

# IPO Wealth Fund

## Constitution

# Constitution

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# Constitution

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## Date

## Party

**Vasco Investment Managers Limited ACN 138 715 009** of Level 5, 488 Bourke Street, Melbourne, Victoria 3000, Australia (**Trustee**)

## Recitals

This Constitution is declared by the Trustee to be the Constitution for a trust to be known as the IPO Wealth Fund.

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Constitution the following terms, unless the context otherwise indicates, shall have the following meanings:

**Adviser** includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Trustee or its related entities to provide advice or services in relation to the Fund.

**AMIT** means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Attribution Managed Investment Trust Rules.

**AMIT Choice** means a choice made by the Trustee pursuant to section 276-10(1)(e) of the Tax Act that the Trust be an AMIT for the purposes of the AMIT Regime.

**AMIT Regime** means the regime for the taxation of AMITs and Unit Holders contained in the:

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

**AMMA Statement** has the meaning given to that phrase in section 276-460 of the Tax Act.

**Application Money** means the money or money's worth paid to the Trustee in respect of any application for Units.

**Application Price** of a Unit on any day means the amount determined under clause 6.

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

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**ASIC Exemption** includes:

- (a) an exemption or modification granted by ASIC in accordance with the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Fund or the Trustee.

**Assets** means cash, investments, rights, income and other property of the Fund from time to time.

**Associate** has the meaning given in section 9 (*Dictionary*) of the Corporations Act.

**ASX** means the ASX Limited (or a successor organisation) or the financial market operated by that company (whichever the context requires).

**Attribution Managed Investment Trust Regime** means the provisions for the taxation of AMITs contained or to be contained in Division 276 of the Income Tax Assessment Act 1997, together with the other relevant amendments to the Income Tax Assessment Act 1997, Income Tax Assessment Act 1936 and Tax Administration Act 1953.

**Attribution Managed Investment Trust Rules** means the rules in the Division 276 of the Income Tax Assessment Act 1997 (Cth) (or an equivalent division), together with the other relevant amendments to the Income Tax Assessment Act 1997 (Cth), Income Tax Assessment Act 1936 (Cth) and Taxation Administration Act 1953 (Cth), contained in the Tax Act.

**Australian Accounting Standards** means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b) above.

**Business Day** means a day that most trading banks are open for business in Melbourne, Victoria excluding any weekend or public holiday.

**Class** means a class of Units as determined by the Trustee under clause 4.5.

**Class Expense** means, in relation to a Class, an Expense or Tax or a proportion of an Expense or Tax determined by the Trustee to be referable to a Class in accordance with clause 15.11.

**Clearly Defined Rights** means where the rights to income and capital arising from each of the Units in the Trust are “clearly defined” at all times when the Trust is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

**Commencement Date** means the date of commencement of the Fund, being the date on which Units are first issued.

**Constitution** means this Constitution.



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**Corporations Act** means the *Corporations Act 2001* (Cth).

**Determined Member Component Choice** means a choice made by a Unit Holder under section 276-205 of the Attribution Managed investment Trust Rules.

**Determined Trust Component** has the meaning given to that term in section 276-255 of the Tax Act.

**Distributable Amount** means the amount determined in accordance with clause 12.3 or clause 12.16, as appropriate.

**Distribution Calculation Date** means the last Business Day of each financial half year unless otherwise determined by the Trustee. For the avoidance of doubt, subject to the Corporations Act, the Trustee may nominate different Distribution Calculation Dates for different Classes.

**Distribution Date** means 60 Business Days after the Distribution Calculation Date for the relevant Distribution Period or any other date determined by the Trustee.

**Distribution Entitlement** means the entitlement of a Unit Holder to the Distributable Amount determined in accordance with clause 12.4.

**Distribution Period** means the period commencing on:

- (a) the Commencement Date and ending on the following Distribution Calculation Date; and
- (b) each subsequent period commencing on the day after a Distribution Calculation Date; and ending on the next Distribution Calculation Date or on termination of the Fund.

**Establishment Costs** has the meaning given in clause 15.6(a).

**Expenses** includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these including the example expenses set out in Schedule 1.

**Financial Year** means:

- (a) the period beginning on the Commencement Date and ending on the following 30 June; and
- (b) each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Fund.

**Fund** means the trust constituted by this Constitution and known as the IPO Wealth Fund.

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

- (a) the value of all Assets; and
- (b) any other amounts which, in the opinion of the Trustee, should be included for the purpose of making a fair and reasonable determination of the value of the Fund having regard to ordinary accounting principles.

**GST** has the meaning given in the GST Act.

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

**IDPS** means an investor directed portfolio service.

**Income** has the meaning given in clause 12.1.

**Indemnified matter** has the meaning given in clause 18.1.

**Issue Date** means the date determined by the Trustee.

**Liabilities** means the aggregate of the following at that time, as calculated by the Trustee:

- (a) each liability of the Trustee in respect of the Fund or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (b) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (c) other appropriate provisions in accordance with Australian Accounting Standards;

but does not include liabilities:

- (d) attached to application money or property in respect of which Units have not yet been issued; or
- (e) representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Fund.

For the avoidance of doubt, this definition of "Liabilities" applies to the operation of the Fund under this Constitution only and is not intended to affect any other meaning of "liabilities" of the Fund which the Trustee may be required to adopt for financial reporting purposes.

**Liquid** has the meaning given in section 601KA(4) (*Liquid schemes*) of the Corporations Act.

**Month** means a calendar month.

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

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Trustee determines should be made); and
- (b) following any Distribution Calculation Date, the amount of any Net Income payable but not paid to Unit Holders on the day which the Net Asset Value is determined.

**Net Income** means an amount that is calculated in the same manner as net income is calculated under the Tax Act, provided that where, in calculating the net income under the Tax Act, it is necessary to:

- (a) gross up any amount of income (for example tax offsets such as foreign tax credits or franking credits);
- (b) reduce the amount of any capital gain under Step 3 of section 102-5 of the Tax Act,

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then the grossing up or reduction must not be included in calculating the Net Income of the Fund.

**Offer Document** means any document offering interests in the Fund irrespective of whether such document is provided to prospective investors as an personal offer or as a public offer document and as amended or replaced from time to time.

**Register** means each of the registers established and kept by the Trustee under clause 20.

**Registered Scheme** means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) (*Registration*) of the Corporations Act.

**Regulatory Requirement** has the meaning given in clause 22.2.

**Regulatory Requirement Amendment** has the meaning given in clause 22.2.

**Relevant Class** means a particular Class.

**Relevant Class Assets** means the Assets referable to the Relevant Class. Where an Asset is referable to more than one Relevant Class, then for the purposes of this definition of Relevant Class Assets, such amount of the Asset will be included as the Trustee determines is properly referable to the Relevant Class.

**Relevant Liabilities** means the Liabilities referable to the Relevant Class. Where Liabilities are referable to more than one Relevant Class, then for the purposes of the definition of Relevant Liabilities, such amount of the Liabilities will be included as the Trustee determines is properly referable to the Relevant Class.

**Relevant Person** means a person who at any time was, is, or shall become a Unit Holder and that person's executors, administrators, successors and assigns.

**Required Part** has the meaning given in clause 22.2.

**Security Interest** means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

**Special Resolution** means a resolution that has been passed at least 75% of the votes cast by members entitled to vote on the resolution.

**Tax** means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) or the *Income Tax (Transitional Provisions) Act 1997* (as the case requires).

**Terms of Issue** means the terms of issue for any Units as set out in this Constitution from time to time.

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**Transaction Charge** means an amount determined by the Trustee which reflects a fair estimate of Expenses incurred or that would be incurred:

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the withdrawal of Units; or
- (c) for the transfer of Units or Assets to a Unit Holder,

as the case requires.

**Transferee Subscription Agreement** means a subscription agreement in the form required by the Trustee in its absolute discretion which requires the transferee to be bound by the terms of this Constitution and any other term as determined by the Trustee.

**Trust Component** has the meaning given to that term in section 276-260 of the Tax Act.

**Trustee** means the person acting as the Trustee or responsible entity of the Fund in accordance with the provisions of this Constitution from time to time, being as at the date of this Constitution Vasco Investment Managers Limited ACN 138 715 009 , and, where appropriate, includes any agent or Adviser appointed by such Trustee or responsible entity.

**Unders and Overs Rules** means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Trust level are to be carried-forward and dealt with in future income years.

**Unit** means a unit in the Fund created under this Constitution.

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

**Unit Holding** means the total Units held by a Unit Holder.

**Valuation Time** means the time when the Assets of the Fund were valued in accordance with clause 11.

**Valuer** means an independent expert who has experience and expertise in determining the underlying value of the property as determined by the Trustee. The valuer so appointed shall act as expert and not as arbitrator and his or her decision shall be final and binding. Such valuer shall be instructed to consider any written representations made reasonably promptly on behalf of the Trustee or any of its subsidiaries.

**Withdrawal Date** means a date determined by the Trustee. For the avoidance of doubt, the Trustee may determine different Withdrawal Dates for different Classes.

**Withdrawal Offer** means an offer made by the Trustee in respect of the Fund in accordance with section 601KB (*Non-liquid schemes - offers*) of the Corporations Act.

**Withdrawal Price** means the amount determined under clause 8.1.

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## 1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and the other way around and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) specifying anything in this Constitution after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (g) a reference to an agreement or document (including a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced from time to time, except to the extent prohibited by this Constitution or that other agreement or document;
- (h) a reference to conduct includes an omission, statement or undertaking whether or not in writing;
- (i) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (j) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
- (k) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

## 1.3 General compliance provision

- (a) This clause 1.3 only applies if the Fund is a Registered Scheme.
- (b) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (c) This clause 1.3 is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.

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- (d) This clause 1.3 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

## **2 Fund**

### **2.1 Trustee**

As from the Commencement Date, Vasco Investment Managers Limited is and has agreed to act as Trustee.

### **2.2 Declaration of trust**

- (a) The Assets shall vest in the Trustee on the Commencement Date and the Trustee declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Constitution.
- (b) The Trustee shall clearly identify the Assets as property of the Fund and hold the Assets separately from the assets of the Trustee and any other trust or managed investment scheme for which the Trustee is the Trustee or responsible entity.

### **2.3 Name of Fund**

The name of the Fund is the IPO Wealth Fund or such other name as the Trustee may from time to time determine.

