
Constitution

ORDE Income Fund (ARSN 649 520 472)

ORDE Capital Management Limited (ACN 636 165 378) (**Responsible Entity**)

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Date:

Parties

- 1 **ORDE Capital Management Limited** ACN 636 165 378 of Level 15, 31 Queen Street, Melbourne, VIC 3000 (**Responsible Entity**)

The party agrees

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this constitution.

1.3 Governing Law

This constitution is governed by the laws of and applying to Victoria. The Responsible Entity and Investors:

- (a) irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria, Australia and its appellate courts for any proceedings in connection with this constitution; and
 - (b) waive any right they may have to claim that those courts are an inconvenient forum.
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2 Constitution

2.1 Nature

- (a) The Scheme was established on the date referenced in the Original Constitution.
- (b) Nothing in this constitution or by registration of the Scheme redeclares, resettles or declares a new trust.

2.2 Name

The Scheme is called *ORDE Income Fund* or such other name determined by the Responsible Entity from time to time and may be named and branded differently at the discretion of the Responsible Entity for different Investors and offerings.

2.3 Responsible Entity

The Responsible Entity is the responsible entity and trustee of the Scheme.

2.4 Benefit and binding

- (a) The Scheme is constituted for the benefit of Investors. This constitution is the constitution for the Scheme and is binding upon and between the Investors and the Responsible Entity as well as any person who claims through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.
- (b) If the provisions of the Corporations Act and this constitution conflict on the same matter, the provisions in the Corporations Act prevail.
- (c) An Interest is issued subject to and on the basis that the Investor is taken to have notice of and be bound by the provisions of this constitution.

3 Duration

The Scheme ends 80 years (less one Day) after the date of the Original Constitution or at such earlier time as this constitution or the Law provides.

4 Interests

4.1 Issuing Interests

The Responsible Entity may create and issue different classes and types of Interests. Each Interest is separate to each other Interest.

4.2 Accounts

- (a) The Responsible Entity may create and maintain any number of Accounts for an Investor.
- (b) Each Account will comprise a separate Interest unless otherwise determined by the Responsible Entity and stated in the terms of issue of that Interest.
- (c) The Responsible Entity may issue Accounts of a single Class or different Classes, with different rights, investment features, obligations and restrictions. All Accounts in a particular Class rank equally. A separate Class does not constitute a separate trust.
- (d) The Responsible Entity may establish one or more sub-accounts within any Account, to or from which any amounts may be paid (including fees and expenses) in relation to the Investor. The Responsible Entity may determine and vary a minimum or target balance for a sub-account.
- (e) An Account may or may not be managed or advised by an investment manager or other person according to a strategy and composition determined by such person.

4.3 Nature of interests

- (a) Subject to any rights, obligations or restrictions attaching to any particular Account or Class, each Investor has a beneficial interest only in the Investor Property as a whole referable to that Account or Class (as the case may be). Investors do not otherwise have an interest in any particular asset of the Scheme unless otherwise determined by the Responsible Entity.

- (b) Scheme Property is held by the Responsible Entity solely for the benefit of the relevant Investors and not to meet the liabilities of any other trust or person.

4.4 Nominee and platform arrangements

- (a) The Responsible Entity may establish and maintain separate Interests and Accounts for any nominee, custodian, platform operator, MDA provider, trustee or similar person.
- (b) Only the holder of an Interest will have the rights and benefits of an Investor under this constitution, and for the avoidance of doubt, an underlying beneficiary is not treated as an Investor unless otherwise agreed by the Responsible Entity or provided for in this constitution.

4.5 Holding of property

The Responsible Entity may mix and mingle Scheme Property and allow Investor Accounts and Classes to hold fractional interests in the same Scheme Property provided it:

- (a) ensures the Scheme Property and related liabilities is separately identified from that of each other Account and Class (as applicable); and
- (b) is permitted under the Law; and
- (c) holds Scheme Property separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Law so requires. Subject to the Law, the Responsible Entity may have Scheme Property held by a custodian.

4.6 Scheme Liabilities

The Responsible Entity must fairly apportion Scheme Liabilities to each Class and between Investors.

4.7 Scheme reserves and property

- (a) The Responsible Entity may create reserves and hold other Scheme Property that is not Investor Property. These amounts may be funded from any lawful means including levies on Investors as set out in this constitution.
- (b) These amounts may be used by the Responsible Entity for any purposes permitted under Law. Upon termination any remaining such Scheme Property will be payable to ORDE Financial Pty Ltd (ACN 634 779 990) (**ORDE Financial**) or its nominee.

4.8 Varying classes

The Responsible Entity may combine, split or otherwise restructure Classes and Interests provided this does not alter the absolute fixed and indefeasible beneficial interest of an Investor.

4.9 Owed amounts

If an Investor owes money to the Responsible Entity or Scheme (for example because an Account has a negative balance), the Responsible Entity or other platform operator (as the case may be) is authorised to obtain payment from the Platform Account of the Platform Investor who the Investor indirectly holds their Interest on behalf of.

5 Applications and Consideration

5.1 Applications

- (a) To become an Investor, a person must give a completed Application and pay the required Consideration to the Responsible Entity.
- (b) The Responsible Entity may reject any Application and request for further contributions to Investor Property or part thereof without giving any reason.

5.2 Consideration

- (a) The Consideration to be paid to the Responsible Entity by an Investor to acquire an Interest must have a monetary value equal to or greater than the Minimum Investment.
- (b) Payment of the Consideration must be in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity (accompanied by a recent valuation of the property if the Responsible Entity requires).
- (c) Any Consideration provided in a form other than cash must be valued in accordance with this constitution.
- (d) An Investor may, where permitted by the Responsible Entity, provide additional Consideration from time to time in the manner set by the Responsible Entity including as to Minimum Investment amount.
- (e) The amount of the Consideration received by the Responsible Entity in respect of the Scheme, after any applicable fees or expenses under this constitution, will be applied as the Investor's Investor Property referable to that Investor's Account or Class (as the case may be).
- (f) An Interest (or increase in Interest) paid for by means that are subsequently dishonoured, cancelled or similar, is void.

5.3 Timing

- (a) An Application lodged after the specified cut off time on a Day is taken to be received on the next Business Day.
- (b) Other than for existing Investors at the time of registration of the Scheme, an Investor's Interest in the Scheme is created on Consideration becoming Scheme Property.

6 Investments and Instructions

6.1 Standing Instructions

- (a) The Responsible Entity may allow Investors to issue Standing Instructions and other instructions to it.
- (b) The Responsible Entity may vary the terms of Standing Instructions and cancel the ability to provide them.

6.2 Limitations

- (a) The Responsible Entity retains absolute discretion as to the way (including timing and price at which transactions the subject of Standing Instructions and other Investor instructions, occur) and will not, to the maximum extent permitted by law, be liable for any amounts related to the time or price at which it executes transactions.
- (b) An Investor may not interfere with, nor exercise rights or powers of, the Responsible Entity in respect of any Scheme Property, Scheme Liabilities or obligation other than by way of Standing Instructions, Withdrawal Requests, requests to transfer the Investor Property referable to that Investor's Account or Class (as the case may be) and other instructions allowed by the Responsible Entity from time to time but in all cases subject to this constitution and any terms of such.

6.3 Liability

Investors will be liable for all amounts (including call amounts, Taxes, brokerage and duties) payable or otherwise arising in respect of their Standing Instructions and other instructions and requests. The Responsible Entity may apply the relevant Investor Property to satisfy such amounts.

6.4 Platform Investors

- (a) The Responsible Entity may, but is not obliged to, treat Platform Investors as the Investor including to accept instructions and requests from them in relation to that part of an Interest referable to them as an Investor might.
- (b) Where an Investor holds an Interest on behalf of multiple Platform Investors, a Platform Investor will only be able to (if permitted by the Responsible Entity) exercise rights with respect that part of the Interest and the Investor Property referable to their Account or Class (as the case may be).

