

ONE MANAGED INVESTMENT FUNDS LIMITED

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Gryphon Capital Income Trust ARSN 623 308 850

*Replacement Constitution*

**Consolidated to 27 February 2018**

This document was prepared by One Managed Investment Funds Limited ACN 117 400 987 of Level 11, 20 Hunter Street, Sydney, New South Wales (Trustee) and is a consolidated version of the constitution of the Gryphon Capital Income Trust as at 27 February 2018. This document consists of the replacement constitution of the Gryphon Capital Income Trust dated 19 December 2017, and incorporates all amendments made to that document up to and including 27 February 2018.

**Date** This Constitution is a deed poll made on the date noted on page 60 of this document.

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**Trustee** One Managed Investment Funds Limited ACN 117 400 987 of Level 11, 20 Hunter Street, Sydney, New South Wales

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## TERMS

### 1. Constitution of the Trust

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#### 1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on—

- (a) all Unitholders (as they are constituted from time-to-time)
- (b) all Optionholders (as they are constituted from time-to-time), and
- (c) the Trustee.

#### 1.2 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Holder.

### 2. Trust

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#### 2.1 *Appointment of Trustee*

The Trustee agrees to act as trustee of the Trust.

#### 2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the Initial Units are issued.

#### 2.3 *Name of the Trust*

The Trust will be known as the Gryphon Capital Income Trust. However, the Trustee may designate another name at any time in its complete discretion.

#### 2.4 *Term of the Trust*

The Trust will end on the earlier of—

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders, and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution, in accordance with the Act or in accordance with the law.

#### 2.5 *No merger*

For the avoidance of any doubt, if the Trustee (in its capacity as trustee of any other trust or trusts) is, or becomes, a Unitholder, or the sole Unitholder, then the estates or interests held by the Trustee in the Assets will not merge and the trust

created under this Constitution will not cease to exist. The Trustee may be the trustee of the Trust and also at the same time a Unitholder, or the sole Unitholder, of the Trust, in a different capacity.

## **2.6 Relationship of agency or partnership excluded**

Any relationship of agency, or of a partnership, between the Trustee in that capacity and any Unitholder is expressly excluded.

## **3. Creation and issue of Units**

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### **3.1 Initial Units**

- (a) The first Units issued by the Trustee will be Initial Units.
- (b) The rights, obligations and restrictions attaching to Initial Units are as set out in this Constitution, except that the following special terms prevail over other provisions of this Constitution:
  - (i) The Application Price of a single Initial Unit will be \$1.00.
  - (ii) Holders of Initial Units will not have an interest in or be entitled to share in any Distributable Amount.
  - (iii) The Withdrawal Price for a Unitholder's Initial Units will be the price paid by the Unitholder to acquire the Initial Units.
  - (iv) Holders of Initial Units are not entitled to receive notices of or attend general meetings of holders of Ordinary Units or other Class. Additionally, Initial Units will have no voting rights.
  - (v) On winding up of the Trust, a holder of Initial Units is only entitled to payment of the price paid by the Unitholder to acquire the Initial Units.

### **3.2 Division of beneficial interest**

The beneficial interest in the Assets as a whole will be divided into Units.

### **3.3 Interest in Assets**

Unless the Terms of Issue of a Class otherwise provide, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the Liabilities, but no Unit confers an interest in a particular part of the Trust or in any particular Asset.

### **3.4 Rights attaching to Units**

Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, Units will be held upon and subject to the provisions contained in this Constitution. To the extent the Terms of Issue relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

### **3.5 Consolidation, division and issue of Units**

- (a) Subject to the Act, the Trustee may, at any time, determine to, consolidate, divide or issue Units and create and issue Units of different Classes.
- (b) The Trustee may make the issue of Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may—
  - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units, or
  - (ii) provide for conversion of Units from one Class to another Class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of each Class.
- (d) To the extent the rights, obligations and restrictions relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

### **3.6 Fractions of Units**

- (a) Fractions of a Unit (calculated to two decimal places) may be issued, by the Trustee but, while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) If any fractions of Units are on issue at a time when the Trust is to be Listed, the Trustee may cancel the fractions with effect from the date of Listing.
- (c) While Units are Officially Quoted, where any calculation or action performed under this Constitution or the terms of a withdrawal offer would result in the issue or redemption of a fraction of a Unit or would otherwise result in fractions of Units being on issue, the number of Units will be rounded down to the nearest whole Unit.
- (d) Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset.

### **3.7 Treatment of fractions**

The provisions of this Constitution relating to Units and Unitholders apply to fractions of Units in the proportion which the fraction bears to the Unit.

### **3.8 Application Price**

- (a) For all Initial Units issued by the Trustee, the Application Price is \$1.00.
- (b) For all Units (apart from the Initial Units) issued prior or pursuant to the first Disclosure Document for the Initial Public Offer, the Application Price is \$2.00.

- (c) At all other times, the Application Price will be determined as follows:
- (i) In the case of a pro rata rights issue, in accordance with clause 3.10.
  - (ii) In the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 3.12.
  - (iii) In the case of reinvestment of distributions, in accordance with clauses 3.13 and 3.14.
  - (iv) In the case of Units issued pursuant to the exercise of an Option, in accordance with clause 4.
  - (v) Subject to clauses 3.8(a) and (b), in all other cases while Units are Officially Quoted the greater of the following amounts calculated immediately before the date on which or as at which the Application Price is to be calculated:
    - A. The Market Price.
    - B. In accordance with the formula in clause 3.8(c)(vi).
  - (vi) Subject to clauses 3.8(a) and (b), while Units are not Officially Quoted, in accordance with the following formula:

$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Units in Issue}}$
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- (d) For the purpose of clause 3.8(c)(vi), “Net Asset Value”, “Transaction Costs” and “Units in Issue” are each that proportion of those variables that the Trustee determines is properly referable to the Class to which the Unit being priced belongs.

### **3.9 Time to calculate Application Price**

The Trustee must calculate the variables in clause 3.8(c)(vi) at the next Relevant Valuation Time after the later of the following to occur:

- (a) The time the Trustee receives the relevant application for Units.
- (b) The time the Trustee receives the relevant Application Money or the property against which Units are to be issued.

### **3.10 Application Price for pro rata rights issues**

Subject to the terms of any applicable ASIC Relief and the Listing Rules (while the Listing Rules apply), the Trustee may offer Units for subscription at a price determined by the Trustee to those persons who were Unitholders on a date determined by the Trustee, whether or not the right or entitlement is renounceable—

- (a) provided that, subject to clause 3.10(b), all Unitholders are offered Units in proportion to the value of the Unitholder’s Units (or, where the offer is made

only to Unitholders who hold Units in a Class, to the value of the Unitholder's Units in that Class) at the relevant date, and

- (b) the Trustee may exclude a Unitholder from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief.

### **3.11 Other jurisdictions**

If the Trust is a Registered Scheme and the Trustee is making an offer of Units to Unitholders which complies with the principles set out in clause 3.10, then the Trustee is not required to offer Units to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

### **3.12 Application Price for placements and security purchase plan while Listed**

While the Units are Officially Quoted, the Trustee may at any time issue Units by way of a placement or under a security purchase plan—

- (a) at the Market Price on the day the Units are offered, or
- (b) at a price and on terms determined by the Trustee, provided the Trustee complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.

### **3.13 Reinvestment while Listed**

- (a) If reinvestment of distributions payable to a Unitholder under clause 16 applies while the Units are Officially Quoted, then subject to the Listing Rules and any applicable ASIC relief, the Application Price for each additional Unit issued or transferred upon reinvestment is the price determined by the Trustee.
- (b) If the Trustee has not determined the Application Price by the date at which Units are to be issued upon reinvestment, the price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the third Trading Day after the Distribution Calculation Date for the relevant Distribution Period.

### **3.14 Reinvestment while not Listed**

- (a) While the Units are not Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions payable to a Unitholder under clause 16 is the price determined by the Trustee.
- (b) If the Trustee has not determined the Application Price by the date at which Units are to be issued upon reinvestment, then the Application Price will be as calculated in accordance with the formula in clause 3.8(c)(vi) on the first Business Day after the end of the Distribution Period to which the distribution relates.

**3.15 Time to calculate Application Price—fixed capital raisings**

The Trustee may calculate the Application Price at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

**3.16 Rounding**

Subject to the Listing Rules, the Application Price may be rounded up or down as the Trustee determines but the amount of the rounding must not be more than one percent of the Application Price. Any excess Application Money which results from rounding becomes an Asset.

**3.17 Units issued against uncleared funds**

- (a) For the purposes of this clause 3, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay as a receipt of Application Money.
- (b) Units issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property, are (at the election of the Trustee) void if the funds are not subsequently cleared, the property does not vest in the Trustee, or the property is not transferred free from encumbrance, within 10 Business Days after the receipt of the relevant application for Units (or such longer period as the Trustee determines).

**3.18 Net Asset Value**

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 11. Nothing in this clause 3 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

**3.19 Satisfaction of Application Money**

The payment of Application Money may be satisfied in such a manner as the Trustee determines, including by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods.

**3.20 Perpetuity Period and restriction on issue and redemption of Units**

The Perpetuity Period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a Perpetuity Period in this clause 3.20 does not require that the Trust terminate on expiration of that period.

## 4. Options

### 4.1 Options

- (a) Subject to clause 4.2, the Trustee may create and issue Options on such terms and to any persons as the Trustee determines. To extent that the rights, obligations and restrictions attaching to the Options relate to matter prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.
- (b) An Option does not confer any interest in or any rights to participate in the Income or capital of the Trust. An Optionholder holds an Option subject to the terms attaching to that Option. Options may be issued with Units or separately. A person becomes an Optionholder when their holding of Options is entered in the Register.
- (c) An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue of the Options may allow the Trustee to buy back the Options.

### 4.2 Terms of Options while the Trust is a Registered Scheme

Subject to the Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Trustee may issue Options as follows:

- (a) At an issue price (which may be zero) determined by the Trustee if permissible under the Act or, if that determination may not be made, at an issue price of zero.
- (b) On the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Trustee—
  - (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue or a placement of Units (as applicable), or under clause 3.8(c)(v), or
  - (ii) while the Units are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with the formula in clause 3.8(c)(vi).

### 4.3 Other jurisdictions

If the Trust is a Registered Scheme and the Trustee is making an offer of Options to Unitholders which complies with the principles set out in clause 3.10, the Trustee is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

### 4.4 Exercise of Options

To exercise an Option, the Optionholder must give notice to the Trustee in accordance with the terms of the Option, together with payment of the exercise

price. The Optionholder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

#### **4.5 Lapse of Options**

An Option lapses, and the liability of the Trustee ceases in respect of the Option, on the earliest of—

- (a) the date stipulated in the terms of issue of the Option
- (b) the termination of the Trust, or
- (c) the winding up of the Trust.

### **5. Application for Units**

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#### **5.1 Form of application**

An application for Units must be in any form the Trustee may for the time being require or approve.