## **3 Application of the Constitution if the Fund is an AMIT**

- (a) If the Trust meets the qualification requirements set out in the AMIT Regime, the Trustee may make an AMIT Choice.
- (b) If an AMIT Choice is made, then subject to clause 3(c), the provisions in Schedule 2 will prevail over any other provisions of this document to the extent of any inconsistency, if such an inconsistency is not adverse to Unit Holders' rights.
- (c) If the Trust ceases to be an AMIT for any reason, including but not limited to the Trust ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
- (i) the provisions of Schedule 2, except those in clause 1 of Schedule 2 which will continue to be applied by the Trustee, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Trust when it is not an AMIT; and
  - (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Trust.

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- (d) Nothing in this clause 3 imposes an obligation on the Trustee to:
    - (i) enter into or facilitate the entry of the Trust into the AMIT Regime;
    - (ii) make any changes to this Constitution; or
    - (iii) make an AMIT Choice.

## **4 Units and Unit Holders**

### **4.1 Units**

- (a) The beneficial interest in the Fund is divided into Units.
- (b) Each Unit confers on the Unit Holder a beneficial interest in the Fund as an entirety and does not confer an interest in a particular part of the Fund or the Assets.

### **4.2 Power to issue Units**

The Trustee has the power to issue Units and different Classes of Units.

### **4.3 Fractional Units**

- (a) The Trustee may issue fractions of a Unit calculated to the third decimal place or such other number of decimal places as the Trustee determines.
- (b) This Constitution applies to fractions of Units in proportion to which the fraction bears to one Unit.

### **4.4 Consolidation, subdivision and conversion of Units**

- (a) The Trustee may consolidate or divide the number of Units on issue (or Units issued in any Class).
- (b) Any consolidation or division shall apply equally to all Units on issue (or all Units issued in the same Class).
- (c) The Trustee shall amend the Register to record any consolidation or division of Units.

### **4.5 Classes of Units**

- (a) Subject to this Constitution and the Corporations Act, the Trustee may create different Classes, with different rights, obligations and restrictions, or convert Units from one Class to another Class.

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- (b) The Trustee may make a determination that specific variables (including Assets, Liabilities and Expenses), are referable to a specific Class and that:
- (i) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
  - (ii) any variable that relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units in issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at the most recent Valuation Time.
- (c) Notwithstanding the generality of this clause 4, the Trustee may issue Classes of Units on the following terms:
- (i) the Relevant Class Assets for each Class comprise a particular Asset or Assets and all proceeds and income received by the Trustee in respect of, or relating to, that particular Asset or Assets;
  - (ii) the Relevant Liabilities are attributed to a Class such that they can only be met from Relevant Class Assets;
  - (iii) Relevant Class Assets for a Class are not encumbered in relation to Relevant Liabilities of another Class;
  - (iv) the Trustee is not entitled to be indemnified out of the Relevant Class Assets of a Class in relation to Relevant Liabilities of another Class; and
  - (v) each Class that is constituted by a particular Asset or Assets will commence on the date the Trustee issues initial Units in that Class and will expire on the date the Trustee distributes all Assets in that Class to Unit Holders of that Class under clause 24 or as otherwise determined by the Trustee.

#### **4.6 Equal value and beneficial interest**

At any time, all the Units of the same Class are of equal value and rank.

#### **4.7 Rights attaching to Units**

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
  - (i) interfere with or question the rights, powers, authority, discretion or obligations of the Trustee under this Constitution;
  - (ii) exercise any right, power or privilege in respect of an Asset;
  - (iii) lodge a caveat in respect of any Asset; or
  - (iv) require that any Asset be transferred to the Unit Holder or any other person.



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- (c) A Unit Holder may not create any Security Interest over a Unit without the consent of the Trustee.

#### **4.8 Unit Holder directions**

The Trustee will be under no obligation to act in accordance with any direction of a Unit Holder, if it would require the Trustee to do or omit to do anything which:

- (a) may result in the Trustee acting contrary to the law; or
- (b) would otherwise not be within the scope of any discretion or power expressly conferred on the Trustee by this Constitution.

#### **4.9 Joint holders of Units**

Where two or more persons are registered as the holders of a Unit they are, for the purpose of the administration of the Fund and not otherwise, deemed to hold the Unit as joint tenants and not tenants in common, on the following conditions:

- (a) the Trustee shall not be bound to register more than three persons as joint Unit Holders of the Unit;
- (b) the joint Unit Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Unit Holder, the survivor or survivors shall be the only person or persons whom the Trustee will recognise as having any title to the Unit, subject to the production of any evidence of death that the Trustee requires;
- (d) any one of the joint Unit Holders may give an effective receipt that discharges the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Unit Holders of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Trustee and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unit Holders,

unless the Trustee determines otherwise.

#### **4.10 Benefits and obligations of Unit Holders**

Except where expressly provided in this Constitution to the contrary, all benefits and obligations contained in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.

#### **4.11 Perpetuities**

The Trustee cannot issue any Units after the eightieth anniversary from the day before the Commencement Date if that issue would cause a contravention of the rule against perpetuities or

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any other rule of law or equity. The preceding sentence prevails over all provisions of this Constitution.

## **5 Application Procedure**

### **5.1 Offers**

The Trustee may at any time offer Units for subscription or sale and may invite persons to make offers to apply for or buy Units.

### **5.2 Minimum amounts**

The Trustee may specify a minimum initial application amount, minimum commitment amount, minimum further application amount, and minimum holding amount in respect of Units for the Fund as a whole or a Class and vary those amounts at its discretion.

### **5.3 Form of application**

- (a) Each application for Units will, unless the Trustee approves otherwise:
  - (i) conform with the form and content requirements of any relevant disclosure document;
  - (ii) if there is no relevant disclosure document, be made in such manner as the Trustee approves; and
  - (iii) be accompanied by Application Moneys as required by any relevant disclosure document.
- (b) The Trustee may authorise an application to be transmitted electronically.

### **5.4 Reinvestment**

The Trustee may, at its absolute discretion, and subject to the Corporation Act and any applicable ASIC Exemption, allow a Unit Holder to reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units under a distribution reinvestment plan on terms and conditions prescribed by the Trustee.

### **5.5 Acceptance or rejection**

The Trustee may, without being bound to give any reason:

- (a) accept an application;
- (b) reject an application; or

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- (c) reject part of an application.

## **5.6 Uncleared funds**

Units issued against Application Money paid other than in cleared funds are void if the funds are not cleared within five Business Days of being presented for payment.

## **5.7 Payment of Application Money**

- (a) All payments or transfers of property received for an application for Units must be made out to the Trustee or its nominated custodial agent.
- (b) If property is to be transferred to the Trustee as payment for the issue of Units, the Trustee must not accept the application for Units unless:
  - (i) an effective transfer of title to the property free of all encumbrances is received; and
  - (ii) a valuation acceptable to the Trustee has been obtained by the applicant stating the current market value of the property.
- (c) The applicant must pay all Expenses and other amounts payable, including the valuation of the property, to transfer the property to the Trustee. If such amounts are not paid, the Trustee may deduct such amounts from the value of the property prior to determining the number of Units to be issued under clause 5.10 or 5.11.
- (d) Payments received and accepted by the Trustee prior to the issue of the Units forms part of the Assets of the Fund.
- (e) Payments not accepted by the Trustee shall be repaid but no interest in respect of the payment shall be payable.
- (f) Any interest on application money is retained by the Trustee.

## **5.8 Receipt of application**

The Trustee may determine that an application for Units or Application Money or property received by the Trustee after a particular time will be deemed to have been received on the next Business Day.

## **5.9 Issue of Units**

Unless otherwise determined by the Trustee, Units are taken to be issued:

- (a) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clauses 5.4 and 12.12, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated; or
- (b) in all other cases, on the Issue Date immediately after the later of the day on which:

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- (i) the Trustee accepts the application for Units and the applicant is registered as the Unit Holder of the Unit on the Register; or
  - (ii) the Trustee receives the Application Money, or the property (which is acceptable to the Trustee) against which the Units are to be issued is vested in the Trustee,

and for the avoidance of doubt, the relevant Distribution Entitlement, Application Money or property against which the Units are issued (as applicable) become Assets at the time of issue.

## 5.10 Number of Units issued

Subject to clause 5.11 and the Terms of Issue of a Unit, the number of Units issued to any person on any Issue Date in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be determined in accordance with the following formula:

$$N = (A / B)$$

where:

N is the number of Units issued;

A is the Application Money or the value of the property transferred to the Trustee by the applicant (including a reinvestment of the Unit Holder's Distribution Entitlement); and

B is the Application Price for the Unit,

and the number of Units issued shall be calculated to the third decimal place or such other number of decimal places as the Trustee determines from time to time.

## 5.11 Units as consideration

Where an investment is acquired (on behalf of the Fund) for consideration which includes the issue of Units by the Trustee, the number of Units created and issued by the Trustee is determined in accordance with the following formula:

$$N = (A - B) / C$$

where:

N is the number of Units issued;

A is the value of the investment being acquired as determined in accordance with clause 11;

B is the amount of the cash consideration paid in respect of the investment (if any); and

C is determined as the Application Price of the Units being issued (as determined in accordance with clause 6.1).

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## 5.12 No certificates

No certificates will be issued for Units, unless determined otherwise by the Trustee.

## 5.13 Defective applications

Where, within ten Business Days (or such other period as the Trustee determines) of the creation and issue of Units in the Fund, the Trustee determines that:

- (a) the applicant was not entitled to hold the Units issued;
- (b) the application was incorrectly executed or executed without power or authority; or
- (c) the application form was defective and was accepted in error,

then the Trustee may in its sole discretion cancel those Units, make an appropriate entry in the Register and repay the Application Money to the applicant out of the Assets. If Units are cancelled under this clause 5.13, the Trustee is not required to adjust any Application Price or Withdrawal Price determined before the cancellation of the Units in the Fund.

# 6 Application Price

## 6.1 Application Price

- (a) Subject to clause 6.1(c), the Corporations Act and the rights, entitlements obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Application Price of \$1.00, or, if the Trustee does not consider that \$1.00 is an appropriate Application Price, having regard to the interests of the Unit Holders as a whole, then the Application Price will be an amount calculated as follows:

$$\frac{\text{Net Asset Value} + \text{Transaction Charge}}{\text{The number of Units on Issue}}$$

Where there is more than one Class in issue, "Net Asset Value", "Transaction Charge" and the "number of Units in issue" may be variables determined by the Trustee in respect of the relevant Class in accordance with clause 4.5.