7 Valuations

7.1 Valuation and calculation

The Responsible Entity may cause Scheme Property to be valued at any time.

7.2 Responsible Entity is not an expert

The Responsible Entity is not to be regarded as having any expertise in valuation.

7.3 Method of Valuation

- (a) The valuation method or policy for any type of property is to be determined and varied by the Responsible Entity.
- (b) The value of any property will be the market value, the net fair value, or such other value as:
 - (i) may be appropriate to the nature of the property; and

- (ii) meets generally accepted accounting principles and approved accounting standards from time to time.
- (c) Property may be valued at cost until revalued.

7.4 Currency conversion

If the Responsible Entity considers it should convert one currency to another it may do so at any time and at any conversion rate as is quoted to the Responsible Entity by any financial institution or other data source the Responsible Entity determines appropriate.

8 Recurring Investments

- (a) The Responsible Entity may establish a Regular Investment Plan under which an Investor may invest further amounts in the Scheme by completing the Regular Investment Plan application in a form and for such minimum amount as is determined by the Responsible Entity from time to time and by lodging a direction for future amounts to be subscribed in a manner acceptable to the Responsible Entity.
- (b) The Responsible Entity may establish and determine from time to time that a Class will have a rolling Investment Term. Where a Class has a rolling Investment Term, the Investor must, prior to the end of the Investment Term, provide a Standing Instruction within the notice period set out in the Offer Document if the Investor does not want the Investment Term to roll over for an additional term.

9 Withdrawal & liquidation

9.1 Instructions

- (a) Where the Scheme is liquid, subject to this clause 9, the Investor may make a Withdrawal Request by:
 - (i) giving at least 30 Days' written notice (or such other period as determined by the Responsible Entity) before the relevant Maturity Date; and
 - (ii) ensuring it has met all other reasonable requirements of the Responsible Entity which it may set in its absolute discretion and as set out in an Offer Document (as amended from time to time), including any Minimum Withdrawal Amount.
- (b) Where an Account has:
 - (i) an Investment Term, notwithstanding any other provision of this constitution, a Withdrawal Request need not be satisfied during the Investment Term; and
 - (ii) a rolling Investment Term, the Account will automatically roll over for another same Investment Term if a Withdrawal Request is not made by the relevant Investor in accordance with clause 9.1(a).
- (c) Where the Scheme is illiquid (as that term is used in the Corporations Act), withdrawal from the Scheme may be permitted in accordance with clause 9.5.

9.2 Timing

- (a) The Responsible Entity will, subject to this clause 9 and the required notice period in clause 9.1(a), and if it is reasonably practicable to do so, satisfy a Withdrawal Request within a reasonable time, having regard to the nature of the Scheme Property representing that Account, the applicable Investment Term, and the best interests of Investors and in any event within 360 Days of the date of receiving the liquidation or Withdrawal Request or such longer period as allowed by clause 10.
- (b) For the purposes of section 601KA of the Corporations Act the period specified in this constitution for satisfying Withdrawal Requests will be 360 Days, subject to any suspension or delay exercised by the Responsible Entity pursuant to clause 10).
- (c) Subject to clause 10, upon completion of the 360 Day period set out in 9.2(a), the Responsible Entity must use reasonable endeavours to pay or transfer the Withdrawal Amount within 21 Days of the date when the Responsible Entity determines that there are sufficient proceeds to satisfy the Withdrawal Request.
- (d) An Investor ceases to be an "Investor" for the purposes of this constitution and will be a creditor of the Scheme from the date of the withdrawal of the last of the Investor Property referable to that Investor's Account or Class (as the case may be).
- (e) If Investor Property referable to an Investor cannot be Realised (including because of the terms of the investment have restrictions) then notwithstanding any other provision of this constitution, the Responsible Entity is not obligated to redeem the Investor's Interest (or Realise the referable Investor Property) until a reasonable time after that restriction ceases to apply, however in any event the Responsible Entity's discretion under this paragraph must be subject to the timeframes set out in clause 10. .

9.3 Withdrawal Amount

- (a) The Withdrawal Amount is the net amount derived by the Scheme from the Realisation of the Investor Property referable to that Investor's Account or Class (as the case may be) that is the subject of the Withdrawal Request (less the applicable amount of Scheme Liabilities and any amounts owed by the Investor under this constitution), or such lesser amount as the Investor has specified in its Withdrawal Request.
- (b) The Responsible Entity may reject a Withdrawal Request if the amount is less than the Minimum Withdrawal Amount unless the Withdrawal Request relates to the whole of that Investor's Investor Property as referable to that Investor's Account in which case the Responsible Entity may treat the request as applicable to the whole of the Account.
- (c) The Responsible Entity may reject or delay a Withdrawal Request (in whole or in part) if the Withdrawal Request would leave the Account worth less than or with insufficient funds to meet the amount of any current, future or reasonably anticipated Scheme Liabilities or other liabilities (including contingent liabilities) that have been, will be or are reasonably anticipated to be incurred in relation to the Investor Property referable to that Investor's Account or Class (as the case may be).
- (d) If a Withdrawal Request would leave an Account worth less than the Minimum Investment (if any), the Responsible Entity may treat the request as applicable to the whole of the Account.

- (e) If at any time, the value of an Account falls below the Minimum Investment, the Responsible Entity may, on behalf of the Investor, liquidate the entire Account of that Investor.

9.4 Cancellation and delay

- (a) An Investor may only cancel a Withdrawal Request if the Responsible Entity agrees.
- (b) Where a Withdrawal Request relates to an investment which is subject to a minimum holding requirement or the Realisation of which might otherwise adversely affect Investors other than the requesting Investor, the Responsible Entity will use all reasonable endeavours to have the investment Realised as soon as possible but will not be liable for any delay or related loss.

9.5 Not liquid and cooling off

- (a) Notwithstanding any provision of this constitution, while the Scheme is not liquid (as that term is used in the Corporations Act) the right of any Investor to a withdrawal and any withdrawals may only occur subject to the provisions of Part 5C.6 of the Corporations Act. Unless otherwise required under the Law, if there is no withdrawal offer made by the Responsible Entity that is currently open for acceptance by Investors, an Investor has no right to withdraw from the Scheme during the period the Scheme is not liquid.
- (b) The rights of an Investor and the obligations of the Responsible Entity under this clause 9 are in addition to, and do not limit, those existing during any cooling off period under the Law or this constitution.

9.6 Regular withdrawal plan

- (a) The Responsible Entity may allow regular withdrawal plans and where it does Investors may make regular withdrawals from that Investor's Account using the method and in the manner required by the Responsible Entity (**Regular Withdrawal Plan**).
- (b) The Responsible Entity may Realise such portion of the Investor Property referable to an Investor's Account or Class (as the case may be) as the Responsible Entity judges necessary to cover the specified Withdrawal Amounts in the Regular Withdrawal Plan. Any surplus will be retained as part of the Account or Investor Property referable to that Investor's Account or Class (as the case may be) or, at the election of the Responsible Entity, deposited into the Investor's Money Account, bank account or other account.
- (c) The Responsible Entity may, in its absolute discretion, reject or accept, subject to such conditions as it may require, or at any time terminate, any request from an Investor for a Regular Withdrawal Plan. The Responsible Entity may determine not to give effect to a Regular Withdrawal Plan when the Scheme is not liquid.

9.7 Compulsory withdrawal

The Responsible Entity may at any time, to the extent permitted by the Law, terminate an Interest and compulsorily withdraw an Investor from the Scheme in whole or part including upon the death of a Platform Investor.

