



LA TROBE AUSTRALIAN CREDIT FUND CONSTITUTION

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Contents

1.	Definitions & Interpretation	2
2.	Declaration of Trust	6
3.	Interests in the Scheme	7
4.	Valuations	9
5.	Register	10
6.	Covenants by the Investment Manager	10
7.	Management of Scheme	11
8.	Covenants by the RE	11
9.	Powers of RE	11
10.	Complaints Procedures	12
11.	Accounts and Audit Accounts to be kept	13
12.	Entitlements and payments	13
13.	Winding up the Scheme	13
14.	Fees and Expenses	14
15.	Retirement, Removal and Replacement of RE Retirement	16
16.	Indemnity and Liability	18
17.	Transfer, transmission and joint holders	18
18.	Members' Rights to Withdraw from the Scheme	19
19.	Income and distributions to Members	23
20.	Amendment of Constitution	26

La Trobe Financial Asset Management Limited ABN 27 007 332 363 ("**the RE**")

La Trobe Financial Services Pty Limited ABN 30 006 479 527 ("**the Investment Manager**")

The Members as they are constituted from time to time of the La Trobe Australian Credit Fund ("**the Members**")

1 Definitions & Interpretation

1.1 In the interpretation of this Constitution and its Recitals, the words and phrases set out below will, unless the context otherwise requires, have the meanings respectively assigned to them namely:

2 Year Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

4 Year Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

6 Month Notice Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

12 Month Term Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

90 Day Notice Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

Applicant means anyone who submits an Application Form for an interest in the Scheme;

Application Form means an application form in a form acceptable to the RE for an interest in the Scheme;

Application Money means the amount received from an Applicant or Member in respect of an application for interests in an Investment Option including capital and any other moneys, any amount attributed to any non-cash consideration under clause 3.10(c) and any amount invested by way of reinvestment of a distribution in accordance with clauses 19.23 to 19.25;

Approved Valuer means a person who, in the RE's opinion, is an appropriately accredited and qualified valuer;

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions;

Assets means all assets, rights and income of the Scheme;

Business Day means any day (not being a Saturday or a Sunday) on which trading banks are open for business in Melbourne, Victoria;

Cash Investments means Assets that comprise cash, term deposits, bills of exchange or negotiable certificates of deposit issued by an Australian authorised deposit taking institution;

Classic Notice Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement;

Complaint has the meaning given to that term in the Law and includes any expression of dissatisfaction that falls with the definition of "complaint" under any enforceable standard or requirement made or approved by ASIC under the Law from time to time;

Compliance Committee means the committee formed, if required by the Law, pursuant to Part 5C.5 of the Law;

Constitution means this document including any amendments to it;

Custodian means the RE or a corporation appointed by the RE to act as custodian over all or any part of the Assets;

Distributable Income in relation to the Scheme or an individual Investment Option for a Financial Year means the Distributable Income determined by the RE in accordance with clauses 19.1 to 19.4;

Extraordinary Resolution means in relation to the Scheme, a resolution:

- a. of which notice as required by the Law has been given; and
- b. that has been passed by at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy);

FATCA means:

- a. sections 1471 to 1474 of the U.S. Internal Revenue Code or any associated regulations;
- b. any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- c. any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any other jurisdiction;

FATCA Withholding means the amount of any withholding or deduction made or anticipated to be made for or on account of FATCA (as withheld or deducted by the RE, the payor of amounts paid to the Scheme or any other party as the context requires);

Final Distribution means, for a Pooled Option for a Financial Year, the entitlement of the Members invested in that Pooled Option to a distribution of the Final Distribution Amount of that Pooled Option for the Financial Year that arises on the last day of the Financial Year in accordance with clause 19.9;

Final Distribution Amount means, for a Pooled Option for a Financial Year, the amount which the RE is required to distribute to Members invested in that Pooled Option on the last day of the Financial Year determined in accordance with clause 19.9;

Financial Year means a year ending on 30 June, or that part of such a year occurring at the termination of the Scheme;

Funding Member has the meaning given to that term in clause 9.11;

Holding Account means the Classic Notice Account, or such other Investment Option or account as nominated by the RE from time to time;

Insolvency Event means the happening of any of these events:

- a. an uncontested application is made to a court for an order or an order is made that a body corporate be wound up;
- b. an uncontested application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- c. a receiver or receiver and manager is appointed in respect of any part of a body corporate and that appointment is not revoked within 7 days of the appointment being made;
- d. a body corporate enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- e. a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, or is otherwise wound up or dissolved;
- f. a body corporate is or states that it is insolvent;
- g. as a result of the operation of section 459F(1) of the Law, a body corporate is taken to have failed to comply with a statutory demand;
- h. a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;
- i. a person becomes an insolvent under administration as defined in the Law or action is taken which could result in that event; or
- j. anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

Interim Distribution means, for a Pooled Option for a Financial Year, an entitlement of the Members invested in that Pooled Option to a distribution of the Distributable Income of the Pooled Option for the Financial Year that is declared by the RE in accordance with clause 19.8;

Investment Management Agreement means the agreement so entitled setting out the rights and obligations of the Investment Manager between the RE and the Investment Manager dated 24 December 2004 as amended from time to time;

Investment Manager means the investment manager appointed by the RE, from time to time, pursuant to the Investment Management Agreement or any such other agreement appointing the investment manager from time to time;

Investment Option means any one of the Classic Notice Account, the 90 Day Notice Account, the 6 Month Notice Account, the 12 Month Term Account, the 2 Year Account, the Select Investment Account, the 4 Year Account or any other investment option that the RE establishes under clause 3.3, as the case requires;

Investor Account means the account maintained by the RE in respect of a Member's interest in an Investment Option in accordance with clause 18.20;

Law means the *Corporations Act 2001*;

Liquid has the same meaning as in the Law;

Market Value of an Other Asset means:

- a. in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the RE, unless:
 - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
 - (ii) the RE reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer at the expense of the Scheme;
- b. in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any financial market:
 - (i) the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund; plus
 - (ii) any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity. Where the fund is operated by the RE or a related body corporate of the RE, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the Constitution governing the fund;
- c. in the case of an Asset that is a real estate asset, the latest independent valuation of the real estate asset or, for a real estate asset not yet revalued since its acquisition, the real estate asset's purchase price (including acquisition costs, the total costs of subsequent additions and costs to date for development in progress, where applicable); and
- d. in the case of any other Asset, the value of the asset determined in accordance with relevant accounting standards or, if the RE is of the opinion that such valuation does not truly reflect the value of the asset, such value as last determined by an Approved Valuer at the expense of the Scheme;

Maturity Date means, in relation to a Selected Asset, the day if any on which scheduled principal and interest of that Selected Asset falls due for payment or such later date that the RE determines;

Member means a person who for the time being is Registered in the Register as having lodged the Minimum Investment, and the term "Member" includes the RE in relation to an investment made by it in an Investment Option;

Minimum Investment means the amount of \$1, or such other amount as the RE may prescribe, alter or waive from time to time;

Minimum Subscription means in respect of an Investment Option the amount (which may be zero) set by the RE as the amount required before the RE can proceed to settlement of an Asset for the Investment Option;

Month means a calendar month;

Mortgage means:

- a. any instrument registered or registrable as a legal mortgage in respect of land and improvements to the land securing a primary obligation of any person to pay any sum or sums;
- b. a loan made on the security (whether by way of mortgage or otherwise) of Real Property; or
- c. any mortgage security complying with the requirements of sub-clause (b) above and where the right title and interest of the mortgagee in the loan, the security and any insurance contracts or policies relating to the mortgage security are assigned or transferred by the mortgagee to the RE,

that satisfies any applicable capital or collateral requirements for the relevant Investment Option as set out in the PDS from time to time and the relevant SPDS if any at the time of investment into the Investment Option;

Net Gains has the meaning given to that term in clause 18.22;

Non-Pooled Option means:

- a. the Select Investment Account; and
- b. any other Investment Option established by the RE and designated as a Non-Pooled Option;

Note means an investment with principal repayment linked to a pool of residential and/or commercial mortgages;

Original Constitution means the original constitution that established the Scheme on 16 June 1999;

Other Asset means an Asset that is not a Cash Investment, Mortgage or Note;

Pooled Option means any of the following Investment Options:

- a. Classic Notice Account;
- b. 90 Day Notice Account;
- c. 6 Month Notice Account;
- d. 12 Month Term Account;
- e. 2 Year Account;
- f. 4 Year Account; and
- g. any other Investment Option established by the RE and designated as a Pooled Option;

Product Disclosure Statement means a Product Disclosure Statement as defined in the Law and issued by the RE for an interest in the Scheme;

Real Property means land (including tenements and hereditaments corporeal and incorporeal and every estate and interest in land whether vested or contingent freehold or leasehold and whether at law or in equity) wherever situated and including any equity of redemption, any fixtures to land and any property to be used in association with any land or fixtures that the RE may from time to time consider to be calculated directly to enhance the value of or render profitable any land or fixtures;

Register means the register of Members maintained by the Investment Manager pursuant to clause 5;

Registered means recorded in the Register and **Registration** has a corresponding meaning;

Registered Scheme means a managed investment scheme registered with ASIC under Chapter 5C of the Law;

Resolution means a resolution of the Members (or if applicable at a meeting of Members holding interests in an Investment Option):

- a. on a show of hands, by the required majority of Members (or if applicable of Members holding interests in the Investment Option) present in person or by proxy and voting on the show of hands; or
- b. on a poll, by the required majority of votes cast by Members (or if applicable of Members holding interests in the Investment Option) present in person or by proxy and voting on the poll;

Responsible Entity means the company for the time being named in ASIC's records of the Scheme's registration as the responsible entity of the Scheme and referred to in this Constitution as the **RE**;

Scheme means a managed investment scheme to be known as the La Trobe Australian Credit Fund or such other name as the RE determines from time to time;

Scheme Property has the meaning given to that term in the Law;

Select Investment Account means the investment option offered under that name (or any replacement name) by the RE by way of a Product Disclosure Statement and a Supplementary Product Disclosure Statement;

Selected Asset means an Asset of a Non-Pooled Option selected by a Member in accordance with the relevant SPDS;

Selected Asset Net Income has the meaning given to that term in clause 19.6;

Shortfall has the meaning given to that term in clause 18.21;

Special Resolution means in relation to the Scheme, a resolution:

- a. of which notice as required by the Law has been given, and
- b. that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;

Supplementary Product Disclosure Statement or **SPDS** means the Product Disclosure Statement as supplemented by a supplementary product disclosure statement, if any, which will disclose from time to time particulars of each prospective Selected Asset as they become available as detailed in clause 3.2. A reference to the relevant SPDS in relation to a Member will be the SPDS under which the Member selected the Selected Asset;

Tax Act means the Income Tax Assessment Act 1936 ("**1936 Act**"), the Income Tax Assessment Act 1997 ("**1997 Act**") or both the 1936 Act and the 1997 Act, as appropriate; and

Taxes means taxes, levies, imposts, deductions, charges, withholding tax and duties imposed by any authority (including stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them).