#### **5.2 Application payment**

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 16, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

#### **5.3 Holding Application Money**

All Application Money must be held by the Trustee (or its agent) on trust for the Applicants.

#### **5.4 Interest on Application Money**

Unless the Trustee decides otherwise, interest earned on Application Money will form part of the Assets, and for the avoidance of doubt, any interest earned on Application Money is not available to a particular Applicant nor is it attributable to a particular Applicant.

#### **5.5 Trustee may refuse application**

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application for Units is refused, then—
  - (i) the Trustee must refund to the Applicant any money paid by the relevant Applicant, and



- (ii) unless the Trustee determines otherwise, no interest shall be paid to the Applicant and any interest earned on the Applicant's Application Money may be retained by the Trustee or form part of the Assets at the Trustee's election.

#### **5.6 Investment of the Application Money**

The Application Money may, pending its application in accordance with the terms of this Constitution, be invested by the Trustee in investments authorised by the law relating to the investment of trust funds.

#### **5.7 Minimum application**

The Trustee may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of a Class), and alter those amounts at any time.

#### **5.8 Date Units issued**

- (a) Units are taken to be issued on the date the Trustee records them in the Register having accepted the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units has been paid in accordance with clause 5.2. The date recorded in the Register must be no later than the date the Units were actually issued.
- (b) However, Units issued on a reinvestment pursuant to clause 16 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

#### **5.9 Number of Units issued**

- (a) The number of Units issued to an Applicant is calculated as follows:

$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$
--

- (b) At the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

#### **5.10 Unit certificates**

The Trustee is not required to issue or provide certificates for Unit holdings.

#### **5.11 Unitholder identification requirements**

- (a) Without affecting clause 5.1, the Trustee may require any Applicant to provide to the Trustee evidence of the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 5.8, the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion, if the Applicant fails or refuses to provide the

evidence required by the Trustee under clause 5.11(a), or the evidence provided is not satisfactory to the Trustee.

- (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder)—
- (i) is a different person or entity from the person or entity originally represented to the Trustee, or
  - (ii) there is a defect or omission in the information provided under clause 5.11(a).
- (d) Nothing in this clause 5.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law relating to the control or identification of money laundering or terrorism financing. This clause 5.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

## **6. Withdrawal Price**

### **6.1 Withdrawal price**

- (a) Subject to the Terms of Issue, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{Units in Issue}}$
---

- (b) For the purposes of the calculation in clause 6.1(a):
- (i) The Trustee may (subject to the terms of any ASIC Relief) exercise discretion in determining—
    - A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price, and
    - B. any matter which is an aspect of the method of calculating the Withdrawal Price.
  - (ii) “Net Asset Value”, “Transaction Costs” and “Units in Issue” are each that proportion of those variables that the Trustee determines is properly referable to the Class to which the Unit being priced belongs.

## **6.2 Time to calculate Withdrawal Price**

The Withdrawal Price must be calculated—

- (a) while the Trust is Liquid, at the next Relevant Valuation Time after the withdrawal request is accepted or approved by the Trustee, or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes or at such other time specified by the Trustee in the withdrawal offer.

## **6.3 Rounding**

The Withdrawal Price may be rounded up or down as the Trustee determines but the amount of the rounding must not be more than one percent of the Withdrawal Price. Any excess which results from rounding becomes an Asset.

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## **7. Withdrawal Procedures**

### **7.1 No obligation to redeem**

In no circumstances is the Trustee obliged to—

- (a) redeem Units, or
- (b) pay any part of the Withdrawal Price out of its own funds.

### **7.2 Request for withdrawal**

- (a) Notwithstanding the remainder of this clause 7.2, while the Units are Officially Quoted and without limiting clause 12.3, Unitholders do not have any right to make a withdrawal request for the withdrawal of some or all of their Units and clauses 7.3 to 7.8 do not apply.
- (b) Subject to clause 7.2(a), a Unitholder may make a withdrawal request in any written form approved by the Trustee, and the Trustee may (but is not required to) give effect to that request. If the Trustee gives effect to the request it must do so in the manner set out in this clause 7.
- (c) A Unitholder may not withdraw a withdrawal request unless the Trustee agrees.

### **7.3 When Trust is Liquid**

- (a) Clause 7.3 applies only while the Trust is Liquid.
- (b) The Trustee will use its best endeavours to consider a withdrawal request as soon as reasonably practicable and, in any event, within 30 days of receipt of the withdrawal request.
- (c) If the Trustee does not consider that it is in the best interests of Unitholders taken as a whole to realise sufficient Assets to satisfy a withdrawal request, the period allowed for considering the withdrawal request may be extended by the number of days during which such circumstances apply.

- (d) If the Trustee decides to satisfy a withdrawal request in respect of a Unit it must do so by payment from the Assets of the Withdrawal Price calculated in accordance with clause 6. The payment must be made within 21 days of redemption.

#### **7.4 When Trust is not Liquid**

- (a) Clause 7.4 applies only while the Trust is not Liquid.
- (b) A Unitholder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee regulating offers of that kind. A Unitholder may agree to withdraw from the Trust by way of a standing power of attorney or another authority given in favour of the Trustee or any other person to accept an offer on its behalf.
- (c) If there is no withdrawal offer currently open for acceptance by Unitholders, then a Unitholder has no right to withdraw from the Trust.
- (d) The Trustee may make a withdrawal offer by—
- (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet), or
  - (ii) giving a copy to the Unitholders or Unitholders of a Class.

However, the Trustee is not at any time obliged to make a withdrawal offer.

- (e) The Trustee may cancel a withdrawal offer by—
- (i) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet), or
  - (ii) notice in writing to the Unitholders to whom the withdrawal offer was made.

#### **7.5 Clauses applicable to all withdrawals**

- (a) Subject to the Act (if relevant), the Trustee need not give effect to a withdrawal request in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount as determined by the Trustee from time-to-time unless the withdrawal request relates to the balance of the Unitholder's holding.
- (b) Subject to the Act (if relevant), if compliance with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price which is less than the then current minimum holding amount as determined by the Trustee, the Trustee may treat the withdrawal request as relating to the balance of the Unitholder's holding.
- (c) If a Unitholder holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount as determined by the Trustee,

then the Trustee may redeem that Unitholder's holding without a withdrawal request.

- (d) If the Trustee increases the minimum holding amount, then the Trustee may after giving 30 days' notice to a Unitholder who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount redeem that Unitholder's holding without the need for a withdrawal request.

#### **7.6 Discretionary withdrawal**

If the Trustee is not obliged to give effect to a withdrawal request, it may in any event, redeem some or all of the Units which are the subject of the request.

#### **7.7 Sums owed to Trustee**

The Trustee may deduct from the proceeds of withdrawal or money paid pursuant to a withdrawal offer any money due to it by the Unitholder.

#### **7.8 Transfer of Assets**

The Trustee may, with the prior written consent of the relevant Unitholder, transfer part of the Assets to a Unitholder rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets, together with any cash paid, must be of equal value to the total amount due to the Unitholder pursuant to the withdrawal request, withdrawal offer or distribution (based on a valuation which is reasonably current and which is consistent with ordinary commercial practice for valuing that type of asset). If the Trustee requires, some or all of the costs involved in transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

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### **8. Suspension of redemption and issues**

#### **8.1 Trustee may suspend redemption and issues**

The Trustee may at any time suspend the redemption or issue of Units, in the Trust for up to 28 days, in the following instances:

- (a) It is impracticable for the Trustee (or its agents or delegates), or it (or its agents or delegates) is unable to calculate the Net Asset Value. For example:
  - (i) An inability to value Assets.
  - (ii) Closure of, or trading restrictions or suspensions on, any stock, commodities, futures or securities exchange or over-the-counter market on which any significant portion of the Assets is listed, quoted, traded or dealt.

- (iii) An emergency or other state of affairs, or on declaration of a moratorium in a country where the Trust invests (or the Trust has exposure to through any derivative in which the Trust invests).
- (b) The Trustee receives withdrawal requests of an aggregate value that in its reasonable estimate exceeds five percent (by value) of all Assets.
- (c) There have been, or the Trustee anticipates there will be, withdrawal requests that involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all met immediately, Unitholders who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the existing Unitholders' disadvantage including a material diminution in the value of the Assets.
- (d) The Trustee is unable to realise Assets to satisfy withdrawal requests.
- (e) The Trustee reasonably considers it is in the interests of the Unitholders.
- (f) It is otherwise legally permitted.

Such suspension may be in respect of all or some Class or Units held by a Unitholder.

## **8.2 Applications and withdrawal requests during suspension**

An Application lodged before or during any period when the issue of Units is suspended, or a withdrawal request lodged before or during any period when the withdrawal of Units is suspended, but where the Application or withdrawal request has not been processed, as the case may be, is taken to be lodged on the date after the end of the relevant suspension period.

## **9. Register**

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### **9.1 Trustee must maintain the Register**

The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept as required by the Act or any declaration, exemption or ruling granted under the Act. The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.

### **9.2 Removing information from the Register**

Information relating to a Holder (or any part of it) may be removed from the Register at any time after the first day of the Financial Year occurring seven years after the Financial Year in which the Holder ceased to be the holder of Units or Options as the context requires.

### **9.3 Register is evidence of who are Holders**

Except in the case of manifest error, the Trustee may treat a registered Holder as the legal owner of Units or Options as the context requires registered in the Holder's name on the Register. The Trustee is not required to recognise any beneficial interest held in any Unit.

### **9.4 Change of details**

A Holder must notify the Trustee of any change of name or address as soon as reasonably practicable after the change occurs. The Trustee must update the Register accordingly.

### **9.5 Limit to number of registered Holders**

In no case will the Trustee be required to register more than two persons as holders of any one Unit or Option as the context requires.

### **9.6 Use of information**

If a Holder inspects or is given a copy of the Register, then they will be taken to have agreed not to use any information obtained from the Register (or part thereof) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars of the holding of that Holder. A Holder's obligation under this clause survives the transfer of all or any part of their Units or Options as the context requires.

## **10. Interests of Unitholders**

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### **10.1 Joint holders**

Where more than one person is registered as the holder of any Unit, then these Unitholders hold them as joint tenants. Joint holders of Units shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit.

### **10.2 Restrictions on Unitholders**

A Unitholder has no right or entitlement to, and must not—

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets
- (c) require any Assets to be transferred to that Unitholder, or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly

conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

## **11. Valuation of Assets**

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### **11.1 Periodic valuations**

The Trustee may cause an Asset to be valued at any time, however (if applicable) the Trustee must do so as and when required by the Act (as varied by any ASIC Relief).

### **11.2 Net Asset Value**

The Trustee may determine the Net Asset Value at any time, including more than once on each day.

