



# Constitution

**Perpetual Credit Income Trust**

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Perpetual Trust Services Limited  
**(Responsible Entity)**

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**This is a consolidated version of the Constitution of the  
Perpetual Credit Income Trust incorporating:**

- **Replacement Constitution dated 21 May 2018; and**
- **Supplemental Deed dated 28 February 2019.**

# Constitution

## Perpetual Credit Income Trust

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# Details

Date May 2018

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## Party

Name	Perpetual Trust Services Limited
ABN	48 000 142 049
Short form name	<b>Responsible Entity</b>
Notice details	Level 18, Angel Place, 123 Pitt Street, Sydney, New South Wales 2000

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# Terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this constitution:

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

- (a) the first Accounting Period commences on the date of execution of this constitution and ends on 30 June 2018; and
- (b) the final Accounting Period ends on the date on which the assets of the Trust are fully distributed to Unitholders on or after the Termination Date and commences on the immediately preceding 1 July.

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

**AMIT** (or attribution managed investment trust) has the meaning given to it in the Tax Act.

**AMMA Statement** means an AMIT Member Annual Statement as defined in and issued under subdivision 276-H of the Tax Act.

**Application** means an application for a Unit, Option or Financial Instrument made by a person in a form and manner acceptable to the Responsible Entity.

**Application Transaction Costs** has the meaning given to it in clause 11.8.

**Approving Resolution** means a resolution passed in accordance with clause 7.

**Approving Resolution Deadline** in relation to a Proportional Takeover Bid means the day that is the 14th calendar day before the last day of the Bid Period.

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

**ASTC** has the same meaning as in the *Corporations Regulations 2001* (Cth).

**ASTC-regulated Transfer** has the same meaning as 'ASTC-regulated transfer' in the *Corporations Regulations 2001* (Cth).

**ASX** means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires.

**ASX Settlement Operating Rules** means the operating rules of ASTC.

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

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

**Auditor** means the auditor of the Trust.

**Bid Class** has the same meaning as 'bid class' in the Corporations Act.

**Bidder** has the same meaning as 'bidder' in the Corporations Act.

**Bid Period** has the same meaning as 'bid period' in the Corporations Act.

**Business Day** has the same meaning as in the Listing Rules.



**Business Hours** means 9.00am to 5.00pm on a Business Day.

**Cash Amount** means cash, cash equivalents and amounts attributable to assets that can be readily converted to cash by the Responsible Entity. For the avoidance of doubt, amounts attributable to an unrealised revaluation of Trust Property are not Cash Amounts.

**Corporate Tax Entity** has the meaning given to it in section 960.115 of the *Income Tax Assessment Act 1997* (Cth).

**Corporations Act** means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any Relief.

**CS Facility Rules** means the operating rules of an applicable CS facility licensee.

**Current Market Value** of a Unit on a particular day is an amount equal to Net Trust Value plus any Application Transaction Costs (in the case of an Application) or less any Redemption Transaction Costs (in the case of a Redemption Request) divided by the number of Units on issue.

**Current Trading Price** of a Unit on a particular day is:

- (a) the amount equal to the average of the daily volume weighted average price for all Unit sales (excluding sales that are special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and after hours adjust phase, or any overseas trades or trades pursuant to the exercise of Options, any overnight crossings or any other sales which the Responsible Entity considers may not be reflective of natural supply and demand) on the ASX during the previous 10 Trading Days immediately preceding that day; or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Responsible Entity's opinion, a determination under paragraph (a) 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,

the price per Unit determined by an advisor who:

- (i) is independent of the Responsible Entity; and
- (ii) has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the Current Trading Price of a Unit is being made,

to be the fair market price of the Unit, having regard but not limited to:

- (i) the nature of the proposed offer of Units for which purpose the Current Trading Price of a Unit is being calculated;
- (ii) the circumstances in which the proposed offer of Units will be made; and
- (iii) the interests of Unitholders generally.

**Delegate** means a person appointed, engaged or otherwise contracted by the Responsible Entity as contemplated by clause 19.3(f).

**Derivative Transaction** means any derivative (as defined in the Corporations Act) or any transaction in respect of a derivative.

**Determined Member Component** has the meaning given to it in the Tax Act.

**Determined Trust Components** has the meaning given to it in the Tax Act.

**Disclosure Document** means information memorandum, product disclosure statement or any other similar document issued by the Responsible Entity relating to the issue of Units in the Trust.

**Distributable Income** has the meaning given to it in clause 23.2.

**Distribution Reinvestment** means the reinvestment in the Trust of distributions.

**DRP Rules** means the Distribution Reinvestment Plan Rules of the Trust as may be amended by the Responsible Entity from time to time.

**Establishment Costs** are all costs, expenses and commissions incurred (or to be incurred) by the Responsible Entity in connection with the establishment of the Trust and the offering of Units under the first Disclosure Document (whether incurred before or after the establishment of the Trust), including government registration charges; legal fees and other expenses in relation to the preparation of the Organisational Documents; accounting, audit and taxation adviser fees; joint lead manager fees, the first Disclosure Document printing costs; and administrator and custodian set-up fees.

**Fee** has the meaning given to it in clause 19.1.

**Financial Instrument** has the meaning given to it in clause 12.3.

**Financial Instrument Holder** means the registered holder of a Financial Instrument and includes persons jointly registered.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

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

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

**Hedge Agreement** means any contract, agreement or arrangement setting out the terms and conditions of a Derivative Transaction. It includes any master agreement as published by the International Swaps and Derivatives Association, Inc. from time to time, and any schedule to, and any derivative, transaction or confirmation under or as defined in, such a master agreement.

**Holder** means a Unitholder, an Option Holder or a Financial Instrument Holder, as the context requires.

**Initial Minimum Investment** means the amount determined by the Responsible Entity from time to time as the minimum number of Units, Options or Financial Instruments or value of Units, Options or Financial Instruments for which an Application may be made.

**Initial Public Offer** means:

- (a) an initial public offer of Units for the purpose of raising substantial capital; or
- (b) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking the Official Quotation of Units.

**Investment Management Agreement** means the agreement between the Responsible Entity and the Manager under which the Manager is appointed to manage or invest part or all of the Trust Property.

**Issue Price** means the price at which a Unit is created and issued.

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth).

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth).

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

**Listed** means in respect of an entity, admitted to the official list of the ASX and, in respect of Units, Officially Quoted.

**Management Fee** has the meaning provided in clause 19.2.

**Manager** means any person appointed by the Responsible Entity to manage or invest part or all of the Trust Property.

**Marketable Parcel** has the same meaning as in the business rules of ASX in force from time to time.

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

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

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

**Net Income** means, for an Accounting Period, the net income of the Trust for the purpose of section 95 of the ITAA 1936 less amounts attributable to franking credits, foreign tax credits and other notional and deemed amounts.

**Net Trust Value** means the total value of the Trust Property less the Trust Liabilities.

**Official Quotation** or **Officially Quoted** means quotation on the official list of the ASX, including where quotation has been suspended for not more than 60 days.

**Operating Rules**, in relation to a Prescribed CS Facility, has the same meaning as 'operating rules' in the Corporations Act.

**Option** means an option to subscribe for a Unit.

**Option Holder** means a person registered as the holder of an Option and includes persons jointly registered.

**Organisational Documents** includes this constitution, the first Disclosure Document and any documentation relating to:

- (a) an investment of the Trust;
- (b) underwriting the issue of Units in the Trust; or
- (c) an administrator, custodian or investment adviser to the Trust.

**Over** has the meaning given to it in the Tax Act.

**Period** means an Accounting Period or a period determined by the Responsible Entity for the purposes of making a distribution under clauses 23 or 24, as appropriate or taking the actions referred to in Schedule 1.

**Perpetual** means Perpetual Investment Management Limited ABN 18 000 866 535.

**Portfolio Value** means, for the purposes of clause 19.2, the Net Trust Value determined as at the close of each market on a particular Business Day, exclusive of any accruals for the Management Fee.

**Prescribed CS Facility** has the same meaning as 'prescribed CS facility' in the Corporations Act.

**Proper ASTC Transfer** has the same meaning as 'proper ASTC transfer' in the *Corporations Regulations 2001* (Cth).

**Proportional Takeover Bid** has the same meaning as 'proportional takeover bid' in the Corporations Act.

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

**Redemption Price** means the price payable on the redemption of a Unit calculated under clause 13.5.

**Redemption Request** means a request by a Unitholder to the Responsible Entity to redeem a Unit.

**Redemption Transaction Costs** means:

- (a) an estimate by the Responsible Entity (which must be independently verifiable) of the total transaction costs the Trust would incur to sell the Trust Property;

- (b) if appropriate having regard to the actual cost which would be incurred because of the redemption, the Responsible Entity's estimate (but which must be independently verifiable) of the total transaction costs, which may be zero; or
- (c) if the Responsible Entity makes no estimate under either paragraph (a) or (b) above, zero.

**Register** means the registers required to be kept pursuant to clause 26.

**Relevant Financial Market** has the same meaning as 'relevant financial market' in the Corporations Act.

**Relief** means any declaration or modification made or exemption granted by ASIC that is applicable to the Trust or the Responsible Entity in its capacity as trustee of the Trust and that is in force, and includes legislative instruments and class orders made by ASIC under the Corporations Act.

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

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

**Restricted Securities** has the same meaning as in the Listing Rules.

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

**Subsequent Minimum Investment** means the amount determined by the Responsible Entity from time to time as the minimum number of Units, Options or Financial Instruments or value of Units, Options or Financial Instruments for which an Application may be made by an existing Holder.

**Tax Act** means ITAA 1936, ITAA 1997, and/or the *Taxation Administration Act 1953* (Cth) (as applicable).

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

**Termination Date** means the date specified by the Responsible Entity in the notice terminating the Trust under clause 29.1, or the effective date of termination of the Trust under clause 29.2, as the context requires.

**Trading Day** has the same meaning as in the Listing Rules.

**Trust** means the trust constituted by and under this constitution.

**Trust Income** in respect of an Accounting Period may be any of the following:

- (a) the income of the Trust in respect of that Accounting Period less all of the expenses of the Accounting Period calculated in accordance with generally accepted accounting principles (as applied by clause 37) but excluding any amount included in the income of the Trust that is not a Cash Amount;
- (b) the Net Income of the Trust; or
- (c) all income gains, receipts and profits and all capital gains, receipts and profits derived during that Accounting Period less all expenses of the Accounting Period referable thereto.