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- a. a reference to any agreement, deed, or document (and, where applicable, any of its provisions) is a reference to that agreement, deed or document as amended, varied, notated, supplemented, or replaced from time to time;
- b. a reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of any of them;
- c. the cover page, contents, headings and footnotes are for convenience only and do not affect interpretation;
- d. a term which has a defined meaning in the Law has the same meaning when used in this Constitution;
- e. provisions which are expressed to be "subject to the Law" are only subject to the provisions of that Act while the Scheme is a Registered Scheme;
- f. the singular includes the plural and vice versa;
- g. the word "person" includes a firm, a body corporate, an unincorporated association, or an authority;

- h. a reference to a person includes a reference to the person's executors, trustees, successors, substitutes (including persons taking by novation) and assigns;
 - i. an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
 - j. an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - k. a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the Law and, if not inconsistent with those accounting standards and the Law, generally accepted accounting principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
 - l. a reference to any thing is a reference to the whole and each part of it and a reference to a group of persons (including the RE) is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - m. if an act prescribed under this Constitution to be done by a party on or by a given day is done after 4.00 pm (Melbourne time) on that day, it is to be taken to be done on the following day;
 - n. if an event must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
 - o. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - p. reference to clauses are references to clauses of this Constitution;
 - q. a reference to "amend" includes vary, delete or replace;
 - r. a reference to a year (other than a Financial Year), half-year, quarter or month means a calendar year, calendar half-year, calendar quarter or calendar month respectively;
 - s. a reference to "present" in the context of a person being present at a meeting includes participating using technology approved by the RE for the purposes of the meeting; and
 - t. the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions.
- 1.3 Headings and footnotes in this Constitution are inserted for convenience only and do not affect the interpretation or construction of this Constitution.

2 Declaration of Trust

Name of the Scheme

- 2.1 The Scheme is called the *La Trobe Australian Credit Fund* or by such other name as the RE determines from time to time.

Declaration of Trust

- 2.2 The RE declares that it holds the Scheme Property on trust for the Members.

Binding on All Parties

- 2.3 This Constitution is binding on the RE, the Investment Manager and on all present and future Members and any person claiming through them.
- 2.4 By completing the Application Form the Members agree to be bound by the terms and conditions of this Constitution.

Term of Scheme

- 2.5 This Constitution is a continuation of the Original Constitution.
- 2.6 Despite any other provisions in this Constitution, no interests may be issued or withdrawn after the 80th anniversary of the day preceding the day the Scheme commenced, unless that issue or withdrawal would not offend the rule against perpetuities, or any other rule of law or equity.
- 2.7 The perpetuity period for the purposes of section 5 of the *Perpetuities and Accumulations Act 1968 (Vic)* is the period of 80 years from the day before the commencement of the Scheme. The specification of a perpetuity period in this clause 2.7 does not require that the Scheme terminate on the expiration of that period.

Members not to interfere

- 2.8 Except as is expressly provided in this Constitution, the interest of a Member in the Assets does not confer on the Member any right to interfere with the rights or powers of the RE, the Investment Manager or the Custodian under this Constitution or to exercise any rights, powers or privileges in respect of any Asset. Members do not have any interest in the Assets as a whole.

3 Interests in the Scheme

Summary of Scheme Activities

- 3.1 Investment in the Scheme by a Member follows the process set out below:
- a. the first stage involves the Member applying for Registration on an Application Form and being accepted into the Scheme. The Member is required to indicate in the Application Form into which Investment Option or Investment Options the Application Money is to be invested and in what proportions;
 - b. if the Member selects a Pooled Option, the Member is not required to complete any further documents. The Application Money will be invested according to the Member's directions; and
 - c. if the Member selects a Non-Pooled Option, the Application Money is invested in the Selected Asset selected by the Member under the relevant SPDS once the Minimum Subscription has been reached. Until such time as the Minimum Subscription has been reached, the Application Money will be invested on behalf of the Member in the Holding Account. Once the Minimum Subscription has been reached that portion of the Member's investment in the Holding Account needed to fund the Member's investment in the Non-Pooled Option will be withdrawn and invested in the relevant Selected Asset selected by the Member and any remaining portion (if any) will be retained in the Holding Account.
- 3.2 Details of the Scheme are contained in the Product Disclosure Statement and, for each Selected Asset which forms part of a Non-Pooled Option, may be supplemented by information contained in a Supplementary Product Disclosure Statement.

Additional Investment Options

- 3.3 The RE may at any time determine to establish an additional investment option to offer to Applicants with any other different rights, obligations and restrictions as specified in the terms of issue of the investment option. The RE:
- a. must determine the name of the option (which the RE may change from time to time) and designate the option as a Pooled Option or a Non-Pooled Option;
 - b. must determine the investments the option may be invested in under clause 3.8 (which the RE may change from time to time);
 - c. must determine whether or not a Member who invests in the option will have any rights to withdraw from the investment option and the extent to which the provisions of clause 18 apply to the option with or without any changes determined by the RE;
 - d. may determine that further documents are required to be completed by a Member who selects the option in addition to applying for Registration on an Application Form;
 - e. may determine that Application Money will be invested in the option once the Minimum Subscription has been reached. If so, until such time as the Minimum Subscription has been reached, the Application Money will be invested on behalf of the Member in the Holding Account;
 - f. may determine that entitlements to Distributable Income or Selected Asset Net Income will be paid to a Member at particular times determined by the RE;
 - g. may determine that the option will have a minimum investment period, notice period or Maturity Dates;
 - h. may determine that extent to which:
 - (i) any liabilities and expenses incurred by the RE in relation to the proper performance of its duties are incurred in connection with the option; and
 - (ii) any fees that the RE is entitled to in accordance with this Constitution and the Law are in connection with the option,
 and must be allocated to and recovered from the option and not any other Investment Option; and
 - i. must determine whether any other different rights, obligations and restrictions apply to the option.
- 3.4 To the extent that the RE does not make a determination required under clauses 3.3(b) to 3.3(i) with respect to an additional Investment Option, the rights, obligations and restrictions of that additional Investment Option that is:
- a. a Pooled Option, will be taken to be the same as the 12 Month Term Account; or
 - b. a Non-Pooled Option, will be taken to be the same as the Select Investment Account.

Interests in an Investment Option

- 3.5 A Member's interest in an Investment Option shall be as a tenant in common with all other Members in that Investment Option in the proportion to which the amounts in their Investor Account allocated into the particular Investment Option bears to the total value of the amounts recorded in all Members' Investor Accounts in that particular Investment Option.

- 3.6 Each Member has a beneficial interest only in the specific and particular Assets determined in accordance with this Constitution, in which they have invested. Members do not have any interest in the Assets as a whole.
- 3.7 A Member must not:
- interfere with any rights or powers of the RE, the Investment Manager or the Custodian;
 - exercise a right in respect of an Asset, lodge a caveat or other notice affecting an Asset or otherwise claim any interest in any particular Asset; or
 - require an Asset to be transferred to the Member.

Authorised Investments

- 3.8 The RE may in its capacity as trustee of the Scheme invest in, dispose of or otherwise deal with property and rights as it sees fit. Moneys held by the RE in an Investment Option may be invested (directly or indirectly) in any investment the RE considers appropriate.

Acquiring an interest in the Scheme

- 3.9 The Minimum Investment is required to register an Applicant as a Member. The consideration to be paid by a Member to acquire the Member's interest in the Scheme must have a monetary value equal to or greater than the Minimum Investment. Payment of the consideration must be in a form acceptable to the RE, or a transfer of property of a kind acceptable to the RE and able to be vested in the RE or the Custodian (accompanied by a recent valuation of the property if the RE requires).
- 3.10
- An application for Registration may only be accepted on receipt of a completed Application Form;
 - The RE may, in its absolute discretion, reject an application to become a Member or to make further investment in an Investment Option in whole or in part, without reason; and
 - The RE may, in its absolute discretion, accept non-cash consideration from a Member to acquire an interest in the Scheme. The amount attributable to this consideration will be the Market Value of the consideration.
- 3.11
- Where the RE has accepted an Applicant's Application Form for a Non-Pooled Option, the Application Money may be invested in the Holding Account on behalf of the Member until it is allocated to a particular investment offered under the relevant SPDS;
 - Application Moneys accepted for investment in a Pooled Option will be invested in the selected Pooled Option as soon as reasonably practicable; and
 - Where the RE accepts Application Money in respect of a Member, the RE must record the amount of the Application Money in the Member's Investor Account for the relevant Investment Option under clause 18.20.
- 3.12 Where a Member's Application Money has been directed for investment in a Non-Pooled Option, but is held in the Holding Account prior to settlement of the Selected Asset offered under the relevant SPDS, the Application Money will carry entitlements to distributions of Distributable Income from the Scheme in accordance with the terms of this Constitution and the Holding Account in which it is invested.

Investments in a Selected Asset

- 3.13 The RE must determine a Maturity Date for each Selected Asset within a Non-Pooled Option and must set out the Maturity Date in the relevant SPDS. The RE may subsequently determine a later Maturity Date for a particular Selected Asset. The RE must give notice of the Maturity Date to each Member whose interest in the Non-Pooled Option is referable to the Selected Asset.