10 Suspension

- (a) The Responsible Entity may suspend or delay for up to 180 Days the acquisition and liquidation of some or all Scheme Property and payment of withdrawal proceeds because of:
 - (i) closure of, or trading restrictions on, stock or securities exchanges;
 - (ii) an emergency, pandemic or other state of affairs;
 - (iii) the relevant Account's underlying investments suspend, delay or restrict the application, redemption or payment of redemption proceeds (as applicable);
 - (iv) any moratorium declared by a government of any country in which a significant proportion of the Account is invested exists; or
 - (v) any other circumstance outside the reasonable control of the Responsible Entity,or as otherwise permitted under the Law or with the agreement of the relevant Investors.
- (b) An Investor's request for liquidation, Regular Withdrawal Plan, in specie transfer or withdrawal lodged during any period of suspension is deemed lodged immediately after the end of the suspension.

11 Powers

Subject to this constitution and the Law, the Responsible Entity has all the powers in relation to the Scheme that it is legally possible for a natural person, corporation, trustee or responsible entity to have, including (but not limited to) to:

- (a) invest in real or personal property of any nature and invest the whole or part of the Scheme Property in a single type of asset or any other investments as the Responsible Entity determines;
- (b) borrow or grant security in respect of borrowings over any Investor Property or anything analogous to either;
- (c) fetter its own discretion and exercise powers, as if it were the absolute and beneficial owner of all Scheme Property;
- (d) acquire, develop, maintain, deal with, invest in and sell any property;
- (e) incur liabilities and obligations of any kind (including to grant indemnities and guarantees, warranties and to make representations and undertakings);
- (f) enter into any sort of futures, derivative, swap, option contract or arrangement or instrument and including of a speculative nature;
- (g) issue debentures, grant mortgages and grant or give any security over, create any interests in (including security interests), or encumber, the Scheme Property;
- (h) carry on any business;

- (i) appoint a manager, advisor, valuer, lawyer, accountant, custodian, nominee administrator, and other professionals or service providers;
- (j) bind the Responsible Entity and any successor responsible entity; and
- (k) invest and deal in investments, funds, trusts, or entities in which the Responsible Entity, a manager, sub-manager or advisor of the Scheme or any of their Associates:
 - (i) have an existing investment;
 - (ii) manage or control; and/or
 - (iii) may receive and/or retain fees, costs and other amounts,

and may decide how and when to exercise such powers in its absolute discretion.

12 Management

The Responsible Entity will manage the Scheme.

13 Indemnity

- (a) To the extent permitted from time to time by the Law, the Responsible Entity is entitled to be indemnified out of Scheme Property for any liability incurred by it in properly performing any of its duties, in relation to the Scheme generally.
- (b) This right of indemnity extends to any and all Scheme Property and is not limited to Scheme Property relating to any particular Account (unless and until fairly apportioned by the Responsible Entity between each Account).
- (c) The Responsible Entity is not required to do or omit a thing unless the Responsible Entity is satisfied that its liability is satisfactorily limited, or for which it does not have a full right of indemnity out of Scheme Property available for that purpose and in respect of which there is, in the Responsible Entity's opinion, sufficient Scheme Property to fully satisfy any such liability.
- (d) Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity allowed by Law.
- (e) Without limitation, the right of the Responsible Entity to be indemnified out of the Scheme Property pursuant to this clause 13 is only available in relation to the proper performance by the Responsible Entity of its duties in relation to the Scheme.

14 Communications to Investors

14.1 Form of notice by Investor

Subject to the Corporations Act, any notice, consent or other communication by an Investor to the Responsible Entity:

- (a) must be in writing (or in any other manner determined by the Responsible Entity) and in English unless the Responsible Entity determines otherwise;
- (b) must be signed personally or bear the electronic signature or other electronic identification including the email address or password of the Investor or, of a duly authorised officer or representative of the Investor (or in any other manner determined by the Responsible Entity) unless the Responsible Entity determines, otherwise;
- (c) must be addressed to the registered office of the Responsible Entity or any other address (including electronic address) that the Responsible Entity notifies from time to time;
- (d) may be delivered via an application where and in the manner, permitted by the Responsible Entity; and
- (e) is taken to be duly given by the sender and received by the Responsible Entity only at the time of actual or deemed receipt by the Responsible Entity.

14.2 Form of Notice by the Responsible Entity

Subject to the Corporations Act, any notice or other communication by the Responsible Entity to an Investor:

- (a) must be given in writing (or in such other manner as the Responsible Entity determines);
- (b) sent to the Investor at their physical or electronic address specified in the Register;
- (c) is taken to be received by the Investor;
 - (i) (in the, case of delivery by hand), on delivery at the physical address of the Investor or on delivery personally to them;
 - (ii) (in the case of pre-paid post) on the next Business Day after the date of posting; or
 - (iii) (if sent by any other manner) at the time the Responsible Entity determines.

14.3 Joint Holders of Investor Property

For persons registered jointly as the holders of Investor Property, notices or other communications given to or by the holder named first in the Register, as provided in clauses 14.1 and 14.2 respectively, will be taken to be validly given to or by all the joint Investors.

14.4 Notification to Investors

No certificates will be issued for Interests or Accounts unless otherwise agreed by the Responsible Entity. The Responsible Entity may send any Investor details relating to the Investor Property referable to that Investor's Account or Class (as the case may be) at any time and manner, and shall within a reasonable time (and in any event within any period prescribed under the Law) confirm the details of any Applications or Withdrawal Requests made in relation to the Investor Property referable to that Investor's Account or Class (as the case may be).

15 Register

15.1 Record keeping

- (a) The Responsible Entity must maintain the Register with such details as it considers appropriate.
- (b) Subject to the Law, the Responsible Entity may establish and keep branch registers anywhere in Australia.
- (c) The Responsible Entity need not, but may, enter notice of any trust on the Register.

15.2 Inspection of Register

If an Investor inspects or is given a copy of the Register (or part of the Register) pursuant to the Law then they will be taken to have agreed not to use any information obtained from the Register for any purpose or disclose any such information to any person except to the extent permitted by law or required by a court. An Investor's obligation under this clause survives them ceasing to be an Investor.

15.3 Notify change of name or address of Investor

An Investor must promptly notify the Responsible Entity of a change of name or address and the Responsible Entity must update the Register accordingly,

15.4 Closure of Register

The Responsible Entity may close the Register at any time.

15.5 Mortgages

- (a) The Responsible Entity may but is not obliged to record in the Register a mortgage or mortgagee of the Investor Property in respect of an Investor's Interest and if it does, may on the mortgagee's written request, delete that record.
- (b) The Responsible Entity may, without liability to an Investor, pay amounts and transfer Investor Property in respect of an Investor's Interest to the recorded mortgagee unless the mortgagee gives contrary written consent.
- (c) Any transfer of the Investor Property in respect of an Investor's Interest is subject to the written consent of any recorded mortgagee.
- (d) The Responsible Entity will not be taken to have notice of the terms of any mortgage and has no liability to a mortgagee in connection with the recording of mortgagees.

15.6 Transfers

The Responsible Entity may, in its absolute discretion, allow an Investor to transfer their Interest. Investors do not have a right to transfer their Interest unless otherwise agreed by the Responsible Entity and such transfer is using the method and in the manner required by the Responsible Entity.

16 Death and insolvency

16.1 Death of an Investor

If an Investor dies, then only the legal personal representative of the Investor, or if the Investor is registered jointly as a holder of the Investor Property, the survivor, will be recognised as having any claim to Investor Property registered in the name of that Investor. The Responsible Entity may require such information as it thinks fit to establish a person's entitlement to claim an Investor's Property.

16.2 Legal disability, bankruptcy etc. of an Investor

If an Investor becomes subject to a legal disability, becomes bankrupt or is placed in liquidation, then the survivor (or survivors in the case of a joint holding of Investor Property) or any person who gives the Responsible Entity all the information the Responsible Entity requires to establish their entitlement to be registered as the holder of the Investor Property registered in the Investor's name as a result of the legal disability, bankruptcy or liquidation, will be recognised as having any claim to the Investor Property registered in the name of that Investor.