- (b) Each of the variables in clause 6.1(a) must be determined:
  - (i) as at the next Valuation Time after the later of the day on which the Trustee:
    - (A) accepts the completed application for Units; or
    - (B) receives the Application Money or the property against which the Units are to be issued is vested in the Trustee; or
  - (ii) in the case of a Unit issued under a distribution reinvestment plan, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.

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- (c) The Trustee may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Fund is a Registered Scheme it is permitted to do so by the Corporations Act and any applicable ASIC Exemption (and in such case, subject to the terms of that ASIC Exemption).

## **6.2 Rounding**

The Application Price may be rounded as the Trustee determines.

## **6.3 Satisfaction of Application Price**

The Application Price may be satisfied by payment in cash or by transfer to the Trustee of property acceptable to the Trustee (or by a combination of both). If the Trustee accepts payment other than cash, it may determine that some or all of the costs associated with the valuation or transfer of such property are payable or reimbursable out of the Assets or by the applicant.

# **7 Withdrawal**

## **7.1 Right to withdraw**

A Unit Holder may make a request for the withdrawal of some or all of its Units, or to realise a specified amount, in writing and delivered to the registered office (or other place nominated by the Trustee). A Unit Holder has no right to withdraw from the Fund other than:

- (a) where the Fund is not a Registered Scheme, as determined by the Trustee in its absolute discretion and otherwise in accordance with clause 7.2 and terms contained in any Offer Document; or
- (b) where the Fund is a Registered Scheme and Liquid, in accordance with clause 7.2; and
- (c) where the Fund is a Registered Scheme and not Liquid, in accordance with clause 7.3.

## **7.2 Withdrawals while Fund is Liquid or not a Registered Scheme**

- (a) This clause 7.2 shall apply in respect of the withdrawal of Units unless clause 8.3 applies.
- (b) Within a reasonable time of receiving the withdrawal request, the Trustee must consider that request and, in the Trustee's absolute discretion:
  - (i) deny the request and notify the Unit Holder accordingly;
  - (ii) effect the withdrawal request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Withdrawal Price out of the Assets;

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- (iii) subject to the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the withdrawal request; or
    - (iv) partially effect the withdrawal in the manner described in clause 7.2(b)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 7.2(b)(iii).
  - (c) If the Unit Holder has made a withdrawal request which complies with this Constitution and the Trustee accepts the withdrawal request, the Trustee must satisfy the withdrawal request in respect of a Unit by payment from the Assets of the Withdrawal Price calculated in accordance with clause 7. The payment must be made within 30 Business Days of the Withdrawal Date following the day on which the withdrawal request was made.
  - (d) Notwithstanding clause 7.2(c), the Trustee may extend the period allowed for satisfying a withdrawal request until a later Withdrawal Date if in the opinion of the Trustee:
    - (i) the Trustee has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset;
    - (ii) the Trustee does not consider it to be in the best interests of the Members as a whole to realise sufficient Assets to satisfy the withdrawal request; or
    - (iii) it is, for any reason, impractical to calculate the Net Asset Value of the Assets, including because of the closure of an exchange or trading or withdrawal restrictions in respect of a security.
  - (e) The Trustee may specify a minimum withdrawal amount for the Fund or a Class and vary that amount at its discretion.
  - (f) Unless otherwise determined by the Trustee, the Trustee need not give effect to a withdrawal request if:
    - (i) the aggregate Withdrawal Price of the Units to be redeemed is less than any minimum withdrawal amount determined by the Trustee; or
    - (ii) the withdrawal would result in the aggregate Withdrawal Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Trustee.
  - (g) If compliance with a withdrawal request would result in the aggregate Withdrawal Price of a Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Trustee, the Trustee may treat the withdrawal request as relating to the Unit Holder's entire Unit Holding.
  - (h) If the Trustee increases the minimum holding amount, the Trustee may, after giving 30 days notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Withdrawal Price of that Unit Holding is less than the then current minimum holding amount, without the need for a withdrawal request.

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- (i) Any balance realised representing a fraction of the proceeds of withdrawal of a Unit will be retained by the Trustee to be added to any further application money received from the Unit Holder or to the proceeds of withdrawal of any other Units of the Unit Holder as the Trustee may determine.
  - (j) If the application money for the Units which are the subject of a withdrawal request is paid by cheque, the Trustee may refuse to act on that request until the cheque has cleared.

### **7.3 Withdrawals while the Fund is a Registered Scheme and not Liquid**

- (a) While the Trust is not Liquid, a Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer made by the Trustee in accordance with Part 5C.6 of the Corporations Act.
- (b) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Trust.
- (c) The Trustee is not at any time obliged to make a Withdrawal Offer.

### **7.4 Clauses applicable whether or not the Trust is Registered or Liquid**

Clauses 7.5 to 7.12 apply regardless of when the Fund is and is not a Registered Scheme.

### **7.5 The Trustee may deny a request for withdrawal**

Subject to the Corporations Act (where the Trust is a Registered Scheme) and clause 7.3, the Trustee may partially or wholly deny a request for a withdrawal of Units in its absolute discretion.

### **7.6 When Units are redeemed**

Units redeemed under this clause 7 are taken to be redeemed at the time at which the applicable Withdrawal Price is calculated, and from that time until payment, the former Unit Holder of the redeemed Units ceases to be a Unit Holder of the Fund in respect of those Units and is a creditor of the Fund in respect of the proceeds of withdrawal.

### **7.7 Trustee discretion to redeem**

The Trustee may at any time in its absolute discretion redeem some of all of the Units held by a Unit Holder at the Withdrawal Price without being requested to do so by giving at least 30 days' notice to the Unit Holder of its intention to redeem such Units, including, without limitation, in the circumstances set out in clause 15.15.

### **7.8 No obligation to pay out of own funds**

The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.



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## **7.9 Sums owed to the Trustee**

The Trustee may deduct from the proceeds of withdrawal or money paid pursuant to a withdrawal request or a Withdrawal Offer any money due to it by the Unit Holder.

## **7.10 Transfer of Assets**

- (a) The Trustee may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Withdrawal Price due to the Unit Holder pursuant to a withdrawal request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 7.10(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal request, Withdrawal Offer (based on a valuation of the Assets which is consistent with the range of ordinary commercial practice for valuing assets of that type and be reasonably current). If the Trustee requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.
- (c) The Trustee may direct an amount arising from the sale of an Asset to a particular Unit Holder, who shall be taken to have a present entitlement in that amount, if the Unit Holder redeems one or more of their Units and the direction is made to fund the redemption.

## **7.11 Order of redemption**

Unless the Trustee determines otherwise, the first Units issued to a Unit Holder are the first to be redeemed.

## **7.12 Determination of income, capital and attribution**

Unless the Trustee otherwise determines, the proceeds of withdrawal paid to a Unit Holder will be comprised of capital only. Subject to the law, the Trustee may however determine and reclassify at its absolute discretion that the proceeds of withdrawal are comprised partly of capital and partly of income of the Fund in the Financial Year in which the withdrawal occurs.

## **7.13 Cooling off**

Where the Fund is a Registered Scheme, nothing in this clause 7 prevents the Trustee from complying with any requirement to return Application Money to Unit Holders in accordance with Part 7.9 (*Financial product disclosure and other provisions relating to issue, sale and purchase of financial products*) of the Corporations Act or with any similar requirement that applies to the Trustee of the Fund.

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## 8 Withdrawal Price of Units

### 8.1 Withdrawal Price

Subject to, the Corporations Act and the rights, entitlements obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at a Withdrawal Price of \$1.00, or, if the Trustee does not consider that \$1.00 is an appropriate Withdrawal Price, having regard to the interests of the Unit Holders as a whole, then the Withdrawal Price will be an amount calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Charge}}{\text{The number of Units on Issue}}$$

Where there is more than one Class in issue, "Net Asset Value", "Transaction Charge" and the "number of Units in issue" may be variables determined by the Trustee in respect of the relevant Class in accordance with clause 4.5.

### 8.2 Determination of Withdrawal Price

Each of the variables in clause 8.1 must be determined:

- (a) while the Fund is a Registered Scheme and not Liquid, as at the day on which the Withdrawal Offer closes; and
- (b) at any other time, as at the next Withdrawal Date after the Trustee received (or is taken to have received) a withdrawal request.

### 8.3 Rounding

The Withdrawal Price may be rounded as the Trustee determines.

## 9 Transfers

### 9.1 Transferability

- (a) Unit Holders may not transfer, sell, pledge or assign their interest in the Fund other than with the prior written consent of the Trustee, which consent may be given or withheld at the Trustee's sole discretion, but will not be unreasonably withheld.
- (b) A transfer of Units is not effective until it has been recorded in the Register.
- (c) Subject to this clause 9 and the terms of their issue, a Unit may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the Trustee approves or requires.
- (d) The Trustee may refuse to register a transfer (whether voluntarily or by operation of law) of Units without being bound to provide any reason for any refusal.

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- (e) A transferor of Units remains the Unit Holder of the Units transferred until the transfer is registered by the Trustee.
  - (f) The Trustee may charge Unit Holders a fee to register a transfer of Units.
  - (g) The Trustee may require a transferee of Units to execute a Transferee Subscription Agreement before allowing the transfer of Units to the transferee.
  - (h) The Trustee may make distributions payable under clause 12 in respect of a Unit for a Distribution Period to a transferor and transferee in proportion to the number of days in the Distribution Period that each held the Unit.

## **9.2 Registration of transfers**

- (a) If a Unit Holder wishes to transfer its Units the following documents must be lodged for registration with the Trustee:
  - (i) a proper instrument of transfer (duly stamped if relevant);
  - (ii) the certificate (if any) for the Units; and
  - (iii) any other information that the Trustee may require.
- (b) Subject to clause 9.3, the Trustee may register the transferee as the Unit Holder of the Units.
- (c) The Trustee may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

## **9.3 Refusal of registration**

Subject to the Corporations Act, the Trustee may refuse to register any transfer of Units without being bound to provide a reason for such refusal.