### **11.3 Valuation methodology**

- (a) Subject to the Act, the valuation methods and policies applied to valuing the Assets must be consistent with ordinary commercial practices for valuing assets of the relevant kind. All valuations used must be reasonably current.
- (b) Subject to the Act, the Trustee may make and act upon estimates of the value of any Assets or the amount of any Liabilities where actual valuations or authenticated figures are not available and the Trustee considers there will be no significant detriment to any Unitholders. The Trustee's power to make and act upon such estimates is conditional upon the estimates being reasonably current and being consistent with ordinary commercial practices for valuing assets of the relevant kind.

### **11.4 Trustee not an expert**

The Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

## **12. Trustee's powers and duties**

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### **12.1 General powers**

Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a natural person or corporation and as though it were the absolute and beneficial owner of the Assets acting in its personal capacity.

### **12.2 Specific powers**

Without limiting clause 12.1, the Trustee's powers include the power to do the following:

- (a) Acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction (which for the avoidance of doubt includes the



acquisition of any contractual or other rights and the provision of debt with or without security).

- (b) Dispose of or otherwise deal with the Assets.
- (c) Manage and administer the Assets and Liabilities.
- (d) Lend all or any money at any time forming part of the Assets to any person with or without the security of any property, including where the amount of any such loan is in excess to the value of the secured property.
- (e) Complete and execute any mortgage document and any other security document, including any document relating to the priority of a security held on behalf of the Trust.
- (f) Do everything which, in the Trustee's opinion, is necessary or expedient to enable the exercise of any right as lender in relation to any loan made from the Assets, including exercising any right granted in relation to any security held on behalf of the Trust.
- (g) Do everything which, in the Trustee's opinion, is necessary or expedient, to enable any security held on behalf of the Trust to be exercised, enforced, discharged or otherwise dealt with by the Trustee.
- (h) Borrow or raise money (including but not limited to the issue of unsecured notes and other debt products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), grant security, enter into ISDA master agreements and derivative transactions (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to—
  - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and
  - (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (i) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then—
  - (i) it may do so on terms the Trustee thinks fit, and
  - (ii) the agent or delegate may be an Associate of the Trustee.

- (j) Act as underwriter for the offer of any securities or other interests in the Trust.
- (k) Fetter its own powers and discretions.
- (l) Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time.
- (m) Delegate (in writing) the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (n) Subject to its obligations at law, waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Trustee in connection with the Trust.
- (o) Enter into any option agreement relating to any lending or financing facility, agreement or transaction.
- (p) Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.
- (q) Apply for the Trust to be Listed and for the Units or Options to be Officially Quoted and for this purpose the Trustee is authorised on its own behalf and on behalf of each Holder to do all things necessary to effect a Listing.
- (r) Make any choice under the Tax Act and do such things as is reasonable to enable such a choice to be made and applied by the Trust or to operate the Trust in accordance with such a choice, including (but not limited to) a choice under sections 275-115, or 276-20 of the Tax Act.

### **12.3 Buy back of Units**

Subject to the Act, the Listing Rules and any ASIC Relief—

- (a) the Trustee may, but is under no obligation to, offer to acquire or acquire Units with consideration for the purchase being paid out of the Assets, including by way of on-market or off-market buy backs while the Units are Officially Quoted, and
- (b) the Trustee may elect that Units so acquired are redeemed and cancelled or sold.

## 12.4 *AMIT powers*

### (a) AMIT Election

The Trustee may make an election to determine the Trust to be an AMIT with effect from the commencement of any Financial Year of the Trust.

### (b) General provisions

The Trustee has, without limiting its other rights and powers provided for under the Constitution and this clause 12.4, all of the powers and rights which are necessary or desirable to enable—

- (i) the Trust to be eligible to apply the AMIT Regime
- (ii) the Trustee to comply with the requirements of the AMIT Regime
- (iii) the Trust to be properly administered and operated under the AMIT Regime, and
- (iv) the Trustee to maintain equity among Unitholders in the operation of the AMIT Regime.

### (c) Specific powers

Subject to clause 15.18, the Trustee may under the AMIT Regime in respect of an AMIT Income Year—

- (i) determine the taxable income of the Trust for each Financial Year, including a determination of the taxable income of a particular, category, source or character for tax purposes
- (ii) make an attribution of the taxable income of the Trust to Unitholders under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes
- (iii) make an alteration to the Trustee's determination of the taxable income of the Trust for a Financial Year, or the Trustee's attribution of the taxable income of the Trust to Unitholders under the AMIT Regime, including a determination or attribution of taxable income of a particular category, source or character for tax purposes. This includes making alterations to the Trust's Determined Trust Components and Trust Components and a Unitholder's Determined Member Components and Member Components under the AMIT Regime for any AMIT Income Year as a result of any Unders or Overs
- (iv) determine whether to issue an AMMA Statement to any Unitholder
- (v) determine what information should be contained in any such AMMA Statement
- (vi) issue an AMMA Statement to any Unitholder, or

- (vii) amend an AMMA Statement that has been issued to a Unitholder, and determine the basis upon which the AMMA Statement is to be amended.
- (d) Units and Classes of Units
  - (i) Subject to clause 12.4(d)(ii), the Trustee may under the AMIT Regime issue Units of a single Class or different Classes. Each different Class must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes issued, but the rights to income and capital of a particular Class must be the same for every membership interest in that Class. All Units in a Class rank equally. A separate Class does not constitute a separate trust.
  - (ii) Clause 12.4(d)(i) does not permit the Trustee to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Act requires those matters to be set out in this Constitution.
- (e) Each Unitholder acknowledges or is taken to acknowledge that the Trustee has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the Trustee is to address any amounts which may give rise to an Under or Over of a particular character for the Trust, including whether such amounts should be addressed by the Trustee by—
  - (i) issuing amended AMMA Statements to Unitholders under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Trust to which the Under or Over relates, or
  - (ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time to time).
- (f) Trustee's limitation of liability for AMIT Regime powers

Without limiting any other provision and to the maximum extent permitted by law but subject to the Act, the Trustee does not incur any liability and it is not obliged to account to anyone (including any Unitholder or former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this clause 12.4, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

### **12.5 Discretion to exercise powers**

Subject to the law, the Trustee may determine whether to exercise and, if so, the manner, mode and time of exercise of its duties, powers and discretions in its absolute discretion.

## 12.6 *Interested dealings by Trustee*

- (a) Subject to the Act, the Trustee may—
  - (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust
  - (ii) act in the same or similar capacity in relation to any other managed investment scheme
  - (iii) hold Units in, or other securities issued by, the Trust in any capacity
  - (iv) hold or deal in or have any other interest in an Asset, or
  - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause 12.6, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 12.6(a)—
  - (i) it may retain and need not account for any benefit derived by it, and
  - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.
- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity)—
  - (i) the Trustee may be registered as a Unitholder in respect of the Units
  - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties, and
  - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.

## 12.7 *Retirement benefit*

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to—
  - (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement, or
  - (ii) its retirement as Trustee.

- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

### **12.8 Investment powers**

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the Trustee Act 1925 (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers.

### **12.9 Exercise of discretion**

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

## **13. Financial reports and tax returns**

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### **13.1 Accounts, audit and other reports**

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 13.1(a), the Trustee must—
  - (i) keep, or cause to be kept, proper books of account in relation to each Class, and
  - (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

### **13.2 Tax returns**

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completing the relevant part of the Unitholder's tax return for the Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than four months after the last day of the Financial Year.

### **13.3 Electronic annual financial report to Unitholders**

While the Trust is a Registered Scheme, each Unitholder agrees and nominates pursuant to the Act to receive notification and access by electronic means of and to financial reports prepared for the Trust.

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## **14. Fees and expenses**

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### **14.1 Establishment fee**

The Trustee is entitled to an establishment fee of \$30,000 for its work establishing the Trust. This fee is payable on the earlier of the Listing Date and the date that is three months from the date the Trust becomes a Registered Scheme. This fee is payable out of the Assets.

### **14.2 Trustee fee**

- (a) The Trustee is entitled to a trustee fee of up to two percent per annum of the gross value of the Assets (including the gross value of the assets of any Sub Entities, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity), subject to a minimum fee of \$5,000 per month Indexed on 1 July each year following commencement of the Trust.
- (b) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit is issued pursuant to the first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.
- (c) For the avoidance of doubt, the amount of the trustee fee payable under this clause 14.2 is subject to any relevant disclosure to Unitholders in a Disclosure Document, but the fee payable will not exceed the fee prescribed in clause 14.2(a).

### **14.3 Custody fee**

- (a) If the Trustee performs the custodial function for the Trust, then it will be entitled to a custody fee of up to one percent per annum of the gross value of the Assets (including the gross value of the assets of any Sub Entities, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity), subject to a minimum fee of \$2,500 per month Indexed on 1 July each year following commencement of the Trust.
- (b) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit is issued pursuant to the first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.
- (c) For the avoidance of doubt, the amount of the custody fee payable under this clause 14.3 is subject to any relevant disclosure to Unitholders in a Disclosure Document, but the fee payable will not exceed the fee prescribed in clause 14.3(a).

#### 14.4 *Fee on retirement or removal*

If One Managed Investment Funds Limited retires or is removed as the trustee of the Trust, then the following applies:

- (a) In consideration for work done in establishing the Trust and facilitating the orderly replacement of One Managed Investment Funds Limited as trustee of the Trust, One Managed Investment Funds Limited is entitled to a retirement or removal fee.
- (b) The retirement or removal fee is only payable in the following circumstances:
  - (i) If One Managed Investment Funds Limited is removed as the trustee of the Trust before the fourth anniversary of the date the first Unit is issued pursuant to the first Disclosure Document and provided that One Managed Investment Funds Limited is not removed because of its gross negligence in the management of the Trust or for a material fiduciary breach. In this clause 14.4(b) a “material fiduciary breach” is a breach by One Managed Investment Funds Limited of a fiduciary duty to Unitholders which causes them substantial loss.
  - (ii) If One Managed Investment Funds Limited retires as the trustee of Trust before the fourth anniversary of the date the first Unit is issued pursuant to the first Disclosure Document, following a request by the Investment Manager under the terms of the Investment Management Agreement.
- (c) The amount of the retirement or removal fee referred to in clause 14.4(a) is the total amount of the trustee fee payable under clause 14.2 and (if applicable) the total amount of the custody fee payable under clause 14.3 that One Managed Investment Funds Limited would have received if it had been the trustee of the Trust until the fourth anniversary of the date the first Unit is issued pursuant to the first Disclosure Document, with such amount being determined on the basis that any future trustee fee and (if applicable) any future custody fee payable to One Managed Investment Funds Limited at the time of calculation of the retirement or removal fee are determined on the basis of the gross value of the Assets as at the time of calculation of the retirement or removal fee.
- (d) If One Managed Investment Funds Limited retires or is removed as the trustee of the Trust, then the fee in clause 14.4(a) is deemed to have become due and payable on the day (as applicable)—
  - (i) a meeting of Unitholders is called, requisitioned or convened to—
    - A. propose removing One Managed Investment Funds Limited as trustee of the Trust (and regardless of whether the resolution is contained in the notice or document which is issued, or in any supplementary or subsequent notice or document), or
    - B. propose modifying, repealing or replacing this Constitution by modifying, repealing or replacing this clause 14.4 or any part of this clause 14.4 (and regardless of whether the resolution is



contained in the notice or document which is issued, or in any supplementary or subsequent notice or document), or

- (ii) the Investment Manager requests that One Managed Investment Funds Limited retires as trustee of the Trust under the terms of the Investment Management Agreement.
- (e) Any trustee of the Trust that succeeds One Managed Investment Funds Limited is not entitled to any benefit under this clause at any time.
- (f) For the avoidance of doubt, the amount of the retirement or removal fee payable under this clause 14.4 is subject to any relevant disclosure to Unitholders in a Disclosure Document, but the fee payable will not exceed the fee prescribed in clause 14.4(c).