16.3 Discharge to Responsible Entity

A person who is entitled to Investor Property upon the death, legal disability, bankruptcy or insolvency of an Investor may give a good discharge for any money payable or property transferable in respect of the Investor Property. Such person is not entitled to receive notices of or attend or vote at any Meetings until they are entered in the Register as the holder in respect of the Investor Property.

17 Termination

- (a) Subject to the Law, the Responsible Entity at any time may terminate the Scheme by written notice to the Investors. On the Termination Date, Applications and (subject to the Law) withdrawals from the Scheme cease unless otherwise permitted by the Responsible Entity.
- (b) The Responsible Entity will, subject to clause 17(d):
 - (i) Realise all Scheme Property;
 - (ii) pay, discharge or provide for all Scheme Liabilities and expenses of Termination (out of Scheme Property); and
 - (iii) distribute to Investors the net proceeds of their Investor Property to which they are respectively entitled to.
- (c) Payments by the Responsible Entity pursuant to clause 17(b)(ii) shall be made in priority to any payments to be made by the Responsible Entity pursuant to clause 17(b)(iii).
- (d) The Responsible Entity may, subject to its duties, postpone Realisation and will not be responsible for any resulting loss unless caused by the Responsible Entity's negligence or breach of trust. Nothing in this clause 17(d) affects the continuing entitlements of Investors to their Income Entitlements. The Responsible Entity may make partial distributions. The Responsible Entity must, if ASIC policy or the Law

so requires, cause the accounts of the winding-up to be independently audited by a registered company auditor or audit firm.

18 Independent rights

The Responsible Entity, any custodian, and any related body corporate or associate of either of them may, subject to the Law and always to acting in good faith to Investors:

- (a) invest in the Scheme and Accounts;
- (b) represent or act for, or contract with, individual Investors;
- (c) deal with their associates, the Scheme or any Investors including acquire or deal with any interest in, or an asset of, a fund, scheme or trust of which the Responsible Entity or any of its associates is the manager trustee or responsible entity;
- (d) be interested in any contract or transaction with its associates, the Scheme or any Investor and retain for its own benefit any profits or benefits derived from any such contract or transaction;
- (e) act as investment manager in relation to the Scheme;
- (f) deal in any capacity with any responsible entity or with any related body corporate or associate or with any trust; or
- (g) act in any capacity in relation to any other trusts, including buying and selling Scheme Property from or to itself in another capacity,

without in any such case being liable to account to the Scheme, the Responsible Entity or to any Investor.

19 Responsible Entity's liability

19.1 No limitation on other statutory protection for the Responsible Entity

Nothing in this constitution limits, prejudices or otherwise affects the operation of the provisions of any Law under which the Responsible Entity may obtain relief from a breach of trust or other duty in respect of the Scheme.

19.2 Responsible Entity may obtain and rely on advice etc.

The Responsible Entity may obtain and rely on:

- (a) the Register;
 - (b) the opinion, advice, statements or information obtained from solicitors or barristers (whether or not they are instructed by the Responsible Entity), bankers, accountants, auditors, valuers, brokers, underwriters, advisers or consultants and any other person who is an expert appointed or otherwise engaged by the Responsible Entity who are in each case reasonably believed by the Responsible Entity to have the relevant expertise in relation to the matters upon which they are consulted;
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- (c) any document believed by the Responsible Entity in good faith to be the original or a copy of an appointment by an Investor of a person to act as their agent for the purposes of or in connection with the Scheme; and
- (d) any other document or information from any Investor, Agent or other person (whether or not the person is appointed or otherwise engaged by the Responsible Entity) believed by the Responsible Entity in good faith to be the original or a copy thereof.

19.3 No liability for Responsible Entity

Subject to clause 19.4 and except to the extent the Law provides otherwise, the Responsible Entity is not liable to any Investor or other person for any loss or damage (including loss or damage) to the Scheme Property regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts, or omissions:

- (a) the Responsible Entity obtaining or relying on (in accordance with clause 19.2) any of the opinions, advice, statements, documents or information referred to in clause 19.2;
- (b) the Responsible Entity performing or not performing its duties or exercising or not exercising any of its powers;
- (c) the Responsible Entity doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Responsible Entity;
- (d) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity). This includes fraudulent or unauthorised acts or omissions;
- (e) the Responsible Entity making any payment to any fiscal authority on any basis even if the payment need not have been made;
- (f) the Responsible Entity doing or omitting to do any act which by reason of:
 - (i) any present or future law; or
 - (ii) any decree, order or judgment of any Court,
 the Responsible Entity is hindered, prevented or forbidden from doing or required to do; or
- (g) the Responsible Entity doing or omitting to do any act at the request of an Investor, including making a payment to a person other than the Investor.

19.4 Fraud, gross negligence or wilful default of the Responsible Entity

Clause 19.3 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud, negligence, material breach of trust which has a material affect or wilful default of the Responsible Entity.

19.5 Liability limited to third parties

The Responsible Entity is not liable to any person who is not an Investor and nor will that person be entitled to enforce any rights against the Responsible Entity to any greater extent than the Responsible Entity is entitled to recover through its right of indemnity from and is in fact indemnified from the Scheme Property.

20 Responsible Entity's fees

20.1 Fee entitlement

The Responsible Entity is, subject to the Law and the proper performance by it of its duties, entitled to receive (but may elect to receive less than) the following fees in relation to Investor Property, payable or reimbursable out of the Investor Property or payable personally by the Investor:

- (a) an **investment manager's fee**, for managing the Investor Property of 2% per annum of the gross value of the Investor Property calculated daily and payable on the last Business Day of the calendar month or at such other times as determined by the Responsible Entity;
- (b) a **trustee fee**, for the ongoing administration and operation of the Scheme, being 2% per annum of the gross value of the Scheme Property calculated daily and payable on the last Business Day of the calendar month or at such other times as determined by the Responsible Entity; and
- (c) an **expense fee**, in respect of expenses incurred by the Responsible Entity in managing Investor Property, being 1% per annum of the gross value of the Investor Property calculated daily and payable on the last Business Day of the calendar month;

provided that where a fee is not under the Law able to be charged on the gross value of Scheme Property or Investor Property, for example because the gross value includes borrowings, then such fee will be levied on the net value of such property. All fees are payable from the date of this constitution until final distribution under this constitution.

20.2 Fee waiver and rebates

- (a) The Responsible Entity may subject to the Law in its discretion elect to receive less than such fees (or defer payment for any period) in respect of any or all Investors and Scheme Property. Where payment of a fee is deferred, the fee still accrues until paid.
- (b) The Responsible Entity may pay any Investor from its own resources, any amounts which it, in its absolute discretion, determines by way of offset or rebate of fees.
- (c) The Responsible Entity subject to the Law may apply different fees to different Investors and different Accounts and Classes.
- (d) The Responsible Entity may credit or otherwise apply, amounts received as rebates or other benefits from service providers, as Investor Property referable to the Investor to which such amount relates.

20.3 Additional services

- (a) The Responsible Entity is entitled, subject to the Law and its proper performance of its duties to a remuneration fee payable out of Scheme Property for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services on the terms set out in clauses 20.3(b) to 20.3(e).
- (b) The remuneration fee 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 Scheme Property.
- (d) The Responsible Entity may notify the Investors of its current hourly rates for the purposes of clause 20.3(b), and the amounts charged to Scheme Property under clause 20.3(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 20.3(b) are in addition to:
 - (i) its rights to fees under clause 20.1; 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 Scheme.
- (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 20.3(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 20.3(i), an appointment, engagement or other contract under clause 20.3(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 constitution, the Responsible Entity is entitled to be indemnified out of the Scheme 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 Scheme is Registered, the terms on which an Associate is appointed, engaged or contracted must not contravene Chapter 2E of the Act (as modified by section 601LC of the 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 Scheme.
- (k) The appointment, engagement or other contracting of a Delegate under clause 20.3(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.

