



Constitution

MCP Master Income Trust

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The Trust Company (RE Services) Limited ABN 45
003 278 831 (**Responsible Entity**)

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Constitution

MCP Master Income Trust

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Details

Date 25TH July 2017.

Parties

Name	The Trust Company (RE Services) Limited ABN 45 003 278 831
Short form name	Responsible Entity
Notice details	Level 18, Angel Place, 123 Pitt Street, Sydney NSW 2000

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this constitution:

Accounting Period means the twelve month period commencing on 1 July and ending on the following 30 June, except that:

- (a) the first Accounting Period commences on the date on which the Trust commences in accordance with **clause 3** and ends on the following 30 June; and
- (b) the final Accounting Period ends on the date on which the assets of the Trust are fully distributed to Holders on or after the Termination Date and commences on the immediately preceding 1 July.

Accrual Period means the part of the Accounting Period as determined by the Responsible Entity for the purpose of making a distribution and commencing either at 1 July (or during the first Accounting Period the day the Trust commences) or the day after the last day of the prior Accrual Period for the same Accounting Period.

Accrual Time means the time determined by the Responsible Entity when the number of Units on issue is calculated for the purpose of making a distribution.

Additional Fund Administration Services means the actions and activities in connection with the management and administration of the Trust which are described in **Schedule 1** and that the Responsible Entity reasonably determines are not normal or routine in nature.

AMIT or **attribution managed investment trust** has the meaning given by the Tax Act.

AMIT Choice means an irrevocable choice made by the Responsible Entity for the Trust to be an AMIT under section 276-10(1)(e) of the *Income Tax Assessment Act 1997* (Cth) (as reflected in the *Tax Laws Amendment (New Tax System for Managed Investment Trusts 2015 Act* (Cth) or equivalent or similar provision).

AMIT Regime means the regime for the taxation of AMITs, as set out in the following legislation:

- (a) *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth);
- (b) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth);
- (c) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth); and
- (d) *Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016* (Cth).

Application Transaction Costs has the meaning given to it in **clause 10.5**.

ASIC means the Australian Securities and Investments Commission or any body replacing it.

ASX means ASX Limited ACN 008 624 691 or the exchange operated by that entity, as the context requires.

ASX Settlement Operating Rules means the official operating rules of ASX Settlement Pty Limited ACN 008 504 532, as amended from time to time.

Attribution Amount means, for a Period, any amount calculated by the Responsible Entity to be fair and reasonable and attributed to a Holder for the purposes of Division 276 of the Tax Act, and may include or be adjusted by:

- (a) components of income character;
- (b) components of tax offset character;
- (c) any amount the Responsible Entity determines; and
- (d) unders or overs.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.

Corporate Tax Entity has the meaning given to that term in section 960-115 of the *Income Tax Assessment Act 1997* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any Relief or other exemption or modification of that Act which applies to the Trust or the Responsible Entity.

Delegate means a person appointed, engaged or otherwise contracted by the Responsible Entity as contemplated by **clause 27.3(f)**.

Disclosure Document means information memorandum, product disclosure statement, terms of issue, or anything analogous to the foregoing issued by the Responsible Entity relating to the issue of Units in the Trust.

Distributable Income means the Trust Income for an Accounting Period or Accrual Period as applicable as determined under **clause 31.1**.

Distribution Reinvestment means the reinvestment in the Trust of distributions in accordance with **clause 33**.

Final Call Date means the date specified in a Disclosure Document of the Trust as being the last date by which the Responsible Entity may make calls on Holders.

GST has the meaning given to it in the GST Act.

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

Holder means a person who holds an interest in the Trust.

Initial Minimum Investment means the amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units for which application may be made by a new Holder.

Issue Price means the price at which a Unit is created and issued as set out in **clause 10**.

Listed means admitted to and not removed from the official list of ASX and **List** and **Listing** have similar meanings.

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

Manager means Metrics Credit Partners Pty Ltd ACN 150 646 996.

Management Agreement means the management agreement entered into between the Manager and the Responsible Entity.

Meeting means a meeting of Holders or a class of Holders.

Minimum Balance means the amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units to be held by a Holder.

Minimum Redemption Amount means an amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units for which a Redemption Request may be made by a Holder.

Net Trust Value means the total value of all Trust Property less all Trust Liabilities as determined by the Responsible Entity.

Option means an option to subscribe for a Unit issued under **clause 5.1**.

Paid Up Proportion means the proportion which the total of all amounts paid up on a partly paid Unit represent of the aggregate of the amounts which have been paid and which remain to be paid for that partly paid Unit to become a fully paid Unit.

Period means an Accounting Period or an Accrual Period, as appropriate.

Quoted means admitted for quotation by ASX under the Listing Rules, including where any such quotation is suspended for a period not exceeding 60 days, and **Quote** and **Quotation** have similar meanings.

Redemption Liabilities means the liabilities representing the Redemption Price for each Unit.

Redemption Price means the price payable on the redemption of a Unit as set out in **clause 13.5**, as applicable.

Redemption Request means a request by a Holder to the Responsible Entity to redeem Units.

Redemption Transaction Costs has the meaning given to it in **clause 13.7**.

Register means the unit register for the Trust referred to in **clause 20**.

Relief means any declaration or modification made or exemption granted by ASIC that is applicable to the Trust and that is in force and includes, without limitation, instruments of class order relief.

Reporting Net Trust Value means the total value of Trust Property less all Trust Liabilities in accordance with the requirements under the Corporations Act from time to time in relation to the preparation of accounts and financial reporting.

Responsible Entity means the body named in this constitution as responsible entity while it remains as responsible entity of the Trust and also means any subsequent responsible entity of the Trust from time to time.

Responsible Entity Fees means the fees payable to the Responsible Entity as provided in **clause 27**.

Responsible Entity Personnel means at any time, officers and employees of the Responsible Entity at that time and persons who, although not officers or employees of the Responsible Entity, operate under the direction or control of the Responsible Entity in their day-to-day activities at that time, including persons seconded to the Responsible Entity who are associates of the Responsible Entity or officers or employees of associates of the Responsible Entity.

Specified Time means a time determined by the Responsible Entity from time to time under **clause 7.1** for the purpose of accepting applications for, issuing or redeeming Units.

Subsequent Minimum Investment means the amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units for which application may be made by an existing Holder.

Tax Act means *Income Tax Assessment Act* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth) or any combination of those Acts, as appropriate.

Taxes means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Termination Date means the time:

- (a) specified in any notice sent by the Responsible Entity to the Holders; or
- (b) where the Holders determine to terminate the Trust under **clause 24.2**, determined by the Holders,

as the time from which winding-up of the Trust commences.

Trust means the MCP Master Income Trust.

Trust Income for an Accounting Period or an Accrual Period (**the Period**) will be the net income of the Trust under section 95 of the *Income Tax Assessment Act 1936* (Cth) (calculated by the Responsible Entity) determined as if references to financial year in section 95 were references to the Period, but less amounts attributable to franking credits, foreign tax credits and other notional and deemed amounts and without reference to any discount available under the capital gains tax provisions of the *Income Tax Assessment Act 1997* (Cth), unless the Responsible Entity in its

discretion before the end of the Accounting Period determines another equal or greater amount to be the Trust Income.

Trust Liabilities include, except as otherwise provided in this constitution, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions the Responsible Entity decides to make (including but not limited to, a provision for accrued management fees) and other unpaid remuneration (if any) due to the Responsible Entity, but excluding unpaid redemption amounts or distributions due to Holders, any amount on account of unitholder equity, application monies or any other amount representing the value of rights attaching to Units whether or not redeemable. For avoidance of doubt the definition of Trust Liabilities is not intended to affect any other meaning of 'liabilities' of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes.

Trust Property means all property, rights and income of the Trust.

Unit means a beneficial interest in the Trust.

Valuation Time means a time the Responsible Entity calculates the Net Trust Value or Reporting Net Trust Value, as the case may be, under **clause 9.6**.

1.2 Interpretation

In this constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this constitution or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) in fee calculations, applicable accounting standards are to guide classification of items as assets, controlled entities and the basis of consolidation of controlled entities.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Conflicts

- (a) For the purposes of this constitution, if the provisions of the Corporations Act and this constitution conflict on the same matter, the provisions of the Corporations Act prevail.

- (b) A reference in this constitution to the Tax Act is a reference to the Tax Act when and to the extent to which it applies to this constitution, the Trust, the Responsible Entity or the Holders, as the case may be.
- (c) For the purposes of this constitution, if the provisions of the Tax Act and this constitution conflict on the same matter, the provisions in the Tax Act prevail.

2. Constitution

2.1 Constitution

This document is the trust deed for the Trust and, upon registration of the Trust as a registered scheme under the Corporations Act, the constitution of the Trust for the purposes of the Corporations Act.

2.2 Unit trust

By this constitution the Responsible Entity constitutes a unit trust called the *MCP Master Income Trust* or such other name as determined by the Responsible Entity from time to time.

2.3 Benefit of the Trust

The Trust is constituted for the benefit of Holders.

2.4 Responsible Entity

The Responsible Entity is the trustee, and for the purposes of the Corporations Act, is the Responsible Entity of the Trust.

2.5 Constitution binding

This constitution binds the Holders (including former and future Holders) and the Responsible Entity as if each were a party to this constitution.

2.6 Separate fund

The Responsible Entity must hold the Trust Property as a separate fund which is not available to meet liabilities of any other trust. The Responsible Entity may mingle Trust Property with other property to the extent legally permitted.

2.7 Duration

- (a) The Trust ends on the date determined by the Responsible Entity or at any earlier time provided by this constitution or by law.
- (b) No Units may be issued, transferred or redeemed after the 80th anniversary of the date of this constitution if that issue, transfer or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

2.8 Vesting

The Responsible Entity must hold the Trust Property on trust for the Holders.

2.9 AMIT Status

- (a) The Responsible Entity may make an election into the AMIT Regime under the Tax Act provided that the Responsible Entity uses reasonable endeavours (including, without limitation, obtaining tax and legal advice from relevant professionals) to consider whether the Trust qualifies as an AMIT.
- (b) Notwithstanding any other provision of this constitution, where the AMIT Choice has been made, the Responsible Entity is authorised to take actions and make decisions in order to enable the Trust to comply with the requirements of the Tax Act in respect of AMITs notwithstanding that such actions or decisions may be inconsistent with this constitution including, without limitation, that the Responsible Entity will not be obliged to provide

information under this constitution which is inconsistent with the Tax Act as it applies to an AMIT.

3. Commencement

The Trust commences when the first Unit is issued.

4. Units

4.1 Beneficial interest

The beneficial interest in the Trust is divided into Units.

4.2 Rights of Holders

A Unit confers on its Holder an undivided beneficial interest in the Trust as a whole, subject to Trust Liabilities, not in parts or single assets. All Units confer identical interests and rights except as otherwise provided in this constitution or by their respective terms of issue. Each partly paid Unit shall carry the Paid Up Proportion of the rights attaching to a fully paid Unit including without limitation, for the purposes of determining distribution amounts under **clauses 31 or 32**, the Redemption Price under **clause 13** and the distribution of the proceeds on winding up under **clause 24**.