Deductions and indemnity

- 3.14 The RE may deduct from any amount to be paid to a Member or former Member, or received from a Member or former Member:
- any money due and unpaid by the Member or former Member;
 - any amount of Tax (or an estimate of it) or any FATCA Withholding which the RE is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the RE considers should be deducted; and
 - where the Member or former Member has an interest in an Investment Option that is a Non-Pooled Option any amount that the RE determines is properly referable to an amount set aside by the RE to meet actual or anticipated expenses and liabilities of the Investment Option including in relation to any Selected Assets invested in under the relevant SPDS.
- 3.15 The RE is entitled to be indemnified by a Member or a person who was at any time a Member in respect of:
- any Tax (or an estimate of it) that is payable by the RE or which may become payable by the RE which the RE determines is properly referable to the Member or former Member;

- b. any other expenses or liabilities incurred by the RE as a result of being liable to or becoming liable to such Tax, and claiming on the indemnity provided by the Member or former Member under this clause 3.15(a) or under the Tax Act; and
- c. any expenses or liabilities:
 - (i) incurred by the RE in relation to a self-certification or other information or document required to be collected by the RE from that person (or from the Controlling Persons of that person) for the purposes of Subdivision 396-C of Schedule 1 to the Taxation Administration Act 1953 (Cth); or
 - (ii) which are or relate to any FATCA Withholding incurred by the RE, or which the RE anticipates will be incurred, which would be made in respect of:
 - (A) a payment to be made to the Scheme directly or indirectly; or
 - (B) a payment to be made by the Scheme directly or indirectly,
 as a result of:
 - (iii) that person's action or inaction;
 - (iv) an act or omission requested by that person;
 - (v) in the case of subparagraph (ii) above, the status of that person for the purposes of FATCA (including without limitation as a non-participating foreign financial institution as defined under FATCA); or
 - (vi) any other matter arising in connection with that person's interest in the Scheme,

but, in the absence of any separate agreement with the Member or person, is not otherwise entitled to be indemnified by them. The RE may prescribe particular terms and conditions which apply in the event that the RE is entitled to be indemnified by a Member or former Member under this clause 3.15 or under the Tax Act.

In this clause 3.15, a "Controlling Person" means a Controlling Person for the purposes of Subdivision 396-C of Schedule 1 to the Taxation Administration Act 1953 (Cth).

Investment with Associates

- 3.16 Subject to clause 3.17, the RE and its associates may hold interests in the Scheme, or interests in any trust or company which is an associate of any of them, in any capacity. Subject to the Law, the RE (and any of its associates to the extent applicable) may:
- a. deal with itself (as trustee of the Scheme or in another capacity), its associates or with any Member, including to engage any of its associates to provide services to the RE;
 - b. be interested in any contract or transaction with itself (as trustee of the Scheme or in another capacity), its associates or with any Member or any other person; and
 - c. act in the same or a similar capacity in relation to any other managed investment scheme or trust,
- and retain for its own benefit any profits or benefits derived from any of these acts, dealings, relationships, capacities, contracts or transactions.

Investment Manager to manage Assets

- 3.17 Subject to clause 3.18, the RE may not lend money out of the Assets to any of the RE's directors, officers, related bodies corporate or any directors, officers or employees of a related body corporate for the purposes of any personal, commercial, or development activities.
- 3.18 Clause 3.17 does not apply to the lending of money out of the Assets by the RE where the money is lent to a related body corporate of the RE and the loan is a type of loan which RE considers appropriate to invest the relevant Investment Option in.
- 3.19 Subject to both the RE and the Investment Manager duly observing and performing the obligations on their part expressed or implied in this Constitution, the Investment Manager, on behalf of the RE, must manage the Assets pursuant to this Constitution with full and complete power of management.

Bank Accounts

- 3.20 The RE must maintain such bank accounts as are necessary for the efficient management of the Scheme and to comply with the requirements of the Law.

4 Valuations

Periodic Valuations

- 4.1 The RE may cause an Asset to be valued at any time and, if the Scheme is a Registered Scheme, must do so as and when required by the Law.

Valuation Methods

- 4.2 While the Scheme is a Registered Scheme, the RE's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset.
- 4.3 Subject to clause 4.2 Cash Investments, Mortgages and Notes will be valued and recorded at cost less a provision for any permanent diminution of value.
- 4.4 Subject to clauses 4.2 and 4.3:
 - a. the RE may determine the value of an Asset, and valuation methods and policies for each category of Asset and change them from time to time; and
 - b. in the absence of any other determination by the RE, the value of an Asset will be its Market Value.

5 Register

The Investment Manager will on behalf of the RE with respect of each Investment Option and each Selected Asset maintain or cause to be maintained a Register in accordance with the Law.

6 Covenants by the Investment Manager

Loan to Valuation Ratio

- 6.1 The Investment Manager covenants, on a best endeavours basis, that it will not permit a Mortgage to be settled unless it is in accordance with the terms of the Mortgage and satisfies any loan to value ratio for the relevant Investment Option as set out in the PDS from time to time and the relevant Supplementary Product Disclosure Statement, if any, at the time of investment into the Investment Option. The Investment Manager must ensure that any Mortgage that is settled otherwise than in accordance with the terms of the Mortgage or does not satisfy the relevant loan to value ratio will be disposed of as an Asset as soon as reasonably practicable.

Mortgage Security

- 6.2 The Investment Manager covenants that all Mortgages are registrable first or second mortgage securities, unless notified and consented to individually by the relevant Members through a Supplementary Product Disclosure Statement.

Conduct Business Properly

- 6.3 The Investment Manager will use its best endeavours to carry on and conduct its business in a proper and efficient manner and will ensure that the Scheme is carried on and conducted in a proper and efficient business like manner and act at all times in the best interests of the RE.

Payment of Monies to Members

- 6.4 The Investment Manager will pay to a Member any monies that are payable by the RE under this Constitution to the Member on the required payment date.

Assignment or retirement by Investment Manager

- 6.5 The Investment Manager may not seek to be discharged from its obligations under this Constitution or transfer or assign or seek to transfer or assign its rights and obligations. The Investment Manager may not seek, without the prior written consent of the RE, to retire from or be removed or replaced under this Constitution.

Appointment of Agents and Advisers

- 6.6 Without in any way affecting the generality of its power, the Investment Manager, in carrying out its duties and obligations under this Constitution, may:
 - a. appoint by writing or otherwise any person to be an agent of the RE as the Investment Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the RE) as it thinks fit and by power of attorney appoint any person to be attorney or agent of the Investment Manager for such purposes and with such powers and authorities as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the RE of documents bearing facsimile signatures of the RE or of the attorney or agent either with or without proper manuscript signatures of its officers;
 - b. subject to the operation of the Law, and in circumstances where the Investment Manager is acting within the powers granted to it by the RE, the Investment Manager will be liable for all acts or omissions of any such attorney, agent, sub-delegate or sub-agent as if such acts or omissions were the Investment Manager's own acts or omissions and will be responsible for their remuneration; and

- c. appoint and engage any Approved Valuers, solicitors, barristers, accountants, surveyors, contractors, qualified advisers and other persons necessary, usual, desirable or convenient for the purpose of exercising its powers and performing its obligations.

Further Assurances

- 6.7 The Investment Manager will perform all acts and execute and deliver all documents and instruments as are necessary to give effect to the terms of this Constitution.

7 Management of Scheme

Moneys to be Banked to Accounts

- 7.1 The Investment Manager must credit directly to the Scheme, all moneys collected by it as manager of the Scheme and must use best endeavours to do so not later than the next Business Day after the date of receipt by the Investment Manager.

Investment Manager to Act Properly and Efficiently

- 7.2 The Investment Manager must perform its functions, rights and obligations in respect of the Assets in a proper and efficient business-like manner.

8 Covenants by the RE

It is acknowledged that the RE, in carrying out its obligations and duties under this Constitution and in exercising any discretion under this Constitution, at all times must act in what the RE in its reasonable discretion perceives to be reasonable having regard to the best interests of the Members as a whole and its fiduciary obligations as RE.

9 Powers of RE

General Powers

- 9.1 Subject to this Constitution, the RE has all the legal capacity and powers both inside and outside Australia in respect of the Scheme that it is possible under the law to confer on a trustee and as though the RE were an individual who is the absolute owner of the Assets acting in their personal capacity.
- 9.2 Without limiting clause 9.1, the RE in its capacity as responsible entity of the Scheme has power to enter into any form of contract and to incur all types of obligations and liabilities including:
 - a. to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities and the issue of financial instruments);
 - b. to grant all types of security (whether for the obligations of the RE or another person);
 - c. to grant guarantees and indemnities; and
 - d. to enter into derivatives.
- 9.3 Without limiting clause 9.1, the RE may in its capacity as responsible entity of the Scheme invest in, dispose of or otherwise deal with property and rights as it sees fit. This includes the power to:
 - a. invest the whole or part of the Assets in a single type of asset, or in trusts managed or controlled by the RE or its related body corporate, or such other investments as the RE determines; and
 - b. lend money and on-lend or provide financial accommodation to any person.

Powers of Delegation

- 9.4 The RE may authorise:
 - a. any person to act as its agent or delegate (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 RE's power, including the power to appoint in turn its own agent or delegate; and
 - b. without limiting any other provision of this Constitution, (but subject to the Law) an agent or delegate (including under a power of attorney) to exercise powers on the RE's behalf in circumstances where the RE has a personal interest or may be otherwise subject to conflicting duties.
- 9.5 The RE may include provisions in the authorisation to protect and assist those dealing with the agent or delegate and to limit the RE's liability, as the RE thinks fit.
- 9.6 The agent or delegate may be an associate of the RE.

Exercise of discretion

9.7 Subject to this Constitution, the RE may in its absolute discretion decide how, when and how often to exercise its powers.

Proposals by Investment Manager to RE

9.8 The Investment Manager may at its discretion on behalf of the Members make proposals in writing to the RE for the exercise by the RE of the powers conferred on the RE under clause 9.1.

Exercise of Powers in accordance with Proposals

9.9 Unless in the opinion of the RE compliance with a proposal by the Investment Manager would be prejudicial to the interests of the Members, the RE must comply with the proposals and exercise its powers accordingly.

Recovery actions

9.10 Subject to the RE's duties at law and under this Constitution, all decisions as to whether or not, and how to fund, prepare for, commence, continue, pursue and settle any action for the recovery of any amount from any person may be made by the RE in its sole discretion. In no circumstances will the RE be required to contribute any of its own funds to any such action.

9.11 The RE may offer Members who selected a Selected Asset in a Non-Pooled Option the opportunity to fund on a voluntary basis all or part of any action for the recovery of any amount payable by any third party in respect of the Selected Asset. Funds received by the RE from a Member who funds an action ("**Funding Member**") will not constitute Application Money or Scheme Property and will be held and allocated under the arrangement entered in between the Funding Member and the RE and not under this Constitution. The RE must determine the priority in which any net proceeds resulting from the action will in appropriate proportions be applied towards repaying the amounts funded by the Funding Members and then allocated between the Investor Accounts of the Funding Members (and if relevant, the Assets of the Fund that are referable to a Pooled Option that also funded the action) and the Investor Accounts of Members who selected the Selected Asset but do not fund the action.