20.4 Levies

The Responsible Entity may apply a levy of up to 1% of Scheme Property per annum to fund reserves and meet Scheme Liabilities.

21 Reimbursable expenses

Subject to the Law and the proper performance of the Responsible Entity of its duties, all costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity including (but not limited to) in connection with the following matters or of the following nature in relation to each Investor and its Investor Property, and the Scheme generally (**Expenses**) are payable or reimbursable out of Scheme Property:

- (a) preparation, approval, stamping, execution and printing of the constitution and any deed amending the constitution;
- (b) retirement, removal and appointment of any Responsible Entity or former Responsible Entity;
- (c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to the constitution or the Scheme generally, including proceedings by the Responsible Entity against any custodian (but the Responsible Entity is not entitled to be reimbursed for outgoings in connection with proceedings to the extent that it is found by a court to be liable for its own negligence, fraud, breach of trust or breach of duty);
- (d) convening and holding any Meeting and implementing any resolution of the Meeting;
- (e) Investors exercising their rights under the cooling off provisions in the Law;
- (f) bank fees, interest, discount and acceptance fees for bill facilities, all borrowing costs and like amounts;
- (g) Taxes;
- (h) any actual or proposed investment, acquisition, Realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Scheme Property;
- (i) amounts payable to administrators, custodians, advisers, agents, brokers, contractors, investment managers, account managers, underwriters or other persons engaged by the Responsible Entity under the constitution (including legal costs on a full indemnity basis);
- (j) fees payable to any person authorised by the Responsible Entity to hold Scheme Property;
- (k) all Expenses properly incurred in the performance of the Responsible Entity's duties including in connection with the establishment and conduct of any compliance committee including, but not limited to:
 - (i) remuneration of committee members;

- (ii) the Expenses of legal, accounting or other professional advice or assistance properly commissioned by the compliance committee; and
- (iii) to the extent permitted by the Law, directly or indirectly:
 - (A) indemnifying a person who is or has been a compliance committee member, and
 - (B) paying premiums under a contract insuring such a person against a liability,
 - including for costs, Expenses and liabilities incurred by that person in defending civil or criminal proceedings;
- (l) establishing and maintaining the Register, the accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (m) fees payable to ASIC or any other regulatory authority;
- (n) preparing, printing and posting accounts, cheques and documents, or making payments to Investors;
- (o) any offer or invitation in respect of an Interest, including preparation, lodgement, registration, distribution and promotion of Scheme prospectuses, product disclosure statements, information memoranda and other offer documents (including without limitation whether in relation to the Scheme or in relation to any Account which may be the subject of a Standing Instruction);
- (p) preparing and lodgement of Scheme taxation or other returns;
- (q) fees payable to any ratings organisation;
- (r) auditors' fees and Expenses, including the fees incurred by any auditor of the compliance plan;
- (s) termination and winding up of the Scheme or any Account;
- (t) performance of the Responsible Entity's duties, compliance with the law (including implementing law reform and regulatory change) or administration of the Scheme;
- (u) fees payable to any securities system authorised by the Responsible Entity to hold Scheme Property;
- (v) fees payable to any information provider;
- (w) dealing with Applications and Withdrawal Requests; and
- (x) any other fees, costs, charges or Expenses agreed with the Investor.

22 Recoveries

- (a) Each Investor is liable for all:
 - (i) Taxes and other amounts paid or payable (including transaction costs) in relation to its Investor Property and Interest;

- (ii) amounts in relation to any act or omission requested by that Investor; and
 - (iii) fees and expenses payable by them to the Responsible Entity, Scheme or other persons in relation to them.
 - (b) The Responsible Entity may (but is not obliged to):
 - (i) deduct reimbursable expenses and their fees at any time from Investor Property including by selling such;
 - (ii) withhold payment of any money payable to an Investor until any such liability is discharged; or
 - (iii) recover the amount payable by an Investor from any other money or property held for, or distribution or other amount payable to, that Investor, including a Withdrawal Amount,

in order to meet a liability or to be reimbursed for a liability which the Responsible Entity has already met. Nothing in this clause shall limit the ability of the Responsible Entity under this constitution to meet payments or to be reimbursed out of Scheme Property generally.
 - (c) The Responsible Entity must apportion any fee, charge or expense which relates to more than one Investor or Account fairly between them. Where a fee, charge or expense is specifically referable to a transaction effected for a particular Investor, it must be borne by that Investor.
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23 Distributable Income

- (a) Prior to the end of a Financial Year of the Scheme, the Responsible Entity may make a determination as to the method of calculating the Distributable Income for the Scheme for that Financial Year.
 - (b) If the Responsible Entity does not make a determination under clause 23(a) above for the Scheme prior to the end of a Financial Year, the Distributable Income for the Scheme will be equal to the total of the Income Entitlements of Investors for that Financial Year.
 - (c) The Income Entitlement of an Investor for a Financial Year shall be equal to the amount of all interest, dividends and other income plus realised gains referable to the Investor's Property. If an Investor has an Income Entitlement which is negative for a Financial Year, that Investor will be taken to have an Income Entitlement of nil for that Financial Year.
 - (d) If the aggregate Income Entitlements of all Investors for a Financial Year are nil or negative and the Net Taxable Income of the Scheme is greater than nil, the Responsible Entity must determine that the Distributable Income of the Scheme is at least \$100.
 - (e) Except as otherwise provided by this constitution, Distributable Income must be distributed to Investors pro rata to their Income Entitlements as determined under this clause 23.
 - (f) Before and after Termination, each Investor has a vested and indefeasible interest, and is presently entitled to such portion of Distributable Income as calculated under clause 23(e) at the time the distribution is received.
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- (g) The Income Entitlement determined in respect of an Investor must be distributed to the Investor at least annually. If the Investor participates in a reinvestment arrangement such amounts may be reinvested in the Scheme as agreed between the Investor and the Responsible Entity from time to time.
- (h) For the avoidance of doubt, the Income Entitlements of an Investor under this clause 23 and otherwise in this constitution, are subject to any Expenses, liabilities (including Scheme Liabilities), fees to which the Responsible Entity is entitled under this constitution (specifically clause 20), and any other amounts that are recoverable from Scheme Property or Investors under this constitution.

24 Payments

24.1 Method

- (a) The Responsible Entity may allow Investors to pay Consideration and receive amounts from the Scheme using different methods to and from different entities and financial products from time to time. Investors may only make and request payments in accordance with such.
- (b) The Responsible Entity's obligations and duties will be fully discharged and it will not be liable to the maximum extent permitted by law where it receives or pays an amount in the manner requested by an Investor using such methods.

24.2 Receipts

Amounts or property received in respect of Investor Property, whether on Realisation or otherwise, must be credited to the Interest of that Investor or, at the election of the Responsible Entity, to the Investor's Money Account or other account with a bank or other institution approved by the Responsible Entity.

24.3 Rounding of Payments

The Responsible Entity may in calculating amounts round to the nearest cent. Any excess money which results from rounding becomes part of Scheme Property.

25 Accounts

Accounts for the Scheme will be prepared in accordance with generally accepted accounting principles and approved accounting standards or as required by law. The Responsible Entity will keep the accounts of the Scheme.

26 Auditor

The Responsible Entity must appoint and may at any time replace as Scheme auditor a registered company auditor, or an audit firm.

27 Meetings

27.1 Corporations Act to apply

- (a) While the Scheme is not Registered, Meetings will be called and conducted as if Part 2G.4 of the Corporations Act applied (as modified by clauses 27.2 to 27.18

inclusive) with any necessary modifications except that at least 7 Days' notice of a Meeting must be given to Investors or Investors of a class, or such shorter notice as they agree.

- (b) While the Scheme is Registered, except as provided for in clauses 27.2 to 27.18 inclusive, the provisions of Part 2G.4 of the Corporations Act apply to Meetings.