**Trust Liabilities** include borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions the Responsible Entity decides to make (including, but not limited to, a

provision for accrued or unaccrued Management Fee), unpaid distributions due to Unitholders and other unpaid remuneration (if any) due to the Responsible Entity but excluding any amount on account of unitholder equity, unpaid redemptions or distributions due to Unitholders, application monies or any other amount representing the value of rights attaching to Units whether or not redeemable. For avoidance of doubt the definition of Trust Liabilities is not intended to affect any other meaning of 'liabilities' of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes.

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

**Under** has the meaning given to it in the Tax Act.

**Unit** means an undivided share in the beneficial interest in the Trust Property as provided in this constitution.

**Unitholder** means:

- (a) a person for the time being appearing on the Register as a holder of a Unit; and
- (b) in all other cases, where required by the Corporations Act, a person determined under the Corporations Act for the time being as a member of the Trust.

**Valuation Time** means a time the Responsible Entity calculates the Net Trust Value under clause 10.3.

## 1.2 Interpretation

In this constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (f) a reference to time is to Sydney, New South Wales, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) provisions which are expressed to be 'subject to the Corporations Act' or 'when required by the Corporations Act' are only subject to the provisions of that Act while the Trust is a registered scheme;
- (j) the word 'law' includes common law, the laws and principles of equity and legislation;
- (k) the word 'present' in the context of a person being present at a Meeting includes participating using technology approved by the Responsible Entity for the purposes of the Meeting;
- (l) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this constitution or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### **1.3 Headings**

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

### **1.4 Corporations Act expressions**

Unless the contrary intention appears in this constitution, an expression in a clause of this constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this constitution, that expression has the same meaning as in that provision.

### **1.5 Interpretation of references to the Tax Act**

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

### **1.6 Conflicts with Corporations Act**

For the purposes of this constitution, if the provisions of the Corporations Act and the Listing Rules, CS Facility Rules or this constitution conflict on the same matter, the provisions of the Corporations Act prevail.

### **1.7 Conflicts with Disclosure Document**

If the provisions of the Disclosure Document and this constitution conflict on the same matter, the provisions of this constitution prevail.

### **1.8 Listing requirements**

Before the Trust or any Unit is Listed, a provision of this constitution subject to or in any way restricted by the Listing Rules or the CS Facility Rules is to be construed as if the provision were not expressed to be subject to or restricted by the Listing Rules or the CS Facility Rules.

### **1.9 Schedule**

Schedule 1 to this constitution is an operative part of it.

## **2. The Trust**

### **2.1 Unit trust**

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

### **2.2 Benefit of the trust**

The Trust is constituted for the benefit of Unitholders.

### **2.3 Responsible Entity**

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

### **2.4 Deed binding**

This is the constitution of the Trust for the purposes of the Corporations Act and it binds the Holders and the Responsible Entity as well as any person who claims through any of them.

## **2.5 Separate fund**

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

## **2.6 Vesting**

The Trust Property vests in the Responsible Entity on trust for the Unitholders.

## **2.7 Duration**

The Trust ends on the earlier of the time provided by this constitution or by law.

# **3. Commencement**

## **3.1 Commencement of Trust**

The Trust commences when the first investor or investors are issued Units in the Trust.

# **4. Units**

## **4.1 Beneficial interest**

The beneficial interest in the Trust is divided into Units.

## **4.2 Rights of Unitholders**

A Unit confers on its Holder an undivided absolute, vested and indefeasible beneficial interest in the Trust as a whole, subject to Trust Liabilities, not in parts or single assets. All Units confer identical interests and rights except as otherwise provided in this constitution or by their respective terms of issue.

## **4.3 Dealing with Units**

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

## **4.4 Issue, consolidation, division and reclassification of Units**

- (a) The Responsible Entity may:
  - (i) create and issue a Unit; or
  - (ii) create and issue one or more different classes of Units with rights, obligations or restrictions differing from each other class of Units,subject to this constitution and the Corporations Act.
- (b) The Responsible Entity may at any time consolidate, divide or re-classify Units, provided that any consolidation, division or re-classification must be undertaken for all Units in a class of Units. Consolidating, dividing or re-classifying Units must not alter the:
  - (i) aggregate beneficial interest in the Trust Property held by a Unitholder prior to the consolidation, division or re-classification; or
  - (ii) value of the relevant Unitholder's aggregate holding of Units.
- (c) Where Units, Options or Financial Instruments are issued on terms of issue that are in whole or in part not set out in this constitution, then, subject to the Corporations Act and ASIC policy, the Responsible Entity may:
  - (i) amend this constitution in accordance with clause 38 by incorporating any or all of the terms of issue in this constitution (including by way of a schedule to this constitution); or

- (ii) where such terms of issue are not incorporated in this constitution, the terms of issue do not affect the provisions of this constitution regulated by section 601GA of the Corporations Act.

#### **4.5 Fractions of Units**

- (a) The Responsible Entity may issue and redeem fractions of a Unit, provided that, where the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) Where any fractions of Units are on issue at a time when the Trust is to be Listed, the Responsible Entity may cancel the fractions with effect from the date of the Listing.
- (c) The provisions of this constitution applying to Units and Holders apply to a fraction of a Unit in the proportion which the fraction bears to a whole Unit.
- (d) Where a holding comprises more than one fraction of a Unit, the Responsible Entity may consolidate those fractions.

#### **4.6 Rounding of Units**

Where any calculation done in accordance with this constitution or the Corporations Act results in the issue or redemption of a fraction of a Unit:

- (a) except as otherwise provided in clause 11.5(b), the number of Units to be issued or redeemed may be rounded down or up to the nearest whole number, or to such number of decimal places, as the Responsible Entity determines; and
- (b) any excess application money or other money or property which results from rounding becomes Trust Property.

#### **4.7 Holders not to interfere**

Except as otherwise provided by this constitution, a Holder has no right or power, merely because it is a Holder:

- (a) to interfere with, or question the exercise or non-exercise of, any power, duty or right of the Responsible Entity;
- (b) to exercise a right in respect of a part of or a particular Trust Property;
- (c) to lodge, in respect of Trust Property, a caveat or other document that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of the Trust Property;
- (d) to claim any interest in a part of or a particular Trust Property; or
- (e) to require Trust Property to be transferred to the Holder (or any other person).

#### **4.8 Restriction on issue and redemption of Units**

No Units may be issued or redeemed after the 80th anniversary of the day the Trust commenced if to do so would cause a contravention of an applicable rule against perpetuities or any other applicable rule of law or equity.

### **5. Classes of Units**

#### **5.1 Fees, expenses or tax referable to a class**

If a class of Units is created in accordance with this constitution and Units in the class have at any time:

- (a) a fee that is referable to that class that is different to the fees that are referable to another class; or
- (b) a type or a particular expense or Tax or a proportion of a particular expense or Tax referable to that class,

the Responsible Entity must:



- (c) calculate each Unitholder's share of income of the Trust, Distributable Income or amount distributed under this constitution by first calculating for each class of Unit held by the Unitholder that proportion of the variables in clause 23 that the Responsible Entity determines is properly referable to the class and the Units held by the Unitholder and then aggregating those amounts; and
- (d) determine the proportion of net proceeds of realisation under clause 29.4 that is properly referable to each class and each proportion referable to each class must be distributed pro rata to Unitholders according to the number of Units in that class they hold.

## **5.2 No limitation of class rights or obligations**

Clause 5.1 does not limit the extent to which a class:

- (a) may have rights, obligations or restrictions other than or in addition to those specified in clause 5.1 different from any other class; or
- (b) may have different rights, obligations or restrictions because of a determination by the Responsible Entity under this constitution, including in relation to issue and redemption prices applicable to different classes of Units.

## **5.3 Determination of variables in relation to a class**

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

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

## **5.4 Value of class Units**

In clause 5.3, the value of a Unit in a class is the mid-point between the applicable Issue Price and Redemption Price for Units in that class at the most recent Valuation Time.

# **6. Transfers of Units, Options and Financial Instruments**

## **6.1 Transfer**

Subject to this constitution and the ASX Settlement Operating Rules in respect of an ASTC-regulated Transfer, a Holder may only transfer Units, Options or Financial Interests in the manner the Responsible Entity from time to time prescribes.

## **6.2 Acceptance of transfers**

- (a) Subject to the Listing Rules and this constitution, the Responsible Entity may, in its absolute discretion, refuse to register any transfer of Units or Options that are Officially Quoted.
- (b) The Responsible Entity is not obliged to register a transfer of Units or Options that are not Officially Quoted where:
  - (i) the transferee does not meet the Responsible Entity's criteria for a Holder;
  - (ii) the transfer is not duly stamped (where required) or otherwise is inconsistent with the form of transfer prescribed by the Responsible Entity; or
  - (iii) any amount payable by the transferee to the Responsible Entity in respect any of the transferor's Units remains unpaid.

## **6.3 Refusal to register**

- (a) The Responsible Entity must:

- (i) except as permitted by ASX, refuse to register any transfer of Units or other securities which are Restricted Securities if that transfer is or might be in breach of the Listing Rules or any restriction agreement entered into by the Responsible Entity under the Listing Rules in relation to the Units; and
  - (ii) refuse to register any transfer where the Responsible Entity is required to do so by the Listing Rules.
- (b) Despite clauses 6.2(a) and 6.3(a), the Responsible Entity must not refuse or fail to register or give effect to, or delay or in any way interfere with, a Proper ASTC Transfer of Units or other securities quoted by ASX.
- (c) If a person has lodged a transfer which the Responsible Entity has refused to register, the Responsible Entity must, within five Business Days after the date of lodgement, give to the lodging person written notice of the refusal and the reasons for it.
- (d) Subject to clause 6.3(b), Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX. The Responsible Entity will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

#### **6.4 Certificates**

The Responsible Entity is under no obligation to and may decline to issue certificates for Units, Options or Financial Instruments. The Responsible Entity at any time may send a Holder details of Units, Options or Financial Instruments held by, transactions of, or distributions to, the Holder.

#### **6.5 Electronic settlement**

- (a) The Responsible Entity may in relation to the Trust participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Corporations Act, the Listing Rules and the Operating Rules of a Prescribed CS Facility, or corresponding laws or securities exchange rules in any other country.
- (b) If the Responsible Entity in relation to the Trust participates in a system of the kind described in clause 6.5(a), then despite any other provision of this constitution:
  - (i) Units may be transferred, and transfers may be registered, in any manner required or permitted by any one or more of the Listing Rules, or the Operating Rules of a Prescribed CS Facility, as applicable (or corresponding laws or securities exchange rules in any other country) applying in relation to the system;
  - (ii) the Responsible Entity must, in relation to the Trust, comply with and give effect to those rules; and
  - (iii) the Responsible Entity may, in accordance with those rules, decline to issue certificates for holdings of Units that are Officially Quoted.