Right to provide FATCA information

9.12 If the RE makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment (as defined under FATCA) to any non-participating foreign financial institution (as defined under FATCA), the RE may provide to any immediate payor of such U.S. Source Withholdable Payment the information required for FATCA Withholding and reporting to occur with respect to such payment, and each Member and former Member consents to the provision of that information.

10 Complaints Procedures

- 10.1 While the Scheme is a Registered Scheme, if a Member submits a Complaint to the RE in relation to the Scheme:
- a. if the Member is a retail client, the RE must comply with the requirements of section 912A(2) of the Law applicable to the Complaint; and
 - b. if the Member is not a retail client, the RE:
 - (i) must acknowledge receipt of the Complaint as soon as reasonably possible;
 - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the RE as appropriate to handle Complaints;
 - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the complaint by endeavouring to correct the error;
 - (iv) may give any remedy to the Complainant including:
 - (A) information and explanation regarding the circumstances giving rise to the Complaint;
 - (B) an apology; or
 - (C) compensation for loss incurred by the Member as a direct result of any breach; and
 - (v) must communicate to the Complainant as soon as reasonably practicable and in any event not more than 90 days after receipt by the RE of the Complaint:
 - (A) the determination in relation to the Complaint;
 - (B) any remedies available to the Member; and
 - (C) information regarding any further avenue for Complaint.
- 10.2 For the purposes of this clause 10, while the Scheme is a Registered Scheme, a reference to a Member includes any person who has an "interest" in the Scheme as that term is defined in section 9 of the Law.

11 Accounts and Audit Accounts to be kept

While the Scheme is not a Registered Scheme, the RE must keep or cause to be kept proper books of account which correctly record and explain the transactions and financial position of the Scheme and may, but need not, have those records audited.

12 Entitlements and payments

Entitlements Rank Equally Unless Otherwise Specified

- 12.1 Subject to clause 9.11, the entitlements of each Member having an interest in a Selected Asset rank equally and, if the funds from the Selected Asset are insufficient, they will be paid *pari passu* from the Scheme in respect of each Selected Asset.

Payments from Scheme

- 12.2 Where the RE attempts to make a payment by cheque, and the cheque is not presented within 6 months, the cheque may be cancelled and the money may be held by the RE for the Member or paid by the RE in accordance with the legislation relating to unclaimed moneys.
- 12.3 Where the RE attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the RE for the Member or paid by the RE in accordance with the legislation relating to unclaimed moneys.
- 12.3 For each Member who has an interest in a Non-Pooled Option, Selected Asset Net Income will be paid over the term of each Selected Asset that the Member's interest in the Non-Pooled Option is referable to the Selected Asset.

13 Winding up the Scheme

- 13.1 The Scheme may only be wound up in accordance with the Law and this Constitution.
- 13.2 The RE must wind up the Scheme in the following circumstances:
- a. if the term of the Scheme as detailed in this Constitution has expired;
 - b. the Members pass an Extraordinary Resolution directing the RE to wind up the Scheme;
 - c. a Court makes an order directing the RE to wind up the Scheme pursuant to the Law; or
 - d. the Members pass an Extraordinary Resolution to remove the RE but do not at the same time pass an Extraordinary Resolution choosing a company to be the new responsible entity that consents to becoming the Scheme's RE.
- 13.3
- a. If the RE considers that the purpose of the Scheme:
 - (i) has been accomplished; or
 - (ii) cannot be accomplished,
 it may take steps to wind up the Scheme.
 - b. If the RE wishes to wind up the Scheme pursuant to clause 13.3(a), the RE must give to the Members and to ASIC a notice in writing:
 - (i) explaining the proposal to wind up the Scheme, including explaining how the Scheme's purpose has been accomplished or why that purpose cannot be accomplished;
 - (ii) informing the Members of their rights to take action under the Law for the calling of a Members' meeting to consider the proposed winding up of the Scheme and to vote on any Extraordinary Resolution Members proposed about the winding up of the Scheme; and
 - (iii) informing the Members that the RE is permitted to wind up the Scheme unless a meeting is called to consider the proposed winding up of the Scheme within 28 days of the RE giving the notice to the Members.
 - c. If no meeting is called within that 28 days to consider the proposed winding up, the RE may wind up the Scheme.
- 13.4 The RE may wind up the Scheme in accordance with this Constitution and the Law if the RE is permitted by the Law to wind up the Scheme.
- 13.5 The RE may wind up the Scheme on a date determined by the RE and advised to Members by notice not less than 30 days before the proposed date of winding up.
- 13.6 The RE may not accept any further applications for an interest in the Scheme or invest any Members' funds in any investment at a time after the RE has become obliged to ensure the Scheme is wound up or after the Scheme has started to be wound up.

- 13.7 The RE must:
- a. subject to clause 13.6 manage the Scheme in accordance with this Constitution (and may exercise its powers) until such time as all Assets have been disposed of and disposal proceeds are paid despite the winding up commencing; and
 - b. make payments (or set aside estimated amounts) from the Assets to pay the Scheme's expenses and liabilities, and the costs or anticipated costs of winding up the Scheme. These amounts will reduce the proceeds of winding up that a Member may otherwise receive.
- 13.8 The RE must use its best endeavours to ensure that all Members' interests in the Scheme are redeemed on disposal of the Assets on a winding up and that the net disposal proceeds are paid to the Members after making allowance for all expenses and liabilities of the Scheme (actual and anticipated) including entitlements of Members to a share of Distributable Income and Selected Asset Net Income and meeting the expenses (including anticipated expenses) of the winding up.
- 13.9 If on completion of the winding up of the Scheme, the RE or such other person who may be winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Assets the RE or person winding up the Scheme must, as soon as practicable, pay the money or transfer the property in accordance with legislation relating to unclaimed money.
- 13.10 If at any time the Scheme is operated while it is not a Registered Scheme the following interested parties may apply to the court to have the Scheme wound up:
- a. ASIC;
 - b. the RE; or
 - c. a Member.
- 13.11 The RE must ensure that an independent audit of the final accounts of the Scheme following the winding-up is undertaken by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the RE.

14 Fees and Expenses

RE's Rights to Fees and Expenses

- 14.1 The RE is entitled to be paid fees from the Assets in accordance with this clause 14.
- 14.2 All expenses incurred by the RE in relation to the proper performance of its duties in respect of the Scheme are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Law. This includes expenses connected with:
- a. this Constitution, any supplemental deed and the formation of the Scheme;
 - b. the preparation, review, distribution and promotion of any Product Disclosure Statement, SPDS or offering memorandum in respect of the promotion of the Scheme;
 - c. the acquisition, disposal, insurance, custody, sale and any other dealing with Assets;
 - d. any proposed acquisition, disposal, sale or other dealing with an Asset;
 - e. the administration or management of the Scheme or its Assets and liabilities;
 - f. convening and holding meetings of Members and the implementation of any Resolutions;
 - g. communications with Members;
 - h. Taxes, any amount payable under clause 3.15 and financial institution fees;
 - i. the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the RE, including overheads and other expenses payable to related companies of the RE for staff, equipment and leased premises;
 - j. preparation, audit and lodgement of the taxation returns and accounts of the Scheme including the relevant auditor's fees;
 - k. termination of the Scheme and the retirement or removal of the RE and the appointment of a replacement;
 - l. any court proceedings, arbitration or other dispute concerning the RE including proceedings against the RE, except to the extent that the RE 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 clause must be repaid;
 - m. the Compliance Committee or other committee established by the RE in connection with the Scheme (if any), including any fees paid to or insurance premiums in respect of committee members;
 - n. any costs and expenses associated with the board of directors of the RE carrying out the functions of a Compliance Committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of the Law;

- o. the preparation, implementation, amendment and audit of the Scheme compliance plan;
- p. complying with any law, and any request or requirement of ASIC;
- q. preparation, stamping, execution and printing of this Constitution and any deed amending this Constitution;
- r. fees payable to any ratings agency;
- s. preparing, printing and posting accounts, cheques and all other documents or making payments to Members;
- t. fees payable to Austraclear Limited or any other securities system, holding property of the Scheme;
- u. preparing and dealing with applications, requests for withdrawals, transfers or switching;
- v. establishing and maintaining the Register;
- w. establishing and maintaining the accounting and investment recording systems of the Scheme;
- x. development and operation of computer facilities, salaries and costs relating to the matters set out in the paragraphs above; and
- y. the Investment Management Agreement including base, performance or other fees and expenses payable to the Investment Manager.

- 14.3 The RE will be indemnified out of the Assets for liabilities or expenses incurred in relation to the proper performance of its duties including:
- a. investment establishment application fees;
 - b. in relation to the structuring or packaging of Asset proposals;
 - c. in relation to investment management;
 - d. in relation to the rollover of an Asset;
 - e. in relation to due diligence enquiries of any Asset;
 - f. in relation to the sale of Assets;
 - g. in relation to the promotion and management of the Assets;
 - h. in relation to the appointment of any Custodian pursuant to a custody agreement, including any fees and expenses of the Custodian;
 - i. legal fees and outgoings in relation to settlement, rollover, default or recovery of loans;
 - j. legal counsel fees;
 - k. search fees including property searches, company, bankruptcy, credit reporting searches and any other searches which may be necessary to enable location, identification and/or investigation of borrowers and guarantors;
 - l. valuation fees;
 - m. independent experts' or consultants' fees including marketing agents, property specialists, surveyors, quantity surveyors, town planners and engineers;
 - n. property report/property consultants' fees;
 - o. process servers' fees;
 - p. private investigators' fees;
 - q. fees in relation to the marketing and packaging of security properties for sale;
 - r. real estate agents' sales commissions;
 - s. costs of maintenance of security properties;
 - t. outstanding accounts relating to security properties such as council rates;
 - u. locksmith for changing locks of security properties;
 - v. insurance (including property and contents);
 - w. removalists for removal of property from security properties;
 - x. security guards to attend security properties;
 - y. building and/or property inspection report fees - i.e. building, town planning experts and the like;
 - z. all ASIC charges;
 - aa. all Taxes and FATCA Withholding;
 - bb. all costs of supplying Members with copies of this Constitution and any other documents required by the Law to be provided to Members;
 - cc. all costs and expenses incurred in producing the Product Disclosure Statement and Supplementary Product Disclosure Statements;
 - dd. reasonable costs incurred in protecting or preserving Assets;
 - ee. all liability incurred as the result of any act or omission of any agent appointed by the RE to do anything it is authorised to do in connection with the Scheme whether or not such agent acted fraudulently or outside the scope of his/her authority or engagement; and
 - ff. any liability, loss, cost, expense or damage arising from the lawful exercise by the RE, the Custodian of their rights under any power of attorney granted in their favour by a Member.