# **10 Transmission of Units**

## **10.1 Entitlement on death**

- (a) Subject to clause 10.1(b), if a Unit Holder dies:
  - (i) the survivor (or survivors, where the Unit Holder was a joint Unit Holder); and
  - (ii) the legal personal representatives of the deceased, where the Unit Holder was a sole Unit Holder,

will be the only persons recognised by the Trustee as having any title to the Unit Holder's interest in the Units;

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- (b) The Trustee may refuse to recognise any person referred to in clause 10.1(a) or to recognise any claim without providing any reason. The Trustee may require evidence of a Unit Holder's death as it thinks fit.
  - (c) This clause 10 does not release:
    - (i) the estate of a deceased joint Unit Holder from any liability in respect of a Unit that had been jointly held by the Unit Holder with other persons; or
    - (ii) where the Unit Holder was a sole Unit Holder, the legal personal representative or the Trustee of the Unit Holder's estate from any liability in respect of Units held by the deceased Unit Holder.

## 10.2 Registration of persons entitled

- (a) Subject to the Corporations Act, the *Bankruptcy Act 1966* (Cth) and the production of any information that is properly required by the Trustee, a person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Unit Holder may elect:
  - (i) by written notice to the Trustee, to be registered as the Unit Holder in respect of that Unit; or
  - (ii) to nominate some other person to be registered as the Unit Holder of the Unit.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
  - (i) the right to transfer;
  - (ii) the registration of the transfer of; and
  - (iii) the issue of certificates for,

Units apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Unit Holder had not occurred and the notice or transfer were a transfer signed by that Unit Holder.

## 10.3 Distributions and other rights

- (a) If a Unit Holder dies or suffers a legal disability, the Unit Holder's legal personal representative or the Trustee of the Unit Holder's estate (as the case may be) is, on the production of all information as is properly required by the Trustee, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Fund or to voting or otherwise) as the Unit Holder would have been entitled to if the Unit Holder had not died or suffered a legal disability.
- (b) Where two or more persons are jointly entitled to any Unit as a result of the death or legal disability of a Unit Holder, they will, for the purposes of this Constitution, be taken to be joint Unit Holders of the Unit.

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## 11 Valuation of Assets

### 11.1 Valuation of Assets

- (a) The Trustee may, at any time, cause the valuation of any Asset and (if the Fund is a Registered Scheme) shall do so as and when required by the Corporations Act.
- (b) The Trustee must cause an Asset to be valued if and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with those requirements.

### 11.2 Determination of Net Asset Value

- (a) The Trustee may determine the Net Asset Value at any time including more than once each day.
- (b) The Trustee must determine the Net Asset Value:
  - (i) if and when required by ASIC or the Corporations Act (if the Fund is a Registered Scheme);
  - (ii) on each Issue Date and any other day on which Units in the Fund are issued; and
  - (iii) on each Withdrawal Date.

### 11.3 Method of valuation

- (a) The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- (b) Where the Trust is a Registered Scheme, unless the Trustee decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be:
  - (i) for assets that are quoted on a financial market - its market value;
  - (ii) for other assets or where there is no market value and whilst the Trust is a Registered Scheme, the valuation methods and policies applied by the Trustee must be based on the ordinary commercial practice for valuing the relevant type of asset and produce a value that is reasonably current at the time of the issue or withdrawal of Units.

## 12 Income and Distributions

### 12.1 Determination of income and reserves

- (e) In each Financial Year the Trustee must determine the income of the Fund (**Income**) in accordance with this clause.

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- (f) The Income of the Fund may be:
- (i) an amount calculated by the Trustee on any basis and determined by the Trustee to be the Income of the Fund; or
  - (ii) if a determination is not made by the Trustee under clause 12.1(f)(i), the Net Income of the Fund, which may be reduced or increased by the amount of any reserves or provisions that, in the determination of the Trustee, need to be made.

## 12.2 Distribution of income

For each Distribution Period, the Trustee shall calculate the Distributable Amount and distribute each Unit Holder's Distribution Entitlement.

## 12.3 Distributable Amount

- (a) The Distributable Amount for a Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) shall be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the Distributable Amount;

I is the Income of the Fund for that Distribution Period (as determined by the Trustee pursuant to clause 12.1); and

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

- (b) The Distributable Amount for the last Distribution Period in a Financial Year shall be the difference between:

(i) the Income of the Fund for the Financial Year (as determined by the Trustee pursuant to clause 12.1); and

(ii) the total of the Distribution Amounts for all the prior Distribution Periods in that Financial Year,

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

## 12.4 Distribution Entitlement

Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Distribution Period shall be determined in accordance with the following formula:

- (a) in respect of a Unit

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$$A = B / C$$

Where

A is the Distribution Entitlement

B is the Distributable Amount for the Distribution Period for which the calculation is made; and

C is the number of Unit on issue each day during the Distribution Period for which the calculation is being made.

- (b) In respect of a Unit Holder, the Distribution Entitlement is the sum of the Distributions Entitlement referred to in (a) above for each Unit held by the Unit Holder on each day during the Distribution Period.

## **12.5 Satisfaction of Distribution Entitlement**

- (a) The Trustee shall pay to each Unit Holder its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Trustee shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as income for the following Distribution Period.
- (c) The Trustee may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this Constitution or that is required to be deducted by law.

## **12.6 Present entitlement**

Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the persons who are Unit Holders at 5:00pm on the last day of a Distribution Period shall have, at that time, an absolute vested and indefeasible interest in the Unit Holder's Distribution Entitlement that has been calculated for that Distribution Period.

## **12.7 Discharge of Trustee's obligation**

It is acknowledged by Unit Holders that payments of Distributable Amounts in accordance with clause 12.3 shall be a good and complete discharge of any liability owed by the Trustee to any person in respect of an entitlement to the Distributable Amount.

## **12.8 Capital distributions**

The Trustee may distribute the capital of the Fund to the Unit Holders in addition to a distribution made under clause 12.3. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Trustee

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divided by the number of Units on the Register on that date. A distribution under this clause may be in cash or by way of Assets or by way of bonus Units.

### **12.9 Grossed up Tax amounts**

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Amount for a Distribution Period which is referable to a dividend or other income to which they are presently entitled.

### **12.10 Excess distribution**

If at the end of a Financial Year the amount distributed as the Distributable Amount under this clause 12 exceeds the aggregate of the Net Income for the Financial Year, the excess will be taken to be a distribution of capital.

### **12.11 Categories and source of income**

The Trustee may keep separate accounts for any category or source of income and distribute the income from any category or source to any Unit Holder.

### **12.12 Reinvestment**

A Unit Holder may, if the Trustee approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Trustee is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 6. The procedure for reinvestment of distributions is to be determined by the Trustee and notified to Unit Holders from time to time.

### **12.13 Other rights or restrictions**

For the removal of doubt and despite anything else contained in this clause 12, the rights of a Unit Holder under this clause 12 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Trustee is entitled to do so under the Corporations Act, the Trustee may issue:

- (a) Units on terms which entitle the Unit Holder to a distribution of the amounts determined for distribution pursuant to this clause 13 based on the period that the Unit Holder has held their Units; or
- (b) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued.



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## 12.14 Withholding Tax

- (a) The Trustee recover from the Unit Holder an amount that the Trustee has paid in Tax on behalf of or in respect of a Unit Holder (including in respect of a distribution or an amount attributed to a Unit Holder) as a debt;
- (b) The Trustee is entitled to set off an amount that the Trustee can recover from the Unit Holder under clause 12.14(a) against debts due, or owed, by the Trustee to the Unit Holder.

## 12.15 Classes

For the avoidance of doubt, the rights of a Unit Holder under this clause 12 are subject to the rights, restrictions and obligations attaching to any particular Unit or the Class.

## 12.16 Public trading Trust

If, and so long as, the Fund is a public trading trust for the purposes of Division 6C of Part III of the Tax Act and any provisions which amend or replace it, the following provisions of this clause 12.16 will apply instead of clauses 12.1 to 12.15 to the extent they are inconsistent. If it does so:

- (a) as soon as practicable after the end of the Distribution Period, the Trustee must determine the taxable Income of the Fund in respect of the Distribution Period calculated in accordance with the Tax Act;
- (b) the Trustee must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the taxable Income of the Fund;
- (g) the Trustee may, in its discretion from time to time, determine to pay an amount as a distribution to Unit Holders holding Units in a Class in respect of the Distribution Period (**Distributable Amount**) to be determined in accordance with the following formula:
  - (i) in respect of a Unit
$$A = B / C$$
Where
    - A is the Distribution Entitlement
    - B is the Distributable Amount for the Distribution Period for which the calculation is made; and
    - C is the number of Unit on issue each day during the Distribution Period for which the calculation is being made.
  - (ii) In respect of a Unit Holder, the Distribution Entitlement is the sum of the Distributions Entitlement referred to in (a) above for each Unit held by the Unit Holder on each day during the Distribution Period.
- (h) in respect of a Distributable Amount being paid to Unit Holders pursuant to this clause 12.16:

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- (i) the Trustee may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
  - (ii) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to public trading trusts.

## 13 Powers and Reporting Obligations of Trustee

### 13.1 General powers of Trustee

- (a) The Fund has been established for the purpose of acquiring and holding investments selected by an investment manager in accordance with parameters which have been set out in Offer Documents.
- (b) The Trustee has all the powers in respect of the Fund that it is possible under law to confer on a Trustee as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.
- (c) In exercising its powers and carrying out its duties, the Trustee must treat the Unit Holders who hold interests of the same Class equally and Unit Holders who hold interests of different classes fairly, except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in 7.10(c).
- (d) The generality of this clause 13.1 is not limited by anything in the remainder of this clause 13.
- (e) To the maximum extent permitted by law:
  - (i) any rules and principles of law or equity that impose a duty on a Trustee exercising a power of investment are excluded; and
  - (ii) without limiting the generality of clause 13.1(e)(i), section 6 of the *Trustee Act 1958 (Vic)* is expressly excluded from operation in relation to this Constitution and the Fund.