#### **6.6 Transfer instruments**

A written transfer instrument must be:

- (a) executed by the transferor or (where the Corporations Act permits) stamped by the transferor's broker; and
- (b) unless the Responsible Entity decides otherwise in the case of a fully paid Unit, executed by the transferee or (where the Corporations Act permits) stamped by the transferee's broker.

Subject to the Corporations Act, the written transfer instrument may comprise more than one document.

## **6.7 Timing of transfer**

Except as required by the CS Facility Rules, a:

- (a) transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units; and
- (b) transfer of Units does not pass the right to any distributions on the Units until such registration.

## **7. Proportional Takeover Bid**

### **7.1 Transfers**

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.

### **7.2 Voting entitlements**

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 Bid Class Units:

- (a) is entitled to vote on an Approving Resolution; and
- (b) has one vote for each Bid Class Unit held.

### **7.3 Meeting**

Where offers have been made under a Proportional Takeover Bid, the Responsible Entity must ensure that an Approving Resolution is voted on at a meeting of the persons described in clause 7.2 before the Approving Resolution Deadline.

### **7.4 Voting threshold**

An Approving Resolution is passed if more than 50% of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.

### **7.5 Meeting rules**

The provisions of this constitution that apply to a Meeting apply, with such modifications as the circumstances require, to a meeting that is called under this clause as if the meeting was a Meeting.

### **7.6 Notice of vote outcome**

If an Approving Resolution to approve the Proportional Takeover Bid is voted on in accordance with this clause 7 before the Approving Resolution Deadline, the Trust must, on or before the Approving Resolution Deadline, give:

- (a) the Bidder; and
- (b) each Relevant Financial Market,

a written notice stating that an Approving Resolution to approve the Proportional Takeover Bid has been voted on and whether it was passed or rejected.

### **7.7 No vote**

If no resolution has been voted on in accordance with this clause as at the end of the day before the Approving Resolution Deadline, 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.

### **7.8 Cessation of clause**

This clause 7 does not commence operation until the Trust is Listed or a Unit is Officially Quoted (whichever first occurs). Thereafter, this clause 7 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 Corporations Act prior to that date.

## **8. Record Time**

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

## **9. Applications**

### **9.1 Application for Units**

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

- (a) (other than on Distribution Reinvestment) give the Responsible Entity an Application; and
- (b) pay the application money or transfer other property to the Responsible Entity or its custodian (where there is one) by way of subscription for Units, Options or Financial Instruments.

### **9.2 Payment in kind**

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

- (a) Responsible Entity permits;
- (b) property is in a form permitted by the Responsible Entity; and
- (c) property is accompanied by a valuation of it that is acceptable to the Responsible Entity, unless otherwise determined by the Responsible Entity.

### **9.3 Responsible Entity may deduct**

The Responsible Entity or its custodian may deduct Fees, Taxes and Application Transaction Costs applicable in relation to or incurred in receiving, and in calculating the value of, consideration for Units, Options or Financial Instruments.

### **9.4 Separate bank account**

The Responsible Entity or its custodian may hold application money for Units, Options or Financial Instruments in a single account containing application money for one or more trusts or bodies corporate.

### **9.5 Responsible Entity may set investment minimums**

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

### **9.6 Amount or value of consideration for Units, Options or Financial Instruments**

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

- (a) consideration is received under a Distribution Reinvestment or paid by the Responsible Entity on behalf of a Holder; or
- (b) Responsible Entity elects to accept lower consideration.

### **9.7 Responsible Entity may reject Applications**

The Responsible Entity may reject an Application without giving a reason.

## **9.8 Issue of Units, Options or Financial Instruments**

Units, Options or Financial Instruments are created and issued when the Responsible Entity has agreed to accept the Application (if relevant) and either the consideration or a commitment in a form acceptable to the Responsible Entity to provide the consideration. Units, Options or Financial Instruments issued against consideration paid other than in cleared funds are void if the funds are not subsequently cleared or the consideration is not provided or transferred at or within the time specified by the Responsible Entity.

## **9.9 Overseas Holders**

Subject to the Listing Rules during such periods as the Trust or Units, Options or Financial Instruments are Listed or Officially Quoted, and subject to any Relief, the Responsible Entity may, in relation to an offer of Units, Options or Financial Instruments to Holders, elect to offer Units, Options or Financial Instruments only to Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this constitution, such offer will be deemed to have been made to all relevant Holders.

# **10. Valuation**

## **10.1 Responsible Entity may value**

The Responsible Entity may cause a Trust Property to be valued at any time as it sees fit, including more than once on each day.

## **10.2 Responsible Entity may revalue**

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

## **10.3 Time of calculation**

The Responsible Entity may calculate the Net Trust Value at any time determined by the Responsible Entity (**Valuation Time**), but must do so, other than when Redemption or other transactions are suspended, at least once each week on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities. The Responsible Entity may calculate Net Trust Value more than once a day.

## **10.4 Calculation of Net Trust Value**

The Responsible Entity must calculate the Net Trust Value by deducting the value of the Trust Liabilities from the value of the Trust Property (determined on the basis of the most recent valuation of each item), each as at the Valuation Time.

## **10.5 Value**

Subject to clauses 10.3 and 10.9, the value of any Trust Property:

- (a) while the Trust is a registered scheme, must be determined by the Responsible Entity using an appropriate method that the Responsible Entity in its discretion determines to be consistent with the range of ordinary commercial practice for valuing that type of Trust Property and reasonably current; and
- (b) while the Trust is not a registered scheme, is the market value, the net fair value, or other value appropriate to the nature of the property and the nature of the Trust from time to time.

## **10.6 Determining value**

Subject to clause 10.3, the value of any Trust Property must be determined by:

- (a) a valuer who is independent of the Responsible Entity;

- (b) a person using a method determined by a person who is independent of the Responsible Entity; or
- (c) the Responsible Entity using any other appropriate method the Responsible Entity decides to adopt (including estimates of value based on objective criteria where actual figures are not available) which is capable of being verified independently by a valuer independent of the Responsible Entity.

## **10.7 Late information**

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

## **10.8 Currency conversion**

Where it is necessary for the Responsible Entity to convert one currency to another for whatever reason, the conversion must be done at a time and at such conversion rates quoted by a bank or other relevant financial institution nominated by the Responsible Entity.

## **10.9 Responsible Entity's reliance**

Without limiting clauses 16.2, 17.2 or 17.3, the Responsible Entity may value any Trust Property, or make any calculation or determination of value under this clause 10, in reliance on any valuer or other person appointed by the Responsible Entity to assist the Responsible Entity to discharge its obligations under this clause 10.

# **11. Issues of Units**

## **11.1 Issue Price of Units**

Subject to this clause 11, and subject to any rights, obligations and restrictions attaching to any particular Units or class of Units specified in this constitution, the Issue Price for a Unit must be calculated as follows:

- (a) in the case of Units in a class offered for subscription pursuant to an Initial Public Offer at a price of \$1.10 per Unit;
- (b) in the case of a placement of Units or issue of Units under a Unit purchase plan while Units are Officially Quoted, in accordance with clause 11.3;
- (c) in the case of a proportionate offer (including a rights issue), in accordance with clause 11.4;
- (d) in the case of Distribution Reinvestment, in accordance with clauses 11.5 and 11.6;
- (e) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 12.1;
- (f) subject to paragraphs (a) to (e) above, in all other cases while Units are Officially Quoted:
  - (i) the Current Trading Price of Units; or
  - (ii) the Current Market Value of Units where greater than or equal to the Issue Price for a Unit calculated under sub-paragraph (i) above, immediately before the date on which or as at which the Issue Price is to be calculated; and
- (g) subject to paragraphs (a) to (e) above, while Units are not Officially Quoted, the Current Market Value of Units in accordance with clause 11.2.

## **11.2 Time for calculation while Units not Officially Quoted**

Each of the variables in clause 11.1(g) must be determined as at the next Valuation Time after:

- (a) receipt by the Responsible Entity of an Application; or
  - (b) the Responsible Entity receives the application money or the property against which Units are to be issued is vested in the Responsible Entity,
- whichever happens later.

### **11.3 Placements and Unit purchase plan while Officially Quoted**

While Units in a class are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units in that class by way of a placement or under a Unit purchase plan at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the terms of any Relief.

### **11.4 Issue Price for proportionate offers**

Subject to the terms of any Relief and the Listing Rules (while the Listing Rules apply), the Responsible Entity may offer Units for subscription at a price determined by the Responsible Entity to those persons who were Unitholders on a date determined by the Responsible Entity:

- (a) provided that, subject to paragraph (b) below, 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 of Units, to the value of the Unitholder's units in that class) at the relevant date; but
- (b) the Responsible Entity 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 any Relief,

whether or not the right of entitlement is renounceable.

### **11.5 Issue Price for Distribution Reinvestment while Officially Quoted**

- (a) If Distribution Reinvestment applies while the Units are Officially Quoted, subject to the Listing Rules and any Relief, the Issue Price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity at its discretion, which may include determining that the Issue Price is to be issued at a discount to the Current Market Value for part of the Distribution Reinvestment and determining a different Issue Price for another part of the Distribution Reinvestment. If the Responsible Entity has not determined the Issue Price by the date at which Units are to be issued upon reinvestment, the price will be the Current Market Value.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit.

### **11.6 Issue Price for Distribution Reinvestment while not Officially Quoted**

While Units are not Officially Quoted, the Issue Price payable for each additional Unit on Distribution Reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which Units are to be issued upon reinvestment, the Issue Price will be as calculated under clause 11.1(g) (except that Issue Price will exclude Application Transaction Costs) on the first Business Day after the end of the Period to which the distribution relates.

### **11.7 Rounding**

Subject to the Listing Rules, the Issue Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the Issue Price. Any excess application money or property which results from rounding becomes Trust Property.

### **11.8 Application Transaction Costs**

The **Application Transaction Costs** are:

- (a) an estimate by the Responsible Entity (but which is independently verifiable) of the total transaction costs the Trust would incur to acquire afresh the Trust Property;

- (b) if appropriate having regard to the actual cost which would be incurred because of the issue or sale of the Units (including in relation to Units issued by way of Distribution Reinvestment), the Responsible Entity's estimate (but which is independently verifiable) of a portion of the total transaction costs, which may be zero; or
- (c) if the Responsible Entity makes no estimate under either paragraph (a) or (b) above, zero.

## 12. Options and Financial Instruments

### 12.1 Issue of Options

The Responsible Entity may, subject to the Corporations Act, the Listing Rules and any Relief, issue Options on such terms and conditions as it determines and the issue price of Options shall be such price (including nil) as the Responsible Entity determines in its discretion.

