legally enforceable as between the Responsible Entity and each Member.
- B. The Borrower is the trustee of the Timbercorp Orchard Trust, and is proposing to be the holder of the AFS Licence which authorises to act as the Responsible Entity of the Trust, which is the registered as a managed investment scheme pursuant to the Corporations Act.

Operative Provisions

1. PRELIMINARY

1.1 Declaration

This deed poll is declared by the Responsible Entity to be the constitution of the Trust.

1.2 Name of Trust

The Trust is called the "Timbercorp Orchard Trust" or such other name as the Responsible Entity determines from time to time.

1.3 Definitions

In this Constitution, unless there is something in the subject matter or context that is inconsistent, these words and phrases have the following meanings:

Aggregate

Unpaid Amount: the aggregate of the amounts of the Application Prices of all Partly Paid Units which have not been paid;

Application

Price: the application price for a Unit calculated in accordance with this Constitution;

Approved

Valuer: a person who is appointed to act as a valuer by the Responsible Entity in relation to the Trust, who is independent of the Responsible Entity and is experienced in relation to the valuation of assets or investments of the kind required to be valued;

ASIC:	the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions;
ASX:	Australian Stock Exchange Limited;
Assets:	all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, any Redemption Price not yet paid or any other Distributable Amount payable but not paid;
Auditor:	a person appointed in accordance with clause 30.1 to act as an auditor of the Trust, the Compliance Plan or both;
BBSW:	<p>(a) the rate determined by the Responsible Entity to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10:30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of 1 month after eliminating one of the highest and one of the lowest of those rates; or</p> <p>(b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Responsible Entity to be the average of the buying rates quoted to the Responsible Entity by 3 Australian banks selected by the Responsible Entity at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to 1 month;</p>
Books Closing Date:	the date (if any) determined by the Responsible Entity in accordance with paragraph 12.5(c);
Bonus Issue Price:	the issue price of the bonus Units issued under paragraph 3.2(b);
Business Day:	<p>(a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne; and</p> <p>(b) any other day specified by the Responsible Entity to be a business day for the purposes of this definition;</p>
Cash:	money in any currency and includes cheques drawn in such currency;
Class:	a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class;
Commencement Date:	the date of this Constitution;
Compliance Committee:	any compliance committee established by the Responsible Entity in connection with the Trust as required by the Corporations Act;
Compliance Committee Member:	a member of the Compliance Committee;
Confirmation:	a written transaction statement, signed on behalf of the

	Responsible Entity, by autographical or mechanical or other means, of the number of Units Registered in the name of the Member or person named in that statement;
Constitution:	this Deed;
Corporations Act:	the Corporations Act 2001 (Cth) and the Corporations Regulations;
Designated Application Date:	(a) the last day of each month (or if a day is not a Business Day on the next Business Day); and (b) such other Business Day specified by the Responsible Entity;
Designated Redemption Date:	(a) the last day of each month (or if a day is not a Business Day on the next Business Day); and (b) such other Business Day specified by the Responsible Entity;
Designated Time:	5 p.m. or such other time as may be specified by the Responsible Entity in the jurisdiction in which the Office is located;
Disclosure Document:	includes: <ul style="list-style-type: none"> (a) any disclosure document in respect of the Units in the Trust lodged by the Responsible Entity with ASIC if so required by the Corporations Act; (b) a "disclosure document" as defined in section 9 of the Corporations Act; (c) a "product disclosure statement" as defined in section 9 of the Corporations Act; (d) a document, including an information memorandum under which offers to subscribe for the Units in the Trust are made.
Distributable Amount:	the amount, if any, determined by the Responsible Entity in accordance with paragraph 12.5(c) ;
Distributable Income:	in respect of a Distribution Period or Financial Year, as the case may be, is the Income of the Trust for the Distribution Period or Financial Year, as the case may be, provided that: <ul style="list-style-type: none"> (a) where the net Income of the Trust exceeds the Taxable Income of the Trust, the Responsible Entity may, in its absolute discretion, determine that the Distributable Income will be the Income of the Trust for the Distribution Period or Financial Year, as the case may be, or some amount not less than the Taxable Income of the Trust but not greater than the Income of the Trust for the Distribution Period or Financial Year, as the case may be; (b) where the Taxable Income of the Trust exceeds the Income of the Trust, the Responsible Entity may, in its

	absolute discretion, determine that the Distributable Income will be the Taxable Income of the Trust for the Distribution Period or Financial Year, as the case may be, or some amount not less than the Income of the Trust but not greater than the Taxable Income of the Trust for the Distribution Period or Financial Year, as the case may be;
	(c) where the Taxable Income of the Trust includes a Franking Credit Amount, assessable under section 6AC of the Tax Act or provisions having the same or substantially similar effect, such amounts will be excluded for the purpose of determining the Distributable Income;
Distribution Calculation Date:	the last day of each Half Yearly Period or such other days as the Responsible Entity designates;
Distribution Period:	<p>each of the periods commencing on the day after the last day of the last preceding Distribution Period and ending on:</p> <p>(a) the last day of June and December, or</p> <p>(b) such other day as the Responsible Entity specifies in accordance with clause 13,</p> <p>in each year during the continuance of the Trust, and includes the period commencing on the Commencement Date and terminating on the next Distribution Calculation Date with the exception of the last Distribution Period which commences on the day after the last day of the last preceding Distribution Period and ends on the date of termination of the Trust;</p>
Dollars, A\$ and \$:	the lawful currency of the Commonwealth of Australia;
Extraordinary Resolution:	has the meaning given to that expression in section 9 of the Corporations Act;
Financial Statements:	has the meaning given to that expression in section 9 of the Corporations Act;
Financial Year:	<p>(a) for the first financial year, the period from the establishment of the Trust to the next 30 June;</p> <p>(b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and</p> <p>(c) in all other circumstances, the 12 month period ending on 30 June;</p>
Franking Credit Amount:	in respect of a Distribution Period, the amount, if any, which in relation to a Distribution Period is included in the assessable income of the Trust under section 160AQT of the Tax Act;
Franking Credit Portion:	a particular Distribution Period, in respect of a particular Member, is the amount calculated by the Responsible Entity in accordance with the following formula:

$$A = B \times C/D$$

- where: A is the Franking Credit Portion;
- B is the Franking Credit Amount for the Distribution Period;
- C is the amount of the Income Entitlement of the Member for the Distribution Period consisting of dividend income in respect of which franking credits as defined in the Tax Act have been received under the provisions of the Tax Act;
- D is the aggregate of the amounts of the Income Entitlements of all Members for the Distribution Period consisting of dividend income in respect of which franking credits as defined in the Tax Act have been received under the provisions of the Tax Act for the Distribution Period.

Fully Paid Unit:	a Unit on which the Application Price has been fully paid;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the <i>A New Tax System (Goods & Services Tax) Act 1999</i> ;
GST Rate:	the rate of GST under the GST Law;
Half Yearly Period:	the six month period ending on the last day of June or December with the exception of: <ul style="list-style-type: none"> (a) the first Half Yearly Period which commences on the Commencement Date and ends the day before the first day of the next Half Yearly Period; (b) the last Half Yearly Period which commences on the day after the last day of the last preceding Half Yearly Period and ends on the day of termination of the Trust, and Half Yearly is to be interpreted accordingly;
Income:	the net income of the Trust for trust law purposes;
Income Distribution:	the amount distributed in accordance with clause 12.1 in respect of a Member for a Distribution Period;
Income Entitlement:	the amount of income to which a Member is entitled under clause 11 in respect of a Member of a Financial Year;
Liabilities:	all present liabilities of the Trust including any provisions and reserves which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust, including: <ul style="list-style-type: none"> (a) proceeds of redemption which have not yet been paid; (b) any amount in the distribution account which has yet to be distributed; and (c) such other amounts as are required to meet contingent liabilities of the Trust.
Liquid:	has the meaning given to that expression in section 601KA of the Corporations Act;

Listing Rules:	the listing rules of the ASX;
Market Value of the Assets:	the aggregate market value of the Assets calculated in accordance with clause 9.2;
Member:	the person Registered as the holder of a Unit including persons jointly Registered;
Minimum Application Amount:	the minimum application amount specified under clause 6.10;
Minimum Holding Amount:	the minimum holding amount specified under paragraph 3.4(i);
Minimum Subscription:	the minimum subscription for Units specified in the first Disclosure Document and subsequent Disclosure Documents;
month:	calendar month;
NAV Per Unit:	the Net Asset Value divided by the Number of Units in Issue;
Net Asset Value:	the Market Value of the Assets less the Liabilities;
Number of Units in Issue:	the Number of Units have been aggregated as far as possible into Whole Units;
Office:	the registered office from time to time of the Responsible Entity;
Paid-up Proportion :	the number obtained by adding each Partly Paid Unit multiplied by its Relevant Percentage;
Partly Paid Unit:	a Unit on which the Application Price has not been paid in full;
person:	includes a company, corporation, firm, authority, unincorporated association or body of persons;
Register:	the register of Members kept by the Responsible Entity under the Corporations Act;
Registered:	recorded in the Register;
Registration:	recording in the Register;
Relevant Percentage:	in the case of a Partly Paid Unit the percentage calculated in accordance with the following formula at the relevant time: <div style="text-align: center;"> $\frac{A-B}{A} \times \frac{100}{1}$ </div> <p>where</p> <p>A means the sum determined by dividing Net Asset Value plus the Aggregate Unpaid Amount by the number of Units in issue;</p> <p>B means the amount of the Application Price of the Unit which is unpaid.</p>
Resolution:	(a) a resolution passed at a meeting of Members in the Trust:

	<ul style="list-style-type: none"> (i) on a show of hands, by the "required majority" of Members present in person or by proxy and voting on (ii) the show of hands; or (b) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or (c) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.
	Except where this Constitution or any applicable law provides otherwise, the "required majority" is a simple majority;
Responsible Entity:	Tekton One Managed Investments Limited (ACN 105 684 231), the responsible entity of the Trust, and any replacement responsible entity;
Rules:	at any time means the rules, procedures and matters (if any) then most recently adopted and published by the Responsible Entity;
Security Interest Rules:	the rules and policies adopted by the Responsible Entity from time to time for the recognition of encumbrances over Units in accordance with clause 3.5;
Special Resolution:	has the meaning given to that expression in section 9 of the Corporations Act;
Tax:	all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties on such amounts;
Tax Acts:	<ul style="list-style-type: none"> (a) the Income Tax Assessment Act 1936 (as amended); (b) the Income Tax Assessment Act 1997 (as amended); (c) the Income Tax (Transitional Provisions) Act 1997 (as amended); (d) Taxation Administration Act 1953 (as amended); and (e) the taxation rating legislation, of the Commonwealth of Australia, as the case requires;
Taxable Income:	is the amount which in the opinion of the Responsible Entity constitutes the net income of the trust estate constituted by the Trust and, ascertained in accordance with section 95(1) of the Tax Act;
Transaction Costs:	the Responsible Entity's estimate of the sum which represents on a per Unit basis the total costs which would have been incurred in selling or disposing of the Assets;
Trust:	the trust constituted or governed by this Constitution;
Unit:	an undivided share in the beneficial interest in the Trust as provided in this Constitution;
Units in Issue:	all Units for the time being created and issued but not cancelled;
Valuation Time:	the valuation time as determined by the Responsible Entity in

accordance with clause 9;

Withdrawal

Offer: an offer made by the Responsible Entity to Members in accordance with sections 601KB to 601KE of the Corporations Act.

1.4 Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) where a word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form in respect of such word or phrase unless the context otherwise requires has a corresponding meaning;
- (f) the words "includes", "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (g) amend includes delete, modify or replace;
- (h) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution; and
- (i) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

1.5 Other Documents

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

1.6 Constitution Legally Binding

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

1.7 Governing Law

The laws of Victoria, and where applicable the laws of the Commonwealth of Australia, govern this Constitution.

1.8 Other Obligations Excluded

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

2. ASSETS HELD ON TRUST

2.1 Assets Vested in Responsible Entity

The Assets will be vested in and held by the Responsible Entity on trust for Members on the terms and subject to the conditions of this Constitution.

2.2 Assets Must Be Held Separately By the Responsible Entity

The Responsible Entity must if, and to the extent, required by the Corporations Act, clearly identify the Assets as property of the Trust and hold the Assets separately from the assets of the Responsible Entity and any other managed investment scheme if, and to the extent, required by the Corporations Act.

3. UNITS

3.1 Nature of Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Each Fully Paid Unit confers an equal undivided interest in the Trust and unless this Constitution provides otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate after deducting the amount which remains to be paid up on the Unit.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer:
 - (i) an interest in a particular Asset;
 - (ii) an entitlement to lodge a caveat in respect of a particular Asset;
 - (iii) an entitlement to interfere with the rights or powers of the Responsible Entity in its dealings with the Assets;
 - (iv) an entitlement to exercise any rights, powers or privileges in respect of any Asset,other than as provided in this Constitution or permitted by Law.
- (d) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.
- (e) Fractions of a Unit may not be issued by the Responsible Entity. Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is to be rounded down or up respectively to the nearest whole Unit.
- (f) Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset of the Trust.

3.2 Additional Units and Bonus Units

- (a) The Responsible Entity may from time to time create additional Units. The number of additional Units created must be determined by the Responsible Entity in accordance with clause 6.
- (b) The Responsible Entity may distribute capital of the Trust to Members by appropriating the whole or part of the amount standing to the credit of the reserve referred to in clause 32, such distribution to be satisfied by the payment of Cash or the issue of Units to Members in proportion to the number of Units held by them respectively.

3.3 Consolidation and Division of Units

Units may be consolidated or divided as determined by the Responsible Entity or any Resolution of Members, provided such consolidation or division does not result in the proportionate interest of Members being affected.

3.4 Transfer of Units

- (a) Subject to this Constitution, Members may transfer Units.
- (b) Transfers must be in a form approved by the Responsible Entity and if necessary be presented for Registration duly stamped.
- (c) The transferee in respect of a transfer of Units is deemed to have agreed to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer and to be bound by this Constitution.
- (d) A transfer is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the Transfer is Registered.
- (e) The Responsible Entity may refuse to record any transfer of Units in the Register without giving any reason for the refusal.
- (f) The Responsible Entity may refuse to record any transfer of Units in the Register during the 5 Business Days immediately preceding any distribution.
- (g) The Responsible Entity may refuse to record any transfer of Units in the Register which is in breach of the Security Interest Rules.
- (h) The Responsible Entity is not required to give effect to any transaction, transfer or dealing at the request of or for the benefit of a Member unless the Member has paid to the Responsible Entity's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.
- (i) The Responsible Entity may refuse to record a transfer in the Register if it would result in either the transferor or transferee holding less than the Minimum Holding Amount specified at the time.
- (j) The Responsible Entity may Register a transfer notwithstanding that the Responsible Entity at the time of Registration has notice of the transferor Member's death.
- (k) Other than as provided in sub clauses 3.4(e) to (f) and (k) and 15.5(b), there is no restriction on the transfer of Units.

3.5 Security Interest Rules

The Responsible Entity may make and amend rules and policies from time to time for the recognition of encumbrances over Units.

3.6 Other Instruments

Subject to the Corporations Act:

- (a) the Responsible Entity may issue any other interests, rights or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (Other Instrument) which the Responsible Entity determines; and
- (b) such Other Instruments may be issued for such consideration and with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls, redemption, conversion or otherwise, as the Responsible Entity decides.

3.7 Rights Attaching to Other Instruments

The holders of Other Instruments issued by the Responsible Entity hold those Other Instruments subject to the rights, restrictions and obligations attaching to those securities or instruments.

4. PARTLY PAID UNITS

4.1 Application Price of Units

The Application Price of Units may be payable by instalments as set out in this clause 4.

4.2 Application Price May be Payable by Instalments

The Responsible Entity may determine at any time that Units to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Responsible Entity determines or, if the Responsible Entity so determines, by a single instalment payable at such time as the Responsible Entity determines.

4.3 Terms and Conditions may be Varied

Subject to any applicable statutory duty requiring the Responsible Entity to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 4.2, those terms and conditions may be varied or compliance with those terms and conditions waived only with the consent of the Responsible Entity. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

4.4 Responsible Entity must give Members Notice

The Responsible Entity must give Members such notice as is specified in the terms of issue of the Unit. If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Responsible Entity determines not exceeding BBSW plus 3% per annum. The Responsible Entity may waive payment of that interest in whole or part.

4.5 Payment may be Revoked, Reduced or Postponed

- (a) The Responsible Entity may revoke, reduce or postpone the payment of an instalment.
- (b) An instalment is deemed to be due on the date determined by the Responsible Entity.
- (c) The non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Member does not invalidate the instalment being due.
- (d) Subject to the Corporations Act, the Responsible Entity may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units.
- (e) Any instalment which, by the terms of issue of the Unit, becomes payable on the issue of the Unit or at any date fixed by or in accordance with such terms of issue is deemed to be an instalment of which the Responsible Entity has given Members notice in accordance with clause 4.4. In the case of non-payment, all the provisions of this Constitution as to payment of interest, forfeiture or otherwise apply as if such notice had been given.

4.6 Failure to Pay in Full any Instalments Due

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Responsible Entity may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable expenses incurred by the Responsible Entity as a result of the non-payment. The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.

4.7 Failure to Comply with Notice issued under Clause 4.6

If the requirements of any notice issued under clause 4.6 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Responsible Entity so determining; and
- (b) subject to the Corporations Act and this Constitution, all voting rights, entitlements to the distribution of income and dividends and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Responsible Entity.

4.8 Forfeited Unit

A forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:

- (a) at a price calculated in accordance with clause 7.1; or
- (b) by private treaty or public auction, if the ASIC has given any necessary relief from the provisions of the Corporations Act and if the Responsible Entity complies with the conditions of that relief.