- 14.4 If the RE has not properly performed its duties, the lack of entitlement to payment of fees pursuant to clause 14.1 is only in respect of that part of the payment which relates to the specific lack of proper performance on any given matter. Nothing in this clause may be interpreted to mean that the RE is not entitled to be paid fees and expenses for work properly performed.
- 14.5 In the event of any dispute regarding the payment of fees and expenses, the RE may be paid such fees and expenses until the dispute is fully determined. Any overpayment of the RE will be repaid without delay on the identification of the overpayment.
- 14.6
- a. The RE is entitled to recover fees and expenses from the Scheme provided they have been properly incurred in accordance with this Constitution and the Law.
 - b. While the Scheme is a Registered Scheme, despite any other provision of this Constitution the fees and expenses payable under this Constitution may be paid to the RE from the Assets only to the extent the fees and expenses are incurred in the proper performance of the RE's duties as responsible entity of the Scheme.
- 14.7 In this Constitution, "expenses" include internal expenses of the RE incurred in connection with matters referred to (including costs of appointing and maintaining staff employed in connection with matters referred to) and amounts paid by the RE to related bodies corporate for services provided to an Investment Manager in connection with the Scheme where the cost, charges and expenses referable to the task performed or service provided by the related body corporate would have been reimbursable under this clause 14 had they been incurred by the RE.
- 14.8 As some of the expenses or liabilities incurred by the RE will relate to the Scheme in general, and some will be incurred only in respect of a particular Asset, Investment Option or Member, any expenses or liabilities incurred by the Scheme are to be appropriately allocated between Assets, Investment Options and Members, or if ascertainable allocated to the specific Asset, Investment Option or Member which caused the expense or liability to be incurred.
- 14.9 To the extent that:
- a. any liabilities and expenses incurred by the RE in relation to the proper performance of its duties are incurred in connection with the 6 Month Notice Account or the 2 Year Account; and
 - b. any fees that the RE is entitled to in accordance with this Constitution and the Law are in connection with the 6 Month Notice Account or the 2 Year Account,
- they must be allocated to and recovered from the 6 Month Notice Account or the 2 Year Account respectively and not any other Investment Option.

New Fees or Charges

- 14.10 If the RE notifies Members that it proposes to charge an additional fee pursuant to this Constitution for a particular service provided to a Member, then the RE is entitled to that fee provided 30 days' notice of the commencement of that fee has been given to affected Members.

Investment Management Fee

- 14.11 The RE is entitled to a monthly investment management fee of up to 1.25% per annum of the total principal sum invested in Cash Investments, calculated daily and paid monthly.
- 14.12 In relation to Mortgages and Notes, the RE is entitled to charge a monthly investment management fee being the difference between the gross proceeds of the investment received by the RE and the investment rate paid by the RE to Members which will not exceed 5% per annum of the total principal sum so allocated, calculated daily and paid monthly.
- 14.13 In relation to Other Assets the RE is entitled to a monthly investment management fee of up to 5% of the higher of the total principal sum invested in those Assets, or the Market Value of those Assets, calculated daily and paid monthly.

Deferral and waiver of fees and expenses

- 14.14 The RE in its discretion may from time to time elect to receive less than the fees or expenses specified in this Constitution or may defer payment for any period, in respect of all or any Assets or Investment Options. The RE or the Investment Manager may pay a Member or Members (or their nominees) invested in a particular Investment Option, from its own resources, any amount which it in its discretion so determines by way of offset or rebate of fees or expenses. For the avoidance of doubt, the RE may adopt any order or prioritisation for the payment or reimbursement of expenses under clause 14.2 or 14.3 as it determines. If payment is deferred, the relevant fee accrues daily until paid.

15 Retirement, Removal and Replacement of RE Retirement

- 15.1 Subject to clause 15.6, if the RE seeks to be discharged from its obligations under this Constitution, it may retire from office on giving not less than 6 months' notice in writing (or such shorter notice as the RE may approve) to the Members of its intention to do so.

- 15.2 If the RE retires or is removed, its successors as RE must, unless otherwise approved by the retiring RE, change the name of the Scheme to a name that does not imply an association with the retiring RE or its business.

Changing the RE

- 15.3 The RE may retire as RE as permitted by the Law.
15.4 The RE must retire when required by the Law.

Removal

- 15.5 The RE covenants that it will immediately retire from office if requested by a Special Resolution to do so in any of the following circumstances:
- a. the material breach of or a failure to perform on the part of the RE of any material covenant, condition or obligation binding on it under or pursuant to this Constitution and (where the breach or failure is capable of remedy) the failure on the part of the RE to remedy the breach or failure within a period of 14 days after being given notice by a Special Resolution specifying the breach or failure and requiring the remedy; or
 - b. an Insolvency Event occurs in relation to the RE.

Appointment of New RE

- 15.6 On the retirement of the RE pursuant to clause 15.1 or 15.4, the RE must nominate and appoint in its place a reputable responsible entity nominated by the RE and approved by the Members provided that:
- a. in the case of voluntary retirement pursuant to clause 15.1, if the RE has not nominated a new responsible entity by the due date of retirement, the RE may nominate a reputable responsible entity as new responsible entity but if the RE cannot find such a new responsible entity to accept office, the RE may not retire prior to the expiry of 12 months; and
 - b. in the case of compulsory retirement pursuant to clause 15.4, if the RE does not retire and execute a deed appointing a new responsible entity within 14 days of being requested to do so by the new responsible entity, the Members may by deed remove the RE from office and appoint a reputable new responsible entity approved by the Members as new responsible entity in accordance with this Constitution.

Vesting of Fund in New Responsible Entity

- 15.7 The RE must on retirement or removal do all such acts and things and execute all such documents as may be required to vest the Assets in such new responsible entity and shall deliver to such new responsible entity the accounts, books, documents, records and other property relating to the Assets.

Covenants by New Responsible Entity

- 15.8 Every new responsible entity appointed on the retirement or removal of any former RE must, subject to the Law:
- a. undertake to be bound by all the covenants on the part of the RE under this Constitution from the date of the new responsible entity's appointment and from such date the new responsible entity shall and may after that date exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the RE under this Constitution as fully as though such new responsible entity had been originally named as a party to this Constitution; and
 - b. agree to indemnify the retiring RE against all claims and liability in respect of which the retiring RE would have been entitled to be indemnified out of the Assets had the retiring RE not retired provided that the new responsible entity shall not in any event be liable to the retiring RE to any greater extent than the Assets.
- 15.9 On appointment of the new responsible entity, the retiring RE will be absolved and released from all further obligations under this Constitution (save and except those arising from any antecedent breach or neglect of duty by the retiring RE).

Discharge of Retiring RE

- 15.10 Subject to the Law, the retiring RE will be entitled to settle with the new responsible entity the amount of any sum payable by either party to the other under the provisions of this Constitution and to give or accept from the new responsible entity a discharge which will be conclusive and binding on the new responsible entity and in particular even though a new responsible entity is appointed in its place, the retiring RE may make such arrangements as it thinks fit for its discharge from any existing liability and any liability which might arise after the RE retires under the provisions of this Constitution and in accordance with such arrangements any such discharge shall be conclusive and binding except in the case of fraud or breach of duty imposed by statute or rule of law.

16 Indemnity and Liability

- 16.1 In addition to any indemnity under any Law, the RE has a right of indemnity out of the Assets on a full indemnity basis, for any liability incurred by it in:
- a. properly performing its duties in relation to the Scheme; or
 - b. exercising any of its powers in the proper performance of its duties in relation to the Scheme, unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.

RE's Liability Limited

- 16.2 While the Scheme is a Registered Scheme, the RE is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Scheme except to the extent that the Law imposes such liability.
- 16.3 While the Scheme is not a Registered Scheme, if the RE acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Scheme.
- 16.4 Subject to the Law, the liability of the RE to any person other than a Member in respect of the Scheme including any contracts entered into as trustee of the Scheme or in relation to any Assets is limited to the RE's ability to be indemnified from the Assets.

Complying with law

- 16.5 The RE will not incur any liability to anyone in respect of any failure to perform or do any act or thing by reason of complying with any law of any jurisdiction or any decree, order or judgment of any court.

RE may rely

- 16.6 The RE may take and may act on:
- a. the opinion or advice of counsel or solicitors, whether or not instructed by the RE, in relation to applicable law or the interpretation of this constitution or any other document or generally in connection with the Scheme;
 - b. advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the RE who are believed by the RE in good faith to be expert in relation to the matters on which they are consulted;
 - c. a document which the RE believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Scheme; and
 - d. any other document provided to the RE in connection with the Scheme on which it is reasonable for the RE to rely, and the RE will not be liable for anything done or omitted by it in good faith in reliance on any opinion, advice, statement, information or document.
- 16.7 The RE may in connection with the Scheme appoint and engage any Approved Valuers, solicitors, barristers, accountants, surveyors, contractors, qualified advisers and other persons necessary or desirable for such purpose who the RE believes in good faith to be expert in relation to the matters on which they are consulted. The RE will not be liable for anything done or suffered by it in good faith in reliance on the opinion or advice of such persons.

Compliance Committee

- 16.8 If any member of a Compliance Committee or any other committee established by the RE in connection with the Scheme incurs a liability in that capacity in good faith, the committee member is entitled to be indemnified out of the Assets to the extent permitted by the Law.

Generally

- 16.9 Each Member accepts any loss whatsoever which may arise from a default of an Asset except where such loss results directly from the negligence, default or dishonesty of the RE or the Investment Manager.
- 16.10 The RE is not liable to account to any Member for any payments made by the RE in good faith to any duly authorised authority of the Commonwealth of Australia or any State or Territory of Australia or Taxes or other statutory charges.

17 Transfer, transmission and joint holders

Transfer of Interest

- 17.1 A Member's interest in an Investment Option may be transferred subject to their terms and this clause 17.

Form of transfer

- 17.2 Transfers must be:
- a. in a form approved by the RE;

- b. accompanied by any evidence the RE reasonably requires to show the right of the transferor to make the transfer; and
- c. if the RE requires, be presented for Registration duly stamped.

RE may refuse

- 17.3 The RE may refuse to record any transfer of a Member's interest in an Investment Option in the Register without giving any reason for the refusal.

When transfer is effective

- 17.4 A transfer is not effective until Registered.

