

THE TRUST COMPANY (RE SERVICES) LIMITED
ABN 45 003 278 831

CONSTITUTION

Hamilton Lane Global Private Assets Fund (AUD)

This is a replacement constitution to the original constitution dated 13th February 2019



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Hamilton Lane Global Private Assets Fund (AUD)

DATE: 27TH FEBRUARY 2019

OPERATIVE PROVISIONS

This deed poll is declared by The Trust Company (RE Services) Limited ABN 45 003 278 831 of Level 18 Angel Place, 123 Pitt Street, Sydney NSW 2000 to be the Constitution of Hamilton Lane Global Private Assets Fund (AUD).

1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Constitution, the following words and phrases have the meanings set out below unless a contrary intention appears:

Act The *Corporations Act 2001* (Cth) and regulations made under it, as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by ASIC.

Accrued Income Entitlement In relation to a Unit means the share of the Distributable Income of the Fund attributable to that Unit accrued from the commencement of the Distribution Period to the date for redemption of the Unit.

Additional Fund Administration Services The actions and activities in connection with the management and administration of the Fund which are described in Schedule 1.

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

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

Application An application for Units.

Application Date Subject to clause 12.6, the Pricing Day applicable to an Application being:

- (a) if the Application is accepted by the Responsible Entity on a Pricing Day on or before the Prescribed Application Time, that Pricing Day; or
- (b) if the Application is accepted by the Responsible Entity on a Pricing Day after the Prescribed Application Time, the next Pricing Day.

Application Price	<p>The price at which a Unit the subject of an Application is issued, being the amount calculated as at the close of business on the Application Date as follows:</p> $\text{Application Price} = \frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units on issue}}$ <p>provided that the Application Price of the Units issued on commencement of the Fund is at \$1.00 per Unit.</p>
ASIC	The Australian Securities and Investments Commission (or its successor body having regulatory authority over the Fund).
Assets	All investments, assets, capital, income, property and rights of the Fund, including proceeds of redemption of Units which have not yet been paid and any unpaid distributions.
Associate	<p>In relation to a person (the <i>first person</i>) means a person who is:</p> <ul style="list-style-type: none"> (a) an associate of the first person within the meaning of section 11 of the Act; or (b) a 'related party' of the first person within the meaning of section 228 of the Act (after modification in accordance with section 601LA of the Act).
Auditor	The current auditor of the Fund, from time to time.
Business Day	A day, other than a Saturday or Sunday, on which trading banks are open for general banking business in Sydney.
Chairperson	The chairperson of a meeting of Members, as appointed in accordance with this Constitution.
Class Rights	In respect of a class of Units, the rights attaching to that class of Units in accordance with clause 5.2.
Commencement Date	The date on which the Fund commences in accordance with clause 4.1.
Compliance Plan	The compliance plan for the Fund required under the Act.
Constitution	This deed poll, as modified from time to time.
Cost	Any cost, charge, disbursement, expense, outgoing, fee, Tax or commission.
Delegate	A person appointed, engaged or otherwise contracted by the Responsible Entity as contemplated by clause 15.9.
Distributable Income	<p>In respect of a Distribution Period, unless the Responsible Entity determines otherwise, the greater of:</p> <ul style="list-style-type: none"> (a) the net income of the Fund for the Distribution Period determined in accordance with generally accepted accounting principles applicable in Australia as they apply to managed investment schemes, adjusted such that any unrealised gains and losses are excluded until (and only to the extent to which) they are realised; and

- (b) the minimum amount which, if distributed to the Members for the period, would (to the extent possible) prevent the Responsible Entity from being liable to tax under sections 99 or 99A of the Tax Act.

Distribution Date	In respect of a Distribution Period, the last day of the Distribution Period.
Distribution Period	Subject to clause 10.1(b), a period, determined by the Responsible Entity, in respect of which income of the Fund is to be distributed to Members in accordance with this Constitution.
Entry Fee	In respect of a Unit, the fee payable to the Responsible Entity of 5% of the Application Price.
Exit Fee	In respect of a Unit, the fee payable to the Responsible Entity of 5% of the proceeds of redemption of the Unit.
Financial Year	Means: (a) for the first financial year, the period on and from the Commencement Date and including the next 30 June; (b) for the last financial year, the period on and from 1 July immediately before the date of final distribution to and including the date of final distribution on termination of the Fund; and (c) in all other circumstances, the 12 month period ending on 30 June in each year.
Fund Document	This Constitution and any other document to which the Responsible Entity is a party in its capacity as the trustee and responsible entity of the Fund.
Fund	The trust constituted under this Constitution.
GST	GST has the same meaning as "GST" in the GST Law and includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.
GST Law	GST Law has the same meaning as "GST Law" in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Income Distribution	In respect of a Member for a Distribution Period, the Member's share of the Distributable Income for the Distribution Period calculated in accordance with this Constitution or, where clause 10A applies, amounts determined under clause 10A to be distributed to a Member but remaining unpaid.
Income Year	Has the same meaning given in the Tax Act.
Liabilities	All liabilities of the Fund, including liabilities accrued and unpaid and provisions which the Responsible Entity reasonably believes, in accordance with generally accepted accounting principles and applicable accounting standards, should be made when determining the liabilities of the Fund, but excluding all liabilities of the Responsible Entity to any Member (other than an unpaid distribution amount) and all amounts representing the value of the rights of a Member (other than an unpaid distribution amount) payable in respect of any redemption of Units not then requested and accepted by the

	Responsible Entity and regardless of whether the Units are characterised as equity or debt in the accounts of the Fund.
Liquid	Has the same meaning as in section 601KA(4) of the Act.
Member	An applicant for Units who holds an interest in the Fund as provided by clause 5.6.
Net Asset Value	The value of the Assets less the Liabilities excluding application money in respect of Applications that have not been accepted by the Responsible Entity.
Prescribed Application Time	3:00 pm (Sydney time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time.
Prescribed Withdrawal Time	3:00 pm (Sydney time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time.
Pricing Day	The day (or days) of the week prescribed by the Responsible Entity from time to time as the day (or days) as at which the Net Asset Value is determined for the purposes of calculating the Application Price and the Withdrawal Price and where such day (or days) have not been prescribed by the Responsible Entity means each Business Day.
redeem	Redeem out of the Assets and, in respect of Units the subject of a withdrawal request that the Responsible Entity elects to purchase or buy-back, includes purchase or buy-back.
Register	The register of Members maintained by, or on behalf of, the Responsible Entity.
Responsible Entity	The person entered on the ASIC register as the responsible entity of the Fund for the time being.
Responsible Entity Personnel	At any time, officers and employees of the Responsible Entity at that time and persons who, although not officers or employees of the Responsible Entity, operate under the direction or control of the Responsible Entity in their day-to-day activities at that time, including persons seconded to the Responsible Entity who are Associates of the Responsible Entity or officers or employees of Associates of the Responsible Entity.
Retail Clients	Has the meaning as in section 761G of the Act.
Tax	Every kind of tax, duty, levy, impost, rate, charge and deduction imposed by any fiscal, national, state or local authority, entity or governmental or quasi-governmental body at any time applying and any interest, penalties or fines imposed in connection with them.
Tax Act	The <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth).
Termination Date	The date the Fund terminates as provided for in clause 4.2.
Transaction Costs	When calculating, as at any date:

- (a) the Application Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Costs that would be incurred to buy the entire investments of the Fund on that date (excluding the purchase price of the investments); and
- (b) the Withdrawal Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Costs that would be incurred to sell the entire investments of the Fund on that date;

provided that subject to the Act the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Unit	An undivided beneficial interest in the Assets (subject to the Liabilities) as provided for in this Constitution.
Wholesale Clients	Has the same meaning as in section 761G of the Act.
Withdrawal Date	Subject to clauses 8.10 and 12.6, the Pricing Day applicable to Units the subject of a withdrawal request being: <ul style="list-style-type: none"> (a) if the withdrawal request is accepted by the Responsible Entity on a Pricing Day on or before the Prescribed Withdrawal Time, that Pricing Day; or (b) if the withdrawal request is accepted by the Responsible Entity on a Pricing Day after the Prescribed Withdrawal Time, the next Pricing Day.
Withdrawal Price	The price at which a Unit the subject of a withdrawal request is redeemed. Subject to clause 8.8, this price is the amount calculated as at the close of business on the Withdrawal Date as follows:

$$\text{Withdrawal Price} = \frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units on issue}}$$

Interpretation

1.2 Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Act are used as defined;
- (b) a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations and instruments and in all instances as amended, supplemented, re-enacted, rewritten or replaced;
- (c) the singular includes the plural and vice-versa;
- (d) 'person' includes a firm, body corporate, an unincorporated association or an authority;

- (e) 'prescribe' and 'determine' and any variations of them means as prescribed or determined from time to time;
 - (f) where a word or phrase is defined, another part of speech or grammatical form of the word or phrase has the corresponding meaning;
 - (g) where the Responsible Entity has the power or discretion to "prescribe" a matter it may do so, without limitation, by:
 - (i) giving notice to Members; or
 - (i) prescribing the matter in an offer document for Units;
 - (h) when preceding a list of items, 'include' and any variation of it does not exclude a reference to other items, whether of the same class or genus or not;
 - (i) words defined in the GST Law have the same meaning in clauses concerning GST;
 - (j) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled; and
 - (k) headings have been inserted only for convenience and do not affect any interpretation of this Constitution.
- 1.3 This Constitution is governed by the law of New South Wales.
- 1.4 A provision of this Constitution which is inconsistent with a provision of the law, including the Act, does not operate to the extent of the inconsistency.
- 1.5 This deed poll is the constitution of the Fund for the purposes of the Act at any time that the Fund is a registered managed investment scheme under the Act.

2 RIGHTS AND OBLIGATIONS OF MEMBERS

- 2.1 This Constitution:
- (a) is executed as a deed poll and for the benefit of the Members; and
 - (b) is legally enforceable as between the Members and the Responsible Entity.
- 2.2 Each Member has the benefit of, and is entitled to enforce, this Constitution even though the Member is not a party to, or may not be a Member at the time of execution and delivery of, this Constitution.
- 2.3 Each Member (and all persons claiming through a Member) will be bound by this Constitution as if they were a party to this Constitution.

3 THE FUND

- 3.1 The Fund formed under this Constitution is called the Hamilton Lane Global Private Assets Fund (AUD) or such other name as the Responsible Entity determines from time to time.
- 3.2 The Trust Company (RE Services) Limited is appointed, and agrees to act, as the trustee and responsible entity of the Fund.

- 3.3 The Responsible Entity declares that it will hold the Assets, subject to the Liabilities, upon trust for the Members on, and subject to, the provisions of this Constitution.
- 3.4 The Assets vest in the Responsible Entity (or a custodian appointed by the Responsible Entity) during the continuance of the Fund.

4 COMMENCEMENT, DURATION AND WINDING-UP

- 4.1 The Fund commences on the date when, following execution of this Constitution by the Responsible Entity, Assets are first vested in the Responsible Entity (or a custodian appointed by the Responsible Entity) in respect of the Fund.
- 4.2 The Fund will terminate on the earliest to occur of the following:
- (a) two days before the 80th anniversary of the date of this Constitution;
 - (b) the date on which an event occurs which under the Act or this Constitution obliges the Responsible Entity to wind up the Fund; or
 - (c) a date determined by the Responsible Entity, being a date of which at least one month's prior written notice has been given to the Members.
- 4.3 The Fund may be wound up in accordance with the Act.
- 4.4 Subject to clause 4.5, the Responsible Entity must realise the Assets:
- (a) if practicable and in the best interests of the Members, within 180 days of the termination of the Fund; or
 - (b) otherwise, as soon as reasonably practicable after the termination.
- 4.5 The Responsible Entity has the power to postpone the realisation of Assets to maximise the net proceeds of the realisation of those Assets attributable to Members provided the Responsible Entity considers that the postponement is not inconsistent with its duties under the Act.
- 4.6 Despite termination, the Responsible Entity retains all its rights, discretions and powers under this Constitution including any entitlement to remuneration, indemnification and reimbursement and any right of recovery. The Responsible Entity may retain funds for the purpose of discharging Liabilities.
- 4.7 Subject to any Class Rights and Members' Income Entitlements (as set out in this Constitution), the net proceeds of realisation are to be distributed pro rata by the Responsible Entity to Members according to the number of Units held following discharge of all outstanding Liabilities, including those associated with the termination. The final accounts of the Fund after termination must be independently audited by a registered company auditor.
- 4.8 Subject to clause 4.7, on final distribution of the net proceeds of realisation in accordance with clause 4.6, the Responsible Entity is, subject to the Act, discharged from all duties and obligations imposed by, or arising under, this Constitution and by law.

5 INTERESTS OF MEMBERS

- 5.1 The beneficial interest of the Fund is divided into Units. A Unit does not confer any interest in any particular part of the Fund or any Asset but only an equal undivided interest in the Fund and the Assets as a whole, subject to the Liabilities.

- 5.2 Subject to the Act, the Responsible Entity may issue classes of Units and determine the rights, liabilities, obligations and restrictions which attach to each class. A Member holds a Unit subject to this Constitution and the rights, liabilities, obligations and restrictions attaching to that Unit.
- 5.3 The Responsible Entity may:
- (a) issue fractions of Units; and
 - (b) consolidate or divide Units,
- provided that the proportions of unitholdings are maintained.
- 5.4 Subject to the Act, a Member must not:
- (a) interfere with any discretions, rights or powers of the Responsible Entity or any dealing or proposed dealing with an Asset or a Liability; or
 - (b) exercise, or purport to exercise, a right in respect of, lodge a caveat affecting, or otherwise claim an interest in, any Asset.
- 5.5 On the request of a Member, the Responsible Entity may record in the Register a mortgage or other security interest (collectively **mortgage**) over the Member's Units. Withdrawal proceeds, capital distributions and distributions on termination of the Fund may be paid to the mortgagee. Any transfer of or other dealing in relation to Units is subject to any mortgage and the consent of the mortgagee. The Responsible Entity, however, is not taken to have notice of the terms of any mortgage and has no liability under any circumstances to any mortgagee of Units.
- 5.6 An applicant for Units in the Fund does not acquire an interest in the Fund until the earlier of:
- (a) the time that applicant is entered on the Register as the holder of Units; and
 - (b) the later of the time when:
 - (i) the Responsible Entity accepts the Application; and
 - (ii) the consideration against which the Units are to be issued is fully vested in the Responsible Entity or the custodian, as the case may be.

6 APPLICATION FOR UNITS PROCEDURE

- 6.1 A person may apply for Units in a form and manner acceptable to the Responsible Entity.
- 6.2 The Responsible Entity may prescribe a minimum level (by number or value):
- (a) of Units to be applied for or of the application amount; and
 - (b) of additional investments which may be made in the Fund,
- provided that the Responsible Entity may waive the minimum level in respect of an Application, in its absolute discretion.
- 6.3 The Responsible Entity may determine not to accept all, or part of, an Application and need not provide any reasons for its determination.

- 6.4 Subject to the Act and this Constitution, upon the issue of the Units that are the subject of an Application, the application payments are vested in the Responsible Entity (or a custodian appointed by it) and become the property of the Fund.
- 6.5 If an application payment is in the form of property:
- (a) prior to the issue of Units, the Responsible Entity may request a valuation of the property, as if the property was an Asset, at the applicant's expense;
 - (b) no Units will be issued until the Responsible Entity is satisfied that the property has effectively been vested in the Responsible Entity (or a custodian appointed by it); and
 - (c) any Costs that the Responsible Entity may incur in connection with vesting the property in accordance with paragraph (b) are to be deducted from the value of the property in determining the amount of the application payment when the number of Units to be issued to the applicant is calculated and the application payment will become the property of the Fund.