At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Responsible Entity thinks fit.

4.9 Consequences of Forfeiture of Units

The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units (and has no claims or demands against the Responsible Entity or the Trust in respect of the forfeited Units but remains liable to pay to the Responsible Entity all moneys which at the date of forfeiture were payable by the former Member to the Responsible Entity in respect of the forfeited Units (including expenses and together with interest at such rate as the Responsible Entity determines not exceeding BBSW plus 3% per annum) but the former Member's liability ceases if and when the Responsible Entity receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

4.10 Statement is Conclusive Evidence

A statement signed by a duly authorised officer of the Responsible Entity that a Partly Paid Unit has been duly forfeited on a date stated in it is conclusive evidence of the facts included in the statement as against all persons claiming to be entitled to the forfeited Units.

4.11 Sale or Disposal of Forfeited Units

Where a Partly Paid Unit is forfeited pursuant to this clause 4 the Responsible Entity may receive the consideration, if any, given for a forfeited Unit on the sale or disposal, and the Responsible Entity may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of and that person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit nor shall the

person's title to that Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

4.12 Responsible Entity may deduct the amount of Instalment owing

Where forfeited Units are sold or disposed of for Cash, the Responsible Entity must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Responsible Entity may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.

4.13 Joint and Several Liability

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

4.14 Rights and Obligations

Subject to the Corporations Act and the provisions of this Constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

5. MEMBERS

5.1 Non-Resident Members

A person who is not a resident of Australia may be a Member.

5.2 Joint tenancy

- (a) Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.
- (b) Any person registered jointly may give an effective receipt on behalf of the joint holders.

5.3 Death or Legal Disability of a Member

- (a) If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only:
 - (i) "the survivor", where the deceased was a joint holder holding as a joint tenant; or
 - (ii) "the legal personal representative", in any other case,will be the person recognised as having any claim to Units Registered in the Member's name.
- (b) The survivor or legal personal representative, as the case may be:
 - (i) may elect in a form approved by the Responsible Entity either to be Registered, or for a nominee to be Registered, as the holder of those Units, subject to the production of any evidence which may be required by the Responsible Entity from time to time; and
 - (ii) will be entitled to receive and may give a discharge for all moneys payable in respect of the Units,
- (c) The survivor or legal personal representative, as the case may be, is not entitled to receive notices of or to attend or vote at any meetings of Members until Registered as a Member.

5.4 Register of Members

The Responsible Entity must keep a Register at the Office in accordance with the Corporations Act.

5.5 Inspection of Register of Members

The Responsible Entity must allow the Register to be inspected in accordance with the Corporations Act.

5.6 Changes in Member's Details

A Member must notify the Responsible Entity of any change in its details kept in the Register.

6. APPLICATION FOR UNITS

6.1 Application Form

- (a) An applicant for Units must complete a form which is approved by the Responsible Entity and leave it for, or deliver it to, the Responsible Entity at its Office, if the Responsible Entity so requires.
- (b) The form may be transmitted electronically to the Responsible Entity with its approval, provided the original application form is left for, or delivered to, the Responsible Entity at its Office.
- (c) An applicant for Units or Other Instruments must complete a form approved by the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.

6.2 Payment of Application Moneys

- (a) Payment in a form acceptable to the Responsible Entity or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity, must accompany the application form and be received by or be made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time.
- (b) The Responsible Entity may require property other than Cash being transferred to it under paragraph 6.2(a) to be valued by an Approved Valuer.
- (c) If the Responsible Entity accepts a transfer of property other than Cash, any costs associated with the valuation or transfer of the property are to be paid or reimbursed out of the property being transferred.

6.3 Receipt of Application

- (a) For the purposes of this clause 6, an application for Units is only taken to have been received by the Responsible Entity when it has:
 - (i) received an application form for Units completed in full; and
 - (ii) received the application moneys relating to the application for Units or had the property against which the Units are to be issued vested in it.
- (b) For the purposes of this clause 6, the Responsible Entity may treat receipt of a cheque or other promise or direction to pay as receipt of the application moneys.
- (c) For the purposes of this clause 6, an application for Units will be deemed to have been received by the Responsible Entity at the following times:
 - (i) if left for or delivered personally to the Responsible Entity at its Office during business hours on a Business Day, on the date and time of

- being so left or delivered;
- (ii) if left for or delivered at the Responsible Entity's Office on a day that is not a Business Day or outside business hours on a Business Day, at 9.00 am on the date on which the Office next opens for business;
 - (iii) if sent by post to the Responsible Entity's Office, on the date and time of delivery to the Office; or
 - (iv) if transmitted electronically to the Responsible Entity's Office, at 9.00 am on the Business Day on which the Responsible Entity receives the deposit of the application moneys in a bank account of the Trust.
- (d) In the case where the Responsible Entity does not require an application form for Units to be completed, the Responsible Entity may determine that it is deemed to have received the application at the time it receives the application moneys or the property against which the Units are to be issued are vested in it.

6.4 Responsible Entity May Reject Application for Units

- (a) The Responsible Entity may reject an application for Units in whole or in part without giving any reason for the rejection.
- (b) Where the Responsible Entity rejects an application for Units, it must return any application moneys and property to the applicant not later than the next Business Day after it is deemed to have received the application in accordance with clause 6.3.

6.5 Acceptance of Application

- (a) Where an application for Units is received and accepted by the Responsible Entity not later than the Designated Time on a Business Day, the application for Units is received and accepted on that Business Day.
- (b) Where an Application for Units is received and accepted:
 - (i) after the Designated Time on a Business Day; or
 - (ii) on a day that is not a Business Day,the application for Units is deemed to have been received and accepted on the next Business Day before the Designated Time.

6.6 Processing of Applications

- (a) Subject to sub-clause 6.6(b), an application received and accepted in accordance with clause 6.5 will be processed as at the Designated Application Date immediately following the Business Day on which the application is received and accepted by the Responsible Entity.
- (b) The Responsible Entity may determine that an application received and accepted in accordance with clause 6.5 after a specified Business Day but before the following Designated Application Date will be processed as at the second Designated Application Date following the Business Day on which the application is received and accepted by the Responsible Entity.

6.7 Application Price of Units

- (a) All Units issued under the first Disclosure Document and the first 6.75 million Units issued to Timbercorp Limited and/or its nominee will be issued at the application price of \$1 per unit. All other Units must only be issued at the Application Price equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs} + \text{Aggregate Unpaid Amount}}{\text{number of Units on issue}}$$

- (b) Each of the variables in clause 6.7 must be determined as at the next Valuation Time after:

- (i) the Responsible Entity receives the application for Units; or
- (ii) the Responsible Entity receives the application money, or the property against which Units are to be issued or vested in the Responsible Entity,

whichever happens later.

6.8 Issue Date

Units are taken to be issued on the date or dates specified in the first Disclosure Document, the date or dates on which Timbercorp Limited and/or its nominee apply for the first 6.75 million Units issued to them and otherwise on the Designated Application Date on which the application is processed by the Responsible Entity in accordance with Clause 6.6.

6.9 Rounding of Issue Price

The Issue Price may be rounded as the Responsible Entity determines and any excess application moneys and property arising from such rounding becomes part of the Assets.

6.10 Minimum Application Amount

The Responsible Entity may set a minimum application amount for the Trust and alter the minimum application amount at any time.

6.11 Uncleared Funds and Property which does not Vest

Units issued against application moneys paid other than in cleared funds are void if the funds are not subsequently cleared within 1 month of receipt of the application and the Responsible Entity may make appropriate entries in the records of the Trust. Units issued against a transfer of property are void if the property does not vest in the Responsible Entity within 1 month of receipt of the application.

6.12 Update Register

The Responsible Entity must update the Register when Units are issued.

6.13 Special Trust Account

Any amounts paid by any applicant in accordance with clause 6.2 must be accounted for by the Responsible Entity in a special trust account and such amounts must be placed in one or more bank accounts kept solely for the purpose of depositing the application moneys and held until the Minimum Subscription is reached.

6.14 Pooling of Amounts

Any amounts paid by any applicant may be pooled with any amounts paid by any other applicant.

6.15 No Recognition of Trust

Until Members have an absolute right to the Units registered in their name, the Responsible Entity is not bound to recognise, even when having notice, any equitable, contingent or future interest, or a severable part interest, in a Unit, or a trust for the holding of a Unit, except as may otherwise be expressly provided by this Deed.

7. REDEMPTION PRICE OF UNITS

7.1 Redemption Price

A Unit may only be redeemed at a Redemption Price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs} + \text{Aggregate Unpaid Amount}}{\text{number of Units in issue}}$$

less:

- (a) in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid; and
- (b) the accrued Income Entitlement attributable to the Unit.

7.2 Determination of Redemption Price

Each of the variables in clause 7.1 must be determined:

- (a) while the Trust is Liquid, as at the next Valuation Time after the Responsible Entity receives the redemption request, or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is not Liquid, at the time the Withdrawal Offer closes.