### 12.2 Option terms

Options may only be dealt with, exercised or reorganised in accordance with their terms of issue.

### 12.3 Financial Instruments

Subject to the Corporations Act, in addition to Units and Options, the Responsible Entity may issue other interests, rights or instruments relating to the Trust (including derivatives, convertible notes, debentures and other instruments in the nature of a debt, equity or hybrid) (**Financial Instruments**).

### 12.4 Issue of Financial Instruments

Subject to the Corporations Act, the Responsible Entity may issue Financial Instruments:

- (a) for consideration or nil consideration; or
- (b) on such terms as the Responsible Entity determines in its absolute discretion.

### 12.5 Interests of Option Holders and Financial Instrument Holders

- (a) An Option shall not, except as otherwise provided by the Corporations Act confer any interest in the Trust or any right to participate in the income or capital of the Trust.
- (b) Subject to the terms of issue of the Financial Instrument, a Financial Instrument will not confer any interest in, or any rights to participate in the income or capital of, the Trust.
- (c) Each Option Holder and, subject to the terms of issue of the Financial Instrument, each Financial Instrument Holder agrees not to:
  - (i) interfere with any rights or powers of the Responsible Entity under this constitution;
  - (ii) exercise or purport to exercise a right in respect of Trust Property or claim any interest in Trust Property (for example, by lodging a caveat affecting any particular item of Trust Property); or
  - (iii) require any item of Trust Property to be transferred to them or any other person.
- (d) Subject to the terms of issue of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unitholder is not entitled to any other rights of a Unitholder.

### 12.6 Voting rights of Option Holders and Financial Instrument Holders

Option Holders and Financial Instrument Holders shall be entitled to receive notices of, and to attend meetings of Unitholders but shall not, except as otherwise provided for by the Corporations Act, any exemption made thereunder or the terms of issues of the Options or Financial Instruments, be entitled to speak or vote at any such meeting.

## 13. Redemption of Units



### **13.1 No redemption where the Trust is Listed**

While the Trust is Listed and without limiting clause 16.4, Unitholders do not have any right to request a redemption of Units and clauses 13.3 to 13.13 and 15 do not apply.

### **13.2 No obligation to redeem**

In no circumstances is the Responsible Entity obliged to:

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

### **13.3 Redemption where Trust is not Listed and is liquid**

- (a) This clause 13.3 applies while the Trust is a registered scheme and is liquid but is not Listed.
- (b) Subject to clause 15, a Unitholder may, prior to the termination of the Trust, request the Responsible Entity to redeem the Unitholder's Units by giving a Redemption Request to the Responsible Entity.
- (c) A Redemption Request must be made in a way approved by the Responsible Entity.
- (d) The Responsible Entity is entitled, but not obliged, to give effect to a Redemption Request in whole or in part and may do so without giving any reasons to the Unitholder. If the Responsible Entity decides to satisfy a Redemption Request in whole or in part, it must do so within 21 days after it decides to do so, or a longer period allowed by clause 15, by paying the Unitholder the Redemption Price from the Trust Property and cancelling the Units by making an appropriate entry in the Register as contemplated under clause 13.3.
- (e) A Unitholder cannot withdraw a Redemption Request, unless the Responsible Entity agrees.
- (f) Subject to paragraph (d) above, the Responsible Entity must redeem Units the subject of a Redemption Request at the Redemption Price.
- (g) Subject to clause 13.11, the Responsible Entity must redeem Units the subject of a Redemption Request from capital and/or income of the Trust.
- (h) The Responsible Entity may determine more than one date with effect from which a Unit is to be redeemed pursuant to a Redemption Request and such Units will be redeemed over those days in such proportions as the Responsible Entity determines, provided that all such Units are redeemed within the period specified in paragraph (i) below.
- (i) If, pursuant to paragraph (d) above, Units the subject of a Redemption Request are to be redeemed:
  - (i) the Redemption Request must be satisfied by paying the Redemption Price calculated in accordance with clause 13.5 multiplied by the number of Units the subject of the Redemption Request; and
  - (ii) the payment referred to in sub-paragraph (i) above must be made within 21 days of that date of redemption of the relevant Units (or deemed date of such redemption).

### **13.4 Redemption where Trust is not Listed and is not liquid**

- (a) If the Trust is not Listed and is not liquid, a Unitholder may request for the Responsible Entity to redeem the Unitholder's Units only in accordance with the terms of any current withdrawal offer made by the Responsible Entity in compliance with the provisions of the Corporations Act regulating offers of that kind.
- (b) If there is no withdrawal offer currently open for acceptance by Unitholders, a Unitholder has no right to make a Redemption Request.
- (c) The Responsible Entity does not have to make a withdrawal offer.

- (d) If the Responsible Entity receives a Redemption Request, and the Trust subsequently ceases to be liquid before the Redemption Request has been accepted or rejected, the Redemption Request lapses.

### **13.5 Redemption Price**

- (a) Subject to the terms of any withdrawal offer made available by the Responsible Entity, the Redemption Price per Unit (other than in the circumstances provided for in clause 14), is the Current Market Value of the Unit.
- (b) Where there is a redemption of Units occurring as a result of a buy back of Units in accordance with clause 16.4, no Redemption Price is payable on cancellation of the Units.

### **13.6 Deduction of Taxes**

The Responsible Entity may deduct any Taxes or any other amount owing to the Responsible Entity or the Trust under this constitution from the Redemption Price.

### **13.7 Determination of Minimum Redemption Amount**

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

### **13.8 Redemption Requests for less than the Minimum Redemption Amount**

The Responsible Entity may reject a Redemption Request if the amount payable to the Unitholder is less than the Minimum Redemption Amount for the Trust.

### **13.9 Deemed Redemption Request for all Units**

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

### **13.10 Transfer of assets on redemption**

The Responsible Entity may satisfy the amount payable on a redemption of Units (partly or fully) by transferring Trust Property in specie as the Responsible Entity in its discretion may select, to be credited at asset values determined as at the same time the Redemption Price is determined, without deduction for any costs or Taxes payable by the Unitholder in respect of the transfer.

### **13.11 Character of Redemption Price and notification to Unitholder**

- (a) Where the Trust (or the relevant class of Units) is not an AMIT and the Trust Income for an Accounting Period is attributable to Trust Property realised to fund a redemption of Units pursuant to clause 13, an equivalent amount of the Redemption Price may in the Responsible Entity's discretion, constitute a distribution of that Trust Income to the redeeming Unitholder and any remaining amount of the Redemption Price will represent a return of Trust capital attributable to that Unit.
- (b) The Responsible Entity must advise the Unitholder in respect of any Unit redeemed pursuant to this clause 13 of the extent to which the Redemption Price represents a return of Trust capital attributable to that Unit and a distribution of Trust Income.

### **13.12 When Units are redeemed**

Units are taken to be redeemed:

- (a) where the redemption occurs in response to a Redemption Request, at the time at which both the applicable Redemption Price is calculated and the Redemption Request is processed; and
- (b) in any other case, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

and from that time until payment, the former Unitholder of the redeemed Units ceases to be a Unitholder in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

### **13.13 Cancel Units**

On the redemption of a Unit, the Responsible Entity must cancel the Unit redeemed and amend the Register accordingly.

## **14. Small holdings**

### **14.1 Power to redeem Units that are not Officially Quoted**

The Responsible Entity may redeem Units that are not Officially Quoted and held by a Unitholder where the total amount of Units held by that Unitholder is less than the Minimum Redemption Amount, without a Redemption Request from the Unitholder, provided that:

- (a) the Responsible Entity notifies in writing any such intention to redeem the Units; and
- (b) within 6 weeks of providing the notice to the Unitholder under paragraph (a) above the Responsible Entity may not redeem the Units; and
- (c) the Responsible Entity pays any costs of redemption out of the Trust Property.

### **14.2 Power to sell or redeem Units that are Officially Quoted**

Subject to the remaining provisions of this clause 14, while the Trust is Listed or Units are Officially Quoted, the Responsible Entity may on one occasion in any 12 month period sell or redeem any Officially Quoted Units held by Unitholders which comprise less than a Marketable Parcel, without request from the Unitholder provided that:

- (a) the Responsible Entity notifies in writing any such intention to sell or redeem (as the case may be), the Units;
- (b) within 6 weeks of providing the notice to the Unitholder under paragraph (a) above neither the:
  - (i) Responsible Entity may sell or redeem the Units; nor
  - (ii) Unitholder advises the Responsible Entity that the Unitholder wishes to retain the Units; and
- (c) the Responsible Entity out of Trust Property, or the purchaser of such Units, pays any costs of sale or redemption.

### **14.3 Proceeds**

The proceeds of any sale or redemption proceeds under this clause 14 will not be sent until the Responsible Entity has received a certificate or other proof of title acceptable to the Responsible Entity relating to the Units (or is satisfied that the certificate has been lost or destroyed).

### **14.4 Takeovers**

The Responsible Entity's powers to sell or redeem Units under this clause 14 lapse following the announcement of a full takeover bid of the Trust. The powers will apply again once such takeover offer closes.

### **14.5 Redemption price**

If a Unit is redeemed under this clause 14, the redemption price for the Unit is its Current Market Value.

### **14.6 Application to Options and Financial Instruments**

This clause 14 applies to the extent appropriate, and with any necessary amendments to Options and Financial Instruments.

## 15. Suspension of redemption and issues

### 15.1 Responsible Entity may suspend redemption and issues

The Responsible Entity may at any time suspend the redemption or issue of Units, in the Trust for up to 28 days, if:

- (a) it is impracticable for the Responsible Entity (or its agents or delegates), or it (or its agents or delegates) is unable, to calculate the Net Trust Value, for example because of:
  - (i) an inability to value Trust Property;
  - (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 Trust Property is listed, quoted, traded or dealt; or
  - (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 Responsible Entity receives Redemption Requests of an aggregate value that in its reasonable estimate exceeds 5% (by value) of all Trust Property;
- (c) there have been, or the Responsible Entity anticipates that there will be, Redemption Requests that involve realising a significant amount of the Trust Property and the Responsible Entity considers that if those Redemption Requests are all met immediately, Unitholders who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those Redemption Requests would otherwise be to the existing Unitholders' disadvantage including a material diminution in the value of the Trust Property;
- (d) the Responsible Entity is unable to realise Trust Property to satisfy Redemption Requests;
- (e) the Responsible Entity reasonably considers that it is in the best interests of the Unitholders taken as a whole; or
- (f) it is otherwise legally permitted.