7 ISSUE OF UNITS

- 7.1 Subject to clause 7.3, Units the subject of an Application accepted by the Responsible Entity will be issued:
- (a) at the Application Price; and
 - (b) as at the Business Day immediately following the Application Date of the Units.
- 7.2 The Responsible Entity has discretion to determine whether to issue Units before an application payment is cleared or effectively vested in the Responsible Entity (or a custodian appointed by it).
- 7.3 If an application payment is not cleared or effectively vested in the Responsible Entity (or a custodian appointed by it), the Units issued in respect of that application payment may be cancelled by the Responsible Entity and deemed not to have been issued and the Responsible Entity may make any consequential or necessary entries in, or changes to, the records of the Fund.
- 7.4 The Responsible Entity alone may determine the holder of a Unit. A Unit is deemed to be issued when the Member's name is entered in the Register. Until then, but subject to clause 5.6, no rights attach to the Unit.
- 7.5 No certificates for Units will be issued unless the Responsible Entity determines otherwise. The entry of a Member's name in the Register is *prima facie* evidence of ownership.
- 7.6 If a Member dies or becomes subject to a legal disability, only the survivor (in the case where the deceased was a joint tenant either in their own right or as a co-trustee) or the legal personal representative (in any other case) of the Member will be recognised as having any claim to the Units registered in the Member's name.
- 7.7 Upon a Member exercising his or her right to return Units in accordance with the Act, the Responsible Entity must pay to the Member the amount required under the Act in respect of the return of those Units.

8 WITHDRAWAL PROCEDURES

- 8.1 Clauses 8.2 to 8.9 (inclusive) apply when the Fund is Liquid, Clauses 8.10 and 8.11 (inclusive) apply while the Fund is not Liquid. The remaining paragraphs of this clause 8 apply in either case.
- 8.2 Subject to clauses 8.9 and 12.6, a Member may request that the Responsible Entity redeem Units of the Member by giving the Responsible Entity a withdrawal request in writing in the prescribed form. Following the receipt of a redemption request from a Member, the Responsible Entity will provide written acknowledgement of the request within a reasonable time (being not more than 5 Business Days) after receipt of the redemption request. Subject to the Corporations Act, the Responsible Entity may decide to accept a redemption request from a Member to redeem some or all of their Units, in whole or in part. The Responsible Entity will notify the Member in writing if their redemption request has been rejected within a reasonable time (being not more than 5 Business Days after the Withdrawal Date).
- 8.3 Subject to clauses 8.8, 8.9 and 12.6, the Responsible Entity must:
- (a) redeem Units the subject of the withdrawal request with effect as at the Business Day immediately following the Withdrawal Date applicable to the Units; and
 - (b) pay to the relevant Member, out of the Assets, the Withdrawal Price (less the Exit Fee) for each Unit that is redeemed within a reasonable time (being not more than 21 days) after the Withdrawal Date.
- 8.4 The Responsible Entity may, with the consent of a Member, transfer Assets to that Member in lieu of cash in satisfaction of its obligations under clause 8.3. The Assets being transferred must be valued as at the relevant Pricing Day and such value must equal the total of the Withdrawal Price (less the Exit Fee) of the Units being redeemed and any Costs associated with the transfer (which must be paid for out of, or deducted from, the Assets being transferred), in accordance with clause 9 of this Constitution.
- 8.5
- (a) The Responsible Entity may from time to time, in its sole discretion, specify a minimum Unit holding (by number or value).
 - (b) If, as a result of the redemption of Units the subject of a withdrawal request, a Member's Unit holding would fall below the minimum holding, the Responsible Entity may treat the withdrawal request as applying to the Member's entire Unit holding.
 - (c) If a Member's Unit holding falls below the minimum Unit holding at any time, the Responsible Entity may cause the redemption of the Member's entire Unit holding as if the Member had given a withdrawal request in respect of the entire Unit holding.
- 8.6 A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.
- 8.8 Immediately prior to the redemption of the Unit the Responsible Entity will distribute to the Member the Accrued Income Entitlement in respect of the Unit. The Accrued Income Entitlement is a reduction to the amount of the Withdrawal Price payable at that time.
- 8.9 Despite anything expressed or implied to the contrary in this Constitution, where:
- (a) In respect of any single Business Day a Member requests the withdrawal of a number of Units that represents more than 5% of the number of Units in issue, the Responsible Entity may determine that the withdrawal request must be treated as 5 separate withdrawal requests, each for one-fifth of the total number of Units in

the original withdrawal request, and that one of each of the separate withdrawal requests is deemed to be received by the Responsible Entity on each of the 5 successive Business Days commencing with the Business Day on which the Responsible Entity received the original withdrawal request.

- (b) In respect of any period of 5 consecutive Business Days Members, including any Member mentioned in paragraph (a), request the withdrawal of a number of Units that in aggregate represent more than 10% of the number of Units in issue, the Responsible Entity may in its discretion:

- (i) determine that each withdrawal request made in that period (each an "original withdrawal request") must be and be deemed to be 5 separate withdrawal requests (each a "deemed withdrawal request") each for a one-fifth portion of the total number of Units in the relevant original withdrawal request; and
- (ii) one of each of the deemed withdrawal requests must be deemed to be received by the Responsible Entity on each of the following days:
 - (A) the Business Day on which the aggregate representing more than 10% of the number of Units in issue was reached;
 - (B) the fifth Business Day after the Business Day referred to in paragraph (A) above;
 - (C) the fifth Business Day after the Business Day referred to in paragraph (B) above;
 - (D) the fifth Business Day after the Business Day referred to in paragraph (C) above;
 - (E) the fifth Business Day after the Business Day referred to in paragraph (D) above.

8.10 If the Fund is not Liquid, the Member may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to redeem Units.

8.11 The Responsible Entity must satisfy withdrawal requests that are to be satisfied under clause 8.10 within 21 days after the offer closes or such other period as required by the Act.

8.12 The Responsible Entity is not at any time obliged to make a withdrawal offer.

8.13 Unless the Responsible Entity determines otherwise, the Units first issued to a Member are Units to be first redeemed.

8.14 On the earlier of:

- (a) the termination of the Fund;
- (b) the receipt by Members of a notice of termination sent by the Responsible Entity; or
- (c) the passing of a resolution (in accordance with the Act) to terminate the Fund at a meeting of Members,

the Responsible Entity may suspend the redemption of any Units.

- 8.15 The Responsible Entity need not redeem a Unit during the period the Member has a right to return the Unit in accordance with section 1019B of the Act.

9 VALUATION

- 9.1 The Responsible Entity may value Assets at any time, and must do so in accordance with and when required by the Act.
- 9.2 The valuation methods and policies applied by the Responsible Entity must be consistent with ordinary commercial practices for valuing property of the relevant kind.
- 9.3 Assets must be valued at their market value unless:
- (a) there is no market for an Asset; or
 - (b) the Responsible Entity reasonably believes that the valuation does not represent the fair value of the Asset,
- in which case, the Responsible Entity may use another valuation method or policies in respect of the Asset provided that the method or policies for calculating the value must be consistent with ordinary commercial practice for valuing that type of scheme property and produce a value that is reasonably current at the time of valuation.
- 9.4 Unless the Responsible Entity otherwise prescribes, the value of Assets as at a specified day is to be determined using the values as at the close of business on the day.
- 9.5 The Responsible Entity's determination of the value of the Fund, of any Asset and of any part of the Fund is, in the absence of fundamental error, final and binding on all Members.