4.3 Dealing with Units

A Holder must not dispose of or otherwise deal with its Units other than in accordance with this constitution. Any disposal or other dealing in a Holder's Units other than in accordance with this constitution has no effect unless the Responsible Entity determines otherwise.

4.4 Consolidation, division and issue of Units

- (a) The Responsible Entity may at any time consolidate, divide, or issue Units, and create and issue Units of different classes.
- (b) Where required by the Corporations Act and subject to the Corporations Act, where units of different classes are issued, the Responsible Entity shall incorporate any or all of the terms of issue or rights and entitlements in this constitution or in a schedule to this constitution to the extent that such terms of issue or rights and entitlements are required by the Corporations Act to be contained in this Constitution.

4.5 Parts of Units

- (a) While Units are not Quoted, a part of a Unit may be created and issued and dealt with in the proportion that the part bears to a whole Unit.
- (b) If any part Units are on issue at a time when the Trust is to be Listed, the Responsible Entity may cancel the part Units with effect from the date of Listing.
- (c) While Units are Quoted, where any calculation or action performed under this deed or the terms of a withdrawal offer would result in the issue or redemption of a part of a Unit or would otherwise result in parts of Units being on issue, the number of Units is, subject to this deed, to be rounded down to the nearest whole Unit.
- (d) Any excess application or other money or property which results from rounding under any provision of this deed becomes Trust Property.

4.6 Holders not to interfere

A Holder may not interfere with, or exercise powers of, the Responsible Entity in respect of any Trust Property, Trust Liability or obligation and has no right to lodge a caveat affecting any Trust Property.

5. Options

5.1 Issue of Options

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may issue Options on such terms and conditions as it determines provided that:

- (a) the issue price of Options shall be \$1.00 or such other amount as determined by the Responsible Entity; and
- (b) the Issue Price of Units to be issued pursuant to the exercise of the Option shall be determined:
 - (i) in the case of an offer which is consistent with the principles set out in **clause 10.4** and applicable Relief, the price determined by the Responsible Entity; and
 - (ii) otherwise, in accordance with **clause 10.2** or **10.3**, as applicable.

5.2 Interest of Option Holders

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

5.3 Voting rights of Holders of Options

Option Holders shall not be entitled to receive notices of, and to attend meetings of Holders unless required under law.

6. Variables relating to classes of Units

6.1 Responsible Entity Fees, expenses or tax referable to a class

If a class is created in accordance with **clause 4.4** and Units in the class have at any time:

- (a) a Responsible Entity Fee that is referable to that class that is different to the Responsible Entity Fee that is referable to another class; or
- (b) a type or a particular expense, cost, charge, outgoing or tax or a proportion of a particular expense, cost, charge, outgoing or tax referable to that class,

the Responsible Entity must:

- (c) calculate each Holder's share of Distributable Income or amount distributed under **clause 31**, or in any Period when the Trust is an AMIT each Holder's distribution under **clause 32(c)**, by first calculating for each class of Unit held by the Holder that proportion of the variables in **clause 31** that the Responsible Entity determines is properly referable to the class and the Units held by the Holder and then aggregating those amounts; and
- (d) determine the proportion of net proceeds of realisation under **clause 24.5** that is properly referable to each class and each proportion referable to each class must be distributed pro rata to Holders according to the number of Units in that class they hold provided that where there are partly paid Units in issue, the entitlement of the partly paid Unit will be proportionate to the Paid Up Proportion applicable to the partly paid Unit.

6.2 No limitation of class rights or obligations

Clause 6.1 does not limit the extent to which a class:

- (a) may have rights, obligations or restrictions other than or in addition to those specified in **clause 6.1** different from any other class; or
- (b) may have different rights, obligations or restrictions because of a determination by the Responsible Entity under this constitution, including in relation to the Issue Price and Redemption Price applicable to different classes of Units.

6.3 Determination of variables in relation to a class

The Responsible Entity in making any determination of variables properly referable to a class under this constitution must ensure that any variable which relates:

- (a) only to a particular class is solely referable to that class; and
- (b) to more than one class, is apportioned between those classes in the same proportions as the aggregate value of Units on issue in each class as at the most recent Valuation Time bears to the aggregate value of Units in all classes on issue at that Valuation Time, to which the variable relates.

7. Specified Time

7.1 Determination of Specified Time

The Responsible Entity may determine (and whenever it elects, vary) one or more times including during each Business Day for the purposes of any or all of:

- (a) applications for Units;
- (b) the issue of Units; and
- (c) Redemption Requests,

different times being applicable to different locations or methods of communication or payment. The times relevant to applications for Units, issues of Units and to Redemption Requests may differ.

7.2 Record date

Unless this constitution otherwise provides, the Responsible Entity will determine the record or similar date for determining Holders' entitlements including their entitlements to participate in new issues and distributions of income and capital.

8. Applications for Units

8.1 Application for Units

Except as otherwise provided in this constitution, a person intending to subscribe for Units must:

- (a) (other than on Distribution Reinvestment) give the Responsible Entity an application in a form and manner approved by the Responsible Entity; and
- (b) either:
 - (i) pay;
 - (ii) transfer other property in (part or full) satisfaction of; or
 - (iii) provide a promise to pay in a form acceptable to the Responsible Entity, the Issue Price (or in the case of partly paid Units, that part of the Issue Price payable on application), to the Responsible Entity or custodian (where there is one); and
- (c) provide the Responsible Entity with any information required by the Responsible Entity for the purposes of administering the Trust or complying with any relevant law including but not limited to:
 - (i) beneficial holders of interests in any Holder; and
 - (ii) information required by the Responsible Entity to comply with its obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

8.2 Payment in kind

A person intending to subscribe for Units may only transfer property (other than money) to pay for those Units, if the:

- (a) Responsible Entity permits;
- (b) property is in a form permitted by the Responsible Entity;
- (c) property is accompanied by a valuation of it that is acceptable to the Responsible Entity, unless the Responsible Entity determines that such a valuation is not required; and
- (d) the property is valued, in a manner consistent with **clause 9.3**, as equal to the amount payable on application under **clause 8.1**.

8.3 Responsible Entity may deduct

The Responsible Entity or custodian may deduct Taxes and costs incurred in receiving, and in calculating the value of, consideration for Units.

8.4 Separate bank account

The Responsible Entity or custodian may hold application money for Units in a single account (being interest or non-interest bearing as determined by the Responsible Entity) containing application money for one or more trusts or bodies corporate.

8.5 Responsible Entity may set investment minimums

The Responsible Entity from time to time may determine and may vary the current Initial Minimum Investment, Subsequent Minimum Investment and Minimum Balance.

8.6 Amount or value of consideration for Units

The amount or value of the consideration for Units on application must equal or exceed the Initial Minimum Investment (or in the case of a subsequent investment, Subsequent Minimum Investment) except if:

- (a) the consideration is received under a Distribution Reinvestment or paid by the Responsible Entity on behalf of a Holder; or
- (b) the Responsible Entity elects to accept lower consideration where it reasonably expects that this will not cause any material adverse effect on other Holders.

8.7 Responsible Entity may determine amounts paid up

The Responsible Entity may deem an amount to be paid up on a partly paid Unit (whether for consideration or not) and where it does so, the Unit will be taken to be paid up to such amount for all purposes.

8.8 Responsible Entity may reject applications

The Responsible Entity may reject an application for Units, in whole or in part, without giving a reason.

8.9 Timing

Consideration may be provided at or within such time before or after the Responsible Entity is given the application as the Responsible Entity may determine or accept from time to time.

8.10 Issue of Units

Units are taken to be created and issued when:

- (a) the Responsible Entity accepts the application and enters the person to whom they are issued on the Register as the Holder of the Units; and
- (b) the consideration or a commitment in a form acceptable to the Responsible Entity to provide the consideration becomes Trust Property. Units issued against consideration paid other than in cleared funds are void if the funds are not subsequently cleared or the consideration is not provided or transferred at or within the time specified by the Responsible Entity.

9. Valuation

9.1 Responsible Entity's expertise

The Responsible Entity does not have any special expertise in valuing property.

9.2 Use of Reporting Net Trust Value and Net Trust Value

The Responsible Entity must use the Reporting Net Trust Value if a calculation on that basis is required by the Corporations Act and must use the Net Trust Value for all other purposes including, but not limited to, determining the net value of Trust Property less Trust Liabilities, Issue Prices, Redemption Prices, Distributable Income and fees.

9.3 Value

(a) The value of any Trust Property:

- (i) is the market value, the net fair value, or other value appropriate to the nature of the Trust Property and the nature of the Trust from time to time; and
- (ii) must be determined by the Responsible Entity using an appropriate method the Responsible Entity decides to adopt which method must be consistent with the range of ordinary commercial practice for valuing that type of Trust Property and be reasonably current.

(b) Trust Property acquired must be valued at cost until revalued.

9.4 Revaluation

The Responsible Entity may, having regard to the nature of the property, cause some or all Trust Property to be revalued whenever it sees fit, however the Responsible Entity must do so when required by the Corporations Act and must do so in order to ensure that the Issue Price of Units and the Redemption Price of Units (as applicable) are reasonably current as at the time of calculation.

9.5 Calculation of Net Trust Value and Reporting Net Trust Value

The Responsible Entity must calculate:

- (a) the Net Trust Value on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities as at the Valuation Time; and
- (b) the Reporting Net Trust Value in accordance with the requirements under the Corporations Act from time to time in relation to the preparation of accounts and financial reporting.

9.6 Time of calculation

The Responsible Entity may calculate the Net Trust Value or Reporting Net Trust Value as at any time determined by the Responsible Entity. The Responsible Entity may calculate Net Trust Value more than once a day. The Responsible Entity may apply different Valuation Times for the redemption and issue of Units.

9.7 Late information

A reference to variables applicable as at the issue or redemption date for a Unit includes a reference to those variables being calculated after the relevant date on the basis of the value of those variables (as at the relevant date) based on information that becomes available after that date.

10. Issue

10.1 Initial Units

The Issue Price of all Units issued prior or pursuant to the first Disclosure Document for the Listing is \$2.00.

10.2 Issue Price while Units are not Quoted

- (a) While Units are not Quoted and subject to the other provisions of this **clause 10** and to **clause 33**, the Issue Price of Units issued after the first day on which Units are issued will be equal :
 - (i) to:
 - (A) the Net Trust Value as at the first Valuation Time after the next applicable Specified Time following receipt by the Responsible Entity of an application that complies with **clause 8**; plus
 - (B) any Application Transaction Costs,
divided by the number of Units on issue at that Valuation Time; or
 - (ii) such amount as determined by the Responsible Entity in accordance with the terms of the Corporations Act as modified by ASIC Relief instrument [CO 13/655] or any other applicable Relief as amended or replaced from time to time.
- (b) For the purposes of **clause 10.2(a)(i)**, 'Net Trust Value', and 'Application Transaction Costs' and 'number of Units on issue' are each that proportion of those variables that the Responsible Entity determines is properly referable to the class to which the Unit for which the Issue Price is being calculated belongs in accordance with **clause 6.3**.