#### **14.5 Waiver and deferral of fees and expenses**

The Trustee may at any time and for any time—

- (a) accept lower fees and expenses than it is entitled to receive under this Constitution
- (b) defer payment of any fees and expenses it is entitled to receive under this Constitution, or
- (c) waive entirely its entitlement to receive any fees and expenses under this Constitution.

#### **14.6 Fees can be applied to acquire Units**

Subject to the Act, where an amount of money is payable from Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own capacity, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with the provisions of clause 3.

#### **14.7 Other fees or different fees**

While the Trust is not a Registered Scheme—

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document, and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 14, provided they are disclosed in a Disclosure Document.

#### **14.8 Expenses**

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, in relation to the proper performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee

will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.

- (b) Without limiting clause 14.8(a), this includes Expenses connected with the following:
- (i) The acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
  - (ii) The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
  - (iii) Raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
  - (iv) The appointment of any professional adviser, consultant, agent, broker, underwriter or delegate by the Trustee, including a custodian or investment manager.
  - (v) The administration or management of the Trust or its Assets and Liabilities.
  - (vi) Bank charges on the operation of bank accounts.
  - (vii) Borrowing money, raising finance or granting security over the Assets.
  - (viii) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity.
  - (ix) Fees and charges of any regulatory or statutory authority or market operator, including the ASX.
  - (x) Convening and holding meetings of Unitholders.
  - (xi) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
  - (xii) Preparation and distribution of any report or document required by the Act or the Listing Rules to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.
  - (xiii) Keeping and maintaining of the accounting records and registers of the Trust.
  - (xiv) Retirement and the appointment of a substitute trustee or any custodian.

- (xv) The initiation, conduct and settlement of any court proceedings (including through alternative dispute resolution)—
  - A. to enforce any provisions of this Constitution, or
  - B. in relation to the Trust or any of its Assets or Liabilities.
- (xvi) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required).
- (xvii) Acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust.
- (xviii) Reasonable travelling and accommodation expenses of the Trustee.
- (xix) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xx) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xxi) The establishment, management and maintenance of any Listing or Official Quotation of the Units or Options, including the costs of the admission of the Trust to the Official List and compliance with the Listing Rules.
- (xxii) The performance of the functions and duties of the Trustee under the Constitution.
- (xxiii) Costs, charges and expenses related to—
  - A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members
  - B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act, and
  - C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxiv) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.

- (xxv) Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities.
- (xxvi) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act).
- (xxvii) Foreign exchange transactions.
- (xxviii) Foreign exchange hedging transactions.
- (xxix) Amounts payable to the Investment Manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, underwriters or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or Investment Manager.
- (xxx) Entering the Trust in a survey.
- (xxxi) Fees payable to a ratings organisation.
- (xxxii) Dealing with Applications and redemptions of Units or other interests, in determining the Application Price and Withdrawal Price.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee.
- (d) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

#### **14.9 Performance of duties**

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 14.9(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 14.9 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

#### **14.10 Goods and Services Tax**

If any supply made by the Trustee under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act, then the following will apply:

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made—
  - (i) on a progressive or periodic basis
  - (ii) such that the consideration is to be provided on a progressive or periodic basis, and
  - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

#### **14.11 Fees or amounts payable by Trust or Sub Entities**

Notwithstanding any other provision of this Constitution, fees payable under this Constitution, and costs, charges and expenses payable or to be reimbursed under this Constitution, may be charged to or reimbursed from the Trust or to or from any Sub Entity, as determined by the Trustee. In addition, services to be provided may be provided by an Associate of the Trustee who may charge the fees set out directly to the Trust or to any Sub Entity as determined by the Trustee.

### **15. Distributions from the Trust**

#### **15.1 Trustee will collect in all money**

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and all other money, rights and property which are paid, due or receivable in respect of the Trust.
- (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities (Cost) to Classes as follows:
  - (i) Where a Cost is attributable to a Class, to that Class.

- (ii) Where a Cost is attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the relevant Assets.
- (iii) Where a Cost is not attributable to any Class, between all Classes on a pro rata basis, provided the Trustee considers such allocation to be fair having regard to the interests of all Unitholders and the relevant Assets.

### **15.2 Situation if Trust taxed as a company**

If the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 15.2 applies in respect of that Financial Year and the following applies:

- (a) As soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine—
  - (i) if there is to be any Dividend Amount for the Distribution Period, and
  - (ii) if so, then the amount of the Dividend Amount and the amount of any franking credits (if any) to be attached to the Dividend Amount.
- (b) The Trustee may determine the extent to which the Dividend Amount (if any) comprises profits, retained profits, capital, returned capital or income of a particular character.

- (c) Subject to any Terms of Issue, at the end of the Distribution Period, a Unitholder is entitled to a Dividend Entitlement, calculated as follows:

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

Where:

A = The number of Units held by the Unitholder as at the end of the Distribution Period.

B = The number of Units held by all Unitholders as at the end of the Distribution Period.

C = The Dividend Amount (if any) for the Distribution Period.

- (d) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.

### **15.3 Situation if Trust not taxed similar to a company**

Clauses 15.4 to 15.11 apply if clause 15.2 does not apply.

### **15.4 Calculation of Distributable Amount**

The Distributable Amount for a Distribution Period will be the amount determined, by the Trustee, pursuant to the definition in Schedule 1. If for a period ending on

the last day of a Financial Year the Trustee has not made a determination for the purpose of this clause 15.4 before the end of that Financial Year, then the Distributable Amount will be the amount mentioned in sub-paragraph (a) of that definition.

### **15.5 *Persons who will receive Distributable Amount***

A Unitholder's Distributable Proportion for a Distribution Period in respect of each Unit is the amount worked out by the Trustee calculated in accordance with the following formula:

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

Where:

- A = The number of Units held by the Unitholder at the close of business on the last day of the Distribution Period.
- B = The Distributable Amount (as determined by the Trustee pursuant to clause 15.16) for the Distribution Period.
- C = The number of Units on issue at the close of business on the last day of the Distribution Period.

The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to all persons who are recorded on the Register as the holder of a Unit at the close of business on the last day of the Distribution Period to which the distribution relates.

### **15.6 *Special distribution amounts***

- (a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Amount (in this clause "Special Distribution Amount").
- (b) Where the Trustee determines under clause 15.6(a) that there is a Special Distribution Amount at a particular time, then this Constitution is to be applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Amount for a Distribution Period.

### **15.7 *Reserves***

The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period.

**15.8 Present entitlement**

- (a) On the last day of a Distribution Period, any person who is a Unitholder and any person who was a Unitholder at any time during the Distribution Period to which the distribution relates—
  - (i) is presently entitled to its Distributable Proportions for the Financial Year in which the end of the Distribution Period falls, and
  - (ii) has a vested and indefeasible interest in its Distributable Proportion of the Trust for that Financial Year.
- (b) For the avoidance of doubt, where the Trust is an AMIT for any income year, the Trust and the Unitholders (as relevant) will be taxed in accordance with the AMIT Regime for that income year.

**15.9 Time for distribution of Distributable Proportion**

The Distributable Proportions for a Distribution Period must be paid by the Trustee to those entitled to receive them within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to all of the Distributable Proportions payable to them from the Trust is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

**15.10 Nature of receipts and nature of distributions to Unitholders**

The Trustee may classify or determine whether, and the extent to which, any receipt or amount (or any part thereof) is capital or Income. If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee.

**15.11 Preparation of accounts**

Notwithstanding that the Distributable Amount may be calculated in accordance with clause 15.4, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount. Without limiting clause 15.10, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

**15.12 Establishment of separate accounts—specific categories**

The Trustee may keep separate accounts for any category or source of Income or capital and distribute the Income or capital for any category or source to any Unitholder.



**15.13 Establishment of separate accounts—deductions, credits, rebates, etc**

The Trustee may allocate any outgoings, expenses, credits, rebates or other adjustments that are allowable or available in relation to the specific categories contemplated by clause 15.12 in accordance with relevant taxation legislation at the time of any determination or allocation including credits and rebates in respect of franked dividends and the flow on franking credits.

**15.14 Initial distribution entitlements**

For the removal of doubt and despite anything in this clause 15, the Trustee may in its discretion issue Units on terms that such Units—

- (a) participate fully for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued
- (b) do not entitle the Unitholder to participate in the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued
- (c) participate for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued on a pro rata basis in accordance with the number of days the Units were held, or
- (d) receive a fixed distribution rate entitlement, out of the Distributable Amount, either for the full Distribution Period in which they are issued or on a pro rata basis in accordance with the number of days the Units were held.

**15.15 Unitholder's rights**

For the removal of doubt and despite anything in this clause 15, the rights of a Unitholder under this clause 15 are subject to the rights, obligations and restrictions attaching to the Units which they hold.

**15.16 Classes**

- (a) If there is more than one Class in issue—
  - (i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly referable to a Class (Class Capital or Income)
  - (ii) subject to the Trustee's obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders, and
  - (iii) the provisions of this clause 15.16 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (b) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.

- (c) The Trustee must identify and allocate to all Unitholders within a Class, a proportionate share of the specific categories identified in clause 15.12 which forms part of the Distributable Amount that is properly Referable to the relevant Class.
- (d) Without limiting clause 15.16(a)(i), the Trustee will take into account any fees charged by the Trustee with respect to a Class in determining the Distributable Amount referable to a Class pursuant to clause 15.16(a)(i).

#### **15.17 Unders and Overs**

- (a) If the Trustee identifies an Adjustment Amount that relates to a prior Financial Year, then the Trustee may—
  - (i) amend the relevant Distributable Proportion of each person who was a Unitholder on the last day of the relevant Financial Year
  - (ii) adjust the Income in the current Distribution Period, or
  - (iii) do nothing.
- (b) An Adjustment Amount may include (but is not limited to) an adjustment made in respect of the following amounts of the Trust:
  - (i) A Trust Component as defined in the Tax Act.
  - (ii) An amount that would be assessable income of the Trust.
  - (iii) An amount that would be a deduction of the Trust.
  - (iv) An amount that is recognised by the Trust under the Tax Act.
  - (v) An amount that is of a similar nature to the items above.