10 INCOME AND CAPITAL DISTRIBUTIONS

- 10.1A This clause 10 is subject to the operation of clause 10A where the Responsible Entity has resolved to make a choice under clause 10A.1(a).
- 10.1 The Responsible Entity must:
- (a) collect, or cause to be collected, all income in respect of the Fund;
 - (b) determine the Distribution Periods for the Fund, provided that immediately following one Distribution Period, another Distribution Period must commence and in each calendar year one Distribution Period must end at midnight on 30 June in the relevant calendar year;
 - (c) determine the Distributable Income for each Distribution Period in accordance with this clause 10; and
 - (d) determine (in its absolute discretion) the classification of an item as being on income or capital account, and the extent to which the income of the Fund is to be adjusted by allocating such amount as it considers proper in accordance with generally accepted accounting principles to a provision or reserve account for the purpose of meeting anticipated expenses or obligations of the Fund.
- 10.2 (a) The total amount to be distributed in respect of a Distribution Period must be transferred to a distribution account or dealt with in accordance with the Responsible Entity's distribution facility:
- (i) as soon as reasonably practicable after the Distribution Date; and

(ii) in any event, within 90 days after the Distribution Date.

10.3 Subject to the restrictions attaching to any particular Unit, a person who, at any time during a Financial Year, is or has been a Member, is presently entitled to the Distributable Income for that Financial Year (on the last day of that Financial Year), in the proportion that the sum of the Income Distributions and Accrued Income Entitlements of the Member in respect of that Financial Year bears to the sum of the Income Distributions and Accrued Income Entitlements in respect of that Financial Year of all persons who are or have been Members at any time during that Financial Year.

10.4 The Income Distribution for a Member for a Distribution Period is an amount calculated by the Responsible Entity as follows:

(a) the Income Distribution of the Member is an amount calculated as follows:

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

where

A is the Income Distribution of the Member for the Distribution Period;

B is the number of Units held by the Member at the end of the Distribution Period, but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period;

C is the aggregate of the number of Units in issue at the end of the Distribution Period, but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period;

D is:

a. for a Distribution Period that does not end on the last day of the Financial Year, an estimate of the Distributable Income for the Distribution Period less any Accrued Income Entitlements for that Distribution Period; and

b. for a Distribution Period that ends on the last day of the Financial Year, the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of (A) the amounts calculated under paragraph (a) and Accrued Income Entitlements in respect of the previous Distribution Periods of the Financial Year; and (B) any Accrued Income Entitlements for that Distribution Period.

10.5 The Responsible Entity may distribute any amount of capital (not included in Distributable Income) to Members in accordance with the following formula (rounded down to the nearest whole cent or as the Responsible Entity otherwise determines):

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

where:

A is the amount of the distribution to which the Member is entitled;

B is the number of Units held by the Member at the time determined by the Responsible Entity relevant to the return of capital;

C is the aggregate of the number of Units in issue; and

D is the aggregate amount to be distributed.

- 10.6 The Responsible Entity may deduct from any amount dealt with under this clause any Tax that it is required or authorised by law or by this Constitution to deduct from such amount.
(ii)
- 10.7 The Responsible Entity must notify Members of the composition of their Income Entitlement and the types of income and capital.
- 10.8 In addition to any Income Entitlement and subject to any Class Rights, the Responsible Entity may, at any time, distribute any amount (capital or income) by way of cash, in specie or bonus Units to Members pro rata to the number of Units held as at a time determined by the Responsible Entity.
- 10.9 (a) The Responsible Entity may offer a reinvestment facility under which Members may elect to reinvest all or a proportion of their Income Entitlement in applications for further Units on each Distribution Date.
- (b) If clause 10.9(a) applies, the Responsible Entity is taken to have received an Application to reinvest distributions at the time the relevant Member becomes presently entitled to the Income Entitlement which is to be reinvested.
- (c) The procedure for reinvestment of distributions for the further Units by a Member is to be determined by the Responsible Entity and is to be notified to Members as and when the facility is offered. Any Units acquired by Members through reinvestment will be issued at the Application Price calculated in accordance with clause 7.1, such Application Price to be satisfied by set off against the money payable by the Responsible Entity to the Member.
- (d) A request for cancellation of the operation of the reinvestment facility by a Member in respect of a distribution for a particular Distribution Period and those Distribution Periods following, is effective only if the Responsible Entity receives written notice of this request at least 21 days prior to the end of a Distribution Period or such other period determined by the Responsible Entity.
- (e) The Responsible Entity may withdraw or suspend the operation of a reinvestment facility at any time.
- 10.10 The Responsible Entity must arrange for, and prepare, the payment of the Income Entitlements and any capital distributions to Members. If a cheque is returned unclaimed, or not presented for payment within 6 months, or an attempted deposit is rejected, the cheque or deposit will be cancelled and the Income Entitlement or capital distribution reinvested in Units at the Application Price prevailing at the time the cheque or deposit is cancelled.
- 10.11 Income Entitlements must be paid to Members out of the distribution account as soon as practicable after the Distribution Date, but within two months after the end of the Financial Year to which the relevant Distribution Period relates, or if the review or audit (if any) for that Distribution Period has not been completed, as soon as possible after the completion of the review or audit.
- 10.12 If in any Financial Year:
- (a) the Responsible Entity as trustee of the Fund; or
- (b) the Fund;
- becomes taxable as if it were a company under the Tax Act, the Responsible Entity has an absolute discretion as to the level of distribution to be made in that or in any subsequent Financial Year.

10A ATTRIBUTION MANAGED INVESTMENT TRUST

- 10A.1 The Responsible Entity may, in accordance with the Tax Act, and where the Fund becomes eligible during an Income Year to make a choice to be taxed under the AMIT Regime, resolve to:
- (a) make a choice for the Fund to be an attribution managed investment trust for the purposes of the Tax Act; and
 - (b) where the Responsibility Entity has made a choice under clause 10A.1(a), make a choice to treat each class of Units in the Fund as being a separate attribution managed investment trust for the purposes of the Tax Act.
- 10A.2 Notwithstanding the other provisions of this Constitution which relate to the income of the Fund and to distributions, including but not limited to clause 10, where the Responsible Entity has resolved to make a choice under clause 10A.1(a) the provisions of this clause 10A apply with respect to an Income Year for which the choice was made and for each following Income Year during which the Fund is an attribution managed investment trust for the purposes of the Tax Act.
- 10A.3
- (a) Terms used in this clause 10A.3 that are not otherwise defined in this Constitution take their meaning from the Tax Act.
 - (b) The attribution model of taxation as set out in Division 276 of the Tax Act (or any successor provisions) applies to the Trust where the Responsible Entity has made a choice under clause 10A.1.
 - (c) Subject to clause 10A.3(d), and without limiting its other rights and powers provided for under this Constitution, the Responsible Entity may make any determination or choice, and may take any action which it can or is required to make or take under the Tax Act for the relevant Income Year, including, but not limited to:
 - (i) the determination of the taxable income of the Fund or each class of Units; and
 - (ii) the determination of assets and liabilities attributed to a class of Units; and
 - (iii) the determination of the trust component and determined trust component of a particular character of the Fund or each class of Units, including the determination of the particular character of an item and the timing of its inclusion in a trust component and a determined trust component; and
 - (iv) the attribution of the determined member component and the determined member component of a particular character for each Member of the Fund (including a former Member of the Fund); and
 - (v) the streaming of a gain made on the disposal of an Asset by the Fund to a Member in order to satisfy all or part of a Member's request to redeem Units of the Member;
 - (vi) the making of alterations to the relevant trust components and determined trust components and the relevant member components and determined member components as a result of any unders or overs (those terms having the definitions attributed to them in Division 276 of the Tax Act); and