10.3 Issue Price while Units are Quoted

While Units are Quoted and subject to the other provisions of this clause 10, the Issue Price of Units issued after the first day on which Units are issued will be equal to the price determined by the Responsible Entity in accordance with the terms of the Corporations Act as modified by ASIC Relief instrument [CO 13/655] or any other applicable Relief as amended or replaced from time to time.

10.4 Pro rata offer

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may offer Units for subscription at an Issue Price determined by the Responsible Entity to those persons who were Holders on a date determined by the Responsible Entity, provided that:

- (a) subject to **clause 10.4(b)**, all Holders are offered Units in proportion to the value of the Holder's Units (or, where the offer is made only to Holders who hold Units in a class, to the value of the Holder's units in that class) at that date; and
- (b) the Responsible Entity may exclude a Holder from the offer if to do so would not be in contravention of the Corporations Act,

whether or not the right of entitlement is renounceable.

10.5 Application Transaction Costs

The Application Transaction Costs are:

- (a) an estimate by the Responsible Entity of the total transaction costs the Trust would incur to acquire afresh the Trust Property; or
- (b) if appropriate having regard to the actual cost which would be incurred because of the issue or sale of the Units (including in relation to Units issued by way of Distribution Reinvestment under **clause 33** or Units issued in consideration of a fee rebate or offset under **clause 27.5**), the Responsible Entity's estimate of the total transaction costs, or a portion of the total transaction costs, which may be zero,

unless the Responsible Entity makes no estimate, in which case the Application Transaction Costs are zero.

10.6 Rounding

Subject to the Listing Rules, the Issue Price may be rounded up or down by no more than 1% or 1 cent (whichever is higher) as determined by the Responsible Entity.

11. Partly paid Units

11.1 Issue of partly paid Units

The Responsible Entity may offer and issue Units on terms that the Issue Price is payable by one or more instalments of such amounts payable at such times as the Responsible Entity determines.

11.2 Calls

Subject to the terms of issue of partly paid Units, the Responsible Entity may from time to time in accordance with this **clause 11** make calls on Holders of partly paid Units for any or all money unpaid on the Holder's Units. Any call must be pro rata as between all Holders and the Responsible Entity may at any time by notice in writing to Holders revoke or postpone a call. From the Final Call Date:

- (a) the Responsible Entity must not make any further calls; and
- (b) the liability of a Holder in relation to the Holder's Units will be deemed to be equal to the aggregate of any amounts called in respect of the Holder's Units before the Final Call Date that has not been paid by the Holder.

11.3 Notice of calls

- (a) The Responsible Entity must give Holders of partly paid Units from whom an instalment is due:
 - (i) if the partly paid Units are not Quoted, at least 10 Business Days' notice; and
 - (ii) if the partly paid Units are Quoted, notice in accordance with the notice requirements under the Listing Rules,
- (b) of the time and date each instalment is due to be paid (**First Notice**).
- (c) If the partly paid Units are Quoted:
 - (i) the First Notice must contain such other information as is required by the Listing Rules; and
 - (ii) the Responsible Entity must send a second notice to all new Holders and those Holders whose holding has changed since the First Notice and from whom an instalment is due, which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

11.4 Liability to pay calls

- (a) Holders on whom a call is made in accordance with this **clause 11** must pay to the Responsible Entity the amount called at the time or times and place specified and if and while an amount called and payable remains unpaid, all voting rights and entitlements to distributions of income and capital are suspended until reinstated by the Responsible Entity.
- (b) Where a Holder has paid the amount of a call, the Unit will be deemed to have been paid up to the amount called on the due date for the payment of the call.
- (c) Subject to the Corporations Act and the Listing Rules:
 - (i) failing to give notice that an instalment is due or the non-receipt of notice by a Holder does not affect the obligation of the Holder to pay the instalment and the provisions of this constitution regarding non-payment of an instalment apply as if notice had been given; and
 - (ii) any instalment which, under the terms of issue of the partly paid Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment of which the Responsible Entity has given notice in accordance with **clause 11.3**. In the case of non-payment, all the provision of this constitution regarding non-payment of an instalment apply as if such notice had been given.

11.5 Interest on unpaid calls

Without limiting the other provisions of this constitution concerning default, if a sum called in respect of a Unit is not paid before or on the day appointed for payment, the Holder must pay interest on the sum from the day appointed for payment of the sum called to the time of actual payment at a rate not exceeding 20% per annum determined by the Responsible Entity in its absolute discretion.

11.6 Default

- (a) If a Holder fails to pay a call in respect of its Units on the day when it is due for payment, the Responsible Entity may give notice requiring the Holder to pay any unpaid call together with any interest which may have accrued and any reasonable expenses incurred by the Responsible Entity as a result of the non-payment (**Default Notice**).
- (b) The Default Notice must:
 - (i) specify a further day (not less than 10 Business Days after the date of the notice) on or before which the payment required by the Default Notice is to be made;
 - (ii) state that, in the event of non-payment at or before the time appointed for payment, the Units in respect of which the call was made will be liable to be forfeited and redeemed or sold in accordance with this constitution; and
 - (iii) if the partly paid Units are Quoted, contain such other information as is required by the Listing Rules.

11.7 Forfeiture on failure to comply with Default Notice

- (a) If a Default Notice is issued, and:
 - (i) the requirements of a Default Notice are not complied with in the time specified in the Default Notice; or
 - (ii) the requirements of a Default Notice are complied with, but are complied with after the time specified in the Default Notice,then:
 - (iii) any Units in respect of which the Default Notice has been given may be forfeited as the Responsible Entity determines at any time after the time specified in the Default Notice for payment; and
 - (iv) subject to the Corporations Act and the Listing Rules, all voting rights, entitlements to distributions and other rights in connection with the forfeited Units are suspended until reinstated by the Responsible Entity.
- (b) The Responsible Entity may, at any time before a forfeited Unit is sold, disposed of or redeemed, annul the forfeiture of the Unit on conditions determined by it and must do so when the Responsible Entity receives payment in full of all amounts owing in respect of the Units, including interest and expenses as set out in **clauses 11.5 and 11.6**.

11.8 Disposal of forfeited Units

A Unit forfeited under **clause 11.7** may be sold, redeemed or otherwise disposed of, as the Responsible Entity determines:

- (a) while Units are Quoted and subject to the Corporations Act and the Listing Rules at a price determined by the Responsible Entity in accordance with the terms of the Corporations Act as modified by ASIC Relief instrument [CO 13/655] or any other applicable Relief as amended or replaced from time to time; or
- (b) while Units are not Quoted and subject to the Corporations Act:
 - (i) at a price no less than a price calculated in accordance with **clause 10.2**; or
 - (ii) at a price determined by the Responsible Entity in accordance with the terms of the Corporations Act as modified by ASIC Relief instrument [CO 13/655] or any other applicable Relief as amended or replaced from time to time.

11.9 Transfer of forfeited Units

- (a) Where a Unit is forfeited under this **clause 11**:
 - (i) the Responsible Entity may receive the consideration (if any) given for a forfeited Unit on any sale or disposal of the Unit under this **clause 11** and effect a transfer of the Unit in favour of a person to whom it is sold or disposed of;
 - (ii) the purchaser of the Unit must be registered as the Holder of the Unit in the Register;
 - (iii) the purchaser of the Unit is not bound to check the regularity of the sale or the application of the purchase price and will not be subject to complaint or remedy by the former Holder of the Unit in respect of the purchase; and
 - (iv) the purchase of the Unit obtains title to the Unit despite any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.
- (b) The Responsible Entity must apply the net proceeds of any sale of a forfeited Unit in the following order:
 - (i) in payment of the expenses of the sale as set out in **clause 11.5**;
 - (ii) in payment of all calls or other amounts that were payable in respect of the forfeited Unit, including interest as set out in **clause 11.6**; and
 - (iii) in payment of any surplus to the former Holder of the Unit.

11.10 Liability of former Holder

- (a) A person whose Units have been forfeited, sold, redeemed or otherwise disposed of remains liable to pay to the Responsible Entity:
 - (i) all money (including interest and expenses) that, at the date of forfeiture, was payable by it to the Responsible Entity in respect of the forfeited Units;
 - (ii) all money that would have become payable by it to the Responsible Entity in respect of the forfeited Units; and
 - (iii) interest due from the date of forfeiture until payment of the money referred to in **clause 11.10(a)(i)** at a rate determined by the Responsible Entity (not exceeding 20% per annum).
- (b) A former Holder's liability to the Trust and Responsible Entity ceases if and when the Responsible Entity receives payment in full of all money (including interest and expenses) payable by the former Holder in respect of the Units.

11.11 Joint Holders

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.

11.12 Other terms

The Responsible Entity may issue partly paid Units on such other terms and conditions as it decides.

12. Transfers of Units

12.1 Transfers while Units are not Quoted

While Units are not Quoted, a Holder may transfer Units with the consent of the Responsible Entity in the manner as the Responsible Entity from time to time prescribes. A transfer of Units takes effect only when recorded in the Register. The Responsible Entity is not obliged to register a transfer including where the transferee does not meet the Responsible Entity's criteria for a Holder which it may set in its discretion, the transfer is not duly stamped (where required), or any amount payable by the transferee to the Responsible Entity in respect any of the transferor's Units remains unpaid.

12.2 Transfers while Units are Quoted

While Units are Quoted and subject to the Listing Rules and **clauses 12.3**:

- (a) a Holder may only transfer Units in accordance with the Listing Rules;
- (b) the Responsible Entity must record a transfer of Units in the Register in accordance with the Listing Rules; and
- (c) except as provided by the ASX Settlement Operating Rules, a transfer takes effect only when recorded in the Register.

12.3 Holding locks

While Units are Quoted and subject to the Listing Rules, the Responsible Entity:

- (a) may refuse to register a transfer where permitted by the Corporations Act or the Listing Rules; and
- (b) must do so where required by the Corporations Act or Listing Rules or the transfer would breach **clause 46.3**.

13. Redemption of Units

13.1 Responsible Entity not obliged to pay Redemption Price out of own funds

In no circumstances is the Responsible Entity obliged to pay any part of the Redemption Price out of its own funds.

13.2 Redemption while Units are Quoted

- (a) This **clause 13.2** applies if Units are Quoted.
- (b) The Responsible Entity may, subject to the Corporations Act and the Listing Rules:
 - (i) make a withdrawal offer as contemplated under **clause 13.4** and the Redemption Price is to be calculated under **clause 13.5**; and
 - (ii) purchase Units at a price determined in its discretion and cause the Units to be cancelled.