7.3 Redemption Price may be Rounded

The Redemption Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1 cent.

7.4 Distribution of Accrued Income Entitlement

Immediately prior to the redemption of the Unit the Responsible Entity is to distribute to the Member and the Member becomes presently entitled to the accrued Income Entitlement in respect of the Unit. The accrued Income Entitlement is to be paid at the time of payment of the Redemption Price.

7.5 Limitation of Right to Distribution

If the right of a Member to receive at the time of redemption of Units the accrued Income Entitlement in relation to the Units would in the opinion of the Responsible Entity either:

- (a) expose the Trust to the risk of being taxed as if it were a company; or
- (b) not be fully recognised as being an income distribution for the purposes of any Tax,

the Responsible Entity may determine that the right does not apply and in that event clause 7.1 and clause 7.4 will not operate.

8. REDEMPTION PROCEDURES

8.1 Request for Redemption

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Responsible Entity and, while the Trust is Liquid, the Responsible Entity may (but is not required to) give effect to that request at the time

and in the manner set out in this clause 8.

8.2 While the Trust is Liquid – Responsible Entity may Redeem

While the Trust is Liquid, the Responsible Entity may decide to satisfy a redemption request either in relation to all or some of the Units which are the subject of the request.

8.3 Payment from the Assets

While the Trust is Liquid, if the Responsible Entity decides to satisfy a redemption request in respect of a Unit it must pay from the Assets the Redemption Price calculated in accordance with this Constitution. The payment must be made within 30 days of the Responsible Entity's decision.

8.4 Obligation to pay Redemption Price

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

8.5 Redemption Request to be treated as relating to the balance of the Member's Holding

While the Trust is Liquid, if compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Member's holding.

8.6 Redemption without need for Redemption Request

While the Trust is Liquid, if the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

8.7 When Trust is not Liquid

While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity, which if the Trust is a registered scheme is in accordance with the provisions of the Corporations Act. If there is no Withdrawal Offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

8.8 Responsible Entity not obliged to make a Withdrawal Offer

The Responsible Entity is not at any time obliged to make a Withdrawal Offer. If the Responsible Entity does make a Withdrawal Offer, it may do so by:

- (a) publishing it by any means (for example, in a newspaper or on the internet); or
- (b) giving a copy to all Members.

8.9 Acceptance of the Withdrawal Offer

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.

8.10 Clauses applicable whether or not the Trust is Liquid

Clauses 8.11 and 8.12 apply whether or not the Trust is Liquid.

8.11 Sums owed to Responsible Entity

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer (if applicable) any money due to it by the Member.

8.12 Transfer of Assets

The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request or pursuant to a Withdrawal Offer (if applicable). These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request or Withdrawal Offer (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

8.13 Rights of Return

Nothing in this clause 8 affects the obligation of the Responsible Entity to comply with any requirement to return application moneys to Members in accordance with Part 7.9 of the Corporations Act or with any similar requirement which applies to the Responsible Entity or to the Trust.

9. VALUATION OF ASSETS

9.1 Valuations under the Corporations Act

The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.

9.2 Responsible Entity May Value

- (a) The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.
- (b) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset will be its market value.
- (c) Where the Responsible Entity values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price, Redemption Price or Bonus Issue Price that is independently verifiable.

10. CONFIRMATIONS

10.1 No Certificate Issued

No Certificate will be issued by the Responsible Entity evidencing the title of a person to Units in respect of which that person is Registered.

10.2 Confirmation

Within 1 month of issuing, transferring or redeeming any Unit to a person, the Responsible Entity must issue a Confirmation to that person.

11. INCOME ENTITLEMENT OF MEMBERS

11.1 Income

Clauses 12.1 to 12.8 next following this clause will apply unless the Responsible Entity makes a determination under clause 12.10.

11.2 Income for each Financial Year

The Responsible Entity must determine the income of the Trust for each Financial Year.

11.3 Calculation of Net Income

Unless the Responsible Entity determines otherwise prior to the end of the Financial Year, the income of the Trust will be the net income of the Trust calculated in accordance with the Tax Act reduced by any amount which would be included in the assessable income of the Trust in accordance with section 6AC or section 160AQT of the Tax Act.

11.4 Preparation of Accounts

Notwithstanding that the income of the Trust may, in accordance with this clause 11, be calculated in the same manner as the net income, the accounts of the Trust may be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the net income of the Trust pursuant to clauses 12.2 and 12.3.

11.5 Classification of Income and Capital

The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

11.6 Entitlement to Income Distribution

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the income of the Trust for the Financial Year in the proportion that the Income Distributions made (or allocated under the clause next following) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) to all persons who are or have been Members at any time during the Financial Year.

12. DISTRIBUTION OF INCOME ENTITLEMENT

12.1 Income Distribution

An Income Distribution in respect of a Member means an amount calculated by the Responsible Entity as follows and any amount so calculated is taken to be allocated to the Member:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year in any year, an amount calculated as follows:

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

where

- A is the aggregate of the number of Fully Paid Units held by the Member at the end of the Distribution Period plus the number obtained by multiplying the number of Partly Paid Units held by the Member as at the end of the Distribution Period by the Relevant Percentage as at the end of the Distribution Period;
- B is the aggregate of the number of Fully Paid Units in issue plus the Paid-up Proportion as at the end of the Distribution Period;
- C is an estimate of the income for the Distribution Period calculated as if the Distribution Period were a year of income but after deducting all distributions of accrued Income Entitlements arising during the

Distribution Period; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year in any year, an amount calculated as follows:

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

where

- A is the aggregate of the number of Fully Paid Units held by the Member at the end of the Distribution Period plus the number obtained by multiplying the number of Partly Paid Units held by the Member as at the end of the Distribution Period by the Relevant Percentage as at the end of the Distribution Period;
- B is the aggregate of the number of Fully Paid Units in issue plus the Paid-up Proportion as at the end of the Distribution Period; and
- C is the amount (if any) by which the income for the Financial Year exceeds the aggregate of the estimates of income calculated for the purposes of variable "C" in paragraph 12.1(a) in respect of the previous Distribution Periods of the Financial Year but after deducting all distributions of accrued Income Entitlements arising during the Financial Year; and
- (c) in respect of a redemption, any accrued Income Entitlement arising during the Financial Year.

12.2 Satisfaction of present entitlement

The present entitlement of a Member to the income of the Trust for a Financial Year will be satisfied by:

- (a) the payment of the Income Distributions to the Member in respect of the Financial Year; or
- (b) if an Income Distribution is not paid to the Member by reason of a transfer of Units by the Member, the payment by the Responsible Entity of an amount equal to that Income Distribution in respect of those Units to the person to whom the Units have been transferred.

Income Distributions must be paid within two months after the Distribution Calculation Date or in accordance with clause 7.4. The Responsible Entity must have distributed all of the income of the Trust for the Financial Year within two months after the end of the Financial Year.

12.3 Minimum Distribution

The Responsible Entity may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the Responsible Entity as trustee of the Trust becoming assessable to pay tax under the Tax Acts.

12.4 Other Distributions

The Responsible Entity may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Responsible Entity (including a distribution pursuant to clause 12.14. The distribution may be in cash or by way of additional Units

12.5 Trust taxed as Company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this clause 12.5 applies to a Distribution Period instead of clauses 12.1 to 12.4. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with normal accounting principles.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time determine to pay such amount or amounts (if any) of income as a distribution in respect of the Distribution Period (each a *Distributable Amount*) to the Members on the register on any date determined by the Responsible Entity (*Books Closing Date*).
- (d) In respect of a Distributable Amount being paid to Members pursuant to this clause 12.5:
- (i) the Responsible Entity must comply with the provisions of the Tax Act and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
 - (ii) the Responsible Entity must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where

- A is the aggregate of the number of Fully Paid Units held by the Member at the Books Closing Date for the Distributable Amount plus the number obtained by multiplying the number of Partly Paid Units held by the Member as at the Books Closing Date by the Relevant Percentage as at the end of the Books Closing Date;
- B is the aggregate of the number of all Fully Paid Units in issue plus the Paid-up Proportion as at the Books Closing Date;
- C is the Distributable Amount; and
- (f) The Distributable Amount must be paid to Members within two months after the Books Closing Date.

12.6 Reinvestment

The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

12.7 Notification of Procedure

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

12.8 Acceptance of Application to Invest

If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.

12.9 Payment of Subscription or Purchase Price

The Responsible Entity may make provision for and make payment of the subscription or purchase price for Units out of the distribution or income (as applicable) which is otherwise available for reinvestment.

12.10 Application Price for each Additional Unit

If reinvestment applies the Application Price for each additional Unit and the application price for the Units is to be calculated in accordance with clause 6. If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust and the Trustee for Members, in such proportions as the Responsible Entity may determine on behalf of the relevant Member.