### 13.2 Specific powers of the Trustee

Without limiting the generality of clause 13.1, the Trustee in its capacity as Trustee of the Fund may:

- (a) carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and for that purpose employ in that trade or business the whole or any part of the capital or income of the Fund and for this purpose acquire property, borrow money on security of the Assets, with or without security incur liabilities binding on the Fund or give any guarantee or indemnity for payment of moneys or the performance of any obligation or undertaking with or without security as the Trustee shall deem fit;

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- (b) advance and lend moneys to, and to borrow and raise money from any persons, firms, corporations, bodies, associations or government or municipal bodies whether alone or jointly with any other company or person upon such terms whether or not with security or interest as the Trustee shall see fit and to secure the repayment of those moneys by mortgaging or creating a Security Interest over any undertaking of the Trustee or all or any part of the Assets including any property which may subsequently be acquired by the Trustee so that it will form part of the Assets and any Security Interest created or purporting to be created under this clause 13.2 shall be valid in all respects irrespective of the actual application of the moneys and the rights of the Security Interest holder shall take priority in all respects over the rights of the Unit Holders and all other persons;
  - (c) create different Classes with different rights and entitlements;
  - (d) contract with any Australian financial services licence holder in respect of the issue, variation and disposal of Units;
  - (e) apply to ASIC for registration of the Fund as a Registered Scheme under the Corporations Act;
  - (f) apply for listing of the Fund and quotation of the Units (or any other financial product relating to the Fund) on any stock exchange (including the ASX) and for this purpose the Trustee is authorised on its own behalf and on behalf of each Unit Holder as the Unit Holder's agent or attorney to do all things necessary to effect a listing or quotation;
  - (g) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
    - (i) purchasing or disposing of Assets for cash or other consideration; and
    - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction;
  - (h) subject to 13.2(g), if the Trustee considers it appropriate to do so, the Trustee may, in respect of the acquisition of assets or the entry into any transaction, seek a direction from the members of the Fund.
  - (i) subject to clause 2.2(b) mix Assets with assets of any other person or trust;
  - (j) register the Fund as a managed investment scheme pursuant to the Corporations Act;
  - (k) share risk and returns with any other person or trust;
  - (l) vary, replace or deal with the Assets in any way;
  - (m) buy-back Units;
  - (n) fetter future discretions, such as by the granting of options;
  - (o) enter into any arrangement or agreement with underwriters in relation to the Fund;
  - (p) exercise all voting rights conferred by the Assets as it thinks fit; and
  - (q) give guarantees and/or indemnities to any person.

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### 13.3 Delegation

- (a) Without limiting clause 13.1, the Trustee may appoint any person as its delegate, attorney or agent to:
  - (i) perform any act;
  - (ii) carry out any obligation; or
  - (iii) exercise any power (including the appointment of its own delegate, attorney or agent),  
that the Trustee has under this Constitution.
- (b) The Trustee may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Trustee and perform any action incidental or ancillary to the same or otherwise approved by the Trustee.
- (c) Any person appointed under clauses 13.3(a) or 13.3(b) may be an Associate or employee of the Trustee.
- (d) An appointment under clauses 13.3(a) or 13.3(b) may be joint.
- (e) Subject to section 601FB (*Responsible entity to operate scheme*) of the Corporations Act (if the Fund is a Registered Scheme), the Trustee will not be liable for the acts or omissions of any delegate. The Trustee may include provisions to protect and assist those dealing with the delegate as the Trustee thinks fit.
- (f) If the Trustee delegates any of its responsibilities under this Constitution to a third party, including administration of the Fund, the Trustee may pay to the person to whom it has delegated that role:
  - (i) all or part of the fees that the Trustee would otherwise have been entitled to receive under this Constitution for undertaking that role; or
  - (ii) the amount of that person's fees from Assets.

### 13.4 Advisers

Without limiting this clause 13, the Trustee may engage an Adviser to assist with its duties and functions under this Constitution. An Adviser may be an Associate or employee of the Trustee.

### 13.5 Exercise of discretion

The Trustee shall in its absolute discretion decide how and when to exercise its powers.

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## **13.6 Reporting**

The Trustee will provide the financial statements including tax information for the completion of Unit Holders' tax returns on an annual basis as soon as practicable after the end of the Financial Year.

## **14 Holding of Assets**

### **14.1 How held**

Subject to clauses 14.2 and 14.3, all Assets will be held in the name of the Trustee.

### **14.2 Custodian**

If the Trustee considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Trustee and acting as agent for the Trustee.

### **14.3 Holding of Assets**

A custodian appointed by the Trustee in respect of a particular Asset must hold that Asset:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Trustee (and while the Fund is a Registered Scheme, to the extent permitted by Corporations Act and any applicable ASIC Exemption).

## **15 Remuneration and Expenses of Trustee**

### **15.1 Trustee fees**

Subject to the Corporations Act (where the Fund is a Registered Scheme) and clause 15.12, the Trustee will be entitled to the following fees in respect of the Trust:

- (a) An establishment fee of \$15,000 payable from the proceeds of the initial issue of Units..
- (b) An annual fee of 0.10% per annum of gross asset value of the Fund subject to a minimum annual fee of \$25,000 per annum. The annual fee is calculated daily and accrues from execution of the Constitution, but is payable monthly in arrears from acceptance of the first application.
- (c) Where the Fund is terminated or the Trustee is replaced:
  - (i) a termination fee of \$9,500; and

- 
- (ii) within 3 years of the establishment of the Fund, the balance of the annual fee which would have been otherwise payable in accordance with sub-clause (b) calculated on the basis of the gross asset value of the Fund at the time of termination or replacement.

## 15.2 Different fees for different Classes

- (a) The Trustee may determine different fees for different Classes.
- (b) If the Trustee determines that different fees are payable with respect to different Classes, then for the purpose of calculating fees for a Class under clauses 15.1, the Trustee may allocate capital raised for the Fund to specific Classes. Fees for different Classes will be charged against the Assets of that Class.

## 15.3 Waiver of remuneration

The Trustee may accept a lower fee than it is entitled to receive under this Constitution, or may waive or defer payment for a period on such terms as the Trustee determines at its sole discretion (in respect of a particular Class or generally).

## 15.4 Priority of Trustee's remuneration

The remuneration of the Trustee shall have priority over the payment of all other amounts payable from the Assets of the Fund.

## 15.5 Redemption of Units

The Trustee is entitled to redeem Units at the Withdrawal Price and is entitled to be paid the proceeds of the redemption in satisfaction of its fees and reimbursement of its expenses under this Constitution.

## 15.6 Establishment costs

- (a) Without limiting clause 15.10, the Trustee, or an Associate of the Trustee, may pay, on behalf of the Fund, any or all costs and expenses incurred in connection with the establishment and initial promotion of the Fund, including the production and distribution of the first disclosure document (**Establishment Costs**).
- (b) In such a case, the Trustee or the Associate (as the case may be) will be entitled to be reimbursed out of the Assets for all Establishment Costs that were reasonably and properly incurred.
- (c) The Trustee or the Associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Assets in a year or years later than the year in which the Establishment Cost was incurred.

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## **15.7 Differential fee arrangements**

Subject to the Corporations Act, the Trustee may agree with any Unit Holder any fee arrangements with that Unit Holder which are different to those provided for under this Constitution or which apply to other Unit Holders.

## **15.8 Units as payment for fees**

Subject to the Corporations Act, the Trustee may elect to be issued Units (in its personal capacity, or in its capacity as Trustee or responsible entity of any trust other than the Fund) instead of cash in payment of its fees or reimbursement of its expenses under this Constitution.

## **15.9 Fees paid to Trustee in a different capacity**

Subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee may be paid a fee for work performed in connection with the Fund in its personal capacity and not in its capacity as the responsible entity or Trustee of the Fund. The Trustee may retain any such fee for its own purposes and is not required to account for the fee to the Fund or to Unit Holders.

## **15.10 Reimbursement of Expenses**

- (a) All Expenses incurred by the Trustee in relation to the proper performance of its duties in respect of the Fund shall be payable or reimbursable out of the Assets, including Expenses arising in connection with the matters listed in item 1 of the Schedule 1.
- (b) All Expenses incurred by any investment manager in relation to investments including potential investments shall be payable or reimbursable out of the Assets.
- (c) If the Assets of the Fund are not sufficient to cover the Expenses incurred by the Trustee and any investment manager, the Unit Holders agree to indemnify the Trustee fully in respect of all expenses, liabilities, costs and any other matters in connection with the Fund incurred by the Trustee under this clause 15.10 to the extent that they cannot be reimbursed out of the Assets.

## **15.11 Class Expenses**

Subject to the Corporations Act, where a Class is in issue and the Trustee may make a determination that an Expense, or part of an Expense, is to be a Class Expense in relation to a Class, but if no determination is made under this clause 15.11, then:

- (a) in respect of fees of the Trustee which are charged to a particular Class, the GST on those fees and the corresponding reduced input credit or output credit (as the case may be) that arises in connection with a fee payable or supply in respect of a Class, is to be referable to that Class; and
- (b) any other Expenses under this clause 15 are to be referable to all Units on an equal basis.

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## 15.12 Proper performance of duties

Where the Fund is a Registered Scheme, the rights of the Trustee to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Trustee, are only available in relation to the proper performance of those duties.

## 15.13 GST

- (a) Expressions that have defined meanings under the GST Act bear the same meaning for the purpose of this clause 15.13 as those expressions in the GST Act.
- (b) Any amount payable or any consideration provided or to be provided under or in connection with this Constitution does not include an amount for GST.
- (c) If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including the performance of any of its obligations) then:
  - (i) the Trustee shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that supply in addition to any amount or consideration to which the Trustee is entitled; or
  - (ii) the recipient of the supply must pay to the Trustee, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that supply,at the Trustee's discretion.
- (d) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Trustee is entitled to recover from the Fund by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Trustee to the Fund treated as separate entities for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Assets for other purposes of this Constitution and the Corporations Act. Where an expense is paid from the Fund to the Trustee, the payment shall comprise part of the consideration for the supply by the Trustee to the Fund treated as separate entities for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Assets for other purposes of this Constitution and the Corporations Act.

## 15.14 Taxes in other jurisdictions

- (a) Without limiting clause 15.13, any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution does not include any goods and services tax, value added tax or other similar Tax payable in any jurisdiction.
- (b) In addition to any other amount to which the Trustee is entitled under this Constitution, the Trustee shall be entitled to be paid or reimbursed for an amount equal to any goods



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and services tax, value added tax or other similar Tax payable by the Trustee in any jurisdiction:

- (i) from the Assets; or
- (ii) by the Unit Holder, where the Trustee has an obligation to pay such goods and services tax, value added tax or other similar Tax in relation to a supply of goods and/or services made to the Unit Holder or other event that triggers a liability for goods and services tax, value added tax or other similar Tax,

at the Trustee's discretion.

- (c) If this clause 15.14 entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of any goods and services tax, value added tax or other similar Tax payable in any jurisdiction for which the party is entitled to any input tax credit or similar credit in any jurisdiction.