27.2 Convening of Meetings

The Responsible Entity may convene a Meeting at any time and may determine the time and place and the manner in which the Meeting will be conducted including by electronic means over internet.

27.3 Omission to give notice

Accidental omission to give notice to, or the non-receipt of notice of Meeting by, an Investor will not invalidate the Meeting.

27.4 Chair

Subject to the Corporations Act:

- (a) the Responsible Entity may appoint a person to chair a Meeting;
- (b) the chair of a Meeting need not be an Investor or an Investor of a class and, if there is an equality of votes either on a show of hands or on a poll, the chair has a casting vote in addition to the votes to which they may be entitled as an Investor or an Investor of a class; and
- (c) the decision of the chair on any matter relating to the conduct of a Meeting is final.

27.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Law.

27.6 Acceptance of proxy appointment

The Responsible Entity may in its absolute discretion accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act. An appointment of proxy may be a standing one.

27.7 Joint Holders

Where more than one person is registered as the holder of any Investor Property, then:

- (a) all such registered holders shall be counted as a single registered holder for the purposes of calculating the number of Investors who have:
 - (i) requested a Meeting under section 252L(1) of the Corporations Act;
 - (ii) given the Responsible Entity notice of a special or extraordinary resolution they propose to move at a Meeting under section 252L(1) of the Corporations Act;
 - (iii) requested that a statement be distributed to Investors under section 252N of the Corporations Act; or

- (iv) demanded a poll under section 253L of the Corporations Act;
- (b) the joint holder first named in the Register (or if that person does not vote, the next named joint holder, and so forth) may exercise the voting rights of jointly held Investor Property.

27.8 Quorum requirements

The quorum for a Meeting is 2 Investors present in person or represented by proxy or represented by both corporate representatives holding, between them, not less than 5% of all issued Investor Property. If, however, there are less than 2 Investors who are entitled to vote at the Meeting, the quorum for that Meeting is the number of Investors or Investors of a class who are entitled to vote at the Meeting.

27.9 Proxies and Representations

- (a) If an individual is attending a Meeting both as an Investor or an Investor of a class and as a proxy or body corporate representative, then the Responsible Entity may for the purposes of determining whether a quorum is present, count the individual in respect of each such capacity.
- (b) Notwithstanding section 252W(2) of the Corporations Act, a proxy is entitled to vote on a show of hands.
- (c) For the purposes of section 252Z of the Corporations Act, the Responsible Entity may determine, in relation to a particular Meeting, or generally, to reduce the period of 48 hours referred to in sections 252Z(2) and (3) for receipt of proxy documents before the time appointed for the Meeting.
- (d) Section 253A(1) applies to determine the validity of proxy votes. That section also applies to determine the validity of a vote of a body corporate representative as if the reference to "proxy" in that section was a reference to body corporate representative.

27.10 Quorum presence

The quorum must be present at all times during the Meeting.

27.11 Absence of quorum - dissolution or adjournment of Meeting

If the quorum is not present within 30 minutes after the scheduled time for the start of the Meeting set out in the notice of Meeting, the Meeting is:

- (a) if called under sections 252B, 252G, 252D or 252E - dissolved. This is not so if the Meeting is called under section 252E and the court has directed otherwise; or
- (b) if called under section 252A adjourned to a place and time that the Responsible Entity decides.

The quorum for any adjourned Meeting is the number of Investors or Investors of a class who are present in person or by proxy or by body corporate representative. If the quorum is not present within 30 minutes after the scheduled time for the start of the adjourned Meeting, the Meeting is dissolved.

27.12 Power of chair to cancel or postpone Meetings

The chair may cancel or postpone a Meeting for any reason to any place and time as it thinks fit unless the Meeting has been called under section 252E and the court has directed otherwise.

27.13 Resolution binding

A resolution passed at a Meeting duly convened and held in accordance with the Corporations Act and this constitution or by postal ballot under clause 27.16 binds all Investors or all Investors of the relevant class (in that capacity) and the Responsible Entity and each Investor is bound to give effect to the resolution. This is so whether or not an Investor was present at the Meeting.

27.14 Poll

A poll may be demanded and if demanded will be conducted as directed by the chair. The result of the poll is the resolution of the Meeting at which the poll was demanded.

27.15 Notice of meeting

- (a) Notwithstanding section 252G(4) of the Corporations Act, a notice of meeting sent by post or by email or other electronic means is taken to be received by the Investor or Investor of a class at the time specified in clause 14.2(c).
- (b) Subject to the Law, anything done (including the passing of a resolution) at a Meeting is not invalid if either or both a person does not give notice of the Meeting or the Responsible Entity accidentally does not give notice of the Meeting to the person.

27.16 Resolution by Postal Ballot

- (a) Subject to the Law, a resolution of Investors may be passed by the Investors completing, signing and returning to the Responsible Entity, within such period as specified by the Responsible Entity, copies of a written resolution.
- (b) The resolution may consist of several documents in the same form, each signed by one or more Investors and is effective at the time specified by the Responsible Entity.
- (c) An Investor has, in relation to the resolution, the number of votes determined in accordance with section 253C(2) of the Corporations Act and the value of the Investor's total interests must be determined at such time as the Responsible Entity specifies.

27.17 Meeting of class Investors

This clause 27 applies to Meetings of Investors of a class with any necessary modifications.

27.18 Restrictions on voting rights

An Investor is not entitled to vote on a resolution at a Meeting where that vote is prohibited by law or an order of a court of competent jurisdiction.

27.19 Register

- (a) When a Meeting is to be held the Responsible Entity must close the Register at an appropriate date and time (having regard to the period of notice required) so as to determine those Investors entitled to notification of the Meeting.
- (b) Subject to the Law, each Investor on the Register as at the date when the Register is closed for the purpose of a Meeting is entitled on a show of hands to 1 vote and in respect of a poll to 1 vote for every dollar of the Withdrawal Amount of the Investor Property.
- (c) The joint Investor first named in the Register (or if that person does not vote, the next named joint Investor, or if that person does not vote, the next named, and so forth) may exercise the voting rights of jointly-held interests.

27.20 Voting

Resolutions will be passed if voted in favour by the simple majority of those Investors entitled to vote unless otherwise required by the Law.

28 Responsible Entity's retirement

Subject to the Law, the Responsible Entity may retire from the Scheme by giving not less than 1 months' notice to Investors, effective on the appointment of a replacement responsible entity.

29 Responsible Entity's termination rights

- (a) To the extent only permitted by law (and in no way limiting or purporting to exclude, or reduce liability under, the Law in particular) upon the Responsible Entity retiring it will be completely released from this constitution as it affects the Scheme and indemnified out of Scheme Property against any claims arising out of its conduct as Responsible Entity of the Scheme except claims in respect of negligence, fraud or breach of trust by the Responsible Entity and without limiting the liability of the Responsible Entity to the Investors.
- (b) Any rights of the Responsible Entity under this constitution to fees or indemnification out of Scheme Property is subject to the proper performance by it of its duties under the relevant provisions which allow for fees and indemnities.

30 Liability of Investors

Except as provided elsewhere in this constitution:

- (a) the liability of each Investor is limited to their Investor Property;
- (b) Investors need not meet a deficiency in the Scheme Property or meet the claim of any creditor in respect of the Scheme; and
- (c) recourse of the Responsible Entity and Scheme creditors shall be limited to Scheme Property.

31 Agents

- (a) An Investor may, using a method and manner set by the Responsible Entity from time to time, appoint a person as the Investor's agent, representative or similar (**Agent**) to act on behalf of the Investor with respect to its Interest.
- (b) Where permitted by the Responsible Entity, the Agent may receive information relating to the Interest, make deposits, Withdrawal Requests, issue instructions and receive the proceeds of such Withdrawal Request or Investor Property transfer and undertake such other transactions the Investor requests and the Responsible Entity agrees.
- (c) Payment to, or at the direction of, an Agent of the proceeds of a Withdrawal Request constitutes a good discharge of the Responsible Entity's duties.
- (d) An Agent's appointment remains effective until cancelled in the manner set by the Responsible Entity from time to time.
- (e) The Responsible Entity may limit the conditions and powers of an Agent's appointment and may cancel the appointment.
- (f) The Responsible Entity may deal with the officers, partners and authorised persons of an Agent or Investor as having authority without further enquiry to act on behalf of the Agent or Investor (as the case may be).