12.11 Aggregation of Money held on behalf of Members

Whenever under this Constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

12.12 Position on Transfer of Units

Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

12.13 Distribution on Transfer of Assets

The Responsible Entity may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Responsible Entity wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Responsible Entity:

- (a) to act as their agent to agree to obtain the Assets; and
- (b) where the Assets comprise shares or an interest in shares in a company, to agree to become a member of that company.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

12.14 Deductions from Income

The Responsible Entity may deduct from any income or other distribution payable to a Member any sums of money presently payable by the Member to the Responsible Entity on account of an instalment due in respect of Units or otherwise.

13. VARIATION OF DISTRIBUTION PERIOD

If the Responsible Entity decides that the Distribution Period should end on a date other than the date from time to time prevailing under the provisions of this Constitution, it may change that date subject to:

- (a) the new date being not later than the pre-existing date, and

- (b) Members receiving notice of the new Distribution Period at least 30 days before the commencement of the new Distribution Period.

14. TAXATION OF TRUST

14.1 Payment of Tax

- (a) The Responsible Entity will determine and pay all Taxes payable in respect of the Trust under the Tax Acts or imposed by any foreign government or authority in respect of any Financial Year.
- (b) The Responsible Entity may realise any Assets to pay Taxes.
- (c) The Responsible Entity may at any time in its absolute discretion debit or credit the provision for Taxes made under clause 14.2:
- (i) in respect of Taxes paid;
 - (ii) where the provision made for Taxes made in the Financial Year exceeds the Taxes payable in that Financial Year; and
 - (iii) where the provision made for Taxes in respect of any Financial Year is less than the amount of Taxes payable in that Financial Year.

14.2 Provision for Tax

The Responsible Entity may at any time make provision for such Tax in respect of the Trust as it in its absolute discretion estimates will be payable from time to time by the Trust under the Tax Acts in respect of that Financial Year having regard to:

- (a) taxation losses accumulated in the Trust;
- (b) capital gains and losses realised on the Assets of the Trust; and
- (c) any other matter or thing which the Responsible Entity in its absolute discretion considers appropriate.

Any provision may be made against such Assets or categories of Assets as the Responsible Entity in its absolute discretion deems appropriate.

14.3 Taxation Credits

Subject to the Tax Acts, where the Responsible Entity is in receipt of any Income in respect of which there arises any Tax credit or rebate, including without limitation, Franking Credit Amounts, it may:

- (a) offset such credits or rebates against the provision for Tax established under clause 14.2 in respect of the Trust; and
- (b) accrue such credits or rebates as they arise despite the time at which such credits or rebates are received.

15. TAXATION OF MEMBERS

15.1 Definitions

In this clause 15, unless there is something in the subject matter or context that is inconsistent, these words and phrases have the following meanings

Taxpayer: a person who at any time is, was or becomes a Member and his heirs, personal representatives or successors; and

Taxation Amount: in relation to a Taxpayer is:

- (a) an amount of Tax referable to that Taxpayer including an amount of Tax imposed on account of or in respect of:
 - (i) that Taxpayer;
 - (ii) a sum paid or payable to that Taxpayer; or
 - (iii) a Unit Registered in the name of or transferred to or by that Taxpayer;
- (b) an amount of Tax which that Taxpayer is primarily liable to pay; and
- (c) an amount charged by a person intended bona fide to reimburse that person for an amount of Tax referred to in paragraph (a) or (b) of this definition.

15.2 Deduct Taxation Amount

The Responsible Entity may deduct from any amount payable to or to be applied in respect of a Taxpayer the Taxation Amount of that Taxpayer which is payable or anticipated to become payable by the Responsible Entity on its own account or out of the Assets.

15.3 Application Taxation Amount Deducted

Any amount deducted under clause 15.2 will be applied in:

- (a) paying the Taxation Amount to the relevant person or authority;
- (b) reimbursing the Responsible Entity for any amount paid from its own funds; or
- (c) paying to the Taxpayer any amount deducted in excess of that required for the purposes of clauses 15.3(a) and (b),

and pending such payment will form part of the Assets.

15.4 Indemnity

- (a) The Responsible Entity on its own account is entitled to be indemnified by each Taxpayer for any Taxation Amount of that Taxpayer paid by the Responsible Entity to the extent that:
 - (i) it is not paid in accordance with clause 15.2; or
 - (ii) the Responsible Entity is not reimbursed out of the Assets under any other clause of this Constitution.
- (b) The Responsible Entity on its own account and on account of the Trust is entitled to be indemnified by each Taxpayer for any Taxation Amount of that Taxpayer:
 - (i) paid out of the Assets; and
 - (ii) for any amount reimbursed to the Responsible Entity under paragraph 15.4(a),
 to the extent that the Taxation Amount has not been paid out of the Assets under clause 15.2.
- (c) The Responsible Entity on its own account and on account of the Trust is entitled to be paid by the Taxpayer interest at the rate not exceeding BBSW plus 3% per annum on the amount for which it is entitled to be indemnified. Such interest must be paid by the Taxpayer within at least 21 days of the date on which the Taxpayer receives notice in writing from the Responsible Entity that such interest is payable on the outstanding amount.

15.5 Recovery Under the Indemnity

If the Responsible Entity on its own account or on account of the Trust becomes entitled to be indemnified under clause 15.4 the Responsible Entity on its own account and on account of the Trust:

- (a) may deduct from any amount payable to or to be applied in respect of the Taxpayer the amount for which it or the Trust is entitled to be indemnified together with interest and apply such amount on account of such interest and right to indemnity;
- (b) may refuse to register a transfer or transmission of any Unit Registered in the name of the Taxpayer until the amount for which the Responsible Entity is entitled to be indemnified, together with interest, has been paid in full to the Responsible Entity; and
- (c) may by notice to the Taxpayer require the amount for which it is entitled to be indemnified together with interest be paid to it within at least 21 days from the date of service of the notice and if such payment is not made on or before the date specified, redeem all or some of the Units Registered in the name of the Taxpayer to recover such amount, provided that the notice has explained to the Taxpayer the consequences not paying the amount within the specified time.

15.6 Redemption of Units under the Indemnity

The proceeds from any Units redeemed under paragraph 15.6(c) must be applied in the following order by:

- (a) paying for expenses recoverable from the Assets by the Responsible Entity in accordance with clause 25.3, incurred by the Responsible Entity in carrying out its duties or exercising its rights under clauses 15.4 and 15.5;
- (b) paying any interest;
- (c) paying the amount in respect of which the notice under paragraph 15.5(c) was given;
- (d) paying the balance remaining, if any, to the Taxpayer.

15.7 Taxpayer to Supply Details

- (a) The Taxpayer must give the Responsible Entity such details regarding its holding of Units or any other relevant matter necessary for the Responsible Entity to determine whether there exists or may in the future exist a Taxation Amount in relation to that Taxpayer.
- (b) The Taxpayer must be given:
 - (i) the request in writing; and
 - (ii) at least 14 days to respond to the request.
- (c) The request must contain the following warnings as to the possible consequences of the Taxpayer not complying with it. The possible consequences are:
 - (i) if any details given to the Responsible Entity under paragraph 15.7(a) cease to be correct for any reason, it is the duty of the Taxpayer who furnished such details, if he is a Member at the time to promptly notify the Responsible Entity of the fact that such detail is no longer correct and provide the correct detail;
 - (ii) if a Taxpayer fails to provide the details requested under sub-clause 15.7(a) or required to be provided under paragraph 15.7(c)(i) the Responsible Entity will be entitled to make such assumptions as it considers necessary in order to protect the Trust from the risk of having to bear a Taxation Amount, and the Taxpayer will have no claim against the Responsible Entity or the Assets for any loss suffered as a result of such assumption being incorrect;
 - (iii) without limiting the preceding provisions of this clause 15.7 the Responsible Entity on its own account and on account of the Trust will

be entitled to be indemnified by any Taxpayer who supplies an incorrect detail under paragraph 15.7(a) or who fails to notify the Responsible Entity under paragraph 15.7(c)(i) that a detail has ceased to be correct, for any loss suffered as a result of the Responsible Entity acting on the basis of the incorrect detail.

- (d) If the Responsible Entity on its own account and on account of the Trust is entitled to be indemnified under paragraph 15.7(c)(ii), clauses 15.5 and 15.6 will apply with any necessary modifications.

15.8 No Encumbrance

- (a) Subject to paragraph 15.8(b), nothing in this clause 15 confers or is intended to confer on the Responsible Entity any mortgage, charge, lien, encumbrance or any other form of security interest whatsoever (for the purposes of this clause 15.8 a "Security Interest") in relation to the Units of a Taxpayer or the proceeds of redemption of such Units.
- (b) Nothing in paragraph 15.8(a) will affect any Security Interest which may arise by operation of law or equity.

16. PAYMENTS

16.1 Payments to Members

Money payable by the Responsible Entity to a Member or Other Instrument Holder may be paid in any manner the Responsible Entity decides.

16.2 Unpresented Cheques

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the NAV per Unit calculated at the next Valuation Time immediately following the date on which the cheque is cancelled.