#### **15.18 Trustee must make “fair and reasonable” allocation**

- (a) Following the end of a Financial Year which is an AMIT Income Year, the Trustee must attribute the taxable income of the Trust for the Financial Year to Unitholders under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Unitholders.
- (b) The Trustee must perform the attribution under clause 15.18(a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
  - (i) The amount of each Unitholder’s Member Components and Determined Member Components of a particular character is so much of the Trust’s Determined Trust Component of that particular character as is attributable to the Units held by the Unitholder.

- (ii) The attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the Trust.
- (iii) The Trustee must not attribute any part of a Determined Trust Component of the Trust to a Unitholder's Units because of the tax characteristics of the Unitholder.

#### **15.19 Streaming of amounts on redemption**

- (a) The Trustee may fund the redemption of Units from an amount or proceeds arising from the sale of an Asset and may allocate the redemption proceeds as being a distribution of Income or capital to the Unitholder.
- (b) To the extent that Income is allocated to a redemption, the amount is to be treated as a distribution of Income for a Distribution Period prior to a final distribution being made.

#### **15.20 Unitholder's objections**

If a Unitholder objects to the basis of the attribution of the taxable income of the Trust for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Unitholder agrees to indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.

### **16. Distribution reinvestment**

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#### **16.1 Reinvestment**

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units in the same Class as the Units to which the Distributable Amount relates and the amount of the Distributable Amount payable to them must be applied on behalf of the Unitholder to acquire those additional Units.

#### **16.2 Compulsory reinvestment**

The Trustee may require Unitholders, or Unitholders of a particular Class or Classes, to reinvest some or all of the Distributable Amount payable to them and, if so, those Unitholders are deemed, for the purposes of any relevant ASIC Relief, to have elected to reinvest some or all of the Distributable Amount payable to them.

#### **16.3 Notice to Unitholders**

If the Trustee permits reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. The Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

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**17. Deductions from Distributions**

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**17.1 Deduction of Taxes**

The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted—

- (a) any amount of Tax (or an estimate of it), and
- (b) any other amount owed by the Unitholder to the Trustee or any other person.

**17.2 Payment of Taxes**

- (a) The Trustee may pay on behalf of a person (including amounts paid in respect of a person that result from the operation of the AMIT Rules) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid—
  - (i) any amount of Tax (or an estimate of it),
  - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 17.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

**17.3 Indemnity**

The Trustee is indemnified from the Assets in respect of any Tax paid by the Trustee from its own funds in order to pay Tax incurred in respect of the Trust on behalf of any Unitholders. This indemnity applies even though the Tax may not have been paid in respect of each Unitholder in the Class, but only one or more Unitholders in the Class.

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**18. Transfers**

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**18.1 Transfer of Units and Options if not Officially Quoted**

If the Units and Options are not Officially Quoted, then the following apply:

- (a) Unitholders may request the Trustee to register transfers of all or any of the Units or Options held by them.
- (b) A transfer of Units or Options is not effective until it has been recorded in the Register.

- (c) All transfers of Units or Options shall be effected by an instrument of transfer in a form and in a manner approved by the Trustee.
- (d) The Trustee may refuse to register a transfer (whether voluntarily or by operation of law) of Units or Options without being bound to provide any reason for such refusal.
- (e) The Trustee may charge Unitholders a fee to cover administrative costs involved in registering a transfer of Units or Options.

### **18.2 *Transfer of Units and Options if Officially Quoted***

If the Units or Options are Officially Quoted, then the Units or Options (as the context requires) may be transferred in any manner permitted by the Operating Rules of a CS Facility. The Trustee may require before registration of any such transfer that there be provided to the Trustee any documents which the Operating Rules of a CS Facility require or permit the Trustee to require be provided to it to authorise registration. This clause 18.2 prevails over any other provision of this Constitution that may be inconsistent with it but it does not permit the Trustee to refuse to register a proper transfer made in accordance with the Operating Rules of a CS Facility.

### **18.3 *Trustee may request holding lock or refuse to register transfer***

If the Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Trustee may—

- (a) request any applicable CS Facility Operator or registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options registered on the CS Facility's sub-register or registered on an issuer-sponsored sub-register, as the case may be, or
- (b) refuse to register a transfer of other Units.

### **18.4 *Notice of holding locks and refusal to register transfer***

- (a) If in the exercise of its rights under clause 18.3 the Trustee requests application of a holding lock to prevent a transfer of Units or Options to refuse to register a transfer of a security, then the Trustee must give written notice of the request to the holder of the Units or Options, to the transferee and to the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Trustee.
- (b) If the Trustee declines to register any transfer of Units or Options, then the Trustee must within five Business Days after the transfer was lodged with the Trustee (or registrar), give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration. Failure to give such reasons does not invalidate the decision of the Trustee.

### **18.5 *Trustee must retain instruments of transfer***

The Trustee must retain every instrument of transfer which is registered for such period as the Trustee determines.

**18.6 Return of refused transfers**

If the Trustee refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of the notice of refusal to register unless there has been an allegation of fraud concerning the transfer of the transaction to which it relates.

**18.7 Suspension of transfers**

The registration of transfers of Units or Options may be suspended at any time and for any period as the Trustee may decide. However, the aggregate of those periods must not exceed 30 days in any calendar year.

**18.8 Recognition of Holder**

Except where this Constitution or the law requires otherwise, the Holder whose name appears in the Register shall be treated as the absolute owner of the Units or Options (as the context requires) and in respect of that Holder the Trustee shall not be bound to take notice of any trust or equity affecting ownership of the Units or Options or the rights attaching to the Units or Options (as the context requires).

**18.9 Death or legal disability of Holder**

- (a) If a Holder dies or becomes subject to a legal disability such as bankruptcy, liquidation or insanity, only the survivor (in the case of joint holders), Legal Personal Representative or the person entitled to Units or Options as a result of the bankruptcy, liquidation, insanity or other legal disability shall be recognised as having a claim to the Units or Options registered in the Holder's name.
- (b) Subject to the Listing Rules, the Trustee may refuse to register any transfer or transmission pursuant to this clause 18.9 or to recognise any claim without providing any reason.

**19. Proportional Takeover Bid**

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- (a) Registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid is prohibited unless and until an Approving Resolution approving the Proportional Takeover Bid is passed.
- (b) A person (other than the Bidder or an Associate of the Bidder) who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held Units in the Bid Class—
  - (i) is entitled to vote on an Approving Resolution, and
  - (ii) has one vote for each Unit in the Bid Class held.
- (c) Where offers have been made under a Proportional Takeover Bid, the Trustee must ensure an Approving Resolution is voted on at a meeting of the

persons described in clause 19(b) before the Approving Resolution Deadline.

- (d) An Approving Resolution is passed if more than 50 percent of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.
- (e) The provisions of this Constitution that apply to meetings of the Trust apply, with such modifications as the circumstances require, to a meeting that is called under this clause as if the clause was a meeting of Unitholders of the Trust.
- (f) If an Approving Resolution to approve the Proportional Takeover Bid is voted on in accordance with this clause 18.9(b) before the Approving Resolution Deadline, then the Trust must, on or before the Approving Resolution Deadline, give the Bidder and ASX a written notice stating an Approving Resolution to approve the Proportional Takeover Bid has been voted on and whether it was passed or rejected.
- (g) If no resolution has been voted on in accordance with this clause 18.9(b) as at the end of the day before the Approving Resolution Deadline, then a resolution to approve the Proportional Takeover Bid is taken, for the purposes of this clause, to have been passed in accordance with this clause.
- (h) This clause 18.9(b) does not commence operation until the Trust is Listed or a Unit is Officially Quoted (whichever occurs first). From that time this clause 18.9(b) will automatically cease to have effect upon three years from the date the Trust is first Listed or a Unit is Officially Quoted (whichever first occurs), unless renewed in accordance with the Act prior to that date.

## **20. Winding up of the Trust**

### **20.1 Events which cause a winding up**

The Trustee must wind up the Trust or cause the Trust to be wound up in any one of the following circumstances:

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) If the Trust is a Registered Scheme, then where—
  - (i) a court orders the Trust be wound up pursuant to section 601ND of the Act
  - (ii) the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in section 601NC of the Act, or
  - (iii) any of the circumstances set out in section 601NE of the Act apply such that the Trustee is required to wind up the Trust.

**20.2 Process of winding up**

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must identify the Assets immediately prior to commencing winding up and all Liabilities (whether actual, contingent or prospective) immediately prior to commencing winding up, of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust.
- (c) Subject to clause 20.2(f), the Trustee must convert the Assets to money, deduct all proper costs and Liabilities of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust and then divide the balance amongst the Unitholders in proportion to the number of Units held by them at the date of the distribution in accordance with the following formula:

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

Where—

A = the amount remaining in the Trust after deduction of the costs referred to in this clause 20.2(b)

B = the aggregate of the number of Units held by the Unitholder as at the commencement of winding up, and

C = the aggregate of the total number of Units in issue as at the commencement of winding up.

- (d) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in this clause 20.2(c) results in a negative dollar amount, then that Unitholder must pay to the Trustee within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.
- (e) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain Classes in preference to the holders of other Classes, as required by the Terms of Issue of each Class. If any such Terms of Issue do not provide any preference, then any interim distributions will be paid to all Unitholders in proportion to the number of Units held.
- (f) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (g) Despite clause 20.2(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in



satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust.

- (h) The cost of winding up the Trust will be paid out of the Assets.

### **20.3 Trustee may withhold proceeds of realisation**

The Trustee may retain money from the proceeds of realisation of the Assets—

- (a) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Unitholders pursuant to this Constitution, and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

### **20.4 Auditor's certificate**

Where the Trust is a Registered Scheme, once the Trustee believes the winding up is complete, the Trustee must engage an Auditor to conduct an independent audit of the final accounts of the Trust. The Trustee must send a copy of any report made by the Auditor to the Unitholders within 30 days after the Trustee receives the report from the Auditor.

### **20.5 Cancellation of Units**

Unless the Trustee determines otherwise, Units in respect of which a final distribution is made are cancelled from the date of that distribution.

### **20.6 Provisions continue to apply**

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until—
- (i) the date of final distribution under clause 20.2, or
- (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 20.6(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

## **21. Small holdings**

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### **21.1 Sale or redemption**

- (a) Subject to the provisions of this clause 21 and while the Units are Officially Quoted, the Trustee may in its discretion from time to time sell or redeem any Units held by a Unitholder which comprise less than a marketable parcel (as provided in the Listing Rules) without request by the Unitholder.

- (b) The Trustee may only sell or redeem Units pursuant to this clause 21 on one occasion in any 12 month period.
- (c) The Trustee must notify the Unitholder of its intention to sell or redeem Units under this clause 21.
- (d) The Trustee must not sell or redeem the relevant Units—
  - (i) before the expiry of six weeks from the date of the notice given under clause 21.1(c), or
  - (ii) if, within the six weeks allowed under clause 21.1(d)(i), the Unitholder advises the Trustee that the Unitholder wishes to retain the Units.