32 Complaints

- (a) 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 as amended or replaced from time to time, in dealing with Complaints received from a Complainant. Accordingly, the Responsible Entity will deal with any Complaint from a Complainant in accordance with Dispute Resolution Policy.
- (b) Unless the Dispute Resolution Policy requires otherwise from time to time (due to a change in the Law, ASIC policy or guidance), the Responsible Entity must, in relation to a Complaint from a Complainant:
 - (i) within 1 Business Day of receipt, acknowledge any Complaint received from a Complainant; and
 - (ii) within 30 Days of receipt of the Complaint (or such other timeframe specified in the Dispute Resolution Policy or such longer or shorter period mandated by the Law, ASIC policy or guidance):
 - (A) investigate, properly consider and decide what action (if any) to take or offer regarding the Complaint, having regard to the nature of the Complaint, the information provided by the Complainant and the nature and extent of the investigation and other activities necessary to deal fully with the Complaint; and
 - (B) communicate its decision to the Investor, at the same time informing the Investor of Remedies available to the Investor of which the Responsible Entity is aware and any available avenue of appeal

against the decision to an external industry complaints tribunal or other body.

33 Amendments to constitution

The Responsible Entity may, subject to the Law, by supplemental deed, make any modification, addition or deletion to this constitution.

34 Change of name

If the Responsible Entity (or any of its related body corporates) is no longer a service provider or responsible entity of the Scheme or if the Responsible Entity so requests, the name of the Scheme and relevant references in this constitution and any documentation relating the Scheme will be deemed to be amended to omit any words associated with ORDE Financial.

35 GST

- (a) Unless otherwise defined in this constitution, terms used in this clause have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth). A reference to Responsible Entity in this clause includes the representative member of any GST group to which the Responsible Entity belongs.
- (b) Unless expressly stated otherwise, the fees and any other amounts which are payable to the Responsible Entity under any other provision of this constitution are exclusive of GST.
- (c) Any payment or reimbursement required to be made under this constitution for an Expense or other amount paid or incurred by the Responsible Entity will be limited to the total Expense or amount less the amount of any input tax credit to which the Responsible Entity is entitled for the acquisition to which the Expense or amount relates.
- (d) If the Responsible Entity is liable to pay GST in respect of any supplies, it makes under or in connection with this constitution then:
 - (i) in addition to any fees or other amount to which the Responsible Entity is entitled, the Responsible Entity is entitled to recover or be paid from the Scheme Property (by way of increased fee or otherwise), at the same time as the fees or other amount, an additional amount equal to the amount of that GST liability; and
 - (ii) the Responsible Entity will issue a tax invoice for such supplies no later than the time at which the Responsible Entity recovers or is paid the additional amount referred to in 35(d)(i) from the Scheme Property, or otherwise receives the consideration for those supplies.
- (e) If the GST payable in relation to a supply made under or in connection with this constitution varies from the additional amount recovered or paid from the Scheme Property under clause 35(d)(i) in respect of that supply, then the Responsible Entity will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Scheme Property (as appropriate).

36 Law and Relief

For so long as the Scheme is Registered as a managed investment scheme under the Corporations Act (**Relevant Period**), the Responsible Entity and each Investor must comply with:

- (a) any conditions of covenants or other provisions required to be contained in this constitution as a condition of, the Relief, class order or other instrument issued by ASIC for so long as the Relief applies;
- (b) any such provisions required to be contained in this constitution are deemed to be contained in this constitution for so long as required.

37 Severability

Where any-provision of this constitution is void, illegal, or unenforceable (for any reason, including if the provision is inconsistent with the Corporations Act) so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this constitution which remain in full force and effect.

38 Miscellaneous

38.1 Approvals and consents

Except where this constitution expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally, or withhold, any approval or consent under this constitution.

38.2 Set off

The Responsible Entity may set off against any payment by it or the Scheme to an Investor against any amount that is due and payable by the Investor.

38.3 Counterparts

This deed may be executed in any number of counterparts, each of which:

- (a) may be executed electronically (for so long as it is permitted to do so by law) or in handwriting; and
- (b) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

38.4 Entire agreement

The Investment Documents constitute the entire agreement between the Investors and Responsible Entity in connection with its subject matter and supersedes all previous agreements, representations or understandings between the parties in connection with its subject matter.

38.5 Waiver

The Responsible Entity does not waive a right, power or remedy if they fail to exercise or delay in exercising the right, power or remedy. A single or partial exercise by a party of a

right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

38.6 Litigation expenses

To the extent that any Investor does not prevail in any legal action arising out of or in connection with an Investment Document, that Investor must reimburse any previous or existing Investor or the Responsible Entity for the amounts of any reasonable fees and costs (including own legal) of that action incurred by such persons.

38.7 Exclusion of laws

To the extent permitted by laws of any applicable jurisdiction, all legislation and rules of law which may be excluded or amended by or is subject to either express or implied agreement does not apply to Responsible Entity, Investors and any other parties in relation to the constitution.

Schedule 1 Dictionary

1 Dictionary

In this constitution:

Unless a contrary intention appears, words and phrases used in this constitution have the same meanings as in the Law and the singular includes the plural and vice versa.

Account means the account established for and in respect of each Investor by the Responsible Entity.

Additional Fund Administration Services means the actions and activities in connection with the management and administration of the Scheme which are described in Schedule 2 or any actions and activities that the Responsible Entity reasonably determines are not normal or routine in nature.

Agent means a person appointed by an Investor in accordance with clause 31.

Application means an application to become an Investor or acquire an Interest in a form and manner approved by the Responsible Entity.

ASIC means the Australian Securities and Investments Commission, any successor body, or other person that regulates the Scheme.

Associate of a person means another person who is:

- (a) associated with the first within the meaning of sections 10 to 17 of the Corporations Act; and
- (b) a “related party” of the first person within the meaning of section 228 of the Act (after modification in accordance with section 601LA of the Act).

Business Day means any Day excluding a Saturday, Sunday or a public holiday on which banks are open for business generally in Melbourne.

Class means a class of Accounts.

Commencement Date means the date the Scheme was established under the Original Constitution.

Complainant means any former or current Investor who is a retail client (as defined in the Corporations Act) and makes a Complaint.

Complaint means (unless the Dispute Resolution Policy requires otherwise from time to time due to a change in the Law, ASIC policy or guidance) any expression of dissatisfaction made to the Responsible Entity related to its products, services, staff or the handling of a Complaint, where a response is explicitly or implicitly expected or legally required that is conveyed to the Responsible Entity in writing or by telephone.

For the avoidance of doubt:

- (a) the Responsible Entity will allow representatives to lodge complaints on behalf of Complainants. Such representatives might include financial counsellors, legal representatives, family, friends and members of parliament; and

- (b) a Complaint may include posts on a social media channel or account owned or controlled by the Responsible Entity and where the Responsible Entity is the subject of the post, provided the author is both identifiable and contactable.

Consideration means the consideration payable or paid into the Scheme, in cash or kind, by an Investor to acquire or increase their Interest.

Corporations Act means *Corporations Act 2001* (Cth) and, where applicable, the *Corporations Regulations 2001* (Cth).

Day means a period of 24 hours ending at midnight (Australian Eastern Standard Time).

Delegate means a person appointed, engaged or otherwise contracted by the Responsible Entity as contemplated by clause 20.3(i).