13.3 Redemption request while Trust is liquid and Units are not Quoted

- (a) This **clause 13.3** applies if the Trust is liquid and Units are not Quoted.
- (b) If the Responsible Entity determines to allow redemptions of Units, Holders can, prior to the termination of the Trust, make Redemption Requests in writing or in such other form as specified by the Responsible Entity. The Responsible Entity may reject a Redemption Request in its absolute discretion.
- (c) For the avoidance of doubt, a Holder has no right to require the Responsible Entity to redeem its Units and the Responsible Entity has no obligation to allow redemptions.
- (d) All Redemption Requests are irrevocable unless the Responsible Entity in its absolute discretion consents to its revocation.
- (e) The Responsible Entity may determine more than one date with effect from which a Unit is to be redeemed pursuant to a Redemption Request and such Units will be redeemed over those days in such proportions as the Responsible Entity determines, provided that all such Units are redeemed within the period specified in **clause 13.3(f)**.
- (f) If Units the subject of a Redemption Request are to be redeemed:
 - (i) the Redemption Request must be satisfied by paying the Redemption Price multiplied by the number of Units the subject of the Redemption Request;
 - (ii) the payment referred to in **clause 13.3(f)(i)** must be made within 21 days of that date of redemption of the relevant Units (or deemed date of such redemption); and

- (iii) the Units the subject of the Redemption Request are deemed to be redeemed at the time at which the applicable Redemption Price is calculated and from that time until payment, the former Holder of the redeemed Units ceases to be a Holder in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

13.4 Situation where Trust is not liquid

If the Trust is not liquid or for the purposes of **clause 13.2(b)(i)**, a Holder may request the Responsible Entity to redeem the Holder's Units only in accordance with the terms of any current withdrawal offer made by the Responsible Entity in compliance with the provisions of the Corporations Act regulating offers of that kind. A withdrawal offer may be provided to Holders by any means determined by the Responsible Entity including but not limited to by mail, by any electronic means or by a notice on its website. Upon receipt of a withdrawal offer by the Responsible Entity a Holder may accept the withdrawal offer by delivering to the Responsible Entity a Redemption Request in writing prior to the close of the withdrawal offer. If there is no withdrawal offer currently open for acceptance by Holders, a Holder has no right to make a Redemption Request. The Responsible Entity does not have to make a withdrawal offer.

13.5 Redemption Price

The Redemption Price per Unit is the sum of:

- (a) the Net Trust Value as at the Specified Time following communication to the Responsible Entity of a Holder's Redemption Request with such adjustments and provisions as the Responsible Entity thinks appropriate in accordance with generally accepted accounting principles or as approved by the auditor of the Trust or an independent expert; less
 - (b) any Redemption Transaction Costs,
- divided by the number of Units on issue at that Valuation Time.

13.6 Variables referable to classes of Units

For the purposes of **clause 13.5**, 'Net Trust Value', and 'Redemption Transaction Costs' and 'number of Units on issue' are each that proportion of those variables that the Responsible Entity determines is properly referable to the class to which the Unit for which the Redemption Price is being calculated belongs in accordance with **clause 6.3**.

13.7 Redemption Transaction Costs

The Redemption Transaction Costs are:

- (a) an estimate by the Responsible Entity of the total transaction costs the Trust would incur to sell the Trust Property; or
- (b) if appropriate having regard to the actual cost which would be incurred because of the redemption, the Responsible Entity's estimate of the total transaction costs, which may be zero,

unless the Responsible Entity makes no estimate, in which case the Redemption Transaction Costs are zero.

13.8 Deduction of Exit Fee

The Responsible Entity may deduct from the Redemption Price any applicable Exit Fee.

13.9 Determination of Minimum Redemption Amount

The Responsible Entity may from time to time determine or vary the Minimum Redemption Amount.

13.10 Redemption Requests for less than the Minimum Redemption Amount

The Responsible Entity may reject a Redemption Request if the amount payable to the Holder is less than the Minimum Redemption Amount for the Trust (unless the Redemption Request is for all Units held by the Holder).

13.11 Deemed Redemption Request for all Units

If a Redemption Request would leave a holding worth, at the Redemption Price, less than the current Minimum Balance, the Responsible Entity may treat the Redemption Request as applicable to all Units held by that Holder.

13.12 Transfer of assets on redemption

Generally, the amount payable on a redemption of Units will be paid in cash. However, the Responsible Entity may satisfy the amount payable on a redemption of Units (partly or fully) by transferring those assets in specie as the Responsible Entity in its discretion may select, to be credited at asset values determined in a manner consistent with **clause 8.3** (in order to ensure that the valuations are consistent with the range of ordinary commercial practice for valuing assets of that type and are reasonably current) as at the same time the Redemption Price is determined, without deduction for any costs or Taxes payable by the Holder in respect of the transfer unless the Responsible Entity determined otherwise.

13.13 Application of proceeds to units in another trust

Where this facility is offered by the Responsible Entity, a Holder may request the Responsible Entity, in a manner acceptable to the Responsible Entity, to apply proceeds from a Redemption Request to subscribe for units in another trust, in which case any application money for the units in the other trust is taken to be paid to the trustee of the other trust when the relevant Units in this Trust are redeemed in accordance with this constitution.

13.14 Character of Redemption Price and notification to Holder

- (a) The Responsible Entity may determine the portion of the Redemption Price for a Unit which represents:
 - (i) Distributable Income where Distributable Income for this purpose can include the amount of Distributable Income to which the redeeming Holder would be entitled if a distribution of Trust Income were made at the time the Unit was redeemed. The Responsible Entity may allocate a separate class of income to make up this amount including:
 - (A) a franked dividend;
 - (B) capital gains;
 - (C) any other remaining Trust Income including further separate classes of income maintained by the Responsible Entity; or
 - (ii) in any Period when the Trust is an AMIT, each Holder's distribution of income under **clause 32(c)**.
- (b) Any determination by the Responsible Entity in relation to (a) must be made within the time periods specified by the Tax Act for the allocation to be effective for the purposes of that Act.
- (c) Any remaining amount of the Redemption Price will represent a return of Trust capital attributable to that Unit.
- (d) The Responsible Entity must advise the Holder in respect of any Unit redeemed pursuant to this **clause 13** of the extent to which the Redemption Price represents a distribution of Trust Income including any separate class or classes of Trust Income that make up the Redemption Price.

13.15 Buy Back

- (a) This **clause 13.2** applies if Units are Quoted.
- (b) The Responsible Entity may, subject to the Corporations Act and the Listing Rules:
 - (i) purchase Units at any price it determines; and
 - (ii) cause Units purchased under this **clause 13.15** to be cancelled if it so decides.
- (c) No Redemption Price is payable on cancellation of Units under this **clause 13.15**.

14. Suspension

14.1 Responsible Entity may suspend redemption and issue of Units

While Units are not Quoted, the Responsible Entity at any time may suspend the redemption or issue of Units in the Trust for up to 365 days, if:

- (a) it is impracticable for the Responsible Entity, its nominee or any service provider appointed by the Responsible Entity to calculate the Net Trust Value, for example because of:
 - (i) an inability to value Trust Property;
 - (ii) closure of, or trading restrictions or suspension on, any stock, commodities, futures or securities exchanges or over-the-counter market on which any significant portion of the investments in the Trust is listed, quoted, traded or dealt; or
 - (iii) an emergency or other state of affairs or a declaration of a moratorium in a country where the Trust invests (or the Trust has exposure to through any derivative in which the Trust invests);
- (b) the Trust investments suspend, delay or restrict the redemption, issue or payment of redemption proceeds (as applicable), or are unable to provide a withdrawal price;
- (c) the Responsible Entity receives Redemption Requests of an aggregate value that in its reasonable estimate exceeds 5% (by value) of all Trust Property;
- (d) there have been, or the Responsible Entity anticipates that there will be, Redemption Requests that involve realising a significant amount of the Trust Property and the Responsible Entity considers that if those Redemption Requests are all met immediately, Holders who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those Redemption Requests would otherwise be to the existing Holders' disadvantage including by way of a material diminution in the value of the Trust Property or departure from the investment strategy of the Trust;
- (e) the Responsible Entity reasonably considers that it is in the interests of the Holders; or
- (f) it is otherwise legally permitted.

14.2 Applications and Redemption Requests during suspension

An application for Units lodged during any period when the issue of Units is suspended, or a Redemption Request lodged during any period when the redemption of Units is suspended, is taken to be lodged the day after the end of the relevant suspension period.

15. Small holdings

15.1 Sale or redemption

- (a) The Responsible Entity may sell or redeem any Units held by a Holder without request by the Holder in accordance with this **clause 15** where:
 - (i) while the Units are not Quoted, the number of Units held by the Holder is less than the Minimum Balance; or
 - (ii) while Units are Quoted and subject to the Listing Rules, the Units held by a Holder comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Responsible Entity may only sell or redeem Units on one occasion in any 12 month period.
- (b) The Responsible Entity may not exercise its power to sell or redeem Units under **clause 15.1(a)(ii)**:
 - (i) in respect of any Holder on more than one occasion in any 12 month period; or

- (ii) following the announcement of a takeover. However, the procedure may be started against after the close of the offers made under the takeover.

15.2 Notice requirements

The Responsible Entity must:

- (a) give the Holder at least 6 weeks' written notice of its intention to sell or redeem Units under this **clause 15**; and
- (b) where a Holder that receives notice under **clause 15.2(a)**:
 - (i) while the Units are not Quoted, increases their holding to not less than the Minimum Balance; or
 - (ii) while the Units are Quoted, advises the Responsible Entity that it wishes to retain the Units,
- (c) the Responsible must not exercise its power to sell or redeem Units under this **clause 15**.

15.3 Price

The Redemption Price of any Units redeemed under this **clause 15** is to be calculated in accordance with **clause 13.5**.

15.4 Mechanics

- (a) The Responsible Entity or the purchaser of the Units must pay the costs of the sale or redemption under this **clause 15** as the Responsible Entity decides.
- (b) The proceeds of the sale or redemption under this **clause 15** will be sent to the relevant Holder, but not before the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate (if any) has been lost or destroyed.
- (c) The Responsible Entity is entitled to execute on behalf of a Holder any transfer of Units under this **clause 15**.

16. Responsible Entity's powers

16.1 General powers

Subject to this constitution and the Corporations Act, the Responsible Entity has within and outside Australia all the powers in relation to the Trust, Trust Property and Trust Liabilities, that it is legally possible for a natural person, corporation, trustee or responsible entity to have, including to invest in real or personal property of any nature (including all financial instruments, derivatives and forward rate and currency exchange agreements for speculative or other purposes) (and may vary any investment at any time in its absolute discretion), to borrow or raise money and to secure by mortgage or otherwise (in whatever proportion to Trust Property), give guarantees and incur liabilities and obligations of any kind and to fetter its own discretion, as if it were the absolute and beneficial owner of all Trust Property. Without limiting this **clause 16.1** and subject to the Corporations Act, the Responsible Entity has power to make co-investments with related entities of the Responsible Entity and to mix and mingle Trust Property with the property of other co-investors (in which case it must keep appropriate records of the Trust's interests in the co-investments) and do all things required in the Responsible Entity's absolute discretion to give effect to **clause 32** (including but not limited to executing any documents or exercising any discretion for the purposes of **clause 32**).

16.2 Investment powers

To the full extent that they may be excluded by this deed, the duties imposed by subsection 14A(2) of the *Responsible Entity Act 1925 (NSW)* or corresponding legislation of any other State or Territory do not apply to the exercise by the Responsible Entity of its investment powers.

16.3 Responsible Entity may delegate powers

- (a) The Responsible Entity, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including but not limited to holding any Trust Property and executing documents on its behalf.
- (b) Any such delegate may be authorised to sub-delegate or appoint its own agents.