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

### 15.2 Applications and Redemption Requests during suspension

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

## 16. Responsible Entity's powers

### 16.1 General powers

- (a) Subject to this constitution, the Responsible Entity has within and outside Australia all the powers in relation to the Trust, its Trust Property and Trust Liabilities, that it is legally possible for a natural person, corporation or trustee to have, including without limitation, power alone or with any other person:
  - (i) to invest in real or personal property of any nature (including any financial instruments, Derivative Transactions and forward rate and currency exchange agreements for speculative or other purposes) (and may vary any investment at any time in its absolute discretion);
  - (ii) to enter into or deal with any Derivative Transaction or Hedge Agreement in connection with any actual or prospective investment of the Trust or any borrowing of, or raising money by, the Trust;

- (iii) to borrow or raise money (in whatever proportion to Trust Property), whether or not on security over Trust Property, including without limitation, to issue debentures (this power includes a power to issue debentures that are redeemable only on the termination of the Trust);
- (iv) to give guarantees and incur liabilities and obligations of any kind;
- (v) to give cross guarantees and any other Security Interests between classes of Units;
- (vi) to grant a Security Interest of any kind over Trust Property (including uncalled capital of the Trust);
- (vii) to enter into an arrangement with a person or persons to underwrite the subscription or purchase of Units, Options or Financial Instruments on such terms as the Responsible Entity determines;
- (viii) to bear all Establishment Costs;
- (ix) to fetter its own discretion;
- (x) to cause the Trust, Units, Options or Financial Instruments to be Officially Quoted;
- (xi) to do all the things necessary to give effect to clause 24; and
- (xii) that are necessary or desirable for the performance or exercise of its powers, duties and rights in respect of the Trust (including its obligations under this constitution),

as if it were the absolute and beneficial owner of all Trust Property.

- (b) Without limiting this clause 16.1 and subject to the Corporations Act, the Responsible Entity has power to mix and mingle Trust Property with the property of other co-investors (in which case it must keep appropriate records of the Trust's interests in the co-investments).
- (c) The other provisions of this clause 16 do not limit the Responsible Entity's general powers under this clause.

## 16.2 Investment powers

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

## 16.3 Responsible Entity may delegate powers

The Responsible Entity, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including, but not limited to, holding any Trust Property and executing documents on its behalf.

## 16.4 Buy back of Units

Subject to the Corporations Act and Listing Rules and any Relief:

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

## 16.5 Exercise of discretions

The Responsible Entity may determine whether to exercise its powers, and the manner, mode and time of exercise of its powers, in its absolute discretion. In exercising its powers and duties under the constitution, the Responsible Entity may enter into agreements with Holders as to the manner, mode and time of exercise of those powers and duties.

## **16.6 Independent rights**

Subject to the Corporations Act, the Responsible Entity, and any related body corporate or other associate of the Responsible Entity, may (whether in its personal capacity or as trustee of any trust):

- (a) hold Units, Options or Financial Instruments;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with itself or with any related body corporate or associate of itself or with any trust;
- (d) invest in and deal in any capacity, with the same investments as that of the Trust, on similar or different terms;
- (e) recommend that investments be purchased or sold, on behalf of the Trust, regardless of whether at the same time it may buy, sell or recommend, in the same or in a contrary manner, the purchase or sale of identical investments in relation to itself or other clients;
- (f) deal in any investment regardless of whether that dealing is inconsistent with the dealing of the Trust;
- (g) act in any capacity in relation to any other trusts, including subscribing for units in other trusts on behalf of Holders or the Trust;
- (h) act in various capacities in relation to, or be otherwise involved in (such as by way of investment), other business activities that may be in competition with the interests of Holders;
- (i) acquire or dispose of Trust Property to associates of the Responsible Entity at the price and in the manner contemplated by a Disclosure Document or in this constitution;
- (j) give guarantees or other Security Interests; or
- (k) receive and retain profits or benefits of any nature, in connection with the Trust or otherwise, including buying or selling Trust Property from or to itself in another capacity, without being liable to account to the Trust, to itself, or to a Holder.

## **17. Management of the Trust**

### **17.1 Responsible Entity to manage Trust**

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

### **17.2 Responsible Entity may engage advisers**

The Responsible Entity may, as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Responsible Entity) investment managers, property managers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.

### **17.3 Reliance by Responsible Entity**

Subject to clause 10.6, the Responsible Entity may, in relation to the Trust, rely and act on any:

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

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

#### **17.4 Equality of treatment**

The Responsible Entity, to the extent permitted by any Relief, does not have to treat all Unitholders equally, including by:

- (a) not making a pro rata offer to Unitholders to certain Unitholders; or
- (b) treating wholesale clients differently from other persons.

### **18. Responsible Entity's limitation of liability and indemnity**

#### **18.1 Responsible Entity's liability**

To the extent legally permitted, where the Responsible Entity acts without fraud, negligence or a breach of trust, the Responsible Entity is not liable to any future trustee, any Holder or any other person:

- (a) for loss caused by:
  - (i) the Responsible Entity's acts or omissions in reliance on:
    - (A) the Register;
    - (B) the authenticity of any document;
    - (C) the opinion, advice or information of any barrister, lawyer, accountant, valuer or other expert instructed by the Responsible Entity or other person referred to in clause 17.2; or
    - (D) information from any banker or the auditor of the Trust,  
if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;
  - (ii) while the Trust is a registered scheme, the Responsible Entity's acts or omissions in reliance on the opinion, advice or information from the compliance plan auditor of the Trust or the compliance committee;
  - (iii) any act, omission, neglect or default of another person;
  - (iv) any act or omission required by law, by a court of competent jurisdiction, by a Government Agency or government official;
  - (v) any particular price or reserve not having been realised;
  - (vi) any unnecessary payment having been made to a fiscal authority;
  - (vii) any act or omission of an operator of a securities title, transfer or holding system;  
or
  - (viii) another reason; or
- (b) in any event, to a greater extent than the investments, cash and other property to which the Responsible Entity is entitled and does recover through its right of indemnity from Trust Property actually vested in the Responsible Entity in accordance with this constitution.

#### **18.2 Indemnity**

- (a) Where the Responsible Entity acts without fraud, negligence or breach of trust, the Responsible Entity is indemnified out of the Trust Property for any liability incurred by it, in its own capacity or through an agent, manager, advisor or delegate. This right of indemnity is not lost by reason of a separate incident that was itself a breach of trust.
- (b) The Responsible Entity is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose.
- (c) Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity legally permitted.

- (d) When calculating the amount of any liability incurred or to be incurred by the Responsible Entity for which it is entitled to be reimbursed or indemnified under this constitution, the Responsible Entity must deduct an amount equal to any input tax credit (as defined in the GST Act) to which the Responsible Entity is entitled in connection with the liability.
- (e) While the Trust is a registered scheme, this clause 18.2 is to be read subject to the Corporations Act, and to the extent that this clause 18.2 is inconsistent with the Corporations Act this clause 18.2 will be of no effect to the extent of the inconsistency.

## 19. Responsible Entity's fees

### 19.1 Fees

- (a) The Responsible Entity is entitled to the Management Fee and such other fees as provided for under this clause 19 and any other provision of this constitution (the **Fees**).
- (b) The entitlement to Fees commences on the date the Trust is established and ends on the date of final distribution on winding up of the Trust.
- (c) The Management Fee is consideration for providing trustee services to the Trust.
- (d) All Fees are payable out of the Trust Property, unless otherwise provided in the terms of issue in respect of a Unit or in the Disclosure Document.
- (e) All Fees are to be pro rated for partial periods.
- (f) All Fees accrue daily.
- (g) All Fees are exclusive of GST, unless otherwise stated.
- (h) While the Trust is a registered scheme, this clause 19 is to be read subject to the Corporations Act. Without limitation, the right of the Responsible Entity to Fees out of Trust Property pursuant to this clause 19 is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Trust.

### 19.2 Management Fee

Before and after termination of the Trust, the Responsible Entity is entitled to a Management Fee of 3% (exclusive of GST) per annum of the Portfolio Value (or any lesser percentage the Responsible Entity may elect), calculated daily and payable monthly in arrears.

### 19.3 Additional Fund Administration Services

- (a) The Responsible Entity is entitled, subject to the law and its proper performance in providing Additional Fund Administration Services, to take and retain for itself a remuneration fee out of Trust Property for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services on the terms set out in this clause 19.3.
- (b) The remuneration fee under clause 19.3(a) is to be calculated on the basis of a maximum hourly rate of \$1,000.00 (Australian dollars) per hour, adjusted quarterly to reflect any increase in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter. For the avoidance of doubt, such rates will not exceed its usual commercial rates.
- (c) The Responsible Entity is entitled to charge and take the remuneration fee out of Trust Property calendar monthly.
- (d) The Responsible Entity may notify the Holders of its current hourly rates for the purposes of clause 19.3(b), and the amounts charged to the Trust Property under clause 19.3(c) from time to time, but its rights to charge and take those amounts are not prejudiced by a failure to do so or a delay in doing so.
- (e) The Responsible Entity's rights under clause 19.3(a) are in addition to:
  - (i) its rights to fees under this clause 19; and



- (ii) its rights under this constitution and at law to be indemnified in connection with debts, liabilities and expenses incurred by it in the proper performance of its duties as responsible entity of the Trust.
- (f) The Responsible Entity may appoint, engage or otherwise contract with a person other than Responsible Entity Personnel to perform any Additional Fund Administration Services.
- (g) An appointment, engagement or other contract under clause 19.3(f) may be sole, joint, several or joint and several and may include a power in turn for a person to delegate the performance of any Additional Fund Administration Services to another person.
- (h) Subject to clause 19.3(i), an appointment, engagement or other contract under clause 19.3(f) may be on any terms that the Responsible Entity determines in its absolute discretion, including in relation to remuneration and other compensation. Subject to this document, the Responsible Entity is entitled to be indemnified out of the Trust Property in respect of that remuneration and compensation.
- (i) A Delegate may be an associate of the Responsible Entity or an officer or employee of an associate of the Responsible Entity. If and for so long as the Trust is a registered managed investment scheme, the terms on which an associate is appointed, engaged or contracted must not contravene Chapter 2E of the Corporations Act (as modified by section 601LC of the Corporations Act).
- (j) To the extent permitted by law, the Responsible Entity may waive or excuse on any terms it thinks fit any breach by any Delegate of their obligations to the Responsible Entity in connection with the Trust.
- (k) The appointment, engagement or other contracting of a Delegate under clause 19.3(f) does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations, including to ensure that the services delegated are properly performed.

#### **19.4 Responsible Entity may receive less Fees**

The Responsible Entity in its discretion may from time to time elect to receive less than the Fees specified above in respect of all or any Units or class of Units (whether determined by reference to a minimum balance or on another basis and whether for the life of a particular Disclosure Document or otherwise) and may pay a Holder or Holders within a particular class, from its own resources, any amount which it in its discretion so determines by way of offset or rebate of fees.