### **21.2 Takeovers**

The Trustee's power to sell or redeem the Units under clause 21.1 lapses following the announcement of a takeover of the Trust but the power will apply again once such takeover offer closes.

### **21.3 Expenses and proceeds**

- (a) The Trustee or the purchaser of the Units must pay the costs of a sale or redemption under this clause 21 as the Trustee decides. If the Trustee decides to pay the costs, then they may be paid out of or reimbursed from the Assets.
- (b) The proceeds of a sale or redemption under this clause 21 will be sent to the relevant Unitholder, but not before the Trustee has received the certificate (if any) relating to the Units, or is satisfied that the certificate (if any) has been lost or destroyed.

### **21.4 Withdrawal Price**

If a Unit is redeemed under this clause 21, then the Withdrawal Price is to be calculated in accordance with the Market Price.

### **21.5 Application to Options**

This clause 21 applies to the extent appropriate, and with any necessary amendments to Options.

## **22. Unvested interests**

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- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.

- (b) Nothing in this clause 21 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

## **23. Indemnity and liability**

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### **23.1 Liability of the Trustee**

Except to the extent the Act imposes liability—

- (a) the Trustee is not liable for any loss suffered by Unitholders in respect of the Trust, whether in contract, tort or otherwise, and
- (b) the Trustee is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

### **23.2 Indemnity from the Trust**

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of—
  - (i) any liability incurred by the Trustee in the proper performance of its duties in respect of the Trust
  - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution, and
  - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) For the avoidance of doubt, and without limiting clause 23.2(a), the Trustee is indemnified out of the Assets for any liability that—
  - (i) is incurred by the Trustee in relation to the proper performance of its duties, and
  - (ii) either—
    - A. is an Attribution Income Tax Liability of the Trustee, or
    - B. results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.
- (c) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or in breach of trust.

**23.3 Payment of taxes**

- (a) Subject to the Act, the Trustee is not liable to account to any Unitholder for any payments made by the Trustee (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory, or any foreign government or authority, for Tax or other charges.
- (b) The Trustee is not obliged (or liable) to account to, or pay to, or allocate to, any Unitholder any amount in relation to any Tax-related benefit or credit attributable to (or alleged to be attributable to) the Unitholder, or earned or accrued or made available because of the Unitholder.

**23.4 Reliance on others**

The Trustee may take and may act upon the following, and if the Trustee does so, then it will not be liable for anything done, suffered or admitted by and in good faith and reliance upon anything listed below:

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

**23.5 Trustee not liable for good faith error**

If for any reason beyond the control of the Trustee it becomes impossible or impractical to carry out the provisions of this Constitution, then subject to the Act, the Trustee is not under any liability for anything done by it in good faith.

**23.6 Limitation of liability of Unitholders**

The liability of Unitholders is limited to their Units and the Assets. Neither the Trustee, nor any creditor or agent of the Trustee, has any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

**23.7 Indemnity unaffected by unrelated breach of trust**

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Trustee (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have

diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

## **24. Meetings of Unitholders**

### **24.1 Trustee calling or postponing a Unitholders' Meeting**

The Trustee may call a meeting of the Unitholders of the Trust or any Class or Classes at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders of the Trust or any Class or Classes, at any time prior to the commencement of the meeting.

### **24.2 Unitholders calling a Unitholders' meeting**

- (a) While the Trust is not a Registered Scheme—
- (i) in respect of a meeting of a Class; the Trustee must call and arrange to hold a meeting of a particular Class to consider and vote on a proposed resolution on the request of Unitholders with at least 50 percent of the votes that may be cast on the resolution
  - (ii) in respect of a meeting of all Unitholders; the Trustee must call and arrange to hold a meeting of all Unitholders to consider and vote on a proposed resolution on the request of Unitholders with at least 15 percent of the votes that may be cast on the resolution, and
  - (iii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 24.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme:
- (i) Subject to the remainder of this clause 24.2(b), the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.
  - (ii) If the Unitholders of a class wish to call a meeting of the Unitholders of the Class, then Part 2G.4 of the Act (and/or any other provision of the Act that applies or may apply to meetings of members of registered managed investment schemes) applies as if each Class were a Registered Scheme.
  - (iii) If the unitholders call a meeting pursuant to section 252D, then those Unitholders who wish to call a meeting must provide the Trustee within three Business Days of calling the meeting, details as to which Unitholders called the meeting, or where the person who called the meeting on their behalf, the original certified copy of each authority provided by the relevant Unitholder to such person. The Unitholders who called the meeting must also provide the Trustee with written confirmation they are jointly and severally liable for the expenses of calling and holding the meeting.

**24.3 Notice**

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Unitholders, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notices of meetings are governed by the Act.

**24.4 Trustee may determine**

Subject to this clause 24 and the Act (if the Act applies), and subject to the Listing Rules while the Listing Rules apply, the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

**24.5 Quorum**

- (a) The quorum for a meeting of the Trust is two Unitholders present in person, by proxy or (where permitted) have voted using 'direct voting' as contemplated in clause 24.8 and who hold or represent at least 20 percent of the Units in issue. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum provided they hold or represent at least 20 percent of the Units in issue.
- (b) If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.
- (c) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they will only be counted as one individual.
- (d) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then—
  - (i) if the meeting was convened on the requisition of Unitholders, then it is dissolved
  - (ii) if the meeting was convened to consider and vote on a resolution to terminate the Investment Management Agreement, then it is dissolved, or
  - (iii) subject to clause 25(d)(ii), if the meeting was convened by the Trustee, then it is adjourned to the date, time and place the Trustee specifies and if the Trustee does not specify one or more of those things, then the meeting is adjourned to—
    - A. if the date is not specified—the same day in the next week
    - B. if the time is not specified—the same time, and
    - C. if the place is not specified—the same place.

- (e) If the meeting is adjourned pursuant to clause 24.5(d)(ii), then the Unitholders present in person or by proxy constitute a quorum.

#### **24.6 Joint holders**

If more than one person is registered as the holder of a Unit, then—

- (a) All registered holders shall be as a single registered holder for the purpose of calculating the number of Unitholders who have—
  - (i) requested a meeting
  - (ii) given the Trustee a notice of any Special Resolution or Extraordinary Resolution they propose to move at a meeting of Unitholders
  - (iii) requested that a statement be distributed to Unitholders pursuant to section 252N of the Act, and
  - (iv) demanded a poll pursuant to section 253L of the Act, and
- (b) the person named first on the Register (or if that person does not vote, then the next named person and so forth) may exercise the voting rights of any jointly held Unit.

#### **24.7 Chairing meetings of Unitholders**

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

#### **24.8 Proxies and direct voting**

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at a time before the meeting is due to start the Trustee considers reasonable.
- (c) The Trustee may determine that at any meeting of Unitholders, a Unitholder who is entitled to attend that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Trustee by post, fax or other electronic means approved by the Trustee. The Trustee may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

#### **24.9 Adjournment**

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

**24.10 Demand for a poll**

A poll may be demanded by the chairperson, or by Unitholders present in person or by proxy holding five percent of Units.

**24.11 Voting**

- (a) On a show of hands at a meeting of Unitholders of a Class, each Unitholder has one vote.
- (b) On a poll at a meeting of Unitholders of a Class, each Unitholder has one vote for each Unit held within that Class.

**24.12 Resolutions binding**

A resolution passed at a meeting for a Class binds all Unitholders in that Class, whether or not they were present at the meeting, and a resolution passed at a meeting for the Trust binds all Unitholders, whether or not they were present at the meeting.

**24.13 Objection at meeting**

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

**24.14 Non-receipt**

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

**24.15 Optionholders**

The provisions of this clause 24 relating to meetings of Unitholders also apply to meetings of Optionholders with any necessary modifications.

**24.16 Voting when unregistered**

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by means of the required number of Unitholders signing a document recording the making of the decision or passing of the resolution.

**24.17 Other decisions**

Subject to the Act (but without affecting clause 24.16), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.



**24A Meeting of Unitholders – supplementary information****24A.1 Paramouncy**

This clause 24A has effect notwithstanding any other provision of this Constitution, and any provision of this Constitution which is inconsistent with this clause 24A does not operate to the extent of any inconsistency.

**24A.5 Appointment of returning officer**

The Trustee must appoint a returning officer in respect of, or in connection with, a meeting of Unitholders (including where such meeting is called pursuant to section 252A, 252B, 252C, 252D or 252E of the Act). The Trustee must act reasonably in providing the returning officer with instructions and directions. No person may perform any of the functions of a returning officer unless appointed by the Trustee.

**24A.6 Election of chairman**

In respect of any meeting of Unitholders called pursuant to section 252C, 252D or 252E of the Act, a nominee of the Trustee must call the meeting to order at the appointed time and place of the M\meeting and do all things necessary or desirable to facilitate, in an orderly manner, the election of a chair of the meeting in accordance with all relevant law (including section 252S(3) of the Act) and this Constitution. Without limitation, such nominee will be responsible for providing instructions to the meeting and to the returning officer in relation to the election for the appointment of the chair and declaring the results of the election.

**25. Retirement or removal of Trustee**

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**25.1 *Situation if Trust is a Registered Scheme***

If the Trust is a Registered Scheme, then clauses 25.2 and 25.3 do not apply and instead the provisions of the Act regulating the retirement or removal of the Trustee will apply.

**25.2 *Retirement of the Trustee***

If the Trustee wishes to retire as trustee of the Trust, then it may do so and appoint a replacement trustee.

**25.3 *Removal of the Trustee by Unitholders***

If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 24.2 to consider and vote to consider and vote on—

- (a) an Extraordinary Resolution that the current Trustee should be removed, and
- (b) an Extraordinary Resolution choosing a replacement trustee.

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**26. Complaints handling**

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**26.1 Complaints handling while the Trust is a Registered Scheme**

This clause 26 applies only while the Trust is a Registered Scheme.

**26.2 Complaints handling officer**

- (a) The Trustee must appoint a person to fulfil the role of complaints handling officer.
- (b) If there is a vacancy in the role of complaints handling officer at any time then the secretary of the Trustee is deemed to be the complaints handling officer until a further appointment is made.
- (c) The complaints handling officer does not need to be a director or secretary of the Trustee.

**26.3 A Unitholder may make a complaint**

- (a) Any Unitholder may make a complaint about any aspect of the Trust, or the complaints handling process itself, by contacting the Trustee. For the purposes of this clause 26, a complaint is any expression of dissatisfaction made to the Trustee, related to the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) The complaint must specify—
  - (i) the name and contact details of the Complainant making the complaint, and
  - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 26.
- (c) If the complaint does not meet the requirement in clause 26.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder—
  - (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint, or
  - (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (e.g. because of a physical disability).