16.4 Registration of the Trust, Listing of the Trust and Quotation of Units

Without limiting the effect of **clause 16.1**, the Responsible Entity may in its capacity as trustee of the Trust:

- (a) apply for registration of the Trust as a registered scheme; and
- (b) apply for Listing of the Trust or Quotation of Units,

and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Holder to do all things necessary to effect registration, Listing or Quotation.

16.5 Discretion

The Responsible Entity may determine whether to exercise, and the manner, mode and time of exercise of, its powers, in its absolute discretion. Without limiting this **clause 16**, the Responsible Entity may enter into arrangements with any one or more Holders in connection with the exercise of its powers or discretions.

17. Management of the Trust

17.1 Responsible Entity to manage Trust

The Responsible Entity must manage the Trust and its Trust Property and Trust Liabilities while any remain.

17.2 Responsible Entity may engage advisers

- (a) The Responsible Entity may, as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Responsible Entity) investment managers, property managers, valuers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.
- (b) Notwithstanding any other provision the Responsible Entity must appoint the Manager as the exclusive manager of the Trust in accordance with the Management Agreement, with such exclusivity to continue until such appointment is terminated pursuant to the Management Agreement.

17.3 Reliance by Responsible Entity

The Responsible Entity may, in relation to the Trust, rely and act on any:

- (a) advice, opinion or other information provided to the Responsible Entity by a person of a category listed in **clause 17.2**; and
- (b) document which it is reasonable for the Responsible Entity to rely upon,

if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise (as the case may be).

18. Indemnity

- (a) The Responsible Entity is indemnified out of the Trust Property for any liability incurred by it, in its own capacity or through an agent, manager, advisor or delegate, in relation to the proper performance of any of its duties in respect of the Trust.

- (b) The Responsible Entity is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose.
- (c) Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity the Responsible Entity is entitled to under the law.
- (d) When calculating the amount of any liability incurred or to be incurred by the Responsible Entity for which it is entitled to be reimbursed or indemnified under this constitution, the Responsible Entity must deduct an amount equal to any input tax credit (as defined in the GST Act) to which the Responsible Entity in its personal capacity is entitled in connection with the liability.
- (e) This **clause 18** is to be read subject to the Corporations Act. Without limitation, the right of the Responsible Entity to be indemnified out of Trust Property pursuant to this **clause 18** is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Trust.

19. Investment Policy

The Responsible Entity will determine the investment policy for the Trust and may vary its investment policy from time to time.

20. Register

20.1 Unit register

The Responsible Entity must establish the Register.

20.2 Branch registers

The Responsible Entity may establish branch Unit registers anywhere in Australia.

20.3 Notice of trust

The Responsible Entity need not enter notice of any trust on the Register.

20.4 Registered Holder is owner

The Responsible Entity may treat a registered Holder as the holder and absolute owner of Units registered in the Holder's name on the Register and is not bound to take notice of any trust or equity affecting a Unit. Entry on the Register is conclusive evidence of a Holder's title to Units.

20.5 Classes

The Responsible Entity must maintain (in accordance with the Corporations Act) a Register recording details of any class of Units.

21. Certificates for Units

Subject to the Corporations Act, the Responsible Entity is not obliged to issue certificates for Units. The Responsible Entity at any time may send a Holder details of Units held by, Unit transactions of, or distributions to, the Holder.

22. Mortgage

22.1 Recording of mortgagee

On the Holder's written request, the Responsible Entity may, but is under no obligation to, record a mortgagee (sole or joint) of Units in the Register and on the mortgagee's written request may delete that record.

22.2 Payments to mortgagees

Redemption proceeds of Units, capital distributions (not representing part of Distributable Income or in any Period when the Trust is an AMIT, each Holder's distribution of income under **clause 32(c)**) and distributions after termination of the Trust must be paid to the recorded mortgagee of the Units in the Register (or as it otherwise directs in writing).

22.3 Transfer of mortgaged Units

A transfer of Units is subject to any existing mortgagee record so that Units in respect of which a mortgagee is recorded on the Register cannot be transferred without the written consent of the mortgagee. For the avoidance of doubt, a transfer of mortgaged Units to the mortgagee remains subject to the terms of transfer ordinarily applying under this constitution.

22.4 Responsible Entity does not have notice of mortgage or charge

The Responsible Entity and its agents are not taken to have notice of the terms of any mortgage or charge and have no liability to a mortgagee of Units.

23. Transmission on death and insolvency

The Responsible Entity only recognises the following persons as having an interest in a Holder's Units in the following circumstances:

- (a) if a Holder dies, or becomes subject to a legal disability, the Holder's legal personal representative;
- (b) if a Holder becomes subject to a legal disability, a person properly appointed under an enduring power of attorney or otherwise legally authorised to deal with the Holder's Units;
- (c) if a joint Holder dies, the surviving joint Holder or Holders; and
- (d) if a Holder becomes bankrupt or enters into liquidation, the person legally entitled to the Holder's Units consequent on bankruptcy or liquidation.

24. Termination

24.1 Responsible Entity may terminate

Subject to the Corporations Act, the Responsible Entity may at any time, while the Trust is not Listed, terminate the Trust by written notice to the Holders with effect from the Termination Date specified in the notice.

24.2 Responsible Entity may terminate under Corporations Act

The Responsible Entity may terminate the Trust in accordance with the provisions of the Corporations Act. Subject to the Corporations Act this **clause 24.2** will only apply while the Trust is not Listed.

24.3 Holders may terminate

The Holders may at any time terminate the Trust in accordance with the relevant provisions of the Corporations Act.

24.4 Issue and redemption stops

From the date on which:

- (a) notice is given in accordance with **clause 24.1**; or
- (b) the Holders determine to terminate the Trust in accordance with **clause 24.2**,

the issue and redemption of Units ceases, the Responsible Entity's ability to make calls on Holders of partly paid Units ceases and any right that a Holder may have to have a Redemption Request processed is extinguished.

24.5 Action on termination

From the Termination Date, the Responsible Entity must:

- (a) realise all Trust Property;
- (b) pay, discharge or provide for all Trust Liabilities (except Redemption Liabilities) and expenses of termination and winding up pursuant to this **clause 24** from the Trust Property; and
- (c) subject to **clause 6.1**, distribute the net proceeds referable to each class of Units among Holders in the class of Units pro rata to the number of Units held within the relevant class of Units on the Termination Date. Where there are both fully paid and partly paid Units in issue, the entitlement of the partly paid Unit will be proportionate to the Paid Up Proportion applicable to the partly paid Unit.

Payments by the Responsible Entity pursuant to **clause 24.5(b)** shall be made in priority to any payments to be made by the Responsible Entity pursuant to **clause 24.5(c)**.

Unless otherwise specified in this constitution, the Responsible Entity must determine the proportion of the net proceeds of realisation under this clause that is properly referable to each class of Units and each proportion referable to each class of Units must be distributed in accordance with this **clause 24.5**.

24.6 Realisation of Trust Property

Subject to the Corporations Act, the Responsible Entity may postpone realising Trust Property as it sees fit and is not responsible for any resulting loss.

24.7 Distributable Income

Each Holder registered on the Termination Date continues to be entitled to their proportionate share of Distributable Income or in any Period when the Trust is an AMIT, each Holder's distribution under **clause 32(c)**, during the winding up period. The Responsible Entity may make partial distributions of Trust proceeds during the winding up period.

24.8 Auditing of winding up accounts

The Responsible Entity must cause the final accounts of the Trust to be independently audited after winding up of the Trust by a registered company auditor or firm of chartered accountants of which at least one partner or member is a registered company auditor.

25. Independent rights

The Responsible Entity, the Manager and any related company or associate of the Responsible Entity or the Manager, may, subject always to acting in good faith to Holders:

- (a) hold Units;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with the Responsible Entity, the Manager or with any related body corporate or associate of the Responsible Entity, the Manager or with any trust;
- (d) invest in and deal in any capacity, with the same investments as those of the Trust, on similar or different terms;
- (e) recommend that investments be purchased or sold, on behalf of the Trust, regardless of whether at the same time it may buy, sell or recommend, in the same or in a contrary manner, the purchase or sale of identical investments in relation to itself or other clients;
- (f) deal in any investment regardless of whether that dealing is inconsistent with the dealing of the Trust;
- (g) act in any capacity in relation to any other trusts, including subscribing for units in other trusts on behalf of Holders;

- (h) act in various capacities in relation to, or be otherwise involved in (such as by way of investment), other business activities that may be in competition with the interests of Holders;
 - (i) acquire or dispose of Trust Property to associates of the Responsible Entity or the Manager at the price and in the manner contemplated by a Disclosure Document or in this constitution; or
 - (j) receive and retain profits or benefits of any nature, in connection with the Trust or otherwise, including buying or selling Trust Property from or to itself in another capacity,
- without being liable to account to the Trust, to the Responsible Entity, to the Manager or to a Holder.

26. Responsible Entity's liability

To the extent legally permitted (and in no way limiting or purporting to exclude, or reduce liability under, the Corporations Act in particular), where the Responsible Entity acts without fraud, negligence or a breach of trust involving a failure to show the degree of care and diligence required of it having regard to the powers, authorities or discretions conferred on it by this constitution, the Responsible Entity is not liable to any future trustee or responsible entity, any Holder or any other person:

- (a) for loss caused by:
 - (i) the Responsible Entity's acts or omissions in reliance on:
 - (A) the Register;
 - (B) the authenticity of any document;
 - (C) the opinion, advice or information of any barrister, solicitor, accountant, valuer or other expert instructed by the Responsible Entity; or
 - (D) information from any banker or the auditor of the Trust,
 if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;
 - (ii) any act, omission, neglect or default of another person;
 - (iii) any act or omission required by law or by a court of competent jurisdiction;
 - (iv) any particular price or reserve not having been realised;
 - (v) any unnecessary payment having been made to a fiscal authority;
 - (vi) any act or omission of an operator of a securities title, transfer or holding system; or
 - (vii) another reason; or
- (b) in any event, to a greater extent than the investments, cash and other property to which the Responsible Entity is entitled and does recover through its right of indemnity from Trust Property actually vested in the Responsible Entity in accordance with this constitution.

27. Responsible Entity's fees

27.1 Entitlement to fees

The Responsible Entity or its nominee is entitled to the fees described in this **clause 27** in relation to the proper performance of its duties, at all times before and after the termination of the Trust. This **clause 27** is to be read subject to the Corporations Act. Without limitation, the right of the Responsible Entity to fees out of Trust Property pursuant to this **clause 27** is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Trust.

27.2 Responsible Entity fee

The Responsible Entity is entitled, in relation to the administration of the Trust, to a fee of 2% per annum of the total value of all Trust Property (subject to a minimum of, calculated and payable in arrears on the last Business Day of each calendar month or calendar quarter or at other times as the Responsible Entity in its discretion may determine.