#### **19.5 Responsible Entity may defer Fees**

The Responsible Entity in its discretion may from time to time:

- (a) elect to receive less of any Fee (or part of any Fee) in respect of all or any Units or class of Units than it is entitled to receive under this constitution;
- (b) defer the receipt of any Fee (or part of any Fee) in respect of all or any Units or class of Units. Where payment is deferred:
  - (i) the Fee (or part thereof, as applicable) accrues daily until paid;
  - (ii) the Responsible Entity is entitled to charge interest on unpaid Fees at a rate that is the aggregate of the UBS Australian Bank Bill Index (or if replaced, an approximate equivalent index) plus 2% per annum; and
  - (iii) the Fee (or part thereof, as applicable) will automatically become due and payable if the Trust is terminated or the Responsible Entity retires, is removed or resigns; or
- (c) pay a Holder, from its own resources, any amount which it in its discretion so determines by way of offset or rebate of Fees or for any other reason (including because that Holder makes a pre-commitment to subscribe for Units).

## 20. Outgoings

### 20.1 Expenses

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

- (a) preparation, approval, stamping, execution and printing of this constitution and any deed amending this constitution;
- (b) retirement and appointment of the Responsible Entity and any custodian;
- (c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this constitution or the Trust (but the Responsible Entity must repay to the Trust any amount it has been advanced in respect of outgoings in connection with proceedings in which it is found by a court to be liable for its own fraud, negligence or a breach of trust);
- (d) convening and holding a Meeting and implementing a resolution of the Meeting;
- (e) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (f) Taxes;
- (g) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (h) foreign exchange transactions and foreign exchange hedging transactions;
- (i) fees payable to a person authorised by the Responsible Entity to hold Trust Property;
- (j) expenses in connection with the ongoing compliance costs in respect of the Trust, including, where established, the costs and expenses associated with the establishment and conduct of any compliance committee including:
  - (i) remuneration of committee members; and
  - (ii) the expenses of independent legal, accounting or other professional advice or assistance properly commissioned by the compliance committee,to the extent permitted by the Corporations Act, directly or indirectly, indemnifying or insuring a person who has been a compliance committee member for or against any liability, including costs, expenses and liabilities incurred by the person in defending civil or criminal proceedings;
- (k) fees payable to ASIC or another regulatory authority;
- (l) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (m) preparing and printing accounts, reports, notices, cheques and documents, posting them to Holders, or paying Holders;
- (n) any offer or invitation in respect of Units, Options or Financial Instruments, including preparation, lodgement, registration, distribution and promotion of a Disclosure Document including for the avoidance of doubt in relation to the first Disclosure Document;
- (o) amounts payable to the Manager (if any), administrators, advisers, agents, brokers, contractors, custodians, asset managers, property managers, investment managers, underwriters or other persons engaged by the Responsible Entity under this constitution (including legal costs on a full indemnity basis), which may include a related body corporate or associate of the Responsible Entity;
- (p) fees incurred by an auditor of the Trust or the compliance plan;

- (q) preparation and lodgment of taxation and other returns for the Trust or the compliance plan;
- (r) commissions, holding fees and other amounts payable to an Australian financial services licensee or its representatives in relation to the Trust including in relation to a Disclosure Document (including the first) and any offer made thereunder;
- (s) terminating and winding up of the Trust;
- (t) entering the Trust in a survey;
- (u) fees payable to a ratings organisation;
- (v) fees payable to a securities system authorised by the Responsible Entity to hold Trust Property;
- (w) performance of the Responsible Entity's duties, exercise of the Responsible Entity's rights or powers, compliance with the law or administration of the Trust;
- (x) establishment, development, maintenance and operation of computer facilities, both software and hardware for the administration of the Trust;
- (y) establishing a gearing facility;
- (z) dealing with Applications and redemptions of Units or other interests, and determining the Issue Price and Redemption Price;
- (aa) any restructuring or Listing of the Trust, Units, Options or Financial Instruments;
- (bb) any fees, costs, charges and expenses incurred in giving effect to clause 24;
- (cc) fees payable to a related body corporate or other associate of the Responsible Entity for services provided to the Responsible Entity in connection with the Trust, where if these expenses had been properly incurred by the Responsible Entity, the expenses would be reimbursable out of the Trust Property under this clause 20.1; and
- (dd) expenses in connection with matters referred to in this clause 20.1, including but not limited to costs of appointing and maintaining staff, costs of computers and other systems to support these staff and costs of premises where staff and systems are located in connection with these matters.

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

## **20.2 Deferral**

The Responsible Entity may in its discretion defer reimbursement for an agreed period or any or all expenses or any part thereof under clause 20.1. Where reimbursement is deferred, the expense accrues daily until paid.

## **21. Holders' liabilities and recoveries**

### **21.1 Liability of Unitholders**

Subject to this constitution, the liability of each Unitholder is limited to the amount subscribed, or agreed to be subscribed by the Unitholder, for Units. Recourse of the Responsible Entity and Trust creditors is limited to Trust Property.

### **21.2 No partnership or agency**

Any relationship of partnership or agency between the Responsible Entity and a Holder or between the Holders themselves in relation to the Trust, this constitution or anything done under this constitution, is expressly excluded.

### **21.3 Holders' liabilities**

Each Holder or former Holder is liable for:

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

### **21.4 Responsible Entity may withhold or recover**

The Responsible Entity may:

- (a) withhold payment of any money payable to a Holder or former Holder until the liability under clause 21.3 is discharged; or
- (b) meet the liability under clause 21.3 and recover the amount:
  - (i) from any money or property held for the Holder;
  - (ii) from any distribution or other payment payable to the Holder; or
  - (iii) by compulsorily redeeming any or all of the Holder's Units, Options or Financial Instruments.

### **21.5 Joint Holders**

Joint Holders and former joint Holders are jointly and severally liable in respect of all liabilities to which this clause 21 applies. Amounts so payable are payable on demand.

## **22. Responsible Entity's retirement or removal**

### **22.1 Responsible Entity's retirement or removal**

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may retire as trustee of the Trust by giving not less than one month's prior notice to the Unitholders, effective on the appointment of a replacement Responsible Entity.
- (b) The Responsible Entity must retire as trustee of the Trust if permitted and when required, under the Corporations Act. The Responsible Entity must retire when required by law.
- (c) Subject to the law, the Responsible Entity may agree with an incoming trustee of the Trust to (and may) receive a benefit from that person, in relation to its retirement as trustee of the Trust and is not required to account to Unitholders for such.

### **22.2 Responsible Entity's release and indemnity**

On the Responsible Entity's retirement or removal:

- (a) the Responsible Entity is released from all obligations, duties and liabilities in respect of the Trust that arise after its retirement or removal to the extent permitted by law; and
- (b) the Responsible Entity is indemnified out of Trust Property against any claims arising out of its conduct as Responsible Entity of the Trust except claims in respect of fraud, negligence or breach of trust by the retiring Responsible Entity. This indemnity is separate from any indemnity allowed by law and survives the termination of this constitution.

### 22.3 Execution of deed by new Responsible Entity

Any replacement Responsible Entity must execute a deed under which it covenants to be bound by this constitution as if it had originally been a party to it.

### 22.4 Change of name

If at any time neither Perpetual nor a related body corporate of Perpetual is the Manager, then the:

- (a) the name of the Trust must cease to include the word 'Perpetual' or any word deceptively similar or likely to be confused with that name; and
- (b) the Responsible Entity must immediately give effect to such a change including to procure the:
  - (i) amendment of this constitution; and
  - (ii) change of name on any relevant ASIC registers,to reflect the change of name.

### 22.5 Amending this clause

Subject to the Corporations Act, this clause 22 can only be amended or deleted upon Perpetual giving its consent in writing to the Responsible Entity to the proposed amendment(s) or deletion before the amendment(s) is made.

## 23. Distributions

### 23.1 Distributable where not an AMIT

This clause 23 applies for each Period when the Trust (or the relevant class of Units) is not an AMIT.

### 23.2 Distributable Income

The **Distributable Income** of the Trust for an Accounting Period or Period is equal to Trust Income or such amount as the Responsible Entity determines in its discretion is the Distributable Income of the Trust, provided that the amount determined by the Responsible Entity must be equal to or greater than the Net Income of the Trust for the relevant Accounting Period or Period.

### 23.3 Distributions to Unitholders

- (a) Except in any income year in which the Trust is taxed as a Corporate Tax Entity:
  - (i) Before and after termination of the Trust, the Responsible Entity at any time may elect that an amount (capital or income) be distributed from the Trust to Unitholders. A distribution made by the Responsible Entity to a Unitholder will be taken to be a distribution of Trust Income of an Accounting Period or Period to the extent the Responsible Entity determines the distribution constitutes a distribution of Trust Income.
  - (ii) Except as otherwise provided by this constitution, the Distributable Income referable to a class for each Accounting Period or Period must be distributed to Unitholders in that class pro rata to the number of Units they hold in that class.
  - (iii) Each Unitholder registered at midnight on the last day of each Accounting Period, has a vested and indefeasible interest in and is presently entitled to a share of the Trust Income for that Accounting Period not previously distributed, for each Unit held by that Unitholder in the proportion set out in paragraph (ii) above.
  - (iv) The Responsible Entity may satisfy the amount payable on a distribution (partly or fully) by transferring those assets in specie as the Responsible Entity in its discretion may select, to be credited at asset values determined as at the same time as the amount of the distribution is determined, without deduction for any costs or Taxes payable by the Unitholder in respect of the transfer.

- (b) Where in any income year the Trust is taxed as a Corporate Tax Entity, then each Unitholder registered at midnight on the last day of each Accounting Period does not have a vested and indefeasible interest in a share of the Distributable Income for that Accounting Period and the Responsible Entity may, at its discretion, choose to make distributions of after tax profits, income, capital or any related taxation or imputation credits provided that all Distributable Income is distributed at the final termination of the Trust.

#### **23.4 Change in the law**

If the law changes in respect of Taxes so that the Trust or the Responsible Entity becomes subject to Taxes on income and gains derived by the Trust even where all available income is distributed to Unitholders, or regardless of the present entitlement of the Unitholders, then the Responsible Entity does not have to make distributions in accordance with this clause 23 and instead the Responsible Entity, at its discretion, may choose when to make distributions of profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust and the amounts of those distributions.

#### **23.5 Income categories**

The Responsible Entity may keep separate accounts of different categories and sources of income and allocate the income from any category or source to any Unitholder.