**26.4 Acknowledgment of a complaint**

- (a) If any Unitholder makes a complaint, then the Trustee must acknowledge the complaint immediately, or if this is not possible, then as soon as practicable, after receiving the complaint.

- (b) If possible, the Trustee will attempt to respond fully to or resolve the complaint as part of the first response.
- (c) The following information must be provided when acknowledging a complaint:
  - (i) The procedure used by the Trustee upon receiving a complaint.
  - (ii) The name, title and contact details of the present complaints handling officer.
  - (iii) If the complaint is not fully dealt with, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the complaint.

### **26.5 Consideration of complaints**

- (a) The Trustee must treat all complaints seriously and deal with them in a timely manner, having regard to the nature and urgency of the complaint.
- (b) If the complaint is not able to be resolved as part of the first response, then the Trustee (through the complaints handling officer or their appointee) must keep the Complainant informed of the progress of their complaint.

### **26.6 Resolving a complaint**

- (a) The Trustee must act reasonably in attempting to resolve a complaint; however, nothing in this clause 26 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) The Trustee must provide a "final response" to a complaint within 45 days from the date of receipt of the complaint. However, the Trustee will endeavour to provide a final response to complaints in less than 45 days wherever possible.
- (c) A "final response" to a Complainant must be in writing (unless the complaint is resolved by the end of the next Business Day after receipt of the complaint), and include the following:
  - (i) A statement of acceptance of the complaint.
  - (ii) The outcome of the complaint, including setting out clear and concise reasons for any decision made and references to any applicable provisions in legislation, codes, standards or procedures.
  - (iii) An offer of redress (if appropriate).
  - (iv) The Complainant's right to take their complaint to the external complaints resolution body of which the Trustee is a member, and its contact details.

- (d) If a "final response" cannot be provided to the Complainant within 45 days, then the Trustee must—
  - (i) inform the Complainant of the status of the complaint and the reasons for delay, and
  - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

### **26.7 Further avenues open to Unitholders**

If a complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may—

- (a) if the Complainant is a "retail client" (as that term is defined in the Act), lodge a complaint with an external complaints resolution body of which the Trustee is a member, or
- (b) take whatever other action is open to the Complainant under the general law, including—
  - (i) requesting an apology from the Trustee, or
  - (ii) seeking compensation for loss incurred by the Complainant as a direct result of the breach (if any).

### **26.8 Recording complaints**

- (a) The Trustee must make a record of complaints.
- (b) However, if a complaint is resolved by the end of the next Business Day from when the complaint was received, then the Trustee is not required to apply the full dispute resolution process in terms of capturing and recording details of the complaint.

### **26.9 Disclosure of existence of complaints handling procedure**

The Trustee must disclose the existence of the complaints handling procedure in all Disclosure Documents prepared by the Trustee.

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## **27. Changing this Constitution**

### **27.1 Power to amend**

- (a) While the Trust is not a Registered Scheme, the Trustee may amend this Constitution at its absolute discretion on such terms as it sees fit.
- (b) While the Trust is a Registered Scheme, then the Constitution may be modified, or repealed and replaced with a new constitution—
  - (i) by Special Resolution of the Unitholders, or

- (ii) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

## **27.2 AMIT**

Without limiting the Trustee's powers in clause 27.1, but subject to the Act, the Trustee may make any change to this Constitution or take any other action which the Trustee reasonably believes is necessary or desirable to—

- (a) facilitate compliance with the preconditions for the operation of the Trust as an AMIT
- (b) enable the Trustee to administer the Trust and issue Units in accordance with the AMIT Rules
- (c) facilitate compliance with the terms of the AMIT requirements in relation to the Trust, including any provisions of the AMIT Rules that, if not complied with, would result in any additional liability or penalty for the Trustee or Unitholders
- (d) facilitate the proper administration and operation of the Trust under the AMIT Rules and ensure that there is an appropriate and equitable application of the powers and rights of the Trustee and Unitholders that arise under the AMIT Rules, or
- (e) comply with the conditions of any ASIC Relief issued in relation to the AMIT requirements, or facilitate operation of the Trust in reliance on such ASIC Relief.

## **27.3 Lodgement of amendment**

If the Trust is a Registered Scheme, then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

## **28. Listing Rules and statutory requirements**

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### **28.1 Listing Rules**

Notwithstanding any other provision of this Constitution including, without limitation, any change to this Constitution effected under clause 27, if and for so long as the Trust is admitted to the Official List the following applies:

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, then authority is given for that act to be done or not to be done (as the case may be).

- (d) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, then this Constitution is deemed to contain that provision.
- (e) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, then this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, then this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (g) If the Listing Rules give the Trustee a power, right or obligation subject to that power, right or obligation being contained in this Constitution then such a power, right or obligation is taken to be included in this Constitution.

### **28.2 Restricted Securities**

While the Trust is Listed and except as permitted by the Listing Rules or ASX—

- (a) a Holder may not transfer Restricted Securities during the applicable escrow period
- (b) the Trustee must refuse to register a transfer that would breach clause 28.2(a), and
- (c) during such period as there is a breach of the Listing Rules or an applicable restriction agreement relating to Restricted Securities, a Holder of Restricted Securities is not entitled to any distribution from the Trust or voting rights in respect of those Restricted Securities.

### **28.3 Corporations Act and ASIC Relief**

- (a) If the Act requires that this Constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief to apply (“Required Provisions”), then to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) If any part of this Constitution (a “Required Part”) is included to comply with the requirements of the Act, Listing Rules, ASIC or ASX (“Regulatory Requirement”) and that Regulatory Requirement ceases or changes, then, to the extent the Act allows, this Constitution is automatically amended so that the Required Part is deleted or amended to reflect the altered Regulatory Requirement.

- (c) The Unitholders—
  - (i) authorise the Trustee to make the amendments referred to in this clause 28.2 in a deed made for that purpose and, if required, to lodge it with ASIC, and
  - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 28.2.
- (d) Where this clause 28.2 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

#### **28.4 Application of Act and Listing Rules**

In this Constitution—

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme, and
- (b) a requirement of the Listing Rules only applies while the Trust is Listed.

#### **28.5 ASIC Class Orders**

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 28.2 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 28.5 are made pursuant to the power in clause 27 but in respect of such changes, the requirements of clause 27 are to be read subject to this clause 28.5.

### **29. Compliance plan and compliance committee**

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#### **29.1 Compliance plan**

- (a) While the Trust is a Registered Scheme, the Trustee must have a compliance plan for the Trust which is lodged with ASIC.
- (b) The compliance plan will deal with the measures the Trustee will adopt to comply with the Act and this Constitution.
- (c) Subject to the Act and the approval of ASIC (if required), the compliance plan may be amended by the Trustee from time-to-time as it sees fit.

## **29.2 Compliance committee**

- (a) This clause 29.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

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## **30. Notices**

### **30.1 Form of notice**

Any notice, document or other communication required to be given to the Trustee or Unitholders is deemed to have been duly given if given in writing by letter, fax, electronic mail or other method as the Trustee determines.

### **30.2 Address for service**

- (a) The address for the Trustee will be the address set out below or the address most recently given to the Unitholders:

Trustee : One Managed Investment Funds Limited  
Address : Level 11, 20 Hunter Street, Sydney NSW 2000  
Facsimile : 02 8580 5700

- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

### **30.3 Deemed date of receipt**

- (a) A notice given to the Trustee is effective when it is received.
- (b) A notice, cheque or other communication sent by post is taken to be received by Unitholders on the Business Day after it is posted. Subject to the Act, the Trustee may determine the time in which other forms of communication may be taken to be received. For any communications sent to Unitholders, proof of receipt is not required.

### **30.4 Notice to joint Unitholders**

In the case of joint Unitholders, the physical or electronic address of the Unitholder means the physical or electronic address of the Unitholder first named in the Register.



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**31. General provisions**

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**31.1 Payments**

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by—

- (a) cheque and sent by post to the address shown in the Register, or
- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Unitholder in writing to the Trustee.

**31.2 Discharge of Trustee**

The Trustee will receive a good discharge on—

- (a) payment of every cheque if duly presented and paid, or
- (b) in the case of money credited to any account with a financial institution, the receipt by the financial institution of the amount paid.

**31.3 Retention of documents**

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

**31.4 Relationship between Trustee and Unitholders**

Each and every Unitholder and the Trustee agree—

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and this Constitution are in every case several and not joint or joint and several
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other
- (c) no Unitholder has authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder, and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

**31.5 Interest payable**

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the BBSW plus 500 basis points. The Trustee may waive payment of that interest in whole or in part.
- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

**31.6 Non-payment of money**

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following:

- (a) The Trustee may deduct money from distributions which would otherwise be paid to the Unitholder who owes the Trustee money until such time as interest and the amount which the Trustee is entitled to be paid has been paid to the Trustee.
- (b) Send a notice to the relevant Unitholder demanding the amount for which the Trustee is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than seven days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unitholder's Units will be liable to be sold or redeemed to recover the unpaid amount.

**31.7 Sale or redemption of Unitholder's Units to pay debt owing by Unitholder**

- (a) For notices sent under clause 31.6(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:
  - (i) Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.
  - (ii) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 31.6(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

**31.8 Trustee may require information from Unitholders**

- (a) Any Unitholder who is asked by the Trustee to supply any information reasonably required by the Trustee for the purposes of managing the Trust or complying with any relevant laws must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 31.8(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 31.8(a) or 31.8(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 31.8(a) or 31.8(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

**31.9 Severability**

Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Constitution which remain in full force and effect.

**31.10 Schedules**

Schedule 1 and Schedule 2 to this Constitution are operative parts of the Constitution.

**31.11 Applicable law**

This Constitution is governed by and to be interpreted in accordance with the laws of New South Wales. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

**Execution**

This Constitution is made this                    day of                    2018.

**Executed** by One Managed Investment Funds Limited ACN 117 400 987 in accordance with section 127 of the Corporations Act 2001 (Cth) by

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**Schedule 1—Dictionary**

Accounting Standards	Has the meaning given to this term in section 9 of the Act.
Act	The Corporations Act 2001 (Cth) for the time being in force, together with the regulations.
Adjustment Amount	An amount determined pursuant to clause 15.17.
AMIT	Has the meaning given to this term by section 995-1 of the Tax Act.
AMIT Election	A choice made by the Trustee in accordance with the requirements of the AMIT Rules for the Trust to be an AMIT.
AMIT Income Year	A year of income for the purposes of the Tax Act that the Trust is an AMIT.
AMIT Regime	The regime for the taxation of AMITs.
AMIT Rules	Divisions 275 and 276 of the Tax Act.
AMMA Statement	Has the meaning given to this term in section 276-460 of the Tax Act.
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
Approving Resolution	A resolution passed in accordance with clause 18.9(b).
Approving Resolution Deadline	In relation to a Proportional Takeover Bid, means the day that is the 14 <sup>th</sup> calendar day before the last day of the Bid Period.
ASIC	The Australian Securities and Investments Commission.
ASIC Relief	An exemption or declaration granted by ASIC which gives relief from certain requirements of the Act.
Assets	Includes all property, rights and income of the Trust and any accretions to the property, rights and income of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes—  (a) Application Money or property paid in respect of which

Units have not been issued

- (b) proceeds from withdrawals which have not yet been paid, and
- (c) any Distributable Amount awaiting payment to Unitholders.