27.3 Additional Fund Administration Services

- (a) The Responsible Entity is entitled, subject to the law and its proper performance in providing Additional Fund Administration Services, to take and retain for itself a remuneration fee out of Trust Property for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services on the terms set out in this **clause 27.3**.
- (b) The remuneration fee under **clause 27.3(a)** is to be calculated on the basis of a maximum hourly rate of \$1,000.00 (Australian dollars) per hour, adjusted quarterly to reflect any increase in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter. For the avoidance of doubt, such rates will not exceed its usual commercial rates.
- (c) The Responsible Entity is entitled to charge and take the remuneration fee out of Trust Property calendar monthly.
- (d) The Responsible Entity may notify the Holders of its current hourly rates for the purposes of **clause 27.3(b)**, and the amounts charged to the Trust Property under **clause 27.3(c)** from time to time, but its rights to charge and take those amounts are not prejudiced by a failure to do so or a delay in doing so.
- (e) The Responsible Entity's rights under **clause 27.3(a)** are in addition to:
 - (i) its rights to fees under this **clause 27**; and
 - (ii) its rights under this constitution and at law to be indemnified in connection with debts, liabilities and expenses incurred by it in the proper performance of its duties as responsible entity of the Trust.
- (f) The Responsible Entity may appoint, engage or otherwise contract with a person other than Responsible Entity Personnel to perform any Additional Fund Administration Services.
- (g) An appointment, engagement or other contract under **clause 27.3(f)** may be sole, joint, several or joint and several and may include a power in turn for a person to delegate the performance of any Additional Fund Administration Services to another person.
- (h) Subject to **clause 27.3(i)**, an appointment, engagement or other contract under **clause 27.3(f)** may be on any terms that the Responsible Entity determines in its absolute discretion, including in relation to remuneration and other compensation. Subject to this document, the Responsible Entity is entitled to be indemnified out of the Trust Property in respect of that remuneration and compensation.
- (i) A Delegate may be an associate of the Responsible Entity or an officer or employee of an associate of the Responsible Entity. If and for so long as the Trust is a registered managed investment scheme, the terms on which an associate is appointed, engaged or contracted must not contravene Chapter 2E of the Corporations Act (as modified by section 601LC of the Corporations Act).
- (j) To the extent permitted by law, the Responsible Entity may waive or excuse on any terms it thinks fit any breach by any Delegate of their obligations to the Responsible Entity in connection with the Trust.

- (k) The appointment, engagement or other contracting of a Delegate under **clause 27.3(f)** does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations, including to ensure that the services delegated are properly performed.

27.4 Payment of Fees

The Responsible Entity's fees are payable first out of Trust income, then out of Trust capital. The entitlement continues until the Trust is wound up. Neither the termination nor the winding up of the Trust affects the right of the Responsible Entity to be paid any unpaid fees owing to it in relation to its role as responsible entity of the Trust.

27.5 Responsible Entity may receive less fees

- (a) The Responsible Entity in its discretion may, from time to time, waive a fee or determine that it is entitled to a fee that is less than the amount that was determined under this **clause 27** in respect of all or any Units or class of Units (whether determined by reference to a minimum balance or on another basis and whether for the life of a particular Disclosure Document or otherwise) and may pay a Holder or Holders within a particular class, from its own resources, any amount which it in its discretion so determines by way of offset or rebate of fees.
- (b) The Responsible Entity may in its discretion elect to provide the rebate or offset of fees under **clause 27.5** by:
 - (i) treating the amount of the rebate or offset as an application for additional Units by the Holder which (for the purposes of **clause 10.2**) is taken to have been received by the Responsible Entity on a date which the Responsible Entity determines in its discretion; and
 - (ii) issuing to the Holder that number of Units equal to the amount of the rebate or offset divided by the Issue Price of the Units calculated in accordance with **clause 10.2**.

27.6 Responsible Entity may defer fees

The Responsible Entity in its discretion may elect to defer receipt of any fee referred to in this **clause 27** in respect of all or any Units or class of Units for an agreed period. However, any fees so deferred will automatically become due and payable if the Trust is terminated or the Responsible Entity retires, is removed or resigns.

27.7 Classes

Where more than one class of Units is on issue, the Responsible Entity may, subject to the terms of issue of Units, make a determination that any particular fee (or part or class of a fee) is referable to a particular class of Units.

28. GST

28.1 Defined terms

In **clause 28**, a word or expression defined in the GST Act has the meaning given to it in that Act.

28.2 Responsible Entity reimbursed for GST

If the Responsible Entity is liable for GST on any supply made under or in connection with this constitution (including, the supply of any goods, services, rights, benefits or things), the Responsible Entity is entitled to receive, unless the consideration for the supply is specifically described in this constitution as being inclusive of GST, in addition to any consideration for that supply, or any other fee, amount or consideration, an additional amount on account of GST, equal to the GST payable by the Responsible Entity, and the Responsible Entity is entitled to be reimbursed or indemnified for the amount out of the relevant Trust Property.

28.3 Tax invoice

The Responsible Entity is not entitled to be reimbursed or indemnified under **clause 28.2** until it issues a tax invoice for the supply.

28.4 GST inclusive supply

Where the consideration for a supply made under or in connection with this constitution is specifically described as being inclusive of GST and:

- (a) the Supply is not subject to GST, and the GST rate is the same as at the date of this constitution, the consideration to be provided for that Supply is reduced by one-eleventh; or
- (b) there is a change to the prevailing rate of GST, the consideration is increased or decreased in proportion to the change in the rate of GST.

28.5 Input tax credits

When calculating the amount of any costs, charges, expenses or outgoings incurred by the Responsible Entity for which it is entitled to be reimbursed out of the Trust Property, the Responsible Entity must deduct an amount equal to any input tax credit to which the Responsible Entity is entitled in its personal capacity in connection with the costs, charges, expenses or outgoings sought to be reimbursed.

29. Outgoings

All costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in the proper performance of its duties, including in connection with the following matters or of the following nature in relation to the Trust, are payable or reimbursable out of Trust Property (and if referable to more than one trust, apportioned in a manner determined by the Responsible Entity):

- (a) preparation, approval, stamping, execution and printing of this constitution and any constitution amending this constitution;
- (b) retirement and appointment of the Responsible Entity and any custodian;
- (c) any fees or expenses incurred in connection with the registration of the Trust as a managed investment scheme;
- (d) applying for or maintaining Listing of the Trust or Quotation of Units, including compliance with the Listing Rules;
- (e) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this constitution or the Trust (but the Responsible Entity must repay to the Trust any amount it has been advanced in respect of outgoings in connection with proceedings in which it is found by a court to be liable for its own negligence, fraud or breach of trust);
- (f) convening and holding any Meeting and implementing a resolution of the Meeting;
- (g) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (h) all Taxes;
- (i) any actual or proposed investment (including in respect of due diligence), acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (j) foreign exchange transactions and foreign exchange hedging transactions;
- (k) fees payable to a person authorised by the Responsible Entity to hold Trust Property;
- (l) all expenses in connection with ongoing compliance costs in respect of the Trust including, where established, the costs and expenses associated with the establishment and conduct of any compliance committee including:
 - (i) remuneration of committee members;

- (ii) the expenses of independent legal, accounting or other professional advice or assistance properly commissioned by the compliance committee; and
 - (iii) to the extent permitted by the Corporations Act, directly or indirectly, indemnifying or insuring a person who has been a compliance committee member for or against any liability, including costs, expenses and liabilities incurred by the person in defending civil or criminal proceedings;
- (m) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (n) fees payable to ASIC or any other regulatory authority;
- (o) obtaining or maintaining a credit rating for the Trust or the Units;
- (p) preparing and printing reports, notices, accounts, cheques and documents, posting them to Holders, or paying Holders;
- (q) any offer or invitation in respect of Units, including preparation, lodgement, registration, distribution and promotion of Trust prospectuses, information memoranda or product disclosure statements;
- (r) amounts payable to persons for marketing and promoting the Trust;
- (s) amounts payable to administrators, advisers, agents, brokers, contractors, custodians, investment managers, underwriters, asset managers, property managers, project managers, collection agents or other persons engaged by the Responsible Entity under this constitution (including legal costs on a full indemnity basis);
- (t) fees incurred in establishing a gearing facility or amounts payable to the provider of or a service provider (including a calculation agent) in relation to, any derivative in which the Trust invests;
- (u) fees incurred by an auditor of the Trust or a compliance plan auditor for the Trust;
- (v) preparation and lodgement of taxation and other returns for the Trust;
- (w) terminating and winding up of the Trust;
- (x) entering the Trust in a survey;
- (y) fees payable in respect of a managed investment scheme in which the Trust has invested (whether or not operated by the Responsible Entity or its associates);
- (z) fees payable to a ratings or research organisation;
- (aa) performance of the Responsible Entity's duties, exercise of the Responsible Entity's rights or powers, compliance with the law or administration of the Trust;
- (bb) establishment, development, maintenance and operation of computer facilities, both software and hardware, for the administration of the Trust;
- (cc) dealing with applications for and redemption of Units, and determining the Issue Price and Redemption Price;
- (dd) any restructuring of the Trust;
- (ee) fees payable to a related body corporate or other associate of the Responsible Entity for services provided to the Responsible Entity in connection with the Trust, where if these expenses had been properly incurred by the Responsible Entity, the expenses would be reimbursable out of the Trust Property under this **clause 29**;
- (ff) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Trust Property; and
- (gg) fees, costs, charges and expenses incurred in giving effect to **clause 32**.

Where more than one class of Units is on issue, the Responsible Entity may, subject to the terms of issue of Units, make a determination that any particular cost, charge, expense or outgoing (or part or class of cost, charge, expense or outgoing) is referable to a particular class of Units.

This **clause 29** is to be read subject to the Corporations Act. Without limitation, the right of the Responsible Entity to be paid or reimbursed out of Trust Property pursuant to this **clause 29** is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Trust.

30. Recoveries

30.1 Holders' liabilities

Each Holder is liable for all fees, Taxes and costs in relation to:

- (a) the Holder's entitlement to, or payment of, income or capital to the Holder;
- (b) any act requested by the Holder;
- (c) any attribution of an Attribution Amount to the Holder;
- (d) unpaid amounts owing by the Holder to the Responsible Entity in relation to the Trust; and
- (e) fees determined and chargeable by the Responsible Entity from time to time for any act or work carried out at the Holder's request which goes beyond the Responsible Entity's duties under this constitution, charged at market rates for the services provided.

30.2 Responsible Entity may withhold or recover

The Responsible Entity may:

- (a) withhold payment of any money payable to a Holder until a liability under **clause 30.1** is discharged; or
- (b) meet the liability and recover the amount:
 - (i) from any money or property held for the Holder;
 - (ii) from any distribution or other payment payable to the Holder; or
 - (iii) by redeeming any or all of the Holder's Units.

31. Distributions

31.1 Distributable Income

The Distributable Income of the Trust for an Accounting Period or an Accrual Period is equal to the Trust Income for the period.

31.2 Determination of Income and categories of Income

The Responsible Entity:

- (a) may determine whether an amount of income or gain which is earned, received or accrued or an expense which is paid or incurred or a loss which is incurred represents either income or capital of the Trust and in relation to any Accounting Period must make this determination before the end of that Accounting Period;
- (b) may keep separate accounts of different classes and sources of income and allocate or distribute a separate class of income to any Holder for the purpose of making or satisfying a distribution of Trust Income; and
- (c) may allocate expenditure or losses directly referable to any separate class of income maintained under (b) and allocate all other expenditure pro-rata across the income categories.