### **15.15 Sums owed to Trustee**

The Trustee may redeem such number of a Unit Holder's Units (including a fraction, if necessary) as have a value (based on the Net Asset Value at that time) equal to any amount of money due to it by the Unit Holder and deduct such amounts from the Withdrawal Price of the Units.

## **16 Change in Trustee**

### **16.1 Voluntary retirement while Fund is a Registered Scheme**

- (a) While the Fund is a Registered Scheme, the Trustee may retire as the Trustee of the Fund as permitted by section 601FL (*Retirement of responsible entity*) of the Corporations Act.
- (b) If permitted by law or by any relief from the Corporations Act granted by ASIC, the Trustee may appoint its successor by deed.

### **16.2 Voluntary retirement while Fund is not a Registered Scheme**

While the Fund is not a Registered Scheme, the Trustee may retire as the Trustee of the Fund by giving at least one month's notice to Unit Holders (or such shorter period as they agree). On retirement, the Trustee may appoint in writing another person to be the Trustee of the Fund.

### **16.3 Compulsory retirement**

- (a) While the Fund is not a Registered Scheme, the Trustee cannot be replaced for a minimum of three years from the Commencement Date.
- (b) Subject to clause (a), the Trustee shall retire as the responsible entity and/or Trustee of the Fund on the passing of a resolution to remove the Trustee at a meeting of the Unit

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Holders where Unit Holders holding at least seventy-five percent (75%) of the Units vote on the resolution (in person or by proxy) to remove the Trustee.

#### **16.4 New Trustee or responsible entity**

- (a) Any proposed replacement Trustee or responsible entity shall execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- (b) On retirement or removal, the Trustee shall give the new Trustee or responsible entity all books, documents and records relating to the Fund.
- (c) On retirement or removal the Trustee shall be released from all obligations in relation to the Fund arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Trustee, all fees and other amounts owing to the Trustee and all amounts deferred by the Trustee under clause 15 become due and payable to the Trustee from the Assets and the new Trustee must take such action as is necessary to promptly effect all such payments.

#### **16.5 Retirement benefit**

Subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee may agree to be paid a benefit by another entity who proposes to be the Trustee of the Trustee ('**Proposed Trustee**') in consideration for:

- (a) retiring as responsible entity and/or Trustee; or
- (b) agreeing to submit to a proposal for its retirement to a meeting of Unit Holders and nominating to the Unit Holders the Proposed Trustee the replacement responsible entity,

and the Trustee is not required to account to Unit Holders for the benefit received. The amount of that retirement benefit is to be set out in the Offer Document.

## **17 Limitation of Liability**

### **17.1 Limitation of Trustee's liability**

- (a) Subject to the Corporations Act (where the Fund is a Registered Scheme), neither the Trustee nor its Associates are liable for any loss or damage to any person (including any Unit Holder) arising out of any matter unless, in respect of that matter, it acted both:
  - (i) otherwise than in accordance with this Constitution; and
  - (ii) without a belief held in good faith that it was acting in accordance with this Constitution,

in any case, subject to the law, the liability of the Trustee in relation to the Fund is limited to the Assets, from which the Trustee is entitled to be, and is in fact, indemnified.

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- (b) In particular, subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
    - (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Trustee;
    - (ii) it acted as required by law; or
    - (iii) it relied in good faith upon any signature, marking or documents.

## 17.2 Unit Holders' liability

- (a) A Unit Holder shall be liable for the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Fund.
- (b) The Trustee, on its own account and on account of the Fund, shall be entitled to be indemnified by each Relevant Person for any Tax, bank fees or charges of the Relevant Person paid out of the Fund, except to the extent to which the Trustee is reimbursed out of the Fund.
- (c) Joint Unit Holders shall be jointly and severally liable in respect of all payments, including payments of Tax, to which clause 17.2(b) applies.
- (d) In the absence of separate agreement with a Unit Holder, the Trustee has recourse directly to claim from Unit Holders any fees, expenses and costs incurred directly in the operation of the Fund under clauses 15 and 18.

## 18 Indemnity

### 18.1 Trustee's indemnity

In addition to any indemnity available to the Trustee under the law or this Constitution, but subject to the Corporations Act ( if the Fund is a Registered Scheme), the Trustee has a right to be indemnified fully out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Fund and against all actions, proceedings, costs, claims and demands brought against the Trustee in its capacity as Trustee or responsible entity of the Fund in respect of any matter or thing done or omitted (**Indemnified Matter**) except:

- (a) in the case of the Trustee's own fraud, gross negligence, wilful default or material breach of the Constitution; and
- (b) in respect of the overhead expenses of the Trustee.

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## **18.2 Trustee's indemnity continuing**

- (a) The right of indemnity of the Trustee in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 18.1 will continue in favour of the Trustee after it has ceased to be the Trustee and will apply even if at any time the Liabilities exceed the Net Asset Value.
- (c) For the avoidance of doubt, the Trustee may be entitled to an indemnity under clause 18.1 in respect of any act or omission of a delegate or agent appointed by the Trustee for which the delegate or agent is not obliged to indemnify the Fund fully.

## **18.3 Payment**

The Trustee may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 18.1.

## **18.4 Trustee not to incur liability**

The Trustee is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

## **18.5 Other service providers' indemnity**

Any investment manager, administration manager and other service providers are entitled to be indemnified fully out of the Assets in respect of the Indemnified Matter except their own fraud, gross negligence, wilful default or material breach of the agreement under which they are appointed.

# **19 Trustee's Indemnity Against Tax Liability**

## **19.1 Indemnity**

- (a) The Trustee is entitled to be indemnified by a Unit Holder and any former Unit Holder to the extent that the Trustee incurs a liability for Tax as a result of the Unit Holder's or former Unit Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.
- (b) For the avoidance of doubt, clause 19.1(a) includes an indemnity by a Unit Holder or former Unit Holder in favour of the Trustee in respect of any Tax that may arise as a result of:
  - (i) the Trustee issuing Units to the Unit Holder or a former Unit Holder;

- 
- (ii) the Trustee redeeming any Unit;
  - (iii) the transfer of Units by a Unit Holder or a former Unit Holder; or
  - (iv) any person acquiring an interest in a Unit or a former Unit Holder
- (as the case may be).

## **19.2 Joint Unit Holders**

Joint Unit Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 19.1 applies.

## **20 Register**

### **20.1 Keeping Register**

- (a) The Trustee shall establish and keep, or cause to be kept, a register of Unit Holders at its registered office.
- (b) Where the Fund is a Registered Scheme, the Register must be kept in a form which, to the extent applicable, complies with the requirements of section 169 (*Register of Members*) of the Corporations Act.

### **20.2 Trustee's powers**

Where the Fund is a Registered Scheme, the Trustee has the powers conferred under the Corporations Act in relation to the Register.

### **20.3 Changes**

Every Unit Holder shall promptly notify the Trustee of any change of name or address and the Trustee must alter the Register accordingly.

### **20.4 Register conclusive**

Except where this Constitution or the law requires otherwise, the Trustee is entitled to treat the registered Unit Holder as absolute owner of the relevant Unit for all purposes. In the absence of evidence to the contrary, a register kept under Chapter 2C of the Corporations Act is proof of the matters shown in the register and subject to the Corporations Act the Trustee is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit.

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## **21 Amendments to Constitution**

### **21.1 Overriding provision**

This clause 0 shall be read subject to clause 22.

### **21.2 Trustee may amend**

- (a) Subject to the Corporations Act (if the Fund is a Registered Scheme) and any other approval that may be required by law, the Trustee may by deed replace or amend this Constitution (including this clause 21) or as otherwise permitted by the Corporations Act.
- (b) Such replacement or amendment may be effected by:
  - (i) Special Resolution of the members; or
  - (ii) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unit Holders' rights.

### **21.3 Statutory requirements**

Clause 21.2 does not apply to provisions deemed by clause 22 to be incorporated into this Constitution.

### **21.4 Attribution Managed Investment Trust**

Without in any way limiting the Trustee's powers in clause 21.2, the Trustee may make any change to this Constitution or take any other action which the Trustee reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the Attribution Managed investment Trust Regime in relation to the Fund; or
- (b) ensure that there is an appropriate and equitable application of the powers and rights of the Trustee and Unit Holders that arise under the Attribution Managed Investment Trust Regime.

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## 22 Corporations Act and ASIC Exemptions

### 22.1 Corporations Act

Notwithstanding any other provision of this Constitution, a provision of this Constitution which is expressed to apply subject to the Corporations Act, is only so subject while the Fund is a Registered Scheme (and the provision is to be read accordingly).

### 22.2 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the Trustee determines otherwise, this Constitution will automatically be amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Trustee to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

### 22.3 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, notwithstanding any amendment to this Constitution effected under clause 22, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Fund) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Trustee declares in writing that this is the case. This declaration may be made at any time.

## 23 Termination of Fund

The Fund terminates on the earlier of:

- (a) unless otherwise permitted by law, the day eighty years less one day from the Commencement Date;
- (b) the date determined by the Trustee as the date on which the Fund is to be terminated, being a date at least three months after the date of the provision of notice of such termination to all Unit Holders; or
- (c) the date on which the Fund is otherwise terminated by law.

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## **24 Termination and Winding Up of a Class**

### **24.1 Realisation of Assets**

On the termination and winding up of a Class, the Trustee shall:

- (a) not issue or redeem Units in that Class;
- (b) not convert, substitute or replace Units with other Units in that Class;
- (c) not vary any rights attaching to Units in that Class; and
- (d) sell and realise the Relevant Class Assets and, subject to clauses 24.3, 24.4 and 24.5, distribute to the Unit Holders the amount calculated in accordance with clause 24.2(a).

### **24.2 Procedure on winding up of a Class**

- (a) Subject to the Terms of Issue of any Unit or Class, the net proceeds of realisation, after making allowance for all Relevant Liabilities of the Class (actual and anticipated) and meeting the Class Expenses (including anticipated Class Expenses) of the termination of the Class, shall be distributed to Unit Holders in proportion to the number of Units they hold in that Class less the value of any Relevant Class Assets transferred to or to be transferred to each Unit Holder under clause 24.2(b). The Trustee may distribute proceeds of realisation in instalments.
- (b) If a Unit Holder and the Trustee agree, the Trustee may transfer to the Unit Holder specified Relevant Class Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Class, such specified Relevant Class Assets to be transferred at a value reasonably determined by the Trustee to be the value of the relevant Relevant Class Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the Corporations Act, the provisions of this Constitution shall continue to apply to Unit Holders of the Class to be wound up from the date of termination of the Class until the date of final distribution under clause 24.2(a), but during that period the Trustee may not accept any applications for Units from a person who is not an existing Unit Holder.