Joint tenancy

- 17.5 Persons Registered jointly as holders of an interest in an Investment Option hold as joint tenants and not as tenants in common of the interest unless the RE otherwise agrees.

Death or legal disability of Member

- 17.6 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to the interest in an Investment Option Registered in the Member's name.
- 17.7 A person who becomes entitled to an interest in an Investment Option because of the death, bankruptcy, insanity or other disability of a Member is entitled to receive and may give a discharge for all money payable in respect of the interest in an Investment Option, but, subject to the Law, is not entitled to receive notices of or to attend or vote at any meetings of Members until that person is Registered as the holder of the interest in an Investment Option.

18 Members' Rights to Withdraw from the Scheme

Members' Right to Withdrawal

- 18.1 Members have no rights to withdraw from the Scheme, wholly or partly, otherwise than in accordance with this Constitution.
- 18.2 A Member who wishes to make a request to withdraw some or all of the Member's funds from the Scheme may do so in any manner or form approved by the RE from time to time and, while the Scheme is Liquid, the RE must give effect to that request within the time and in the manner set out in this clause 18.
- 18.3 A Member may not withdraw a withdrawal request unless the RE agrees.

While Scheme is Liquid

- 18.4 Clauses 18.5 to 18.9 apply only while the Scheme is Liquid.
- 18.5 A Member has the following withdrawal rights:
- a. a Member has the right to withdraw from the Classic Notice Account by giving written notice to the RE. Subject to any existing rights of a Member, the RE will satisfy a withdrawal notice within 12 months after it receives the notice or at such earlier time as the RE may determine is reasonably practicable having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members. Subject to any existing rights of the Member, the RE will for each withdrawal notice received, determine whether an earlier time is reasonably practical and having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members use every endeavour to ensure that time is 2 Business Days after it receives the notice;
 - b. a Member has the right to withdraw from the 90 Day Notice Account by giving written notice to the RE. Subject to any existing rights of a Member, the RE will satisfy a withdrawal notice within 12 months after it receives the notice or at such earlier time as the RE may determine is reasonably practicable having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members. Subject to any existing rights of the Member, the RE will for each withdrawal notice received determine whether an earlier time is reasonably practical and having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members use every endeavour to ensure that time is 90 days after it receives the notice;
 - c. a Member has the right to withdraw from the 6 Month Notice Account by giving written notice to the RE. Subject to any existing rights of a Member, the RE will satisfy a withdrawal notice within 12 months after it receives the notice or at such earlier time as the RE may determine is reasonably practicable having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members. Subject to any existing rights of the Member, the RE will for each withdrawal notice received determine whether an earlier time is reasonably practical and having regard to its ability to realise for value any of the relevant Assets and to the best interests of Members use every endeavour to ensure that time is 180 days after it receives the notice;

- d. subject to clauses 18.7 and 18.8, a Member has the right to withdraw from the 12 Month Term Account only:
 - (i) on the expiry of the minimum investment period of 12 months after the Application Moneys have been accepted for the Scheme and on the expiry of every subsequent 12 month anniversary provided the Member gives the withdrawal request to the RE within the requisite notice period as determined by the RE prior to the relevant expiry date; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 18.8 or 18.9;
 - e. subject to clauses 18.7 and 18.8, a Member has the right to withdraw from the 2 Year Account only:
 - (i) on the expiry of the minimum investment period of 2 years after the Application Moneys have been accepted for the Scheme and on the expiry of every subsequent 2 year anniversary provided the Member gives the withdrawal request to the RE within the requisite notice period as determined by the RE prior to the relevant expiry date; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 18.8 or 18.9;
 - f. subject to clauses 18.7 and 18.8, a Member has the right to withdraw from the 4 Year Account only:
 - (i) on the expiry of the minimum investment period of 4 years after the Application Moneys have been accepted for the Scheme and on the expiry of every subsequent 2 year anniversary provided the Member gives the withdrawal request to the RE within the requisite notice period as determined by the RE prior to the relevant expiry date; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 18.8 or 18.9;
 - g. subject to clauses 18.7 and 18.8, a Member has the right to withdraw from an Investment Option that has a minimum investment period, notice period or Maturity Date under clause 3.3(g) or 3.4 only:
 - (i) on the expiry of the minimum investment period notice period or Maturity Date after the Application Moneys have been accepted for the Scheme and on the expiry of every subsequent investment period anniversary provided the Member gives the withdrawal request to the RE within the requisite notice period for the Investment Option prior to the relevant expiry date; or
 - (ii) at the discretion of the RE in the circumstances set out in clause 18.8 or 18.9.
- 18.6 A Member has no right to withdraw from a Non-Pooled Option except at the discretion of the RE in the circumstances set out in clause 18.8 or as otherwise set out in the relevant SPDS. Following expiration of the relevant Maturity Date and on receipt in cleared funds by the RE of the proceeds of disposal of any Selected Asset of a Non-Pooled Option, the RE must withdraw the interest of each Member that has an interest in the Non-Pooled Option to the extent that Member's interest is referable to the Selected Asset that is disposed of.
- 18.7 The RE may at its absolute discretion offer Members in a Pooled Option who satisfy one or both of the following conditions the opportunity to withdraw some of the Member's funds in the Pooled Option under a periodic withdrawal arrangement on terms determined by the RE from time to time:
- a. the Member's investment in the Pooled Option or Scheme exceeds \$250,000 or such other amount specified in the Product Disclosure Statement from time to time; or
 - b. the Member satisfies any conditions determined by the RE from time to time.
- If the RE decides to permit a periodic withdrawal arrangement for Members invested in a Pooled Option, it must notify the eligible Members of the periodic withdrawal arrangements and any change in the arrangements. An eligible Member who wishes to make a request to withdraw some of the Member's funds invested in the Pooled Option under the periodic withdrawal arrangement may do so in any manner or form approved by the RE from time to time. The RE is not obliged to satisfy any such request. For the avoidance of any doubt, no periodic withdrawal will be given effect to by the RE at any time when the Scheme is not Liquid.
- 18.8
- a. The RE may in its absolute discretion consider a withdrawal request from a Member in respect of the Member's interest in an Investment Option prior to the date the RE must satisfy the withdrawal request where the withdrawal occurs or is to occur while the Scheme is Liquid. The RE is not obliged to satisfy any such request.
 - b. Where a Member makes a request under clause 18.8(a) and instead of satisfying the request the RE in its absolute discretion determines to transfer that part of the Member's interest requested to be withdrawn to another Member for an amount equal to the amount of funds requested to be withdrawn, the first Member appoints the RE and any person nominated by the RE as the first Member's attorney and agent to do all things necessary to effect the transfer of the Member's interest for the purposes of facilitating the transfer.
 - c. The RE will charge a withdrawal fee in the circumstances in clause 18.8(a) or (b) in respect of a withdrawal request of an interest in an Investment Option of up to 3.50% of the funds being withdrawn or transfer proceeds with a minimum withdrawal fee of \$500, or such other amount as the Member consents to in writing. The RE may in its complete discretion agree to waive the withdrawal fee in whole or in part.

- 18.9 The RE may also compulsorily withdraw all or part of any interest which the Member has in any Investment Option to cover the amounts which the RE is entitled to be indemnified under clause 3.15 or under the Tax Act, or in any other circumstances that the RE determines. If the RE makes such a determination the RE will be taken to have received a withdrawal request from the Member for the purposes of clause 18.8 and that clause will apply with the necessary changes.

When Scheme is not Liquid

- 18.10 Clauses 18.11 to 18.14 apply while the Scheme is not Liquid.
- 18.11 While the Scheme is not Liquid, a Member may withdraw from the Scheme in accordance with the terms of any current withdrawal offer made by the RE in accordance with the provisions of the Law regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Scheme.
- 18.12 The RE is not at any time obliged to make a withdrawal offer.
- 18.13 A withdrawal offer made by the RE will be communicated to the Members or the relevant class of Members by such notice or other means as the RE reasonably considers appropriate and effective. Without limitation, the RE may use any one or more of the following modes – letter, email or publication on the RE’s or the Scheme’s website or any other manner for giving notices to Members in accordance with the Constitution.
- 18.14. If the RE receives a withdrawal request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time it makes the withdrawal offer.

Whether or not the Scheme is Liquid

- 18.15 Clauses 18.16 to 18.25 apply whether or not the Scheme is Liquid.
- 18.16 The RE may withhold or suspend any right of Members to withdraw or defer its obligation to pay an amount in respect of a withdrawal under clause 18.19, in whole or in part, from the Scheme or from any one or more of the Investment Options, while and for as long as the RE is reasonably of the view that it is not in the best interests of Members, for it to process withdrawals or make the payment (as applicable) due to one or more circumstances outside its control which could not have been reasonably foreseen at the relevant time, such as restricted, suspended or permanent cessation of trading or extreme price fluctuation or uncertainty in the market for an Asset or it is necessary to do so in order for the RE to comply with its obligations under the Law, including its obligation to treat Members holding interests of the same class equally, and Members who hold interests of different classes fairly.
- 18.17. If compliance with a withdrawal request or acceptance of a withdrawal offer would result in a Member having less than the current Minimum Investment amount, the RE may treat the withdrawal request or acceptance as relating to the entire interest of the Member in the Scheme, and may charge a withdrawal fee in respect of a withdrawal request or withdrawal offer of an interest in an Investment Option of up to 3.50% of the funds being withdrawn with a minimum fee of \$500. The RE may in its complete discretion agree to waive the withdrawal fee in whole or in part.

Pooled Options – Cash management and shortfalls

- 18.18 If at any time during a calendar month notices of withdrawal or acceptances of withdrawal offers in respect of a particular Pooled Option (“Withdrawals”) have been received by the RE which Withdrawals, in the aggregate, would exceed the cash available to the RE for withdrawals from that Pooled Option such that an insufficient amount of cash is or would be available to satisfy all Withdrawals, then from that time onwards the RE will satisfy the Withdrawals proportionately in accordance with the following formula:

$$\text{Total cash available to satisfy Withdrawals} \times \frac{\text{Total value of the Members' Withdrawal}}{\text{Total value of the Withdrawals}}$$

A Member who receives a proportionate withdrawal according to the above formula will have the outstanding interest in the Pooled Option redeemed in the month(s) after, subject to cash constraints and again subject to the above formula if relevant. Withdrawals in respect of the Pooled Option from any one month will be met completely prior to satisfaction of Withdrawals received in respect of the Pooled Option in subsequent months, gaining priority as a class according to the time the RE receives the Withdrawal, unless the Member has withdrawn the withdrawal request with the agreement of the RE under clause 18.3.