31.3 Determination of Reserves

The Responsible Entity must determine before the end of the relevant Accounting Period the extent to which the income of the Trust is to be adjusted by allocating such amount as it considers proper in accordance with generally accepted accounting principles to a provision or any reserve account for the purpose of meeting anticipated expenses or obligations of the Trust.

31.4 Distributions

- (a) Except in any income year in which the Responsible Entity is taxed as a Corporate Tax Entity and subject to **clause 46.3**:
 - (i) before termination of the Trust, the Responsible Entity at any time may elect that, for an Accounting Period or Accrual Period, an amount (capital or income) be distributed from the Trust to Holders. A distribution made by the Responsible Entity to a Holder will be taken to be a distribution of:
 - (A) capital gains;
 - (B) franked dividends; and/or
 - (C) any other class or classes of Trust Income;
 - (ii) of an Accounting Period or Accrual Period to the extent the Responsible Entity determines the distribution constitutes a distribution of such capital gains, franked dividends or any other class of Trust Income derived by the Trust during that Accounting Period or Accrual Period;
 - (iii) except as otherwise provided by this constitution, the distribution (whether of Distributable Income or otherwise) referable to a class of Units for each Accounting Period or Accrual Period must be distributed to Holders of Units in that class pro rata to the number of Units they hold in that class at the end of the Accounting Period or Accrual Period;
 - (iv) subject to **clause 31.4(v)** and the terms of any class of Units on Issue, each Holder registered at midnight on the last day of each Accounting Period, has a vested and indefeasible interest in and is presently entitled to, a share of the Distributable Income for that Accounting Period not previously distributed in any prior Accrual Period for each Unit held by that Holder in the proportion set out in **clause 31.4(iii)** above;
 - (v) in calculating the 'number of Units held' by a Holder and the number of Units 'in issue', each partly paid Unit is to be counted as a Unit multiplied by the Paid Up Proportion applicable to the partly paid Unit; and
 - (vi) to the extent that Distributable Income for that Accounting Period has not been distributed on or before the end of the Accounting Period an amount equal to the shortfall must be distributed by the Responsible Entity to each entitled Holder as soon as reasonably practicable after the end of the Accounting Period.
- (b) Where in any income year the Responsible Entity of the Trust is taxed as a Corporate Tax Entity, then each Holder registered at midnight on the last day of each Accounting Period, does not have a vested and indefeasible interest in a share of the Distributable Income for that Accounting Period and the Responsible Entity may, at its discretion, choose to make distributions of after tax profits, income, capital or any related taxation or imputation credits provided that all Distributable Income is distributed at the final termination of the Trust.

31.5 Change in the law

If the law changes in respect of Taxes so that the Trust or the Responsible Entity:

- (a) becomes subject to Taxes on income and gains derived by the Trust even where all available income is distributed to Holders, or regardless of the present entitlement of the Holders, or
- (b) is not subject to Taxes where the Holders are subject to Tax and regardless of whether the Holders have a vested and indefeasible interest in the Trust Income,

then:

- (a) the Responsible Entity does not have to make distributions in accordance with this **clause 31**; and instead
- (b) the Responsible Entity, at its discretion, may choose when to make distributions of profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust.

31.6 AMIT

This **clause 31** applies to each Period when the Trust is not an AMIT.

32. AMIT

- (a) This clause applies:
 - (i) for each Period in which the Trust or a class of Units is an AMIT; and
 - (ii) to Attribution Amounts relating to any period in which the Trust or a class of Units is or was an AMIT.
- (b) The Responsible Entity will attribute an Attribution Amount to a Holder in accordance with this constitution.
- (c) The Responsible Entity may distribute any amount, including income or capital, to a Holder.
- (d) For the purposes of **clauses 32(b)** and **32(c)** any amount the Responsible Entity has paid, remitted or applied for the benefit of a Holder in relation to Attribution Amounts attributed to a Holder is taken to be made for that Holder.
- (e) Without limiting this clause, or **clause 16.1**, the Responsible Entity may:
 - (i) determine to make a choice for the purposes of subparagraph 276-10(1)(e)(i) of the Tax Act; and/or
 - (ii) determine to treat each class of Units as a separate AMIT for the purposes of subparagraph 276-20(1)(d) of the Tax Act.
- (f) Without limiting **clause 18**, the Responsible Entity shall be indemnified out of the Trust Property in relation to any Taxes incurred by it under a Tax Act while the Trust, or a class of Units, is or was an AMIT.
- (g) If a Holder objects or proposes to object to the basis of an attribution of an Attribution Amount to the Holder, including by making a choice for the purposes of section 276 – 205 of the Tax Act, the Holder indemnifies the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection or proposed objection.

33. Distribution Reinvestment

33.1 Discretion of Responsible Entity

The Responsible Entity may offer or require Distribution Reinvestment.

33.2 Distribution Reinvestment at Holder's request

If the Responsible Entity offers Distribution Reinvestment, a Holder may request the Responsible Entity to invest future income distributions and/or future capital distributions wholly (or with the Responsible Entity's approval, partly) in subscriptions for additional Units at the Issue Price determined in accordance with **clause 10.2**. A request or cancellation in respect of the distribution entitlement arising at that and subsequent Accrual Times must be received in a mode and by a time determined by the Responsible Entity.

33.3 Distribution Reinvestment by Responsible Entity for and on behalf of Holder

If the Responsible Entity requires Distribution Reinvestment:

- (a) at the Accrual Time each Holder has an absolute vested and indefeasible interest in:
 - (i) the share of Distributable Income to which the Holder is presently entitled; or
 - (ii) in any Period when the Trust is an AMIT, the Holder's distribution under **clause 32(c)**;
- (b) that amount of Distributable Income or in any Period when the Trust is an AMIT, the Holder's distribution under **clause 32(c)** will be applied by the Responsible Entity for and on behalf of the Holder in subscriptions for additional Units at the Issue Price in accordance with **clause 10.2**; and
- (c) any money remaining is to be retained in the Trust and accounted for as a Trust Liability and applied towards the next Distribution Reinvestment for that Holder.

34. Payments

34.1 Means of payment

Any money payable by the Responsible Entity to a Holder may be, in any currency the Responsible Entity decides:

- (a) deposited into an account with a bank or other financial institution approved by the Responsible Entity and nominated by the Holder;
- (b) applied in another manner as the Responsible Entity is directed in writing by the Holder (if the Responsible Entity agrees); or
- (c) paid by cheque posted to the Holder (if the Responsible Entity agrees).

The obligations of the Responsible Entity are fully discharged in respect of any money so paid.

34.2 If payment not effective

If a distribution cheque or a cheque issued in payment of a Redemption Request is returned unclaimed, or is not presented for payment within a reasonable period (which the Responsible Entity may determine from time to time), or an attempted deposit is rejected, the Responsible Entity may pay to ASIC the unclaimed money or reinvest the relevant amount for the Holder in the Trust as from such date as the Responsible Entity selects as appropriate, including in Units.

34.3 Rounding

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

34.4 Joint Holders

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

34.5 Deduction of Tax or amounts owing

The Responsible Entity may deduct from any amount to be paid to a Holder, or received from a Holder, any amount of Taxes (or an estimate of it) or any other amount owed by the Holder to the Responsible Entity or any other person which the Responsible Entity is required or authorised to deduct by law or by this constitution or which the Responsible Entity considers should be deducted.

35. Auditor

The Responsible Entity must appoint and may at any time replace as auditor of the Trust either a registered company auditor, or a firm of chartered accountants of which at least one partner is a registered company auditor, or the Auditor-General of New South Wales.

36. Meetings

36.1 Convening Meetings

A Meeting may be convened and conducted in accordance with this constitution and the relevant provisions of the Corporations Act.

36.2 Failure to give notice

Accidental omission to give notice to, or non-receipt of notice by, a Holder does not invalidate a Meeting nor a resolution passed at a Meeting.

36.3 Rights of proxy

A proxy may attend, speak and vote for a Holder even if the Holder is present at the Meeting.

36.4 Proxy appointments

An appointment of a proxy is valid even if it does not include the Holder's address or the Trust's name. An appointment of a proxy for a Meeting is effective if received by the Responsible Entity by a time before the time the Meeting is due to start that the Responsible Entity considers appropriate.

37. Conduct of Meetings

37.1 Closing of Register

When a Meeting is to be held the Responsible Entity must close the Register at an appropriate date and time to determine those Holders entitled to vote at the Meeting, and entitled to notification of the Meeting.

37.2 Joint Holders

The first named of joint Holders shown in the Register (or if that person does not vote, the next named joint Holder, or if that person does not vote, the next named, and so forth) may exercise the voting rights of jointly-held Units.

37.3 Ordinary resolution

An ordinary resolution is passed if a simple majority of votes cast are in favour.

37.4 Validity of vote

The chairperson's declaration of the validity of any vote and the result of voting is conclusive.

37.5 Resolutions binding

A resolution duly passed binds all Holders, whether or not present at the Meeting.

37.6 Adjournment, postponement and cancellation of Meeting

- (a) The chairperson may adjourn a Meeting to a time and place as the chairperson sees fit.
- (b) The Responsible Entity may at any time postpone or cancel a Meeting or withdraw any resolution proposed to be put to a Meeting.

37.7 Minutes

Minutes of a Meeting signed by the chairperson constitute conclusive evidence of the proceedings of the Meeting.

37.8 Postal ballot

- (a) Subject to the law and the Listing Rules, a Meeting or resolution may be conducted or passed by postal ballot in accordance with arrangements the Responsible Entity may determine reflecting, as closely as may be practicable, the provisions of this constitution.

- (b) A resolution determined by postal ballot will not be taken to be passed at a Meeting of Holders of the Trust unless otherwise determined by the Responsible Entity.

38. Responsible Entity's retirement or removal

38.1 Responsible Entity's retirement

- (a) The Responsible Entity may retire as Responsible Entity of the Trust in accordance with:
 - (i) the relevant provisions of the Corporations Act; or
 - (ii) any relevant Relief.
- (b) The Responsible Entity must retire as responsible entity of the Trust when required by law.

38.2 Responsible Entity's indemnity

On the Responsible Entity retiring or being removed from the Trust or otherwise ceasing to be the Responsible Entity, to the extent legally permitted (and in no way limiting or purporting to exclude, or reduce liability under any laws, including the Corporations Act) the retiring Responsible Entity is completely released from this constitution as it affects the Trust and is indemnified out of Trust Property against any claims arising out of its conduct as Responsible Entity of the Trust except claims in respect of gross neglect, breach of trust or default by the retiring Responsible Entity and without limiting liability of the retiring Responsible Entity to the Holders. This **clause 38.2** is to be read subject to the Corporations Act. Without limitation, the right of the Responsible Entity to be indemnified out of the Trust Property pursuant to this **clause 38.2** is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Trust.

39. Liability of Holders

Subject to this constitution, the liability of each Holder is limited to the amount subscribed, or agreed to be subscribed by the Holder, for Units. Recourse of the Responsible Entity and Trust creditors is limited to Trust Property. Any relationship of partnership or agency between the Responsible Entity and a Holder in relation to the Trust, this constitution or anything done under this constitution, is expressly excluded.