### **24. AMIT**

#### **24.1 Application**

This clause 24 applies:

- (a) for each period in which the Trust (or the relevant class of Units) is an AMIT;
- (b) to Attribution Amounts relating to any period in which the Trust is or was an AMIT; and
- (c) at any other time required to ensure that clause 24.3 operates as intended.

#### **24.2 Elections and other powers**

- (a) Without limiting this clause 24 or clause 16, the Responsible Entity may:
  - (i) determine to make a choice for the purposes of subparagraph 276-10(1)(e)(i) of the Tax Act; and/or
  - (ii) determine to treat each class of Units as a separate AMIT.
- (b) In addition to any other powers provided for under this constitution, the Responsible Entity has all of the powers and rights which are necessary for or incidental to the Trust being able to be operated as an AMIT in the manner permitted in the Tax Act, including complying with the requirements of Division 276 of the Tax Act and the issue or amendment of any AMMA Statements.
- (c) The Responsible Entity may issue or amend AMMA Statements and Unitholders acknowledge that amended AMMA Statements may affect the rights or interests of Unitholders, including former Unitholders.

#### **24.3 Validity of decisions of Responsible Entity**

- (a) Any decision which the Responsible Entity purports to make in reliance on the powers in this clause 24 will not be invalid by reason of the fact that the Trust is not an AMIT in the relevant Period, provided that:
  - (i) the Responsible Entity was not aware that the Trust did not qualify as an AMIT in the relevant Period; and
  - (ii) the Responsible Entity was not grossly negligent in relying on the powers in this clause 24 in purporting to make the relevant decision.

- (b) The Responsible Entity has such powers to make any decisions and to take such actions to, as far as reasonably possible, put the Unitholders, former Unitholders and the Trust in the same position as if the decisions purported to have been made under the powers in this clause 24 had been validly made under this clause 24.

#### **24.4 Attribution**

- (a) The Responsible Entity will attribute an Attribution Amount during a Period to a Unitholder in accordance with this constitution and any other constituent documents of the Trust.
- (b) The Responsible Entity must attribute all of the Determined Trust Components of the Trust (or the relevant class of Units) in such a manner so as not to be liable for shortfall or excess taxation under subdivision 276-G of the Tax Act.
- (c) The Responsible Entity may attribute an amount to a Unitholder on redemption of a Unit.
- (d) Notwithstanding any other provision in this constitution, the attribution must:
  - (i) be worked out on a fair and reasonable basis in accordance with this constitution and any other constituent documents of the Trust; and
  - (ii) not be worked out because of the tax characteristics of the Unitholder or former Unitholder for the purposes of Division 276 of the Tax Act.
- (e) Where this clause 24.4 applies, clause 23 in relation to distributions does not apply.

#### **24.5 Distribution**

Before the termination of the Trust, the Responsible Entity at any time may elect that any amount, including income or capital, be distributed from the Trust to Unitholders in accordance with the provisions of this constitution.

#### **24.6 Deemed payment**

For the purposes of clauses 24.4 and 24.5, any amount the Responsible Entity has paid or remitted in accordance with clause 21.4 in relation to a Unitholder is taken to be made for that Unitholder.

#### **24.7 Unitholder challenge**

Where a Unitholder intends to choose, or chooses, a different Determined Member Component to that recorded in an AMMA Statement:

- (a) the Unitholder agrees to:
  - (i) provide the Responsible Entity with a notice of their intention to choose a different Determined Member Component at least 7 days prior to contacting the Commissioner of Taxation;
  - (ii) provide a summary of the reasons why the Unitholder considers the attribution in the AMMA Statement is inappropriate at least 7 days prior to contacting the Commissioner of Taxation;
  - (iii) provide any additional information requested by the Responsible Entity to assist the Responsible Entity in assessing the Unitholder's decision to choose a different Determined Member Component;
  - (iv) meet all costs and liabilities incurred by the Responsible Entity as a result of the Unitholder's decision to choose a different Determined Member Component; and
- (b) the Responsible Entity has no liability in respect of any act, matter or thing done by the Unitholder.

#### **24.8 Unders and Overs**

- (a) The Responsible Entity may make an allocation of an Under or Over notwithstanding that a Unitholder at the time of the allocation was not a Unitholder for the Period to which the Under or Over relates.

- (b) Unitholders acknowledge and agree that the choice of allocation of an Under or Over may result in a greater or lesser amount of any one or more of the following being attributed to the Unitholder in the Period in which it is discovered or to which it relates:
  - (i) assessable income; or
  - (ii) tax offset.

#### **24.9 AMIT indemnity**

- (a) Except in the case of fraud, negligence or breach of trust of or by the Responsible Entity, the Responsible Entity shall be indemnified from the Trust Property in relation to any income tax liability incurred under a Tax Act because the Trust (or a class of Units) is an AMIT.
- (b) The indemnity in this clause 24.9 is in addition to the indemnity in clause 18.

#### **24.10 Change in law**

If the law changes in respect of Taxes so that the Trust or Responsible Entity becomes subject to Taxes on income and gains derived by the Trust even where all available income is attributed to Unitholders, then the Responsible Entity, at its discretion, may choose when to attribute any of the profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust and the amounts of those attributions.

### **25. Distribution Reinvestment**

- (a) The Responsible Entity may decide whether to permit or require a Unitholder to reinvest some or all of any distribution to acquire a Unit.
- (b) For the purposes of this clause 25, the Responsible Entity may, subject to the Corporations Act, Listing Rules and any Relief, determine:
  - (i) the terms of the DRP Rules, including on terms that it may be available only to holders of a class of Unit or to certain Unitholders of a class of Units; and
  - (ii) that Distribution Reinvestment in respect of a Period is optional, mandatory or comprises both optional and mandatory components, and, where it is mandatory, on such terms that may require the reinvestment of an amount of distributions paid or payable in excess of a specified distribution amount for that Period.
- (c) If the Responsible Entity decides to permit or require Distribution Reinvestment, then it must notify Unitholders of the terms of, and procedure for, reinvestment and any change thereto.
- (d) For reinvestment in respect of Units, the Responsible Entity is deemed to have received an Application to reinvest distributions by way of the acquisition of existing Units or the issue of new Units on the Business Day that the distribution is paid.
- (e) For the avoidance of doubt, a Unit issued on Distribution Reinvestment will not have a right to distributions in respect of the Period to which the reinvested distribution relates.

### **26. Register**

#### **26.1 Registers to be maintained**

The Responsible Entity must establish a Register of Unit Holders, a Register of Option Holders and a register of Financial Instrument Holders.

#### **26.2 Branch registers**

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



### **26.3 Notice of trust**

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

### **26.4 Registered Holder is owner**

The Responsible Entity may treat a registered Holder as the holder and absolute owner of Units, Options or Financial Instruments registered in the Holder's name on the Register and is not bound to take notice of any trust or equity affecting a Unit, Option or Financial Instrument.

### **26.5 Classes**

The Responsible Entity must maintain in accordance with the Corporations Act a Register recording details of any class of Units, Options or Financial Instruments.

## **27. Mortgage**

### **27.1 Recording of mortgagee**

- (a) Subject to paragraph (b) below, on the Unitholder's written request, the Responsible Entity may, but is under no obligation to, record a mortgagee (sole or joint) of Units in the Register and on the mortgagee's written request may delete that record.
- (b) Subject to clause 9.7, on the Unitholder's written request made pursuant to an Application included in or with the first Disclosure Document, the Responsible Entity must record a mortgagee (sole or joint) of Units in the Register and on the mortgagee's written request may delete that record.

### **27.2 Payments to mortgagees**

Redemption proceeds of Units, capital distributions (not representing part of Distributable Income or in any Period when the Trust (or the relevant class of Units) is an AMIT, distributions of income under clause 24) and distributions after termination of the Trust must be paid to the recorded mortgagee of the Units in the Register (unless it directs otherwise in writing).

### **27.3 Transfer of mortgaged Units**

- (a) A transfer of Units is subject to any existing mortgagee recorded on the Register so that Units in respect of which a mortgagee is recorded on the Register cannot be transferred without the written consent of the mortgagee.
- (b) For the avoidance of doubt, a transfer of mortgaged Units to the mortgagee remains subject to the terms of transfer (such as the requirement for the Responsible Entity to approve the transfer) ordinarily applying under this constitution.

### **27.4 Responsible Entity not taken to have notice of mortgage or charge**

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

## **28. Death and insolvency**

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

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

The estate of the deceased joint Holder is not released from any liability in respect of the Units, Options or Financial Instruments.

## **29. Termination**

### **29.1 Responsible Entity may terminate**

Subject to the Corporations Act and, while the Trust or Units are Listed, the Listing Rules, the Responsible Entity at any time may terminate the Trust by written notice to the Unitholders with effect from the Termination Date specified in the notice.

### **29.2 Unitholders may terminate**

The Unitholders may at any time terminate the Trust in accordance with the Corporations Act.

### **29.3 Issue and redemption stops**

From the date on which the notice is given, the issue and redemption of Units ceases and any right that a Unitholder may have to have a Redemption Request processed is extinguished.

### **29.4 Action on termination**

- (a) From the Termination Date, the Responsible Entity must, subject to the terms of issue of any particular class of Unit specified in this constitution:
  - (i) realise all Trust Property;
  - (ii) then, pay, discharge or provide for all Trust Liabilities (except Redemption Liabilities) and expenses of termination and winding up from the Trust Property; and
  - (iii) then, subject to clause 5 and paragraph (b) below, distribute the net proceeds among Unitholders pro rata to the number of Units held (subject however to the terms of issue of any class of Units specified in this constitution) on the Termination Date.
- (b) The net proceeds referable to a class:
  - (i) will be those proceeds that the Responsible Entity determines to be properly referable to that class having regard to the terms of issue of the Units of that class specified in this constitution; and
  - (ii) must be distributed by the Responsible Entity to Unitholders (held on the Termination Date) in that class pro rata to the number of Units the Holder holds in that class on the Termination Date.

### **29.5 Realisation of Trust Property**

The Responsible Entity may postpone realising Trust Property and is not responsible for any resulting loss unless caused by its fraud, negligence or a breach of trust.

### **29.6 Income**

Each Unitholder registered on the Termination Date continues to be entitled to their proportionate share of Distributable Income or in any Period when the Trust (or the relevant class of Units) is an AMIT, their distribution under clause 24 during the winding up period. The Responsible Entity may make partial distributions of Trust proceeds during the winding up period.

### **29.7 Auditing of winding-up accounts**

If required by the Corporations Act or under ASIC policy, the Responsible Entity must cause the final accounts of the winding up to be independently audited by a registered company auditor or firm of chartered accountants of which at least one partner or member is a registered company auditor.