16.3 Unsuccessful Transfer

Where the Responsible Entity attempts to make a payment to a Member or Other Instrument Holder by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be reinvested in Units at the NAV per Unit calculated for the next Valuation Date immediately following the date on which the third attempt fails.

16.4 Fraction of Cents

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

16.5 Payments to Joint Members

A payment to any one of joint Members will discharge the Responsible Entity in respect of the payment.

16.6 Payments to Joint Members

The Responsible Entity may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax or an estimate of the Tax which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Responsible Entity considers should be deducted.

16.7 Deduction of Amounts payable to Member or Other Instrument Holder

The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Member or Other Instrument Holder, or received from a person who is or has been a Member or Other Instrument Holder:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member or Other Instrument Holder to the Responsible Entity or any other person,

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

17. POWERS AND DUTIES OF THE RESPONSIBLE ENTITY**17.1 General Powers**

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

17.2 Contracting and Borrowing Powers

- (a) Without limiting clause 17.1, the Responsible Entity in its capacity as trustee of the Trust has power to borrow whether or not on security of the Assets and to incur all types of obligations and liabilities, including guarantees.
- (b) Without limiting the effect of clause 17.2, the Responsible Entity in its capacity as trustee of the Trust has power to enter into an arrangement with a person to underwrite the subscription or purchase of Units or Other Instruments on such terms as the Responsible Entity determines. Unless the agreement between the Responsible Entity and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Responsible Entity.

17.3 Investment Powers

Without limiting clause 17.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

17.4 Power of Delegation

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

17.5 Powers of the Responsible Entity

A reference to the "power" of the Responsible Entity under this clause 17 includes all the powers that a natural person would have in that particular context.

17.6 Exercise of Discretion

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

17.7 Obligations

The Responsible Entity must comply with the obligations imposed on it under section 601FC(1) of the Corporations Act in exercising its powers and carrying out its duties.

18. RETIREMENT OF RESPONSIBLE ENTITY**18.1 Voluntary Retirement**

The Responsible Entity may retire as the responsible entity of the Trust as permitted by law.

18.2 Compulsory Retirement

The Responsible Entity must retire as the responsible entity of the Trust when required by law.

18.3 New Responsible Entity

Any proposed replacement Responsible Entity must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.

18.4 Release

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.

18.5 Retirement Benefit

The Responsible Entity may agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement, or
- (b) its retirement as Responsible Entity,

and is not required to account to Members or Other Instrument Holders for such remuneration or benefit.

19. NOTICES TO MEMBERS AND OTHER INSTRUMENT HOLDERS**19.1 Communications With Members**

Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member or Other Instrument Holder must be:

- (a) given in writing or in such other manner, including electronic communication, as the Responsible Entity determines; and
- (b) delivered or sent to the Member or Other Instrument Holder at its physical or electronic address last advised to the Responsible Entity for delivery of notices.

A notice or communication sent by facsimile is deemed to have been given in writing.

19.2 Cheques

A cheque payable to a Member or Other Instrument Holder may be posted to its physical address or handed to the Member or Other Instrument Holder or a person authorised in writing by the Member or Other Instrument Holder.

19.3 Communications With Joint Members

In the case of joint Members or Other Instrument Holders, the physical or electronic address of the Member will be the physical or electronic address of the Member or Other Instrument Holder first named in the Register.

19.4 Deemed Receipt of Communications

- (a) A notice, cheque or other communication sent by post is taken to be received on the third day after it is posted.
- (b) A facsimile is taken to be received upon receipt by the sender of an acknowledgement or transmission report generated from the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
- (c) Subject to the law, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.
- (d) Proof of actual receipt is not required.
- (e) Every person who becomes a Member or Other Instrument Holder other than by way of application for Units is bound by every notice which was duly given to the person from whom he derived title to those Units.

20. NOTICES TO THE RESPONSIBLE ENTITY**20.1 Communications with the Responsible Entity**

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing or in such other manner, including electronic communication, as the Responsible Entity determines.
- (b) A notice or communication sent by facsimile is deemed to have been given in writing.

20.2 Effectiveness of Notice

The notice is effective only at the time of receipt.

20.3 Signature

The notice must bear the actual, facsimile or electronic signature of the Member or Other Instrument Holder or a duly authorised officer or representative of the Member or Other Instrument Holder unless the Responsible Entity dispenses with this requirement.

21. MEETINGS OF MEMBERS OR OTHER INSTRUMENT HOLDERS**21.1 Corporations Act**

- (a) The Responsible Entity may at any time convene a meeting of Members or Other Instrument Holders.
- (b) The Responsible Entity must also convene a meeting of Members or Other Instrument Holders when required by the Corporations Act.

21.2 Responsible Entity May Determine Time and Place

Subject to this clause 21 and the Corporations Act, the Responsible Entity may determine the time and place at which a meeting of Members or Other Instrument Holders will be convened and the manner in which the meeting will be conducted.

21.3 Quorum

The quorum:

- (a) for a meeting of Members at which a Resolution only is to be proposed is at least 5 Members or Other Instrument Holders present in person or by proxy together holding at least 10% of all Units in Issue; and
- (b) for a meeting of Members at which an Extraordinary Resolution is to be proposed is at least 5 Members present in person or by proxy together holding at least 25% of all Units or Other Instruments in Issue,

unless the Trust has only 1 Member who may vote on a Resolution, in which case that 1 Member constitutes a quorum. For the sole purpose of this clause 21.3, Units held by Timbercorp Limited and its controlled entities are to be disregarded in determining whether a quorum is present.

21.4 No quorum

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

- (a) if convened on the requisition of Members, dissolved; or
- (b) if convened other than on the requisition of Members and for the purpose of passing a Resolution only, adjourned to the same day in the next week at the same time and the same place;
- (c) if convened other than on the requisition of Members and for the purpose of passing an Extraordinary Resolution, adjourned for such period as the Chairman directs being not less than 21 Business Days provided notice of the proposed Extraordinary Resolution and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place day and hour of such adjourned meeting have been given to the Members or Other Instrument Holders by the Responsible Entity.

At any adjourned meeting, those Members or Other Instrument Holders present in person or by proxy constitute a quorum and have the power to pass a Resolution or Extraordinary Resolution.

21.5 Chairman

- (a) Subject to the Corporations Act, the Members present at a meeting may appoint a person to chair the meeting of Members and where no such appointment is made, the Responsible Entity may appoint the person to chair the meeting. The decision of the chairman on any matter relating to the conduct of the meeting is final.
- (b) If there is an equality of votes, the Chairman has a casting vote.

21.6 Adjournment by Chairman

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

21.7 Resolutions Binding

A Resolution whether or not Extraordinary binds all Members or Other Instrument Holders, whether or not they were present at the meeting.

21.8 Objections

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

21.9 Validity of Meeting

A meeting is still valid even if a Member does not receive a notice of meeting, including where the notice is accidentally not given to the Member.

21.10 Proxies and Voting

- (a) The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.
- (b) The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

21.11 Resolutions Binding

- (a) A Resolution binds all Members, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

21.12 Non-Receipt

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

21.13 Meetings of Other Instrument Holders

If any meeting of Other Instrument Holders is required to be held the foregoing provisions of this clause 21 will apply with any necessary amendments.

22. RIGHTS AND LIABILITIES OF RESPONSIBLE ENTITY**22.1 Holding Units**

The Responsible Entity and its associates may hold Units in the Trust and/or other Instruments in any capacity.

22.2 Other Capacities

Subject to the Corporations Act, nothing in this Constitution restricts the Responsible Entity (or its associates) from:

- (a) dealing with itself (as responsible entity of the Trust or in another capacity), an associate or with any Member or Other Instrument Holder;
- (b) being interested in any contract or transaction with itself (as responsible entity of the Trust or in another capacity), an associate or with any Member or Other Instrument Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme, or
- (d) dealing with Units in the Trust.

provided that the Responsible Entity, its directors, officers or related bodies corporate act in connection with any such matters in the utmost good faith to all Members.

22.3 Reliance by Responsible Entity

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or lawyers, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Constitution or any other document whether statutory or otherwise or generally in connection with

the Trust;

- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Member or Other Instrument Holder of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Responsible Entity in connection with the Trust upon which it is reasonable for the Responsible Entity to rely,

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

23. LIMITATION OF LIABILITY AND INDEMNITY IN FAVOUR OF RESPONSIBLE ENTITY

23.1 Limitation on Responsible Entity's Liability

- (a) If the Responsible Entity acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members or Other Instrument Holders for any loss suffered in any way relating to the Trust.
- (b) The limitation of liability under paragraph 23.1(a):
 - (i) only operates to the extent permitted by the Corporations Act;
 - (ii) does not exclude or reduce the liability of the Responsible Entity under the Corporations Act; and
 - (iii) applies to any liability arising from any act or omission of a delegate, attorney or agent appointed by the Responsible Entity.
- (c) The liability of the Responsible Entity to any person other than a Member in respect of the Trust including any contracts entered into as responsible entity of the Trust or in relation to any Assets is limited to the Responsible Entity's ability to be indemnified from the Assets.