Exit Price

18.19 The amount payable to a Member on withdrawal of all or part of a Member's interest in an Investment Option, if such withdrawal is permitted in accordance with the terms of this clause 18, will be an amount equal to:

- a. the Member's Investor Account for the Investment Option at the time of withdrawal; or
- b. where the withdrawal is not of all of the interest in the Investment Option, an amount equal to that part of the Investor Account that is withdrawn,

less any withdrawal fee or other amount (including expenses) deducted by the RE in accordance with this Constitution and in compliance with the Law. The payment must be made within 21 days of the date on which the RE determines to withdraw the Member's interest, or such longer period as allowed by clause 18.16.

Investor Account

18.20 The RE must establish an Investor Account in respect of each Member for each Investment Option that they have an interest in. The Investor Account for each Member must record in respect of the relevant Investment Option:

- a. the total Application Money of the Member invested in the Investment Option;
- b. any amounts withdrawn from the Investment Option in respect of the Member;
- c. any fees, expenses or liabilities, Taxes or FATCA Withholding that the RE determines are properly referable or to be allocated to the Investment Option or Member to the extent that those amounts will not operate to reduce the Distributable Income or Selected Asset Net Income for the Investment Option; and
- d. if it is a Pooled Option:
 - (i) appropriate allocation of any Shortfalls allocated to the Investment Option or Member under clause 18.21 and any provisions for amounts included under paragraph (c); or
 - (ii) appropriate allocation of any Net Gains allocated to the Investment Option or Member under clause 18.22;
 - (iii) Members' entitlements to Interim Distributions at the time of their declaration in accordance with clause 19, until those entitlements are paid and satisfied; and
 - (iv) Members' entitlements to Final Distributions, within 15 Business Days of the end of the Financial Year; and
- e. if it is a Non-Pooled Option, the appropriate allocation of any:
 - (i) amounts received by the RE in respect of any Selected Asset that the Member has an interest in and has had its Maturity Date expire, to the extent that those amounts exceed the total Application Money that was used to invest in the Selected Asset and will not be included in the Selected Asset Net Income for the Investment Option;
 - (ii) actual losses of Application Money invested by the Member in the Investment Option in each Selected Asset invested in under the relevant SPDS to the extent that those amounts will not reduce the Selected Asset Net Income for the Investment Option; and
 - (iii) amounts set aside by the RE to meet actual or anticipated expenses and liabilities of the Investment Option including in relation to Selected Asset invested in under the relevant SPDS to the extent that those amounts will not reduce the Selected Asset Net Income for the Investment Option.

18.21 The RE will operate a provisioning policy in respect of each Pooled Option to address potential and actual losses of money and other consideration invested in the Pooled Option's Assets ("**Shortfalls**"). The objective of each policy will be to effect an appropriately equitable distribution of any amount of a Shortfall among all Members invested in the Pooled Option. To the extent a Shortfall has not already reduced or will reduce the Distributable Income of the Pooled Option under clause 19.8 or 19.9 the amount may be allocated by the RE in full or in part to reduce the Investor Account of each Member that has an interest in the Pooled Option in accordance with clause 18.20(d)(i).

18.22 The RE will operate a net gains policy in respect of each Pooled Option to effect an appropriately equitable distribution of any amounts of net and unrealised gains ("**Net Gains**") of any Other Assets of the Pooled Option among all Members that hold an interest in the Pooled Option. To the extent a Net Gain has not already been included or will be included in the Distributable Income of the Pooled Option under clause 19.8 or 19.9, it may be allocated by the RE in full or in part to increase the Investor Account for each Member of the Pooled Option in accordance with clause 18.20(d)(ii).

18.23 To the extent that the RE determines to allocate a Shortfall of a Pooled Option under clause 18.21 or a Net Gain of a Pooled Option under clause 18.22 they must be appropriately allocated to the Investor Accounts of all Members with interests in the Pooled Option (in proportion to the aggregate of all Members' Investor Accounts in the Pooled Option). The allocation is at the discretion of the RE, but cannot result in the Member's Investor Account in the Pooled Option being less than zero.

- 18.24 For the avoidance of doubt, how an Investor Account is maintained, in respect of the crediting, and timing of the crediting, of Interim Distributions and Final Distributions is not determinative of when the relevant entitlement to Distributable Income arises. The Investor Account is an account that is maintained by the RE to record a Member's interest in respect of each Investment Option they are invested in, including to facilitate payment of the entitlements to Distributable Income of each Investment Option to each Member.
- 18.25 The Investor Account maintained by the RE for a Member in respect of a Pooled Option is personal to and for the benefit of the Member, and any rights to Distributable Income that arise for a Member in respect of an Investor Account remain with the Member despite any withdrawal of the interest in respect of which the Investor Account was maintained.

19 Income and distributions to Members

Income

- 19.1 The RE must determine, for each Financial Year, the Distributable Income of:
- the Scheme; and
 - each Pooled Option.
- 19.2 Unless the RE determines otherwise prior to the end of the relevant Financial Year, the Distributable Income of the Scheme is the aggregate of the Distributable Income for each of the Pooled Options within the Scheme during the Financial Year.
- 19.3 The Distributable Income for each Pooled Option will be the amount determined by the RE as to be the 'net income of the trust estate' of the Pooled Option for the Financial Year for the purposes of section 95 of the Tax Act, determined as if the Pooled Option is a separate trust but disregarding:
- any amounts the RE determines are included in the "net income of the trust estate" for the Financial Year that represent either or both franking credits or foreign income tax offsets; and
 - any reduction in the net capital gain for the Financial Year which the RE determines arises as a result of the discount capital gains concession.
- 19.4 The preparation of the accounts of the Scheme in accordance with any current or past Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 19.2 or Selected Asset Net Income under clause 19.6.

Classification of amounts

- 19.5 Without limiting clause 19.2 or 19.6, the RE has the power to determine:
- the classification of any item as being Distributable Income, Selected Asset Net Income or otherwise;
 - the extent to which reserves or provisions need to be made in the determination of the Distributable Income or Selected Asset Net Income; and
 - whether any item should be recognised as it is received or as it accrues (but not yet received).

Non-Pooled Options

- 19.6 Subject to the terms of the relevant SPDS, for each Selected Asset of each Non-Pooled Option the RE must determine the following amount for each Financial Year ("**Selected Asset Net Income**"):
- the income that arises in respect of the Selected Asset; less
 - any expenses or liabilities that the RE:
 - incurs in connection with the Selected Asset (including any expenses or liabilities incurred in connection with the recovery of any amount in relation to the Selected Asset); and
 - determines are properly attributable to the Selected Asset.
- 19.7 Subject to the terms of the relevant SPDS, each Member that has an interest in each Selected Asset invested in under the relevant SPDS is presently entitled to the Selected Asset Net Income as and when it arises for each Financial Year in the proportion to which their Investor Account allocated to the Selected Asset bears to the total value of the particular Selected Asset. The RE must pay to the Member who is so entitled to the Selected Asset Net Income of each of Selected Asset of the Non-Pooled Option their entitlement to the Selected Asset Net Income. The amount must be paid to the Member as soon as practicable after receipt in cleared funds by the RE of the funds referable to the Selected Asset Net Income, subject to any provision made for expenses or liabilities that the RE determines are to be deducted from Selected Asset Net Income in accordance with clause 19.6(b) above. The RE will prepare the SPDSs and administer each Non-Pooled Option such that Members that are invested in the Non-Pooled Option are presently entitled to all of the Selected Asset Net Income of each Selected Asset of the Non-Pooled Option in accordance with clause 19.17(c).

Interim Distributions

- 19.8 For each Pooled Option, the RE may declare an Interim Distribution for each Member that has invested in the Pooled Option at its discretion, taking into account the rights, obligations and restrictions attaching to the Pooled Option. Multiple Interim Distributions may be declared within the Financial Year at a frequency determined by the RE.

Final Distributions

- 19.9 For each Pooled Option, the RE must calculate a Final Distribution Amount. The Final Distribution Amount equals the greater of zero and:
- the Distributable Income of the Pooled Option for the Financial Year determined in accordance with clause 19.2; less
 - the aggregate of all Interim Distributions declared for the Pooled Option.
- 19.10 For each Pooled Option, the Members invested in that Pooled Option at any time during the Financial Year which the Final Distribution relates will, at 11:59pm on the last day of a Financial Year, become entitled to a distribution of the Distributable Income of the Pooled Option.
- 19.11 All Interim Distributions and Final Distributions must be paid within 3 months of crediting under clause 18 or this clause 19.

Proportionate entitlement

- 19.12 For each Interim Distribution and Final Distribution that arises for a Pooled Option, each Member or former Member invested in the Pooled Option will be entitled to a proportion of the Interim Distribution or Final Distribution as determined by the RE taking into account the rights, obligations and restrictions attaching to the Pooled Option. The RE must establish and maintain a distribution policy in respect of each Pooled Option that identifies the methodology used to determine Interim Distribution and Final Distribution entitlements for each Member that has invested in the Pooled Option.

Entitlement to income

- 19.13 A Member who has had an interest in a Pooled Option becomes entitled to an Interim Distribution on the day it is declared and to the Final Distribution at 11.59pm on the final day of the Financial Year.
- 19.14 This entitlement to a distribution of the Distributable Income of the Scheme will be treated by the RE as a liability of the Scheme from the time at which the Member becomes entitled to the distribution and must be satisfied by the RE in accordance with clause 19.16 or, where the entitlement arises on withdrawal, in accordance with the provisions in the Constitution that relate to the payment of withdrawal entitlements to Members.
- 19.15 If the share of Distributable Income for a Member determined under clause 19.13 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated under clause 19.13 and the fraction of the cent becomes an Asset of the Scheme.
- 19.16 The RE must pay to each Member who becomes entitled to a distribution under clause 19.13, the amount of the distribution, either in cash, property or by way of reinvestment under clauses 19.23 to 19.25.