### **24.3 Trustee may recover Class Expenses**

The Trustee shall be entitled to be indemnified out of the Relevant Class Assets for, and to be paid and retain from the proceeds, all Class Expenses incurred or likely to be incurred:

- (a) by the Trustee in connection with the winding up of the Class ;
- (b) by or on behalf of any creditor of the Trustee in relation to the Class; and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Trustee in connection with the winding up of the Class.



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## **24.4 Retention of Relevant Class Assets**

The Trustee may retain under its control for so long as it thinks fit that part of the Relevant Class Assets which in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Class. If any part of the Relevant Class Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 24.1 and 24.2.

## **24.5 Postponement of realisation**

The Trustee may postpone the realisation of any part of the Relevant Class Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Relevant Class Assets and will not be responsible for any loss attributable to that postponement.

## **24.6 Trustee's obligation to make distributions**

The Trustee shall not be obliged to make a distribution to a Unit Holder under this clause 24 unless the Unit Holder delivers to the Trustee any evidence of title required by the Trustee together with any form of receipt and discharge required by the Trustee.

## **24.7 Cancellation of Units**

Unless the Trustee determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Relevant Class Assets is made.

## **24.8 Continuation of powers**

The powers, duties and rights of the Trustee (including the rights to remuneration and to any indemnities under this Constitution or the law) continue following termination of a particular Class to the extent to which they are not inconsistent with this clause 24.

# **25 Termination and Winding Up of Fund**

## **25.1 Realisation of Assets**

On the termination and winding up of the Fund, the Trustee shall:

- (a) not issue or redeem Units;
- (b) not convert, substitute or replace Units with other Units or Classes;
- (c) not vary any rights attaching to Units; and

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- (d) sell and realise the Assets and, subject to clauses 25.3, 25.4 and 25.5, distribute to the Unit Holders the amount calculated in accordance with clause 25.2(a).

## **25.2 Procedure on winding up of Fund**

- (a) Subject to the Terms of Issue of any Unit or Class, the net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, shall be distributed to Unit Holders in proportion to the number of Units they hold less the value of any Assets transferred to or to be transferred to each Unit Holder under clause 25.2(b). The Trustee may distribute proceeds of realisation in instalments.
- (b) If a Unit Holder and the Trustee agree, the Trustee may transfer to the Unit Holder specified Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Fund, such specified Assets to be transferred at a value reasonably determined by the Trustee to be the value of the relevant Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the Corporations Act, the provisions of this Constitution shall continue to apply from the date of termination of the Fund until the date of final distribution under clause 25.2(a), but during that period the Trustee may not accept any applications for Units from a person who is not an existing Unit Holder.

## **25.3 Trustee may recover Expenses**

The Trustee shall be entitled to be indemnified out of the Fund for, and to be paid and retain from the proceeds, all Expenses incurred or likely to be incurred:

- (a) by the Trustee in connection with the winding up of the Fund or a Class (as applicable);
- (b) by or on behalf of any creditor of the Trustee in relation to the Fund or a Class (as applicable); and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Trustee in connection with the winding up of the Fund or a Class (as applicable).

## **25.4 Retention of Assets**

The Trustee may retain under its control for so long as it thinks fit that part of the Assets which in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Fund or a Class (as applicable). If any part of the Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 25.1 and 25.2.

## **25.5 Postponement of realisation**

The Trustee may postpone the realisation of any part of the Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Assets and will not be responsible for any loss attributable to that postponement.

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## **25.6 Trustee's obligation to make distributions**

The Trustee shall not be obliged to make a distribution to a Unit Holder under this clause 25 unless the Unit Holder delivers to the Trustee any evidence of title required by the Trustee together with any form of receipt and discharge required by the Trustee.

## **25.7 Cancellation of Units**

Unless the Trustee determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Assets is made.

## **25.8 Continuation of powers**

The powers, duties and rights of the Trustee (including the rights to remuneration and to any indemnities under this Constitution or the law) continue following termination to the extent to which they are not inconsistent with this clause 25.

## **25.9 Audit of accounts of Fund**

If the Fund is a Registered Scheme, to the extent that the Corporations Act or ASIC policy requires, the Trustee shall arrange for the final accounts of the Fund following the winding up to be audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Trustee.

# **26 Meetings of Unit Holders**

## **26.1 Convening meetings**

The Trustee may at any time convene a meeting of Unit Holders or a Class of Unit Holders and must do so if required by the Corporations Act.

## **26.2 Calling and holding meetings while Fund is a Registered Scheme**

While the Fund is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 (*Meetings of members of registered managed investment schemes*) of the Corporations Act. However:

- (a) despite section 252G(4) (*When notice by post or fax is given*) of the Corporations Act, a notice of meeting sent by post is taken to be given the day after it is posted;
- (b) despite section 252R(2) (*Quorum*) of the Corporations Act, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;
- (c) despite section 252R(3) (*Proxies and representatives*) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate

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representative, the Trustee may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and

- (d) despite section 252Y(2) (*An appointment may be a standing one*) of the Corporations Act, an appointment of a proxy:
  - (i) is valid even if it does not specify the Unit Holder's address; and
  - (ii) may be a standing one.

### **26.3 Calling and holding meetings while Fund is not a Registered Scheme**

While the Fund is not a Registered Scheme, meetings of Unit Holders must be called and held in accordance with this clause 26.3.

- (a) The Trustee may convene a meeting of Unit Holders at any time and shall convene a meeting of Unit Holders on receiving a request in writing to do so signed by a Unit Holder or Unit Holders holding not less than 25% of the issued Units.
- (b) Not less than 14 days' notice shall be given of every such meeting (unless all the Unit Holders shall agree in writing to dispense with notice) and such notice shall specify the general nature of the business to be transacted at the same.
- (c) No business shall be transacted at any general meeting unless at the time when the meeting proceeds to business there are present (in person or by proxy) a quorum of at least two Unit Holders who between them hold at least 40% of the issued Units of the classes entitled to vote at the meeting.
- (d) If, within 15 minutes from the time appointed for the meeting, a quorum is not present:
  - (i) the meeting, if convened on the requisition of Unit Holders, shall be dissolved; and
  - (ii) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at an adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the meeting shall be dissolved.
- (e) A person nominated by the Trustee shall preside as chairperson at each meeting.
- (f) The chairperson shall not have any casting vote (in the event of an equality of votes) in addition to any vote or votes to which he or she may be entitled as a Unit Holder.
- (g) Every question at any meeting shall be decided in the first instance by a show of hands, but a poll may be demanded before or immediately after any question is put to a show of hands by a Unit Holder or Unit Holders holding between them not less than 10% of the issued Units.
- (h) Subject to any special rights or restrictions in relation to Units of any Class, each Unit Holder present shall on a show of hands have one vote and on a poll have one vote for every Unit held by that Unit Holder.
- (i) Votes may be given either personally or by proxy.

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- (j) Without the consent of the Trustee, no person shall be appointed a proxy who is not a Unit Holder provided that where a corporation is a Unit Holder, the proxy may be an officer of such corporation.
  - (k) In the case of joint Unit Holders, any one of such joint Unit Holders may vote either personally or by proxy as if that Unit Holder were solely entitled to the Units comprised in the Unit Holding, but if more than one of such joint Unit Holders be present at any meeting, either personally or by proxy, that one of the joint Unit Holders so present whose name stands first on the register in respect of the joint holding shall alone be entitled to vote in respect of the same.
  - (l) The accidental omission to give notice or sufficient notice to any Unit Holder shall not invalidate any meeting or any of the proceedings at the same, nor shall any irregularity which does not unfairly prejudice any person.
  - (m) If the Trustee considers it appropriate to do so, the Trustee can convene a meeting to seek a direction under clause 13.2(h) in relation to the acquisition of assets or the entry into any relevant transactions. The Trustee will be deemed to have received the direction from the Unit Holders on the passing of a resolution at a meeting of the Unit Holders where Unit Holders holding at least fifty percent (50%) of the issued Units vote in favour of the resolution to approve the acquisition or transactions.

#### **26.4 Clauses applying to meetings irrespective of whether or not Fund is a Registered Scheme**

Clauses 26.5 and 26.6 apply irrespective of whether or not the Fund is a Registered Scheme.

#### **26.5 Resolution binding on Unit Holders**

A resolution passed at:

- (a) a meeting of Unit Holders is binding on all Unit Holders; and
- (b) a meeting of Class of Unit Holders is binding on all Unit Holders in that Class.

#### **26.6 Written resolution**

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of Unit Holders or a Class of Unit Holders, a resolution in writing signed by Unit Holders, or, where relevant, Unit Holders of a Class, together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders, or Class of Unit Holders, and is effective when signed by the last of Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by that Unit Holder.

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## **27 Notices**

### **27.1 Notices to Unit Holders**

- (a) Subject to the Corporations Act, a notice or other communication from the Trustee to a Unit Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes facsimile numbers and electronic mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the Trustee to a Unit Holder sent by:
  - (i) post, is taken to be received on the Business Day after it is posted;
  - (ii) facsimile, is taken to be received one hour after the transmitter receives confirmation of transmission from the receiving facsimile machine; and
  - (iii) other means, is taken to be received at the time the Trustee determines.

### **27.2 Notices to joint Unit Holders**

The Trustee may give a notice or other communication to joint Unit Holders by giving it to the Unit Holder first named in the Register for that holding.

### **27.3 Notices to successor**

The Trustee may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Unit Holder by sending it to the legal personal representatives of the Unit Holder or Trustee of the deceased Unit Holder's estate at the address supplied for the purpose by the representative or Trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Unit Holder's address as recorded in the Register.

### **27.4 Signature on notice**

The signature on any notice or other communication by the Trustee may be written, printed, stamped or produced electronically and the signature may be that of Trustee or of any director, secretary or other authorised officer of the Trustee.

### **27.5 Notices to Trustee**

Notices to the Trustee by Unit Holders must be given in writing or in any other manner the Trustee determines. A notice is effective when it is received by the Trustee. A notice must be signed by the Unit Holder or a duly authorised representative (unless the Trustee waives this requirement).