Disposal Expenses means, at any time, an amount (if any) which the Responsible Entity determines is the total Expenses which may be incurred or are expected to be incurred by the Responsible Entity if all Scheme Property held at that time were to be disposed of at that time. If the Responsible Entity considers it appropriate, it may determine Disposal Expenses to be a lesser sum or zero.

Dispute Resolution Policy means the Responsible Entity's policy titled 'Dispute Resolution Policy – ORDE Financial Pty Ltd and ORDE Capital Management Limited (ORDE)' dated October 2021, as amended from time to time. A copy of the Dispute Resolution Policy can be found on the Responsible Entity's website.

Distributable Income means the amount calculated under clause 23.

Expenses includes all costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in connection with the following matters set out in clause 21.

Financial Year means each year ending on 30 June and ending on 1 July, or such shorter period in the case of the first and last such period or as determined by the Responsible Entity.

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

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

Income Entitlement means the income entitlement of each Investor in accordance with this constitution.

Interest means an interest in the Scheme.

Investment Document means this constitution and any Application.

Investment Term means, in relation to a Class or Account, the initial term of that Class or Account, set by the Responsible Entity, for which an Investor must remain invested in a Class or Account and includes any subsequent term where the Account is rolled over.

Investor means a person who holds an Interest and each other person determined by the Law to be a member of the Scheme.

Investor Property means in respect of an Investor, the property, rights and income relating to their Interest.

Law means the Corporations Act and the general law applicable to the Scheme or Responsible Entity.

Maturity Date means, in respect of a Class, the date on which the principal amount and interest or earnings of the underlying asset falls due for payment, or such later date that the Responsible Entity determines.

Meetings means meetings of Investors in the Scheme, whether involving all Investors or Investors in a class.

Minimum Investment means the amount in respect of a Class or Account, determined by the Responsible Entity that it prescribes, alters or may waive from time to time, as the minimum Account balance required for the Investor to access the Class.

Minimum Withdrawal Amount means \$1,000 or such other sum as the Responsible Entity from time to time determines.

Money Account of an Investor means the money account specified in their Application as varied from time to time in the manner required by the Responsible Entity.

Net Taxable Income means the net income of the Scheme for a Financial Year determined in accordance with section 95(1) of the Tax Act.

Offer Document includes a prospectus, product disclosure statement, information memorandum or other offer document.

Original Constitution means the original constitution dated 9 April 2021 that established the Scheme on 30 April 2021.

Platform means an investor directed portfolio service, superannuation fund, superannuation master fund product, investor directed-like portfolio service or any other nominee service approved by the Responsible Entity (in its absolute discretion) to be a Platform for the purposes of this definition from time to time.

Platform Account means any sub-account established for a Platform Investor in the applicable Platform.

Platform Investor means a person who indirectly holds its Interest via a Platform.

Realise, Realisation or Realised means the sale, refinance, repayment or anything analogous to the foregoing.

Register means the register of Investors maintained by the Responsible Entity pursuant to Chapter 2C of the Corporations Act.

Registered means registered as a managed investment scheme by ASIC under Chapter 5C of the Corporations Act.

Regular Investment Plan means a regular investment plan established by the Responsible Entity pursuant to clause 8.

Regular Withdrawal Plan means a regular withdrawal plan established by the Responsible Entity pursuant to clause 9.6.

Relevant Period means the period during which the Scheme operates as a registered managed investment scheme under the Law.

Relief means declarations made and exemptions (including for the avoidance of doubt any class orders) granted by ASIC at any time and continuing in force applicable to the Scheme.

Remedies means a remedy appropriate to the nature of the Complaint and are determined in accordance with the Dispute Resolution Policy and may include:

- (a) payment of any moneys due to, and refunds of any moneys paid by, a Complainant;
- (b) reasonable compensation for any loss suffered by a Complainant; and
- (c) provision of information or an apology.

Responsible Entity means the responsible entity of the Scheme 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.

Scheme means the scheme known as *ORDE Income Fund* (or other name determined by the Responsible Entity from time to time) governed by this constitution.

Scheme Liabilities means all liabilities including borrowings, unpaid costs, charges, expenses, outgoings and fees, provisions determined by the Responsible Entity from time to time (which are in accordance with generally accepted accounting principles and approved accounting standards or as required by Law), unpaid amounts due and payable to Investors, unpaid remuneration due to the Responsible Entity or other persons and, except for the purpose of calculation of investments in, and withdrawals from, Investor Property, contingent liabilities.

Scheme Property means all assets and other property of the Scheme from time to time and includes Investor Property.

Standing Instruction means an instruction given by an Investor to the Responsible Entity as to matters relating to its Interest including regular withdrawal or contribution plans, in the form and manner and method required by the Responsible Entity from time to time.

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

Taxes means all income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding and other taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other levies, fees, 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 means termination of the Scheme.

Termination Date means the date with effect from which the Scheme is terminated pursuant to clause 17.

Withdrawal Amount means the amount payable for a withdrawal pursuant to clause 9.3(a).

Withdrawal Request means a request lodged by an Investor (using the method specified by the Responsible Entity) to withdraw all or part of the Investor's Interest pursuant to clause 9.

2 Interpretation

2.1 Interpretation

In this constitution the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this constitution;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words "such as", "including", "particularly" and similar expressions are not words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this constitution;
 - (vi) this constitution includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation under it;
 - (ix) an agreement other than this constitution includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (x) a monetary amount is in Australian dollars and all amounts payable under or in connection with this constitution are payable in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this constitution or any part of it;

- (i) when the Day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (j) in determining the time of Day where relevant to this constitution, the relevant time of Day is:
 - (i) for the purposes of giving or receiving notices, the time of Day where a party receiving a notice is located; or
 - (ii) for any other purpose under this constitution, the time of Day in the place where the party required to perform an obligation is located; and
- (k) if a period of time is calculated from a particular Day, act or event (such as the giving of a notice), unless otherwise stated in this constitution, it is to be calculated exclusive of that Day, or the Day of that act or event.

2.2 References to Corporations Act

- (a) Notwithstanding any other provision of this constitution, a provision of this constitution which is expressed to apply subject to the Corporations Act, is only so subject while the Scheme is Registered (and the clause is to be read accordingly).
- (b) Words and expressions defined in the Corporations Act and GST Law have the meaning given in respectively that Act and the GST Law unless otherwise indicated or the context requires otherwise.

Schedule 2 Additional Fund Administration Services

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

- (a) the Scheme itself, including:
 - (i) the establishment and formation of the Scheme;
 - (ii) any structural or strategic changes to the Scheme;
 - (iii) registering or deregistering the Scheme as a managed investment scheme;
 - (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the Scheme, including any supplementary or replacement disclosure document relating to the Scheme;
 - (v) any form of equity raising and debt refinancing associated with the Scheme;
 - (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 Scheme and the associated taking of accounts, discharging of Scheme Liabilities and Scheme expenses and distribution of Scheme 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 Scheme (**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 Scheme 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 Scheme Property;
 - (ii) taking out and maintaining all insurances in relation to the Scheme and the Scheme 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 Scheme Property;
- (d) the Scheme 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 Scheme, any taxation audit, and the management of the tax affairs of the Scheme;
 - (ii) preparing and maintaining the books, records and accounts of the Scheme;
 - (iii) the preparation and audit of the taxation returns and accounts of the Scheme;
 - (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 Scheme;
- (f) dealing with Investors, including:
 - (i) offering the Scheme and dealing with Applications and Withdrawal Requests;
 - (ii) facilitating, convening and holding Meetings and implementing resolutions of Investors;
 - (iii) corresponding and communicating with Investors;
 - (iv) maintaining and operating the Register and any other register of the Scheme; 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 Scheme, 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 Scheme 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 Scheme or the Scheme Property, whether commenced or to be commenced by or against 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 Scheme or the Scheme Property or in connection with the interpretation of a Fund Document; and
- (h) all matters incidental to any of the above.