- (vii) the giving of an annual statement, within the period set out in AMIT Regime of the Tax Act, to each Member of the Fund (including a former Member of the Fund for the relevant Income Year) which includes information that reflects:
 - (A) the amount and character of each member component of the Member of the Fund (or a former Member of the Fund); and
 - (B) any cost base adjustment in respect of the Units of the Member of the Fund (or of a former Member of the Fund); and
 - (viii) the amendment of an annual statement that has been issued to a Member of the Fund (or a former Member of the Fund), and the basis upon which the annual statement issued is to be amended.
 - (d) In making a determination or choice, or in taking an action, as contemplated by clause 10A.3(c), the Responsible Entity must ensure that any determination, allocation or attribution is made on a fair and reasonable basis and without regard to a Member's tax characteristics.
- 10A.4 The Responsible Entity is entitled to attribute the determined trust component to determine the member component and determined member component of a particular character in respect of an Income Year to be attributed to a Member of the Fund, pursuant to clause 10A.3, upon a redemption or withdrawal (or any other similar action) of Units by that Member.
- 10A.5 Notwithstanding any other provision of this Constitution, the Responsible Entity is entitled to determine the amount to be distributed to Members for an Income Year.
- 10A.6 Notwithstanding any other provision of this Constitution, if the Responsible Entity has given a statement to a Member of the Fund in accordance with Division 276 of the Tax Act (or any successor provisions), the Responsible Entity is not required to otherwise notify a Member of the Fund of their proportionate share of the Fund 's income or capital, including income of the trust estate or net income calculated under Division 6 of the Tax Act as if the choice in clause 10A.1(a) had not been made.
- 10A.7 Subject to the Act, the Responsible Entity is entitled to be indemnified out of the assets of the Fund for:
- (a) any tax liabilities incurred by the Responsible Entity as a result of the application of clause 10A.3; or
 - (b) any liability that results from a Member of the Fund (or a former Member of the Fund) making a claim against the Responsible Entity in relation to a tax liability of the Member of the Trust (or a former Member of the Fund) that results from the application of clause 10A.3,
- together with any other costs, expenses or liabilities incurred by the Responsible Entity as a result of incurring any such liability.

11 ACCOUNTS AND AUDIT

- 11.1 The Responsible Entity must:
- (a) prepare, or cause to be prepared, accounts of the Fund in accordance with generally accepted accounting principles and approved accounting standards as they apply to managed investment schemes; and

- (b) ensure that the accounts are maintained, audited and reported on as prescribed by the Act.
- 11.2 The Responsible Entity must appoint an independent registered company auditor to audit the accounts of the Fund. Subject to the Act, the Responsible Entity may remove and subsequently replace any Auditor.

12 POWERS OF RESPONSIBLE ENTITY

- 12.1 Without limiting any other clause, the Assets may be invested in, or represented by, any form of investment. The Responsible Entity may determine, in its discretion, the types of investments into which the Fund is to be invested.
- 12.2 The Responsible Entity has all the powers in respect of the Fund, the Assets and the Liabilities that it is legally possible for a natural person, trustee or corporation to have including all and any powers:
 - (a) to acquire, develop, maintain, deal with, invest in and sell any property;
 - (b) which it could exercise if it were the absolute and beneficial owner of the Assets;
 - (c) to incur liabilities and obligations of any kind (including to grant indemnities and guarantees, to make representations, to give warranties and undertakings and enter into any sort of futures, derivative, swap, option contract or arrangement or instrument or combination of any of these) and including of a speculative nature;
 - (d) to borrow, procure financial accommodation and raise money for the purposes of the Fund whether or not on the security of the Assets;
 - (e) to issue debentures, grant mortgages and grant or give any security over, create any interests in (including security interests), or encumber, the Assets;
 - (f) to carry on any business;
 - (g) to fetter future discretions; and
 - (h) to sell, transfer, encumber or otherwise deal with, any of the Assets or any interests in the Assets as part of any securitisation or repurchase arrangement undertaken in connection with the Fund.
- 12.3 The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.
- 12.4 The Responsible Entity may authorise any person or persons to act as its delegate or agent (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power. The delegate or agent may be an associate of the Responsible Entity.
- 12.5 The Responsible Entity may engage or appoint any agent, investment manager, adviser, valuer, broker, underwriter or other contractor ("**Adviser**") to assist it in managing the Fund, exercising any power, discharging any duty or obligation or dealing with any Asset or Liability. An Adviser may include an associate or related body corporate of the Responsible Entity. Subject to the Act, the Responsible Entity is not liable for the acts or omissions of an Adviser provided that the Responsible Entity has exercised care in the selection of the Adviser. An associate or related body corporate of the Responsible Entity that provides such services is entitled to fees in addition to any remuneration payable to the Responsible Entity under clause 15.

- 12.6 Despite anything expressed or implied to the contrary in this Constitution, the Responsible Entity may determine that it is desirable for the protection of the Fund or in the interests of the Members (as a whole) to suspend the issue or redemption of Units or the calculation of Application Prices or Withdrawal Prices whilst:
- (a) any relevant financial, stock, bond, note, derivative or foreign exchange market is closed;
 - (b) trading on any such market is restricted;
 - (c) an emergency (including an emergency caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price;
 - (d) any state of affairs exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price; or
 - (e) any moratorium declared by a government of any country in which a significant proportion of the Fund is invested exists.

The Application Price or Withdrawal Price for Units the subject of an Application or withdrawal request accepted by the Responsible Entity before the suspension but for which the Application Price or Withdrawal Price has not yet been determined, or received and accepted by the Responsible Entity during the suspension, shall be the Application Price or Withdrawal Price next determined after the end of the suspension.

- 12.7 The Responsible Entity may retire at such time as it thinks fit and may appoint another company to be the new Responsible Entity. For the purpose of section 601FL of the Act, the Responsible Entity is entitled to nominate another company that meets the requirements of section 601FA of the Act for submission to the Members' meeting.
- 12.8 When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.
- 12.9 None of the clauses in this clause 12 limit or restrict the operation of any other clause in this clause 12 or any other clause of this Constitution.
- 12.10 The powers, discretions and rights of the Responsible Entity under this clause 12 must be exercised subject to any duties imposed under the Act.

13 RIGHTS AND LIABILITIES OF RESPONSIBLE ENTITY

- 13.1 Subject to the Act, the Responsible Entity and its associates may hold Units.
- 13.2 Despite any other provision in this Constitution but subject to the Act the Responsible Entity or its associates are permitted to:
- (a) deal with their associates, the Fund or any Members including acquire or deal with any interest in, or an asset of, a fund, scheme or trust of which the Responsible Entity or any of its associates is the manager, trustee or responsible entity;
 - (b) deal with itself in relation to the Fund where, in respect of such dealing, it is acting in different capacities;
 - (c) be interested in any contract or transaction with its associates, the Fund or any Member and retain for its own benefit any profits or benefits derived from any such contract or transaction;

- (d) act as investment manager in relation to the Fund; or
 - (e) act as responsible entity, trustee, investment manager or a similar capacity in relation to any other fund, scheme or trust.
- 13.3 The Responsible Entity and its associates may retain and are not liable to account to the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 13.2.
- 13.4 Subject to the Act, when the Responsible Entity is a Member, the Responsible Entity is entitled to all of the benefits and rights of any other Member under this Constitution and the Act.
- 13.5 To the extent permitted by the Act and in addition to any indemnity allowed by law, the Responsible Entity is entitled to be indemnified in full out of the Assets for any liability incurred by it in the proper performance of its duties in relation to the Fund.
- 13.6 Subject to the Act, the Responsible Entity is not liable to the Members in contract, tort or otherwise for any loss suffered in relation to the Fund except to the extent to which the loss is caused by the failure of the Responsible Entity to properly perform its duties.
- 13.7 Subject to the Act, the liability of the Responsible Entity to any person (including a Member) in respect of the Fund is limited to the extent to which the Responsible Entity is actually indemnified out of the Assets for that liability.
- 13.8 The Responsible Entity is not required to do anything:
 - (a) unless the Responsible Entity is satisfied that its liability is satisfactorily limited; or
 - (b) for which it does not have a full right of indemnity out of the Assets available for that purpose and in respect of which there are, in the Responsible Entity's opinion, sufficient Assets to fully discharge any such liability.