23.2 Indemnity in Favour of Responsible Entity

- (a) The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, the indemnity under paragraph 23.2(a) includes any liability incurred as a result of any act or omission of a delegate, attorney or agent appointed by the Responsible Entity.
- (c) This indemnity under paragraph 23.2(a):
 - (i) is in addition to any indemnity allowed by law; and
 - (ii) continues to apply after the Responsible Entity retires or is removed as responsible entity of the Trust.

24. LIABILITY OF MEMBERS

24.1 Liability Limited

- (a) Subject to clauses 15.4 and 24.2, the liability of a Member or Other Instrument Holder is limited to the amount if any which remains unpaid in relation to the

Member's or Other Instrument Holder's unpaid application moneys for their Units or Other Instrument.

- (b) A Member or Other Instrument Holder need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust.

24.2 Recourse

The recourse of the Responsible Entity and any creditor is limited to the Assets.

24.3 Restrictions on Members

A Member or Other Instrument Holder:

- (a) must not interfere with any rights or powers of the Responsible Entity under this Constitution;
- (b) must not exercise any right, power or privilege in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member or Other Instrument Holder.

25. REMUNERATION AND EXPENSES OF RESPONSIBLE ENTITY

25.1 Remuneration of the Responsible Entity

- (a) In this clause 25.1, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them

CPI:	(a)	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics; or
	(b)	such other index number that replaces it in accordance with paragraph 25.1(e);

Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:
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$$A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$$

where:

- A_t = the amount on the Adjustment Date;
- A_0 = the amount being adjusted;
- CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0 ;
- CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, " CPI_0 " will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date.

Management Fee: the management fee calculated in accordance with the following formula as at the last day of each Half Yearly Period:

$$F = [(A/B)/100] \times C$$

where: F is the management fee for the Half Yearly Period;

A is 0.5;

B is 2;

C the aggregate Market Value of the Assets as at the last day of the Half Yearly Period;

Minimum Management Fee: \$152,000 Indexed as at 31 December of each year, beginning on 31 December 2004, and using the Commencement Date as the Base Date.

- (b) The Responsible Entity is entitled to receive out of the Trust and retain for its own use and benefit the Management Fee calculated Half Yearly not later than 7 Business Days after the end of each Half Yearly Period to which it relates until the date of the final distribution made in accordance with clause 34.3.
- (c) The Management Fee and Minimum Management Fee are to be adjusted on a pro rata basis if the Half Yearly Period in respect of which the calculation is made is the Half Yearly Period ending on the date of termination of the Trust or the Half Yearly Period commencing on the Commencement Date.
- (d) If the Management Fee payable to the Responsible Entity would, but for this paragraph 25.1(d), be less than the Minimum Management Fee for the Half Yearly Period, then in addition to the Management Fee payable in accordance with paragraphs 25.1(a) and (b), the Responsible Entity will be paid an additional amount out of the Trust, on the same terms as paragraphs 25.1(a) and (b), with the Management Fee payable for that Half Yearly Period, so that the Responsible Entity is paid the Minimum Management Fee for the Half Yearly Period.
- (e) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is determined by the Auditor will replace it as the new "CPI".

25.2 Waiver of Fees

The Responsible Entity may:

- (a) accept or charge lower fees than it is entitled to receive under this Constitution; or
 - (b) postpone or defer payment for any period,
- on such terms as it thinks fit and as stated in a current Disclosure Document.

25.3 Expenses

- (a) The Responsible Entity will, in addition to its remuneration, be reimbursed out of the Trust for all out of pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Responsible Entity connected with:
 - (i) this Constitution, formation of the Trust and registration of the Trust as a registered scheme;

-
- (ii) the preparation, review, distribution and promotion of any Disclosure Document in respect of Units or Other Instruments or other promotion of the Trust including all expenses, costs, disbursement and charges incurred in connection with the offering of Units for sale or subscription including legal, valuation, underwriting, brokerage, printing and marketing costs on a cost basis;
 - (iii) the preparation of, and compliance with, the Security Interest Rules;
 - (iv) such commission, trailing commission, procuration or other fees or brokerage as the Responsible Entity may determine to any person subscribing or obtaining subscriptions for or underwriting the issue or purchase of Units;
 - (v) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (vi) any proposed acquisition, disposal or other dealing with an Asset of the Trust;
 - (vii) the administration or management of the Trust or its Assets and Liabilities;
 - (viii) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
 - (ix) underwriting of any subscription or purchase of Units or Other Instruments including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under any such underwriting agreement;
 - (x) the cost of printing Confirmations, Financial Statements, cheques, distribution statements, reports, audit reports, notices of meeting and other documents required to be circulated amongst or sent out to Members or Other Instrument Holders under this Constitution;
 - (xi) costs of postage of all Confirmations, cheques, Financial Statements, distribution statements, notices, reports, audit reports and other documents circulated amongst or sent out to Members or Other Instrument Holders under this Constitution or the Corporations Act;
 - (xii) convening and holding meetings of Members or Other Instrument Holders, the implementation of any Resolutions and communications with Members or Other Instrument Holders;
 - (xiii) Tax and financial institution fees and charges;
 - (xiv) any GST charged by a supplier of goods or services, or both, to the Responsible Entity in connection with the Trust;
 - (xv) the engagement of administrators, agents, valuers, contractors and advisers (including legal advisers) whether or not the administrators, agents, valuers, contractors or advisers are associates of the Responsible Entity;
 - (xvi) preparation and audit of the taxation returns, Financial Statements and the Register of the Trust and examination of Confirmations by an auditor;
 - (xvii) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
 - (xviii) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach

of trust, to have acted fraudulently or in wilful default, or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph 25.3(a)(xviii) must be repaid;

- (xix) any Compliance Committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of Compliance Committee Members and the cost of any independent advice sought by the Compliance Committee or a Compliance Committee Member;
 - (xx) while there is no Compliance Committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (xxi) the preparation, implementation, amendment and audit of the compliance plan; and
 - (xxii) complying with any law, and any request or requirement of ASIC.
- (b) In this clause 25.3, "charges, expenses and outgoings" includes:
- (i) internal charges, expenses and outgoings of the Responsible Entity incurred in connection with the items referred to in paragraph 25.3(a), including the costs of appointing and maintaining staff in connection with those items; and
 - (ii) amounts paid or owing by the Responsible Entity to related entities for services provided to the Responsible Entity in connection with the Trust where the amounts would have been payable, or reimbursed to the Responsible Entity, out of Assets had the services been provided to the Responsible Entity by a third party.

25.4 GST

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the Value of the taxable supply (the "GST Exclusive Amount") and not the Price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) GST payable under paragraph (b) must be payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause 25.4 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph (b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment

multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- (g) If a party has a claim for, or a right to recover, under or in connection with this Deed, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
- (h) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.
- (i) This clause 25.4 takes precedence over any other term or condition of this Deed to the extent of any inconsistency.

25.5 Availability of Fees and Indemnity

The Responsible Entity will only be entitled to the remuneration set out in clause 25.1 or the reimbursement of expenses incurred under clause 25.3 in relation to the performance of its duties under this Constitution where it has properly performed those duties.

26. AMENDMENTS TO THIS CONSTITUTION

26.1 Amendments to the Constitution

This Constitution may be amended by:

- (a) Special Resolution of the Members; or
- (b) the Responsible Entity if the Responsible Entity reasonably considers the amendment will not adversely affect Members' rights.

26.2 Statutory Requirements

- (a) If the Corporations Act or any relief from the provisions of the Corporations Act granted by ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution at all times during which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) Clause 26.1 does not apply to provisions deemed by paragraph 26.2(a) to be incorporated in the Constitution.

27. INSPECTION AND COPIES OF THE CONSTITUTION

27.1 Inspection of Constitution

Members may inspect a copy of this Constitution during usual business hours at the Office.

27.2 Copy of Constitution

The Responsible Entity must give a Member a copy of this Constitution and any supplemental deeds within 7 days if the Member:

- (a) asks the Responsible Entity in writing for a copy of the Constitution; and
- (b) pays any fee required by the Responsible Entity, such fee not to exceed the amount prescribed under the Corporations Act.

28. COMPLIANCE COMMITTEE

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

29. COMPLAINTS PROCEDURE

29.1 Procedure

Subject to the guidelines of the external complaints resolution scheme of which the Responsible Entity is a member in accordance with paragraph 29.6, complaints made by any Member in relation to the Trust or the Responsible Entity ("Complaints") must be dealt with in the manner set out in this clause 29.