40. Complaints

The Responsible Entity, as the holder of an Australian financial services licence, must comply with the dispute resolution requirements in section 912A(2) of the Corporations Act (as amended or replaced from time to time) in dealing with complaints received from Holders in relation to the Trust.

41. Changing the constitution

- (a) The Responsible Entity may by supplemental deed modify, add to or delete from this constitution:
 - (i) if the Trust is a registered scheme under the Corporations Act, subject to the Corporations Act; or
- (b) if it reasonably considers necessary or desirable in order:
 - (i) to comply with any applicable provisions of the Corporations Act;
 - (ii) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Trust;
 - (iii) facilitate compliance with the terms of the AMIT Regime in relation to the Trust, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Holders;

- (iv) facilitate the proper administration and operation of the Trust under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Holders that arise under the AMIT Regime; or
 - (v) comply with the conditions of any ASIC relief issued in relation to the AMIT Regime, or facilitate operation of the Trust in reliance on such relief.
- (c) Without limiting the generality of **clause 41(a)**, the Responsible Entity may exercise its power under **clause 41(a)** to ensure that the Trust qualifies to participate in the specialised regime for the taxation of 'managed investment trusts' or any other similar regime introduced or amended from time to time.

42. Currency conversion

Where the Responsible Entity is required to convert any currency into Australian dollars, from Australian dollars into another currency, or from a currency other than Australian dollars into another currency, it may do so in a manner it considers fair and appropriate. Where any currency conversion will affect the number of Units issued pursuant to this constitution, the method of calculating the conversion must be disclosed in a communication to Holders (including by publication on the Responsible Entity's website).

43. Calculations

Any calculation for the purposes of this constitution must be to the fourth decimal place or, in any case, as otherwise determined by the Responsible Entity from time to time.

44. Notices and cheques

44.1 Notices

Any consent, notice, report or statement required to be in writing may be sent to a Holder or joint Holders:

- (a) by prepaid post or courier to the address of the Holder or first named joint Holder shown in the Register, and is taken to be received on the next Business Day after it is sent; or
- (b) electronically or by facsimile to any electronic address or facsimile number given by the Holder or the first named joint Holder shown on the Register, from time to time, and is taken to be received:
 - (i) when it is sent; or
 - (ii) if it is sent not on a Business Day or after 5.00pm on a Business Day, at 9.00am on the next Business Day.

44.2 Cheques

Any cheque required to be sent to a Holder or joint Holders may be sent by prepaid post or courier to the address of the Holder or first named joint Holder shown in the Register, and is taken to be received on the next Business Day after it is sent.

45. Corporations Act

45.1 Compliance with Relief and things required to be in this constitution

While the Trust is registered as a managed investment scheme under the Corporations Act, the Responsible Entity and each Holder must, subject to the Corporations Act and to any Relief applicable to the Trust, comply with:

- (a) any conditions of, and any covenants required to be contained in this constitution as a condition of the Relief, for so long as it applies; and

- (b) all provisions required from time to time to be contained in this constitution as a condition of any class order applicable to the Trust, for so long as it applies.

45.2 Matters required to be in this constitution

For so long as the Trust is registered as a managed investment scheme:

- (a) any covenants required to be contained in this constitution as a condition of any Relief are taken to be contained in this constitution for so long as the Relief applies; and
- (b) all provisions required from time to time to be contained in this constitution as a condition of any class order applicable to the Trust are taken to be contained in and incorporated into this constitution to the extent that they are not specifically set out in this constitution for so long as the class order applies.

46. ASX Listing Rules

46.1 Quotation

Where Units or a class of Units are Quoted, the Responsible Entity and each Holder must comply with the provisions of the Listing Rules relevant to them.

46.2 Listing Rules

Where Units or a class of Units are Quoted, the following provisions apply:

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

In accordance with the Corporations Act and any applicable Relief, a change in the text of this deed because of this **clause 46.2** is not a modification of, or the repeal and replacement of, this deed for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

46.3 Restricted Securities

- (a) While Units are Quoted and except as permitted by the Listing Rules or ASX:
 - (i) a Holder may not transfer Restricted Securities during the applicable escrow period;
 - (ii) the Responsible Entity must refuse to register a transfer that would breach **clause 46.3(a)**; and
 - (iii) during a breach of the Listing Rules or an applicable restriction agreement relating to Restricted Securities, a Holder of Restricted Securities is not entitled to any distribution from the Trust or voting rights in respect of those Restricted Securities.
- (b) In this **clause 46.3**, **Restricted Securities** has the meaning given in the Listing Rules.

47. Governing law

This constitution is governed by the law of the State of New South Wales, Australia.

Schedule 1 - Additional Fund Administration Services

Additional Fund Administration Services means actions and activities in connection with the management and administration of the Trust including actions and activities in connection with:

- (a) the Trust itself, including:
 - (i) the establishment and formation of the Trust;
 - (ii) any structural or strategic changes to the Trust;
 - (iii) registering or deregistering the Trust as a managed investment scheme;
 - (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the Trust, including any supplementary or replacement disclosure document relating to the Trust;
 - (v) any form of equity raising and debt refinancing associated with the Trust;
 - (vi) obtaining and maintaining a rating from any ratings agency;
 - (vii) the retirement, removal or replacement of the Responsible Entity; and
 - (viii) the termination or winding up of the Trust and the associated taking of accounts, discharging of Trust Liabilities and expenses and distribution of Trust Property;
- (b) this constitution and any other document to which the Responsible Entity is a party in its capacity as the responsible entity of the Trust (**Fund Documents**), including:
 - (i) reviewing, negotiating, settling and executing Fund Documents;
 - (ii) dealing with or considering any request for any amendment, restatement, waiver or consent under a Fund Document or the termination of a Fund Document;
 - (iii) investigating circumstances which the Responsible Entity reasonably believes may be a default or breach by any person of a Fund Document; and
 - (iv) the actual or contemplated enforcement of, or the preservation or consideration of any right or power under, any Fund Document;
- (c) the Trust Property, including:
 - (i) the actual, attempted or proposed acquisition, investment, disposal or other dealing in, of or with assets which are, were or are to become Trust Property;
 - (ii) taking out and maintaining all insurances in relation to the Trust and the Trust Property which the Responsible Entity reasonably believes are appropriate; and
 - (iii) the receipt, collection, management, maintenance, custody, holding, supervision, insurance, repair, valuation and distribution of Trust Property;
- (d) the Trust Liabilities, including:
 - (i) raising and complying with the terms of financial accommodation of any kind, including all dealings with the providers of that accommodation;
 - (ii) appointing or engaging, negotiating with and instructing advisers and experts; and
 - (iii) appointing or engaging, negotiating with and instructing third parties to perform any of the activities described in this definition;
- (e) accounting, compliance, recordkeeping and taxation, including:
 - (i) complying with all obligations and requirements under tax laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the Trust, any taxation audit, and the management of the tax affairs of the Trust;

- (ii) preparing and maintaining the books, records and accounts of the Trust;
 - (iii) the preparation and audit of the taxation returns and accounts of the Trust;
 - (iv) the establishment and maintenance of the compliance committee and the preparation, implementation, amendment and audit of the compliance plan; and
 - (v) liaising with compliance plan auditors in relation to any breaches, incidents or events which have occurred in respect of the Trust;
- (f) dealing with Holders, including:
 - (i) offering the Trust and dealing with applications and Redemption Requests;
 - (ii) facilitating, convening and holding meetings of Holders and implementing resolutions of Holders;
 - (iii) corresponding and communicating with Holders;
 - (iv) maintaining and operating the Register and any other register of the Trust; and
 - (v) establishing and administering complaints handling procedures and obtaining and maintaining membership of an external dispute resolution scheme;
- (g) other dealings, including:
 - (i) complying with all applicable laws;
 - (ii) dealings with any securities exchange;
 - (iii) dealings with regulators, taxation authorities and other governmental agencies, whether in the ordinary course or in relation to requests, requirements, complaints, investigations, enquiries or disputes;
 - (iv) dealings with service providers of the Trust, including work performed by the Responsible Entity in respect of potentially reportable breaches caused by service providers and completing ad-hoc monitoring visits of service providers of the Trust as a result of systemic incidents or performance issues reported;
 - (v) initiating, prosecuting, defending and compromising any court, arbitration, mediation or other dispute resolution action, claim or proceedings concerning the Responsible Entity (in that capacity), the Trust or the Trust Property, whether commenced or to be commenced by the Responsible Entity or not; and
 - (vi) approaching any court of competent jurisdiction to seek opinion, advice or direction on any question in connection with the management or administration of the Trust or the Trust Property or in connection with the interpretation of a Fund Document; and
- (h) all matters incidental to any of the above.

Signing page

EXECUTED as a deed poll

**Executed by The Trust Company (RE Services)
Limited** in accordance with Section 127 of the
Corporations Act 2001



Signature of director - Alternate

VICKI RIGGIO

Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

GLENN FOSTER

Name of director/company secretary (print)

Compliance Checklist for Constitution

Corporations Act Section	Requirement	Clause reference
s 601FC(1)(i)	The responsible entity must ensure that scheme property is clearly identified as such and held separately from property of any other scheme	Clause 2.6
s 601FC(1)(j)	The responsible entity must ensure that scheme property is valued at regular intervals appropriate to the nature of the property	Clause 9.3(a)(ii)
s 601FC(2)	Hold scheme property on trust for scheme members	Clause 2.8
s 601GA(1)(a) and Regulatory Guide 134 pars 18 to 22	Make adequate provision for the consideration paid to acquire an interest	Clause 10
s 601GA(1)(b) and Regulatory Guide 134 pars 115 to 119	Make adequate provision for the powers of the responsible entity in relation to making investments of, or otherwise dealing with, scheme property	Clause 16.1
s 601GA(1)(c) and Regulatory Guide 134 pars 133 to 144	Make adequate provision for the method by which complaints made by members in relation to the scheme are to be dealt with	Clause 40
s 601GA(1)(d) and Regulatory Guide 134 pars 182 to 199	Make adequate provision for winding up the scheme (eg at a specified time, or in specified circumstances or on the happening of a specified event - see section 601NA)	Clause 24
s 331AD and Regulatory Guide 134 pars 200 to 203	Provision for the independent audit of the accounts of a winding up	Clause 24.8
s 601GA(2) and Regulatory Guide 134 pars 120 to 132	Rights to be paid fees out of the scheme property or to be indemnified out of scheme property for liabilities or expenses incurred in relation to the responsible entity's duties	Clauses 18, 27.1, 29, 38.2
s 601GA(3) and Regulatory Guide 134 par 116	Specify any powers to borrow or raise money	Clause 16.1
s 601GA(4) and Regulatory Guide 134 pars 146 to 181	Specify members' right to withdraw from the scheme The right to withdraw, and any provisions in the constitution setting out procedures for making and dealing with withdrawal requests, must be fair to all members	Clause 13
s 601GB and Regulatory Guide 134 pars 205 to 212	Be legally enforceable as between the members and the responsible entity	Clause 2.5