Where there is more than one Class on issue, and the Net Asset Value referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly referable to each Class.

Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
ASX	ASX Limited ACN 008 624 691 or the exchange operated by it, as the context requires.
Attribution Income Tax Liability	An income tax liability of a person under the Tax Act that results from the Trust being operated as an AMIT.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
Authorised Representative	In respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative, and in respect of a party which is a corporation— <ul style="list-style-type: none"> <li>(a) a company secretary or director, or any officer of the corporation whose title or office includes the words “manager” or “director”, or</li> <li>(b) a person acting with the title or in the office of manager or director.</li> </ul>
BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Bid Class	The same meaning as “bid class” in the Act.
Bid Period	The same meaning as “bid period” in the Act.
Bidder	The same meaning as “bidder” in the Act.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.
Class	A class of Unit in the Trust.

Complainant	A Unitholder who has complained to the Trustee pursuant to clause 26.
Constituent Documents	The “constituent documents” referred to in section 276-210(3) of the Tax Act.
Constitution	This document (including its schedules) as it may from time to time be amended and in force.
CS Facility	Has the meaning given to the term ‘clearing and settlement facility’ in the Act.
CS Facility Operator	The operator of the CS Facility.
Determined Member Component	Has the meaning given to this term in section 276-205 of the Tax Act.
Determined Trust Component	Has the meaning given to this term in section 276-255 of the Tax Act.
Disclosure Document	A document by which Units are offered for subscription (including an information memorandum, product disclosure statement or terms of issue), and it includes any supplementary or replacement document issued in respect of the disclosure document.
Discovery Year	Has the meaning given to this term in section 276-345 of the Tax Act.
Distributable Amount	Means— <ul style="list-style-type: none"> <li>(a) the Income of the Trust, and</li> <li>(b) any amount of capital of the Trust, determined by the Trustee from time to time to be distributed to Unitholders.</li> </ul>
Distributable Proportion	In respect of a Unit, the amount determined in accordance with clause 15.5
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<ul style="list-style-type: none"> <li>(a) For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date.</li> <li>(b) For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust.</li> <li>(c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</li> </ul>

Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 15.2.
Dividend Entitlement	Amounts determined under clause 15.2(c).
Expenses	Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.
Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).
Financial Year	The period of 12 months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Holder	A Unitholder or an Optionholder, as the context requires.
Income	The Net Income unless otherwise determined by the Trustee.
Index Number	Means— <ul style="list-style-type: none"> <li>(a) the Consumer Price Index (All Groups) for the city of Sydney, published from time to time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for the city of Sydney, a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician, or</li> <li>(b) if the Consumer Price Index (All Groups) is discontinued or suspended, then a replacement index determined by the Trustee which reflects fluctuations in the cost of living in the city of Sydney.</li> </ul>



Indexed	Means adjusted on 1 July, by the aggregate percentage change in the Index Number for the previous four quarters most recently published prior to 1 July in the relevant year. However, if the Index Number is negative, then the aggregate percentage change in the Index Number will be zero.
Initial Public Offer	<p>Means—</p> <ul style="list-style-type: none"> <li>(a) an initial public offering of the Units which involves the raising of capital for subscription</li> <li>(b) a sell down of a substantial proportion of the Units by the Unitholders, or</li> <li>(c) any other arrangement which has substantially the same economic effect,</li> </ul> <p>in each case for the purpose of seeking Listing and Official Quotation of the Units.</p>
Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Unit).
Investment Management Agreement	The investment management agreement between the Trustee and the Investment Manager.
Investment Manager	The investment manager of the Trust appointed under the Investment Management Agreement.
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Holder, or the trustee of the estate of an Applicant or Holder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Holder.
Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly referable to each Class.</p>
Liquid	Has the same meaning as in section 601KA of the Act.

Listed	Means admitted to the Official List and “List” and “Listing” have a corresponding meaning.
Listing Date	The date the Trust is first admitted to the Official List and the Units are Officially Quoted.
Listing Rules	The official listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the Official List, each as amended or replaced from time-to-time, except to the extent of any express written waiver by ASX.
Market Price	<p>Market Price of a Unit on a particular day is—</p> <p>(a) the VWAP for the Unit for the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day)</p> <p>(b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market standard, or</p> <p>(c) if—</p> <p>(i) in the case of paragraph (a), Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day, or</p> <p>(ii) in the case of paragraphs (a) or (b), in the Trustee’s opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,</p> <p>the price per Unit determined by an appropriately qualified adviser who—</p> <p>(iii) is independent of the Trustee, and</p> <p>(iv) has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the Market Price of a Unit is being made,</p> <p>to be the fair market price of the Unit, having regard to—</p> <p>(v) valuation principles that are consistent with the range of ordinary commercial practices for that type of asset and are reasonably current</p>

- (vi) the nature of the proposed offer of Units for which purpose the Market Price of a Unit is being calculated
- (vii) the circumstances in which the proposed offer of Units will be made, and
- (viii) the interests of Unitholders generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

Member Component	Has the meaning given to this term in section 276-210 of the Tax Act.
Member Objection Choice	A choice made by a Unitholder under the AMIT Regime for the Unitholder's Determined Member Component to be the Unitholder's Member Component, including a choice made by a Unitholder under section 276-205(5) of the Tax Act.
Net Asset Value	The total value of the Assets calculated in accordance with clause 11, less the Liabilities. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class other than Ordinary Units, the Trustee may (where permitted under the Terms of Issue) exercise discretions and decide on matters that may affect the determination of the Net Asset Value figure which may result in an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.
Net Income	The total assessable income of the Trust less all deductions of the Trust (as calculated in accordance with the Tax Act) which may be reduced or increased by the amount of any reserves, provisions or amounts that, in determination of the Trustee, need to be made. If the total amount is less than zero, then the total amount is taken to be zero.
Official List	The official list of ASX as defined in the Listing Rules.
Officially Quoted	Means admitted to quotation on the Official List of the ASX, including where quotation has been suspended for not more than 60 days and 'Official Quotation' has a corresponding meaning.
One Managed Investment Funds Limited	One Managed Investment Funds Limited ACN 117 400 987 or any other company which replaces One Managed Investment Funds Limited as trustee of the Trust and which is a related body corporate of One Managed Investment Funds Limited.

Operating Rules	In relation to a CS Facility, has the same meaning as ‘operating rules’ in the Act.
Option	An option to subscribe for a Unit.
Optionholder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class, as set out in the Terms of Issue of that other Class.
Over	Has the meaning given to this term in section 276-345 of the Tax Act.
Perpetuity Period	The period specified in clause 3.20.
Proportional Takeover Bid	The same meaning as “proportional takeover bid” in the Act.
Register	The register of Holders required to be kept according to clause 8.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Restricted Securities	Has the meaning given to this term in the Listing Rules.
Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
Sub Entity	A trust, company or other entity in which the Trust has a direct or indirect interest, including a trust, company or other entity that was established by or is managed by the Trustee or by an Associate or related body corporate of the Trustee.
Sub Entity Assets	<p>In relation to any Sub Entity, all property, rights and income of the Sub Entity and any accretions to the property, rights and income of the Entity and any provisions the Trustee considers should be taken into account in determining the Sub Entity Assets, but excludes—</p> <ul style="list-style-type: none"> <li>(a) application money or property paid in respect of which unit or shares (as applicable) have not been issued in the Sub Entity</li> <li>(b) proceeds from withdrawals which have not yet been paid</li> </ul>

out of the Sub Entity, and

- (c) any distribution or dividend that has been declared but is awaiting payment to unitholders or shareholders of the Sub Entity (as applicable).

Tax	This term includes income tax (including any tax on the disposal of Assets), capital gains tax, withholding tax, transaction tax, stamp duty and any other duties, levies, imposts, interest, penalties, deductions and charges whatsoever imposed by any government or governmental entity of Australia or a State or Territory of Australia, including any interest and penalties imposed in respect of any of the above.
Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), or all as appropriate.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time-to-time.
Trading Day	Has the meaning given to this term in the Listing Rules.
Transaction Costs	<p>(a) When calculating the Application Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total transaction costs the Trust would incur to acquire afresh the Assets</li> <li>(ii) if appropriate, the total transaction costs the Trust will incur to acquire proposed Assets, or</li> <li>(iii) if appropriate, having regard to the actual transaction costs which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total transaction costs, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the Withdrawal Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total transaction costs the Trust would incur to sell the Assets, or</li> <li>(ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the withdrawal, a portion of the total transaction costs, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction</p>

Costs are zero.

Trust	The trust constituted by this Constitution.
Trust Component	Has the meaning given to this term in section 276-260 of the Tax Act.
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
Under	Has the meaning given to this term in section 276-345 of the Tax Act.
Unit	An undivided interest in the Trust as provided in this document.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.
Valuation Time	The time at which the Trustee calculates the Net Asset Value.
Vesting Day	The day which is the later of— <ul style="list-style-type: none"> <li>(a) the day immediately prior to the 80<sup>th</sup> anniversary of the date of commencement of the Trust, or</li> <li>(b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.</li> </ul>
VWAP	In respect of a Unit for a Trading Day, means the volume weighted average of the Unit prices for that Trading Day for all sales of Units recorded on ASX for the day. The Trustee may include, or may substitute, in VWAP calculations trading on another other financial market on which trading in Units is permitted. The Trustee may exclude sales that occur otherwise than in the ordinary course of trading on ASX or other financial market (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the afterhours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Trustee reasonably considers may not be fairly reflective of natural supply and demand.
Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause 6.1.

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**Schedule 2—Rules for interpretation**

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In this Constitution unless the context indicates a contrary intention—

- (a) words denoting any gender include both genders
- (b) the singular number includes the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation
- (d) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, the Constitution, and a reference to this Constitution includes any schedule
- (e) a person includes their executors, administrators, successors, substitutes (for example, persons taking by novation) and assigns
- (f) a person includes companies and corporations and vice versa
- (g) except in the dictionary, headings do not affect the interpretation of this Constitution
- (h) general words must not be given a restrictive meaning, by reason of the fact they are followed by particular examples intended to be embraced by the general words (in this regard, the word “including” is not a word of limitation)
- (i) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (j) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- (k) a reference to a document includes any variation, novation or replacement of it
- (l) a reference to any thing includes the whole or each part of it
- (m) words defined in the Act have the same meaning when used in this Constitution except where the context otherwise requires
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day
- (o) where time is to be calculated by reference to a day or event, then that day or event is excluded, and

- (p) the defined terms in Schedule 1 have the meaning given to them in that schedule except where the context otherwise requires.