14 LIABILITY OF MEMBERS

- 14.1 The liability of a Member is limited to the amount, if any, that remains unpaid on the Member's Units. A Member need not indemnify the Responsible Entity or any creditor of the Fund or Responsible Entity, if the Assets are not sufficient to discharge the Liabilities or meet the claim of any creditor of the Fund or the Responsible Entity in respect of the Fund.
- 14.2 Except as provided in this Constitution, the recourse of the Responsible Entity and any creditor is limited to the Assets.

15 REMUNERATION AND EXPENSES

- 15.1 Despite any other provision of this Constitution, the right of the Responsible Entity to be paid fees out of the Assets, or to be indemnified out of the Assets for the Liabilities or any liabilities or expenses incurred in relation to the performance of its duties is available only in relation to the proper performance of those duties.
- 15.2 Subject to clause 15.1, the Responsible Entity is entitled to receive and retain the following fees for its own use being fees which (unless stated otherwise) are to be paid out of the Assets:
 - (a) a fee of 3% per annum of the gross value of the Assets calculated and accruing daily and payable within 10 days of the end of each month. The Responsible Entity may determine whether this fee is payable out of income or out of the capital of the Fund or both.

- (b) An Entry Fee payable from the relevant application payment within 10 days of receipt of the relevant payment.
- (c) An Exit Fee payable from the relevant redemption proceeds within 10 days of receipt of the relevant payment.

Expenses

- 15.3 Subject to clause 15.1, in addition to the remuneration payable to the Responsible Entity, the Responsible Entity is indemnified, and is to be kept indemnified, out of the Assets for all Costs, liabilities, damages and losses reasonably and properly incurred by the Responsible Entity in connection with the Fund, the Assets and the Liabilities or in performing its duties and obligations including in connection with:
- (a) this Constitution and the formation of the Fund, any modification, repeal or replacement of this Constitution and lodgment with ASIC;
 - (b) the preparation, review, printing, distribution and promotion of any disclosure document, product disclosure statement or information memorandum in respect of Units and any material supplemental, or in replacement of, such document;
 - (c) the sale, purchase, transfer, insurance, custody of, and any other dealing with, the Assets;
 - (d) any proposed or actual investment;
 - (e) the operation, administration, management, investment or promotion (including in connection with any proposed or actual issue of Units) of the Fund, the Assets or the Liabilities, including investment management, property and project management Costs;
 - (f) the preparation, printing and postage of distribution statements or any other communications with Members;
 - (g) convening and holding meetings of, and dealings with, Members (other than expenses payable under section 252C(4) of the Act), and the implementation of any resolutions passed at a meeting of Members;
 - (h) all Taxes (provided the Tax is not income tax on the personal account of the Responsible Entity) including any goods and services tax or value added tax payable in respect of the fees payable to the Responsible Entity or another person and bank fees and other Costs;
 - (i) the engagement of delegates, brokers, underwriters, investment managers, custodians, investment administrators, other agents, valuers, asset consultants, advisers and contractors of all kinds including legal Costs and expenses (charged at the usual commercial rates of the relevant legal services provider);
 - (j) preparation and audit of the taxation returns, financial statements and reports and accounts of the Fund;
 - (k) computer and other facilities relating to the matters in paragraphs (c), (e) and (j);
 - (l) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a new Responsible Entity;
 - (m) any court proceedings, arbitration or other dispute concerning the Fund or any Asset or Liability including proceedings against the Responsible Entity (except to the extent that a court has found that the Responsible Entity did not properly perform its duties);

- (n) any Costs incurred in connection with, or as a result of, any agreement in connection with the Fund to which the Members are parties and any Costs which any such agreement provides are to be borne by the Fund or paid for out of the Assets;
- (o) the establishment, operation and maintenance of the Register, including without limitation, any Costs of any person employed or appointed by the Responsible Entity in connection with that Register (notwithstanding it may be the Responsible Entity's agent);
- (p) preparing, changing and auditing the Responsible Entity's compliance with, the Compliance Plan;
- (q) fees (including insurance premiums) of external directors of the Responsible Entity, or external members of the Responsible Entity's compliance committee;
- (r) the preparation and lodgment of accounts, applications and returns with ASIC;
- (s) the Liabilities;
- (t) any amounts payable by the Responsible Entity pursuant to any agreement entered into by it for the benefit of, otherwise relating to or in connection with, the Fund;
- (u) any Costs in connection with borrowings, securities lending or other financial accommodation (including capital repayments, interest and discount and other bank fees) and any other bank account or services offered by any financial institution (including electronic funds transfer and other electronic banking or payment services or any other method of making payments to Members) in connection with the Fund; and
- (v) any Costs (including an apportionment of such Costs) in connection with the Responsible Entity being a member of an external complaints handling scheme to which a dispute may be referred under clause 18.2(e) (including as required by the terms of the Responsible Entity's licence, in applying for membership, application and ongoing membership fees, in maintaining membership and any Costs in connection with any complaints or matters to or to be, or proposed to be, dealt with by, the manager of such a scheme in accordance with the terms of such a scheme).

The Responsible Entity may pay any items referred to in this clause directly out of the Assets or it may pay them itself and be reimbursed out of the Assets.

Additional Responsible Entity remuneration for Additional Fund Administration Services

- 15.4 The Responsible Entity is entitled, on the terms set out in clauses 15.4 to 15.8, to take and retain for itself remuneration out of the Assets for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services.
- 15.5 Remuneration under clause 15.4 is to be calculated on the basis of a maximum hourly rate of \$1,000 (Australian dollars) per hour, adjusted quarterly to reflect any increase in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter.
- 15.6 The Responsible Entity is entitled to charge and take that remuneration out of the Assets calendar monthly in arrears.
- 15.7 The Responsible Entity may notify the Members of its current hourly rates for the purposes of clause 15.5, and the amounts charged to the Assets under clause 15.6

from time to time, but its rights to charge and take those amounts are not prejudiced by a failure to do so or a delay in doing so.

15.8 The Responsible Entity's rights under clause 15.4 are in addition to:

- (a) its rights to fees under clause 15.2; and
- (b) its rights under this document and at law to be indemnified in connection with debts, liabilities and expenses incurred by it in the proper performance of its duties as trustee and responsible entity of the Fund.

Responsible Entity may appoint third parties to perform Additional Fund Administration Services

15.9 The Responsible Entity may appoint, engage or otherwise contract with a person other than Responsible Entity Personnel to perform any Additional Fund Administration Services.

15.10 An appointment, engagement or other contract under clause 15.9 may be sole, joint, several or joint and several and may include a power in turn for a person to delegate the performance of any Additional Fund Administration Services to another person.

15.11 Subject to clause 15.12, an appointment, engagement or other contract under clause 15.9 may be on any terms that the Responsible Entity determines in its absolute discretion, including in relation to remuneration and other compensation. Subject to this document, the Responsible Entity is entitled to be indemnified out of the Assets in respect of that remuneration and compensation.

15.12 A Delegate may be an Associate of the Responsible Entity or an officer or employee of an Associate of the Responsible Entity. If and for so long as the Fund is a registered managed investment scheme, the terms on which an Associate is appointed, engaged or contracted must not contravene Chapter 2E of the Act (as modified by section 601LC of the Act).

15.13 To the extent permitted by law, the Responsible Entity may waive or excuse on any terms it thinks fit any breach by any Delegate of their obligations to the Responsible Entity in connection with the Fund.

15.14 The appointment, engagement or other contracting of a Delegate under this clause 15.9 does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations, including to ensure that the services delegated are properly performed.