## **29.8 Notice to Manager**

The Responsible Entity must, not less than 7 days before the winding up of the Trust, give the Manager (if any) written notice that the Trust is to be wound up.

## **30. Payments**

### **30.1 Means of payment**

Any money payable by the Responsible Entity to a Holder may:

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

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

### **30.2 If payment not effective**

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

### **30.3 Rounding**

The Responsible Entity may in its discretion round any amount up or down to the nearest whole cent, and any remaining fraction of a cent becomes Trust Property.

### **30.4 Joint Holders**

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

### **30.5 Deduction of Tax or amounts owing**

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

## **31. Auditor**

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

## **32. Meetings**

### **32.1 Convening Meetings**

- (a) The Responsible Entity may at any time convene and conduct a Meeting and must do so in accordance with this constitution and the Corporations Act.
- (b) A Meeting may be held at two or more venues simultaneously using technology that gives the Unitholders as a whole a reasonable opportunity to participate.

### **32.2 Meetings requisitioned by Unitholders while the Trust is Listed**

While the Trust is Listed, in respect of a requisition by Unitholders to hold a Meeting to vote on a proposed ordinary resolution to terminate the Investment Management Agreement in accordance with the terms of that agreement, section 252B of the Corporations Act is taken to be amended as it applies to the Trust by deleting the words "special or extraordinary" where appearing before the word "resolution", with the intention that the Unitholders will have the same right to requisition the Meeting for that purpose as if section 252B had applied to ordinary resolutions (but not for any other purpose).

### **32.3 Notices**

- (a) Notice of a Meeting must be given in accordance with, and contain the information required by, the Corporations Act.
- (b) Each of the following are entitled to receive notice of a general meeting:
  - (i) every Unitholder;
  - (ii) every director of the Responsible Entity; and
  - (iii) the Auditor.

### **32.4 Proxies**

- (a) A proxy may attend, speak and vote for a Unitholder even if the Unitholder is present at the Meeting.
- (b) An appointment of a proxy is valid even if it does not include the Unitholder's address or the Trust's name. An appointment of a proxy for a Meeting is effective if received by the Responsible Entity by a time before the time the Meeting is due to start that the Responsible Entity considers appropriate.

### **32.5 Other types of Units, Options and Financial Instruments**

Clause 32 applies also, to the extent appropriate and with any necessary amendments, to meetings of Holders of any type or class of Units or Options or Financial Instruments.

## **33. Conduct of Meetings**

### **33.1 Chairperson may adjourn Meeting**

The chairperson may adjourn a Meeting to a time and place as the chairperson sees fit. The only business that can be transacted at an adjourned Meeting is the unfinished business of the initial Meeting.

### **33.2 Closing of Register**

When a Meeting is to be held the Responsible Entity must subject to the Listing Rules and CS Facility Rules close the Register at an appropriate date and time to determine those Unitholders entitled to vote at the Meeting, and entitled to notification of the Meeting.

### **33.3 Joint Unitholders**

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

### **33.4 Resolutions**

- (a) The chairperson's declaration of the validity of any vote and the result of voting is conclusive.
- (b) A resolution duly passed binds all Unitholders, whether or not present at the Meeting.
- (c) A resolution in writing signed by all Unitholders will be deemed to have been duly passed at a Meeting.

### **33.5 Minutes**

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

### **33.6 Postal ballot**

Subject to the Corporations Act, a Meeting may be conducted by postal ballot in accordance with arrangements the Responsible Entity may determine reflecting, as closely as may be practicable, the provisions of this constitution.

### **33.7 Destruction of proxy forms and ballot papers**

In the absence of any resolution to the contrary, all proxy forms and ballot papers may be destroyed 14 days after the closure of a Meeting.

### **33.8 Right to attend and be heard**

The Auditor and Manager (if any) are entitled to:

- (a) attend any Meeting of Unitholders;
- (b) be heard at any Meeting of Unitholders on any part of the business of the Meeting that concerns them in their respective capacity, even if:
  - (i) the Auditor or Manager (if any) retires at the general Meeting; or
  - (ii) Unitholders pass a resolution to remove the Auditor (from office); and
- (c) authorise a person in writing to attend and speak at any general Meeting as their representative.

### **33.9 Certain polls**

A poll demanded on any resolution concerning the election of the chairperson of a Meeting or to adjourn the Meeting must be taken immediately.

### **33.10 Other types of Units, Options and Financial Instruments**

This clause 33 applies also, to the extent appropriate and with the necessary amendments, to Meetings of Holders of any type or class of Units or Options or Financial Instruments.

## **34. GST**

### **34.1 Interpretation**

In this clause 34, a word or expression defined in the GST Act has the same meaning given to it in that Act.

### **34.2 GST gross up**

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

### **34.3 GST inclusive supply**

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

- (a) the supply is not subject to GST, and the GST rate is the same as at the date of this constitution, the consideration to be provided for that supply is reduced by one-eleventh; or

- (b) there is a change to the prevailing rate of GST, the consideration is increased or decreased in proportion to the change in the rate of GST.

#### **34.4 Input tax credits**

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

### **35. Complaints**

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

For the purposes of this clause 35, a reference to a Holder includes any person who has an 'interest' in the Trust as that term is defined in section 9 of the Corporations Act, or a former Holder whose Units have been redeemed under clause 13.12 but who has not yet been paid in accordance with clause 30 the Redemption Price of each Units redeemed.

### **36. Corporations Act**

#### **36.1 Compliance with Relief and things required to be in this constitution**

The Responsible Entity and each Holder must, subject to the Corporations Act and to any Relief, comply with:

- (a) any conditions of, and any covenants required to be contained in this constitution as a condition of the Relief, for so long as it applies, and
- (b) all provisions required from time to time to be contained in this constitution as a condition of any Relief, for so long as it applies.

#### **36.2 Matters required to be in this constitution**

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

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

### **37. Application of Accounting Principles and Standards**

#### **37.1 Application**

Notwithstanding any other provision of this constitution, where:

- (a) the effect of this constitution is that any of the amounts referred to in paragraph (b) below are required to be calculated by reference to the:
  - (i) value of Trust Property;
  - (ii) amount of any liability that under the constitution may be discharged from Trust Property; or
  - (iii) the income of the Trust,

and the effect of the constitution is that the value or amount is to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time; and

- (b) the relevant amounts include the:
  - (i) consideration that is to be paid to acquire a Unit;
  - (ii) amount to be paid on a withdrawal from the Trust;
  - (iii) remuneration or Fees payable to the Responsible Entity, any agent of the Responsible Entity or any custodian who holds Trust Property;
  - (iv) extent of any limitation on borrowings or on the investment of Trust Property; or
  - (v) amount of a distribution payable to Unitholders,
- (c) then, to the extent to which paragraph (a) above applies to any of the relevant amounts referred to in paragraph (b) above, the amounts referred to in paragraph (b) above may be calculated instead by applying generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

### **37.2 Perpetuities**

Notwithstanding any other provision of this constitution, where the effect of current generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time is that the constitution should be interpreted (whether because of the existence of a perpetuities clause in the constitution or otherwise) on the basis that liabilities representing interests in, or rights attaching to, Units:

- (a) at any time during the life of the Trust;
- (b) on termination of the Trust; or
- (c) on the vesting of any interest in the Trust,

should be treated as a liability in the accounts of the Trust, then such liabilities shall continue to be treated for Trust operational purposes such as the calculation of the Responsible Entity's Fees (but not for the purpose of financial reporting) in accordance with the accounting principles or methodology set out in accounting standards generally accepted or in force immediately before 1 January 2005.

### **37.3 Interpretation of this clause**

For the purposes of this clause 37, a reference to:

- (a) Trust Property includes the terms assets or property (of the Trust) or trust fund or words of similar import;
- (b) Unitholder includes a member, investor or other similar description;
- (c) constitution includes trust deed or other similar description;
- (d) Trust includes fund or other similar description; and
- (e) Responsible Entity includes the trustee, Manager or other party however described, acting in the capacity of responsible entity.

## **38. Amendments to constitution**

Subject to the Corporations Act, the Responsible Entity may by supplemental deed modify, add to, delete from or replace, this constitution (including this clause 38).

## 39. Calculations

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

## 40. Notices and cheques

### 40.1 Notices sent by mail

Subject to clause 40.2, any consent, notice, report, statement given, or required to be given, in writing, or cheque, may be sent to a Holder or joint Holders by prepaid post to the address of the Holder, or of the first named of joint Holders, shown in the Register and is taken to be received on the next Business Day after posting.

### 40.2 Notices sent by email or facsimile

If a Holder, or the first named of joint Holders shown on the Register, has given its electronic address or facsimile number to the Responsible Entity, any consent, notice, report or statement given or required to be given in writing may be sent to the Holder or joint Holders electronically at the address or facsimile number given to the Responsible Entity from time to time, and is taken to be received on the Business Day it was sent but if it is sent before or after Business Hours, it is taken to be received on the next Business Day.

## 41. Governing law

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

## 42. Listing Rules

Notwithstanding anything contained in this constitution, for so long as the Trust or Units are Listed:

- (a) If the Listing Rules prohibit an act being done, the act shall 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, 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, 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, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

## 43. Restricted Securities

- (a) Paragraphs (b) and (c) below only operate:
  - (i) while Units are Officially Quoted; and
  - (ii) to the extent they are not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Holder who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.
- (c) While the Trust or Units are Listed, during the applicable escrow period:



- (i) a Holder may not transfer Restricted Securities; and
  - (ii) the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities,
- except as permitted by the Listing Rules or ASX.

# Signing page

**EXECUTED** as a deed poll.

**Executed by Perpetual Trust Services Limited**  
**ABN 48 000 142 049** in accordance with  
Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

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

Name of director/company secretary (print)

# Schedule 1 – Additional Fund Administration Services

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

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

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

# Perpetual Credit Income Trust - Legislation guide

This list has been prepared to assist in identifying the provisions of the Perpetual Credit Income Trust relating to requirements under the *Corporations Act 2001* (Cth) (**Corporations Act**) for constitutions of registered managed investment schemes.

Corporations Act provision	Constitution provision
601GA (1)(a)	Clause 11
601GA (1)(b)	Clause 16
601GA (1)(c)	Clause 35
601GA (1)(d)	Clause 29
601GA (2)(a)	Clauses 18.2 and 19
601GA (2)(b)	Clauses 18.2 and 19
601GA (3)	Clause 16
601GA (4)(a)	Clause 13.1
601GA (4)(b)	Clause 13.3
601GA (4)(c)	Clause 13.4
601GB	Clause 2.4