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## 28 Complaints

If:

- (a) the Fund is a Registered Scheme; and
- (b) a Unit Holder submits to the Trustee a complaint,

the Trustee:

- (c) shall, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable, and otherwise in accordance with the requirements of the Corporations Act;
- (d) shall ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Trustee as appropriate to handle complaints;
- (e) shall act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (f) may, in its discretion, give any remedies to the complainant, including:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (g) shall communicate to the complainant, as soon as practicable and, in any event, in accordance with the requirements of the Corporations Act:
  - (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Unit Holder; and
  - (iii) information regarding any further avenue for complaint.

## 29 Rights of Trustee

### 29.1 Right to hold Units

The Trustee and/or any of its Associates may hold Units in any capacity.

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## 29.2 Other capacities

Subject to the Corporations Act and the law generally, nothing in this Constitution restricts the Trustee (in its personal capacity or in any other capacity other than as responsible entity or Trustee of the Fund) and/or any of its Associates:

- (a) dealing with the Trustee (as responsible entity or Trustee of the Fund or in another capacity), an Associate of the Trustee or with any Unit Holder;
- (b) borrowing from the Trustee in its personal capacity or in any other capacity other than as responsible entity or Trustee of the Fund;
- (c) being interested in any contract or transaction or matter with the Trustee (as responsible entity or Trustee of the Fund or in another capacity), an Associate of the Trustee or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction;
- (d) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (e) any dealings with any entity in which the Assets are invested,

and in each case the Trustee (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

## 29.3 Trustee may rely

The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and any other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by the Trustee of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Trustee in connection with the Fund upon which it is reasonable for the Trustee to rely,

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



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## 30 Constitution Legally Binding

This Constitution binds the Trustee and each present and future Unit Holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

## 31 Other Obligations Excluded

Except as required by the Corporations Act, all obligations of the Trustee which may otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including any obligation of the Trustee in its capacity as Trustee of the Fund arising under any statute.

## 32 Payment

- (a) Any money payable by the Trustee to a Unit Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's address as supplied in the Register.
- (b) A Unit Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this Constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Unit Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within six months or any electronic fund transfer which is unsuccessful at least twice is cancelled. If the Trustee so determines the amount of the cheque or electronic fund transfer may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 5.4. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled.
- (e) The Trustee is entitled to keep any interest accrued on money payable to a Unit Holder or former Unit Holder.
- (f) Money payable to the Trustee may from time to time be paid in a manner other than that described in this clause 32 with the Trustee's consent.
- (g) The Trustee may deduct from any amount to be paid, or received from, a Unit Holder or a person who was previously a Unit Holder any amount the Trustee is authorised or required to deduct by law, the Constitution or any product disclosure document for the Fund of which the terms are binding on the Unit Holder.

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### **33 Severability**

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable, so much of this Constitution as is necessary to render it valid and enforceable shall be deemed to be severed but the remainder of this Constitution will remain in full force and effect.

### **34 Governing Law**

This Constitution is governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.

**EXECUTED as a Deed**

# Constitution

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## Schedule 1- Expenses

The following are examples of Expenses for which the Trustee may be reimbursed out of the Assets and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Fund and any supplemental deed or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) the preparation, approval, implementation, audit and interpretation of a compliance plan for the Fund;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any other interest in the Fund, marketing material or other documents whether required by law or otherwise to be prepared in respect of the Fund;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (f) the investigation, negotiation or acquisition of any proposed investment;
- (g) the administration, management, valuation or promotion of the Fund or its Assets and Liabilities, including:
  - (i) fees and expenses payable to any investment manager appointed by the Trustee;
  - (ii) the establishment and maintenance of accounts and Registers;
  - (iii) issuing Units by the Trustee or any sales of Units by one or more Unit Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
  - (iv) computer operation and development and data processing;
  - (v) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this Constitution;
  - (vi) dealing with Unit Holder enquiries;
  - (vii) communications with Unit Holders (written or otherwise);
  - (viii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Fund or on an ongoing basis;
  - (ix) leasing premises outside of Australia for the Trustee in connection with the Fund; and

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- (x) any travel expenses incurred in connection with the Fund;
  - (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;
  - (i) Taxes (provided they are not on the personal account of the Trustee and including any GST charged to the Trustee), stamp duty and financial institution fees;
  - (j) the inclusion of the Fund on any IDPS list;
  - (k) the engagement of delegates, agents, Advisers and Valuers;
  - (l) without limiting paragraph (k), the payment of management fees, performance fees or other fees associated with the engagement of any investment manager or other delegate or appointee;
  - (m) preparation and audit of the taxation returns and accounts of the Fund;
  - (n) termination of the Fund and the retirement or removal of the Trustee and the appointment of a replacement;
  - (o) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent in which case any expenses paid or reimbursed under this paragraph (o) shall be repaid;
  - (p) the establishment and operation of a compliance committee in connection with the Fund, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of such compliance committee;
  - (q) while there is no compliance committee, any costs and expenses associated with the board of directors of the Trustee carrying out the functions which would otherwise be carried out by a compliance committee, including (if the Fund is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C (*Managed investment schemes*) of the Corporations Act;
  - (r) admission of the Fund to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Fund from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
  - (s) complying with any law or any request or requirement of ASIC or any other regulatory authority in relation to the Fund;
  - (t) fees payable to ASIC or any other regulatory authority in relation to the Fund or Units;
  - (u) the assigning or maintaining of a credit rating to the Fund; and
  - (v) raising money or otherwise obtaining financial accommodation for the Fund, including a capital raising by the Fund, including fees payable to any underwriter or broker.

# Constitution

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## Schedule 2 - AMIT Provisions

### 1 Unit Holders' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Unit Holder has in the Trust constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to have Clearly Defined Rights:
  - (i) the Trustee may not exercise any right or power, whether it is one provided to the Trustee under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Trust arising from each Unit in each relevant AMIT for the Trust to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
  - (ii) the Trustee must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c); and
  - (iii) in addition to the requirements of clause 0, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution) which would or may cause the requirements of this clause to not be met.

### 2 Trustee powers in relation to AMIT Regime

- (a) The Trustee has all of the powers and rights which are necessary and expedient to enable the Trust to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (b) Without limiting the Trustee's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Trustee has the power to:
  - (i) work out the Trust Component of each applicable character of the Trust or each Class, for a financial year;
  - (ii) attribute all of the Trust Components and Determined Trust Components of the Trust, or each Class, to Unit Holders under the AMIT Regime, including make an attribution of income of a particular category, source or character for tax purposes;

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- (i) make an alteration to the Trustee's attribution of the Trust Components and Determined Trust Components of the Trust, or each Class, for a Financial Year under the AMIT Regime, including, without limitation, making alterations as a result of the Trustee applying the Unders and Overs Rules;
  - (iii) issue (or reissue as the case may be) an AMMA Statement;
  - (iv) where the Trust has more than one Class of Units on issue, to make a choice that each Class be treated as a separate AMIT. If the Trustee has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;
  - (v) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;
  - (ii) allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis; and
  - (vi) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.
- (b) Subject to the Corporations Act, the Trustee is not liable to any Unit Holder or former Unit Holder with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Trustee makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Trustee results in a different attribution outcome for the Unit Holder than if the Trustee had not made the choice, or had made the choice in a different way.

### **3 Attribution of income**

- (a) The Trustee must attribute all of the Trust Components and Determined Trust Components of:
- (i) the Trust; or
  - (ii) if the Trustee has made a choice that each Class will be treated as a separate AMIT, each Class in the Trust,
- in respect of a Financial Year, to the Unit Holders or former Unit Holders under the AMIT Regime.
- (b) The Trustee undertakes to perform attribution under clause 3(a) in accordance with the following principles:

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- (i) the amount of each Unit Holder's or former Unit Holder's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units in the Trust held by the Unit Holder or former Unit Holder, having regard to the provisions of this Constitution;
  - (ii) subject to clause 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Trust;
  - (iii) subject to clause 3(b)(iv), the Trustee must not attribute any part of a Determined Trust Component to a Unit Holder or former Unit Holder because of the tax characteristics of the Unit Holder or former Unit Holder;
  - (iv) the Trustee may direct an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 7.10(c);
  - (v) if there is more than one Class on issue in the Trust and the Trustee has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Trustee must only attribute Determined Trust Components of a particular Class to Unit Holders of that Class (and not any other Class); and
  - (vi) the Trustee must attribute to each Unit Holder or former Unit Holder, so much of the Determined Trust Components of the Fund or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Unit Holder or former Unit Holder has become entitled to during the Financial Year.
- (c) Where the Trustee exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Trustee make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement provisions or amount payable to a Unit Holder under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution);
  - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital contemplated in the existing Distribution Entitlement provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5 of this Constitution) and should not be materially different from those rights and entitlements.

## 4 Ceasing to be an AMIT

If the Trust ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Trust for any subsequent Financial Year and to the extent required by the

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AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Trust was an AMIT.

## 5 Determined Member Component Choice

- (a) If a Unit Holder makes or intends to make a Determined Member Component Choice (in this clause, a **Choice**) for the purposes of the AMIT Regime, the Unit Holder must:
  - (i) before providing notice of such Choice to the Commissioner of Taxation, provide the Trustee not less than seven days' notice of its intention to do so and a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
  - (ii) provide to the Trustee all information the Trustee reasonably requests in relation to any act, matter or thing relating to the Choice;
  - (i) consent to the Trustee becoming a party to any proceedings with the Commissioner of Taxation relating to the Choice.
- (b) The Unit Holder acknowledges that if a Unit Holder makes a Choice it may be necessary or desirable for the Trustee to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Unit Holders for the purposes of the AMIT Regime.
- (c) The Trustee shall have no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to a Choice.
- (d) The Trustee has the right to issue or reissue any AMMA Statement to the Unit Holder or other Unit Holders if a Unit Holder makes a Choice.

## 6 Debt-like AMIT instruments

The Unit Holders and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.



# Constitution

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# Constitution

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## Signing Page

DATED: \_\_\_\_\_ 2017.

EXECUTED by VASCO INVESTMENT )  
MANAGERS LIMITED ACN 138 715 009 in )  
accordance with the Corporations Act 2001 (Cth) )  
by being signed by the following officers: )

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / company secretary

\_\_\_\_\_  
Name of director *(please print)*

\_\_\_\_\_  
Name of director / company secretary *(please print)*