Waiver

15.15 The Responsible Entity may waive or take a lower fee than it is entitled to under this Constitution, and may defer payment for any period. Where payment is deferred, the fee still accrues daily until paid.

15.16 Subject to the Act, and without limiting clauses 5.2 or 15.18 the Responsible Entity may charge one or more Members lower fees and charges (including, without limitation, under clause 15.2) than those applying to other Members holding Units of the same class on such terms and conditions as the Responsible Entity determines.

15.17 The Responsible Entity may, in its absolute discretion, pay from the remuneration and fees it receives in accordance with this clause 15, fees or commissions to its advisers, agents and employees or any licensed or authorised dealer, broker or adviser.

15.18 The Responsible Entity may, in its absolute discretion, to the extent permitted under the Act, agree with a Member, or a class of Members, to rebate a percentage of the

remuneration or fees charged to the account of a Member or class of Members. The Responsible Entity may either pay such rebated amounts to the Member in such manner as determined by the Responsible Entity or reinvest the rebated amounts into additional Units for the benefit of the relevant Member as elected by the Member.

GST

- 15.19 The fees payable to the Responsible Entity under clause 15.2 are inclusive of GST.
- 15.20 If the Responsible Entity exercises a power to transfer Assets to a Member as a distribution, the Responsible Entity may as it sees fit in its absolute discretion either:
- (a) require the Member receiving the Asset as a distribution, or another Member receiving Assets or cash as a distribution, to pay some or all of any GST on any supply arising from the distribution (and any Member so required must then indemnify the Responsible Entity against that GST, and pay to the Responsible Entity an amount equal to that GST); or
 - (b) itself pay some or all of that GST and recover the amount of that GST out of the Assets.

16 ADMINISTRATION AND REPORTING

- 16.1 Members may transfer Units by completing a transfer form as prescribed by the Responsible Entity and paying any relevant Costs. The Responsible Entity may refuse to register a transfer and need not provide any reasons. Where the Responsible Entity refuses to register a transfer, it may compulsorily redeem those Units in accordance with clause 8 as if a withdrawal request had been lodged in respect of them.
- 16.2 Money payable to a Member by the Responsible Entity will be in such form and manner as approved by the Responsible Entity. Only whole cents are to be paid and any fractions of a cent remaining after rounding become an Asset.
- 16.3 The Responsible Entity may deduct from any money payable to a Member any Taxes which it is required or authorised to deduct or which it considers should be deducted.
- 16.4 When two or more persons are registered as the holders of a Unit (in this clause called **joint holders**):
- (a) any one of the joint holders may give effectual receipts for any distribution; and
 - (b) only the person whose name stands first in the Register as one of the joint holders of a Unit is entitled to delivery of any certificate or confirmation that may be issued relating to the Unit or to receive notices, cheques or other communications from the Responsible Entity and any certificate, confirmation, notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

Notices

- 16.5 A notice given under this Constitution must be in writing (which includes a fax and any electronic format) and may be given in any form and manner as prescribed by the Responsible Entity (including any electronic means of communication). A notice is deemed to be received by a Member as follows:
- (a) if posted, within 2 Business Days from the date of postage;
 - (b) if sent by facsimile to the correct facsimile number, on receipt of a message from the machine from which it was sent confirming that the notice was sent in its entirety; or

- (c) if sent by electronic mail, within 1 Business Day from the date of sending provided that no error message has been received.

17 MEMBERS' MEETINGS

- 17.1 The Responsible Entity may convene a meeting of Members at any time in the manner prescribed by the Act.
- 17.2 The Responsible Entity must convene a meeting pursuant to the Act upon receipt of a Members' request made in accordance with the Act.
- 17.3 Unintentional omission to give notice to, or non-receipt of notice by, a Member does not invalidate a meeting or resolution passed at a meeting, of Members.
- 17.4 The Responsible Entity, its agents, representatives and advisers are entitled to attend and speak at a meeting of Members.
- 17.5 A Member may appoint a proxy in the manner provided by the Act to attend and vote at a meeting. An appointment is valid even if it does not contain all the information required by section 252Y(1) of the Act. A proxy and any authority under which it may be made must be received by the Responsible Entity at a place, facsimile number or electronic address specified in the notice of meeting at least 48 hours, or such shorter time specified by the Responsible Entity in the notice of meeting, before the time of the meeting.
- 17.6 A body corporate may be represented at a meeting by an individual appointed pursuant to the Act. The appointed person may, subject to the terms of the appointment, exercise all of the powers of the body corporate that the body corporate could exercise at a meeting or in voting for a resolution.
- 17.7 A meeting of Members will be chaired by a person appointed by the Responsible Entity or otherwise in accordance with the Act.
- 17.8 The quorum for a meeting is at least 2 Members in person or proxy, unless there is only one Member in which case the quorum is that Member. The quorum must be present at all times during the meeting.
- 17.9 If a quorum is not present within 30 minutes of the scheduled commencement time of the meeting, the meeting is:
- (a) if convened pursuant to clause 17.2, dissolved; or
 - (b) otherwise, adjourned to such date, time and place as the Responsible Entity specifies.
- 17.10 If a quorum is not present at the resumed meeting within 30 minutes of the scheduled commencement time of the meeting, the meeting is at the discretion of the Responsible Entity dissolved or adjourned to such other date, time and place as the Responsible Entity specifies.
- 17.11 At any meeting of Members convened pursuant to the provisions of this Constitution, unless the Act otherwise provides or the express terms of this Constitution otherwise require, a resolution is duly passed if a majority of the Members attending the meeting vote in favour of the motion.
- 17.12 Subject to this Constitution and the Act, a proposed resolution may be decided by a percentage of Units or in writing executed by Members holding the requisite majority of Units. Voting is by a show of hands where each Member in person or by proxy is entitled to one vote on a show of hands. If more than one proxy has been appointed by a Member, only one vote is to be recorded on a show of hands in respect of that Member. If a proxy is

acting as proxy for more than one Member, only one vote is to be recorded on a show of hands in respect of that proxy.

- 17.13 A poll may be demanded on any resolution before a vote is taken, and before or on declaration of the result of a show of hands by:

- (a) the Chairperson;
- (b) Members present in person or by proxy, collectively holding at least 5% or more of the votes that may be cast on the resolution on a poll; or
- (c) at least 5 Members present in person or by proxy entitled to vote on the resolution.

On a poll each Member in person or by proxy is entitled to 1 vote for each dollar of the value of whole Units held.

- 17.14 The joint Member first named in the register is entitled to exercise the voting rights of jointly held Units.
- 17.15 A resolution duly passed at a meeting of Members duly convened and held in accordance with the Act and this Constitution binds all Members (in that capacity) and each Member is bound to give effect to the resolution, whether or not the Member was present at the meeting.
- 17.16 Any objection made to a vote cast can only be made at the meeting. The Chairperson's decision as to the validity of a vote is final and binding on all Members and for all purposes.
- 17.17 Minutes of a meeting executed by the Chairperson constitutes conclusive evidence of the business transacted at a meeting.