29.2 Complaints Officer

- (a) The Responsible Entity must appoint an internal Complaints officer ("Complaints Officer") with authority to review any complaints from Members or Other Instrument Holders.
- (b) The roles and responsibilities of the Complaints Officer include:
 - (i) to receive and process verbal and written Complaints from Members or Other Instrument Holders, at no charge to them;
 - (ii) to review and properly consider Complaints from Members and Other Instrument Holders in a timely and efficient manner;
 - (iii) to communicate directly with Members and Other Instrument Holders in relation to Complaints;
 - (iv) to make readily available to Members and Other Instrument Holders information on how, when, where and to whom to make Complaints and any documented policies and procedures for the resolution of complaints;
 - (v) periodically to develop and review the Responsible Entity's policies and procedures for the resolution of Complaints, in accordance with Australian Standard AS 4269:1995, *Complaints Handling* (as amended from time to time);
 - (vi) to provide information relating to the Responsible Entity's Complaints handling procedures to employees of the Responsible Entity, in the form of training, brochures and the development of internal guidelines.

29.3 Receipt of Complaint

- (a) Upon receipt of a verbal Complaint which cannot be resolved verbally, the Complaints Officer may request that the complainant provide:
 - (i) a written notice specifying the nature of the Complaint, the desired outcome and what action the Member or Other Instrument Holder thinks will settle the complaint; and
 - (ii) all relevant material to support the Complaint.
- (b) Upon receipt of the written notice described in paragraph 29.3 (a) (or, if a written notice is not required, upon receipt of a verbal Complaint) ("Lodgement Date"), the Complaints Officer must:
 - (i) make a written record of the complaint setting out the following details:

- (A) the name, address and telephone number of the complainant;
 - (B) the date the Complaint was received;
 - (C) the nature of the Complaint; and
 - (D) any other information the Complaints Officer deems adequate;
- (ii) provide the complainant with a written acknowledgement of receipt of the Complaint and the time-frame in which the Complaint will be considered;
 - (iii) consider and investigate the circumstances surrounding the Complaint;
 - (iv) advise the complainant of the criteria and processes applied by the Responsible Entity in dealing with Complaints;
 - (v) upon request, provide the complainant with any relevant material (not being confidential material) relating to the Complaint; and
 - (vi) communicate directly with the complainant, with a view to resolving the Complaint in a fair and timely manner.

29.4 Notification of Decision

- (a) If the Complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay.
- (b) No later than 90 days following the Lodgement Date, the Complaints Officer must:
 - (i) notify the complainant, in writing, of the decision of the Responsible Entity in relation to the Complaint;
 - (ii) provide the complainant with written reasons for the decision;
 - (iii) outline to the complainant the remedies, if any, available to the complainant;
 - (iv) advise the complainant of any further avenues for complaint and the time-frames in those avenues.

29.5 Further Avenues

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the Complaint, the complainant may take the following action:

- (a) if the Responsible Entity is a member of an external complaints resolution scheme approved by ASIC, the complainant may refer the Complaint to that external complaints resolution scheme, for determination in accordance with the guidelines of that external complaints resolution scheme; or
- (b) if the Responsible Entity is not a member of an external complaints resolution scheme approved by ASIC, and only in that case, the complainant may take any appropriate lawful action.

29.6 External Complaints Resolution Scheme

- (a) The Responsible Entity is and must remain a member of an external complaints resolution scheme approved by ASIC.
- (b) If the Responsible Entity is a member of an external complaints resolution scheme approved by ASIC in accordance with paragraph 29.6 (a), and subject to any right of appeal contained in the guidelines of the relevant external complaints resolution scheme, the complainant and the Responsible Entity

agree to accept the determination of the external complaints resolution scheme as final and binding.

30. AUDIT

30.1 Appointment of Auditor

- (a) The Responsible Entity must from time to time appoint an auditor or auditors of the Financial Statements and the Compliance Plan.
- (b) The Auditors of the Financial Statements and the Compliance Plan must at all times be a person who is a registered company auditor under the Corporations Act.
- (c) The Auditor of the Compliance Plan must not be ineligible under the Corporations Act to audit the Compliance Plan.

30.2 Retirement of Auditor

- (a) An Auditor of the Financial Statements may:
 - (i) retire at any time by notice in writing to the Responsible Entity;
 - (ii) be removed from office by the Responsible Entity; or
 - (iii) be removed from office by Special Resolution of the Members.
- (b) An Auditor of the Compliance Plan may:
 - (i) retire at any time by notice in writing to the Responsible Entity and ASIC where ASIC has consented to the retirement;
 - (ii) be removed from office by the Responsible Entity where the Auditor becomes ineligible under the Corporations Act to audit the Compliance Plan; or
 - (iii) be removed from office by the Responsible Entity with ASIC's consent.

30.3 Appointment of New Auditor

Any vacancy in the office of the Auditor must be filled by an appointment made by the Responsible Entity.

31. DOCUMENTS OF TITLE

The Responsible Entity must:

- (a) hold in custody all documents of title in relation to an Asset; or
 - (b) use reasonable endeavours to ensure documents of title in relation to an Asset are held in safe custody by any of its agents, attorneys or delegates.
-

32. RESERVES

32.1 Reserves

The Responsible Entity may at any time create reserves or provisions in respect of the Trust and debit and credit such reserves to take into account such amounts as it determines in its absolute discretion, including:

- (a) unrealised increases or decreases in the value of the Assets;

- (b) capital gains and losses which are not assessable or deductible under the Tax Acts;
- (c) Tax that will be payable on realised capital gains of the Trust; or
- (d) any future expense or liability which may be incurred by the Responsible Entity on account of the Trust.

33. DURATION OF THE TRUST

33.1 Period of the Trust

The Trust commences upon registration by ASIC as a managed investment scheme pursuant to the Corporations Act.

33.2 Termination

Unless otherwise determined pursuant to any other provision of this Constitution, the Trust terminates on the earliest of:

- (a) the 80th anniversary of the day before the Trust commenced;
- (b) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members and Other Instrument Holders;
- (c) the date on which the Trust terminates in accordance with another provision of this Constitution or by law;
- (d) the date on which a court directs the Responsible Entity to wind up the Trust; and
- (e) the date on which the Members and Other Instrument Holders resolve that the Trust must terminate as determined by an Extraordinary Resolution of the Members at a meeting called for that purpose.

34. PROCEDURE ON TERMINATION

34.1 Realisation of Assets

Following termination of the Trust, the Responsible Entity must realise the Assets. This must be completed in 180 days if practicable and in any event as soon as possible after that.

34.2 Audit of Winding Up

The Responsible Entity must arrange for independent review audit of the final Financial Statements of the Trust by a registered company auditor.

34.3 Distribution Following Termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

$$\frac{(A+X) \times B}{C} - Y$$

Where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 34.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and

C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid units;

X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any); and

Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination.

If the calculation of the entitlement to distribution of capital in respect of a particular Member or Other Instrument Holder in accordance with the formula in this clause 34.3 results in a negative dollar amount, then that Member or Other Instrument Holder must pay to the Responsible Entity within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Responsible Entity may distribute proceeds of realisation in instalments.

34.4 Constitution Continues To Apply During Period of Termination

Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 34.3.

34.5 Dealing in Units After Termination

No Units may be issued, redeemed or transferred after the Trust is terminated.

35. General Provisions

35.1 Waiver and Exercise of Rights

- (a) A waiver of a provision or of a right arising under this Deed must be given in writing signed by the other party.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.
- (d) Failure by one party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

35.2 Rights Cumulative

The rights, remedies and powers of the other parties under this Deed are cumulative and not exclusive of any rights, remedies or powers conferred to the parties by law.


35.3 Consents and Approval

A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Deed expressly provides otherwise.

35.4 Governing Law and Jurisdiction

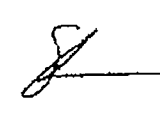
This Deed is governed and construed by the laws of Victoria and the Commonwealth of Australia. The parties irrevocably and unconditionally submit to the non-exclusive jurisdictions of the courts of Victoria.

EXECUTED by Tekton One)
Managed Investments Limited in)
accordance with section 127(1) of)
the Corporations Act by:


Signature

MICHAEL EMERY
Full Name (please print)

DIRECTOR
Position Held


Signature

Full Name (please print)

Position Held



*This is to certify that
Plant Breeder's Rights
have been granted under section 44(1)
of the Plant Breeder's Rights Act 1994 to
Andriske Table Grapes Pty Ltd*

for the variety

Vitis vinifera

'BW 41/5'

Application No 1996/018

Certificate No 1910

Date of Grant 27 March, 2002

Expiry of Right 27 March, 2027

D. Venterhouse

Registrar of Plant Breeder's Rights



Australian Government

Department of Agriculture, Fisheries and Forestry
Plant Breeder's Rights

David R. Messenger
PO Box 4003
Mildura VIC 3500

Dear Mr Messenger

Assignment of Plant Breeder's Rights

1996/018 *Vitis vinifera* 'BW 41/5'

I acknowledge that an assignment of the breeder's right to the above variety has been received.

All records have now been amended to show the owner of this variety has been assigned from **Andriske Table Grapes Pty Ltd** to **Andriske Research Pty Ltd**.

Public notice and particulars of this assignment will be made in the *Plant Varieties Journal*.

Yours sincerely

Nik Hulse
Deputy Registrar
P: 02 6271 6476
F: 02 6272 3650
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1 September 2004

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