Present entitlement

- 19.17 A person who at any time during the Financial Year is or has been a Member, is, at the end of the last day of the Financial Year, presently entitled to:
- the Distributable Income of the Scheme for the Financial Year, in the proportion that the entitlements of the Member under clause 19.13 to the Distributable Income of the Scheme of the Financial Year that arise during the Financial Year for all Pooled Options that the Member had an interest in during the Financial Year bear to the entitlements of all Members under clause 19.13 to the Distributable Income of the Scheme that arose during the Financial Year for all Pooled Options that the Members had an interest in during the Financial Year;
 - the Distributable Income of each Pooled Option for the Financial Year, in the proportion that the entitlements of the Member under clause 19.13 that arose during the Financial Year in respect of the Pooled Option bear to the entitlements of all Members under clause 19.13 (as appropriate) that arose during the Financial Year in respect of the Pooled Option; and
 - all of the Selected Asset Net Income of each Selected Asset of a Non-Pooled Option for the Financial Year, in the proportion that the entitlements of the Member under clause 19.7 that arose during the Financial Year in respect of the Selected Assets of the Non-Pooled Option bear to the entitlements of all Members under clause 19.7 that arose during the Financial Year in respect of the Selected Assets of the Non-Pooled Option.

This present entitlement is satisfied through the satisfaction of the entitlements of Members under clause 19.7 and 19.13 in respect of which the present entitlement arises.

- 19.18 If the total entitlements of a Member to Distributable Income or Selected Asset Net Income under clause 19.7 or 19.13 exceed the share of the Distributable Income or Selected Asset Net Income to which the Member is presently entitled under clause 19.7, the excess amount will be a return of capital.
- 19.19 Despite any other provision of this Constitution, a person cannot be defeated of any share of the Distributable Income or Selected Asset Net Income to which the person is entitled under clause 19.17.

Separate accounts

- 19.20 Subject to clauses 19.21 and 19.22, the RE may:
- a. keep separate accounts of different categories or sources of Distributable Income, Selected Asset Net Income, deductions, losses or credits for tax purposes in accordance with the requirements of the Tax Act; and
 - b. allocate items of Distributable Income, Selected Asset Net Income, deductions or credits from a particular category or source (or both) for tax purposes to particular Members.
- 19.21 Where the RE allocates items of Distributable Income, Selected Asset Net Income, deductions or credits from a particular category or source for tax purposes to a Member other than pro rata with all other Members, the RE must:
- a. notify the Member; and
 - b. record, in the accounts and records of the Scheme, the allocation of the items of Distributable Income, Selected Asset Net Income, deduction or credit from the particular category or source to the Member.
- 19.22 Without limiting the generality of clauses 19.20 and 19.21, where there is more than one Investment Option:
- a. the RE must classify into different categories all of the items included in determining the Distributable Income of the Scheme and the Selected Asset Net Income for each Selected Asset;
 - b. the RE must keep accounts separate for each category of items included in determining the Distributable Income of the Scheme for each Pooled Option and in determining the Selected Asset Net Income for each Selected Asset;
 - c. through their entitlements to Distributable Income and Selected Asset Net Income under clause 19.7 or 19.13, each Member who has an interest in a Pooled Option or a Non-Pooled Option that invests in the relevant Selected Asset will be allocated each of the particular categories or sources of the items included respectively in the Distributable Income of the Pooled Option or in the Selected Asset Net Income of the Selected Asset pro rata based on respectively the proportion of the Distributable Income of the Investment Option or the Selected Asset Net Income which the Member is entitled to; and
 - d. the RE must advise each Member of the extent to which their entitlements to Distributable Income or Selected Asset Net Income under clause 19.7 and 19.13 consist of an amount from a particular category or source.

Reinvestment

- 19.23 The RE may decide whether to permit or require the Members to reinvest some or all of any distribution in further interests in the Investment Option in respect of which the distribution arose, or any other Investment Option in the Scheme.
- 19.24 If the RE decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- 19.25 If reinvestment applies, the RE is treated as having received and accepted an application to invest in the relevant Investment Option and the relevant Application Money at the beginning of the day after the day on which the entitlement to the distribution arises.

Tax

- 19.26 The RE may take such action as it considers necessary to ensure to the extent possible that any Australian income tax liability in respect of the Distributable Income of the Scheme or the Selected Asset Net Income of each Selected Asset of a Financial Year is borne by the Members in proportions that correspond with the shares of Distributable Income or Selected Asset Net Income to which they are presently entitled, and that the RE incurs no liability to pay tax under the Tax Act as trustee of the Scheme (other than tax deducted for or on account of a Member).

Liability

- 19.27 The RE does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 19, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

20 Amendment of Constitution

Amending of Constitution

- 20.1 This Constitution may be modified or repealed or replaced with a new Constitution:
- by Special Resolution of the Members; or
 - by the RE if the RE reasonably considers the change will not adversely affect Members' rights.
- 20.2 In the event the RE wishes to change the Constitution the RE must:
- lodge with ASIC a copy of the modification or the new Constitution; and
 - lodge with ASIC a consolidated copy of the Scheme's Constitution if ASIC directs it to do so, provided however that the modification, or repeal and replacement cannot take effect until the copy has been lodged.

Notices to Members

- 20.3 Subject to the Law, a notice or other communication required to be given to a Member in connection with the Scheme must be given in writing (including by email or other electronic means) or in any other manner as the RE determines, including a notification that it is available by electronic means. It must be delivered or sent to the Member at their physical or electronic address last advised to the RE for delivery of notices.
- 20.4 A cheque payable to a Member may be posted to their physical address or handed to them or a person authorised in writing by them.
- 20.5 In the case of joint Members, their physical or electronic address means the physical or electronic address of the Member first named in the Register.
- 20.6 Subject to the Law, a notice or other communication sent to a Member:
- by post is taken to be received on the Business Day after it is posted; and
 - by email or other electronic means is taken to be received one hour after it is sent if the sender has not received a notice of non-delivery.
- 20.7 A cheque is taken to be received on the Business Day after it is posted.
- 20.8 Proof of actual receipt is not required. The RE may determine the time at which other forms of communication will be taken to be received.

Notices to RE

- 20.9 A notice required under this Constitution to be given to the RE must be given in writing, or in such other manner as the RE determines.
- 20.10 A notice to the RE is effective only at the time of receipt in legible form.
- 20.11 The notice must bear the actual or electronic signature of the Member or their duly authorised officer or representative, unless the RE dispenses with this requirement.

Meetings of Members

- 20.12 The RE may at any time convene a meeting of Members and must do so if required by the Law.
- 20.13 Subject to this clause 20 and the Law, the RE may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.
- 20.14 The quorum for a meeting of Members is 2 Members present in person or by proxy.
- 20.15 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- if convened on the requisition of Members - dissolved; or
 - otherwise – adjourned to such place and time as the RE decides.
- At any adjourned meeting, those Members present in person or by proxy constitute a quorum.
- 20.16 Subject to the Law the RE may appoint a person to chair a meeting of Members (**RE Chairman**).
- 20.17 The decision of the RE Chairman on any matter relating to the conduct of the meeting is final.
- 20.18 The RE Chairman has power to adjourn a meeting for any reason to such place and time as the Chairman thinks fit.
- 20.19 A Resolution binds all Members, whether or not they were present at the meeting.
- 20.20 No objection may be made to any vote cast unless the objection is made at the meeting.

- 20.21 The RE may determine whether a Resolution (including a Special Resolution and an Extraordinary Resolution) is voted on:
- a. at a meeting of persons entitled to vote on the resolution convened and conducted in accordance with this Constitution and the Law with such modifications as the RE determines the circumstances require; or
 - b. by means of a ballot (whether postal, electronic or a combination of both) conducted in accordance with the following procedure:
 - (i) a notice of ballot and ballot paper must be sent (either in hard copy form or by electronic means) to all persons entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the ballot, or such lesser period as the RE determine the circumstances require;
 - (ii) the non-receipt of a notice of ballot or ballot paper by, or the accidental omission to give a notice of ballot or ballot paper to, a person entitled to receive them does not invalidate the ballot or any resolution passed under the ballot;
 - (iii) the notice of ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the RE considers appropriate;
 - (iv) each ballot paper must specify the name of the person entitled to vote;
 - (v) a ballot is only valid if the ballot paper is duly completed and:
 - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
 - (B) if the person entitled to vote is a corporation, executed under seal or as permitted by the Law or under the hand of a duly authorised officer or duly authorised attorney;
 - (vi) for the avoidance of doubt, the ballot paper may be signed or executed by an individual or corporation in hard copy or by electronic means for the purposes of clause 20.21(b)(v);
 - (vii) a ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power or authority certified as a true copy by statutory declaration is or are received by the RE before close of business on the date specified in the notice of ballot at any place as is specified for that purpose in the notice of ballot; and
 - (viii) a person may revoke a ballot vote by notice in writing which to be effective must be received by the RE before the close of business on the date for closing of the ballot.

Use of technology at meetings of Members

- 20.22 Subject to the Law, the RE may hold a meeting of Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate (which may include, but is not limited to, electronic participation facilities or technology with or without Members being able to attend a physical venue or linking separate venues together by technology); and participation in such a meeting will constitute presence as if in person at such a meeting.
- 20.23 If, before or during a meeting of Members, any technical difficulty occurs such that the Members as a whole do not have a reasonable opportunity to participate, the RE Chairman may:
- (a) adjourn the meeting until the difficulty is remedied; or
 - (b) where a quorum remains present (either at the place at which the RE Chairman is present or by technology contemplated by clause 20.22) and able to participate, subject to the Law, continue the meeting.

Proxies

- 20.24 A Member may be represented at a meeting by proxy. Proxies are governed by the Law. The RE is not obligated to enquire whether a proxy has been validly given. A proxy expires after 12 months. A proxy is still valid after it is revoked or after the Member who gave it dies or becomes under a legal disability, unless the RE has received written notice of that fact before the meeting at which the proxy is used.

Representatives

- 20.25 A body corporate may be represented at a meeting by a person appointed in the manner provided in the Law. The RE may accept a certificate under the Law as evidence of the person's appointment. The person may exercise on the body corporate's behalf the same powers as the body corporate could if it were a natural person and the body corporate is taken to be present at the meeting in person.

Other attendees

- 20.26 The RE and the Investment Manager may attend and speak at any meeting or invite any other person to attend and speak.

Investment Option meetings

20.27 Subject to the Law, the provisions of this Constitution relating to meetings of Members apply so far as they are capable of application to a meeting of Members who hold interests in an Investment Option.

Instructions in Writing

20.28 All instructions, consents, requests, proposals and notices required by this Constitution to be given by the RE or the Investment Manager to the other of them shall be given in writing and signed by a duly authorised person on behalf of the party giving the same.

Governing Law

20.29 The rights, liabilities and obligations of the RE, the Investment Manager and the Members shall be governed by the law of the State of Victoria and any proceedings to enforce such rights, liabilities or obligations may be taken in the Courts of that State.

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