18 COMPLAINTS HANDLING

- 18.1 A Member who is dissatisfied with the Fund or a service provided by the Responsible Entity in relation to the Fund is entitled to make a complaint to the Responsible Entity.
- 18.2 For the purposes of this clause 18, a complaint will be taken to be an expression of dissatisfaction made to the Responsible Entity in relation to the products and services being provided to the Member, which in this case relates to the Fund as the product and the services supplied in relation to the Fund, including the complaints handling process itself, where a resolution is explicitly or implicitly expected.
- 18.3 The Responsible Entity must comply, as an Australian financial services licensee, with the dispute resolution requirements under s912A(2) of the Act for Retail Clients in dealing with a complaint of a Member that is a Retail Client.
- 18.4 The Responsible Entity must apply the following procedure in relation to complaints of a Member that is a Wholesale Client:
- (a) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
 - (b) the Responsible Entity will ensure that a complaint is acknowledged in writing immediately and a Member making the complaint is treated courteously; and
 - (c) the Responsible Entity will ensure that a final written response will be provided to the Member within 45 days of receipt of the Complaint and in a manner that is fair to the Member and Responsible Entity or its officers or employees against whom it is made. The final written response will inform the Member of the final outcome of their complaint within the internal dispute resolution scheme (including the remedies available to the Member),

19 AMENDMENTS TO THE CONSTITUTION

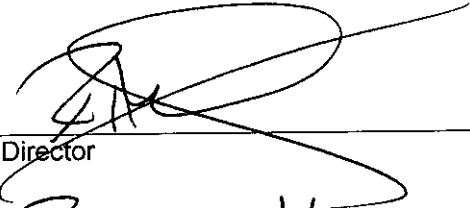
The Responsible Entity may by deed modify, repeal or replace this Constitution subject to the Act.

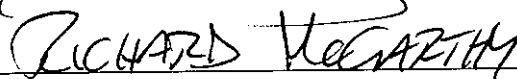
20 SUBJECT TO THE ACT

Any provision of this Constitution which would otherwise conflict with the Act must be read down to the extent necessary to eliminate any conflict. If the Act or any relief from the provisions of the Act granted by ASIC requires that this Constitution contain certain provisions whether as an absolute requirement or in order to gain the benefit of a concession, exemption or the relief, then, unless the Responsible Entity determines otherwise in writing, those provisions are deemed 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.

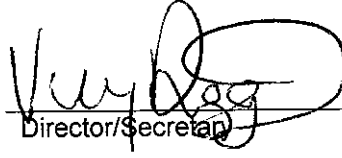
EXECUTED as a deed poll.

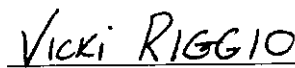
EXECUTED BY THE TRUST COMPANY (RE SERVICES) LIMITED:



Director


Name



Director/Secretary


Name

SCHEDULE 1

Additional Fund Administration Services

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

(a) the Fund itself, including:

- (i) the establishment and formation of the Fund;
- (ii) any structural or strategic changes to the Fund;
- (iii) registering or deregistering the Fund as a managed investment scheme;
- (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the Fund, including any supplementary or replacement disclosure document relating to the Fund;
- (v) any form of equity raising and debt refinancing associated with the Fund;
- (vi) obtaining and maintaining a rating from any ratings agency;
- (vii) the retirement, removal or replacement of the Responsible Entity; and
- (viii) the termination or winding up of the Fund and the associated taking of accounts, discharging of Liabilities and Fund expenses and distribution of Assets;

(b) the Fund Documents, including:

- (i) reviewing, negotiating, settling and executing Fund Documents;
- (ii) dealing with or considering any request for any amendment, restatement, waiver or consent under a Fund Document or the termination of a Fund Document;
- (iii) investigating circumstances which the Responsible Entity reasonably believes may be a default or breach by any person of a Fund Document; and
- (iv) the actual or contemplated enforcement of, or the preservation or consideration of any right or power under, any Fund Document;

(c) the Assets, including:

- (i) the actual, attempted or proposed acquisition, investment, disposal or other dealing in, of or with assets which are, were or are to become Assets;
- (ii) taking out and maintaining all insurances in relation to the Fund and the Assets which the Responsible Entity reasonably believes are appropriate; and
- (iii) the receipt, collection, management, maintenance, custody, holding, supervision, insurance, repair, valuation and distribution of Assets;

(d) the Liabilities, including:

- (i) raising and complying with the terms of financial accommodation of any kind, including all dealings with the providers of that accommodation;

- (ii) appointing or engaging, negotiating with and instructing advisers and experts; and
 - (iii) appointing or engaging, negotiating with and instructing third parties to perform any of the activities described in this definition;
- (e) accounting, compliance, recordkeeping and taxation, including:
 - (i) complying with all obligations and requirements under tax laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the Fund, any taxation audit, and the management of the tax affairs of the Fund;
 - (ii) preparing and maintaining the books, records and accounts of the Fund;
 - (iii) the preparation and audit of the taxation returns and accounts of the Fund;
 - (iv) the establishment and maintenance of the compliance committee and the preparation, implementation, amendment and audit of the compliance plan; and
 - (v) liaising with compliance plan auditors in relation to any breaches, incidents or events which have occurred in respect of the Fund;
- (f) dealing with Members, including:
 - (i) offering, issuing and redeeming Units;
 - (ii) facilitating, convening and holding meetings of Members and implementing resolutions of Members;
 - (iii) corresponding and communicating with Members;
 - (iv) maintaining and operating the Register and any other register of the Fund; and
 - (v) establishing and administering complaints handling procedures and obtaining and maintaining membership of an external dispute resolution scheme;
- (g) other dealings, including:
 - (i) complying with all applicable laws;
 - (ii) dealings with any securities exchange;
 - (iii) dealings with regulators, taxation authorities and other governmental agencies, whether in the ordinary course or in relation to requests, requirements, complaints, investigations, enquiries or disputes;
 - (iv) dealings with service providers of the Fund, including work performed by the Responsible Entity in respect of potentially reportable breaches caused by service providers and completing ad-hoc monitoring visits of service providers of the Fund as a result of systemic incidents or performance issues reported;
 - (v) initiating, prosecuting, defending and compromising any court, arbitration, mediation or other dispute resolution action, claim or proceedings concerning the Responsible Entity (in that capacity), the Fund or the Assets, whether commenced or to be commenced by the Responsible Entity or not; and
 - (vi) approaching any court of competent jurisdiction to seek opinion, advice or direction on any question in connection with the management or administration

of the Fund or the Assets or in connection with the interpretation of a Fund Document; and

(h) all matters incidental to any of the above.

FINDING LIST

CORPORATIONS ACT	CLAUSE
Section 601GA(1) The Constitution of a registered scheme must make adequate provision for:	
(a) the consideration that is to be paid to acquire an interest in the scheme; and	7.1 and definition of Application Price in clause 1.1
(b) the powers of the responsible entity in relation to making investments of, or otherwise dealing with, scheme property; and	12.2 and 12.3
(c) the method by which complaints made by members in relation to the scheme are to be dealt with; and	18
(d) winding up the scheme.	4.3 - 4.8
Section 601GA(2) If the responsible entity is to have any rights to be paid fees out of scheme property, or to be indemnified out of scheme property for liabilities or expenses incurred in relation to the performance of its duties, those rights:	
(a) must be specified in the scheme's Constitution; and	15, 13.5 and 13.7
(b) must be available only in relation to the proper performance of those duties.	15.1
Section 601GA(3) If the responsible entity is to have any powers to borrow or raise money for the purposes of the scheme those powers must be specified in the scheme's Constitution.	12.2(d)
Section 601GA(4) If members are to have a right to withdraw from the scheme, the scheme's Constitution must:	
(a) specify the right; and	8
(b) if the right to withdraw may be exercised while the scheme is liquid (as defined in section 601KA) - set out adequate procedures for making and dealing with withdrawal requests; and	8.2 - 8.9
(c) if the right may be exercised while the scheme is not liquid (as defined in section 601KA) - provide for the right to be exercised in accordance with Part 5C.6 and set out any other adequate procedures (consistent with that Part) that are to apply to a making and dealing with withdrawal requests.	8.10 and 8.11
The right to withdraw, and any provisions in the Constitution setting out procedures for making and dealing with withdrawal requests, must be fair to all members.	
Section 601GB The Constitution of a registered scheme must be contained in a document that is legally enforceable as between the members and the responsible entity.	2

Section 601GC(1)

The Constitution of a registered scheme may be modified, or repealed and replaced with a new Constitution:

- (a) by special resolution of the members of the scheme; or
- (b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.

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