



Amending Deed

REGARDING THE

Constitution

OF THE

Australian Ethical Growth Opportunities Fund

ENTERED INTO BY

- (1) the party described in Schedule 1 (*Key Terms*) as the **Trustee**.





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Amending Deed

This **Amending Deed** is entered into on the date first (1st) written in Schedule 1 (*Key Terms*) by the party described in Schedule 1 (*Key Terms*) as (1) the Trustee.

Background

- A. Party - The party to this deed poll is the party to the Original Deed.
- B. Amendment - The party to this deed poll wishes to amend the Original Deed on the terms of, *subject* to the conditions in, and in accordance with, this deed.

Terms and Conditions

The party to this deed poll declares as set out in this deed poll.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed poll, *unless* the context otherwise requires, expressions used will have the meanings respectively assigned to them in the Original Deed, in addition to which the following terms will have the following meanings:

“**Effective Date**” means the date described as such in Schedule 1 (*Key Terms*);

“**Original Deed**” means the deed described as such in Schedule 1 (*Key Terms*); and

“**Trustee**” means the party described as such in Schedule 1 (*Key Terms*).

1.2 Interpretation

The rules of interpretation provided for in the Original Deed apply in this deed poll.

2. AMENDMENT

2.1 Power

The party to this deed poll acknowledges that under and in accordance with clause 27 (*Amendments to the Constitution*) of the Original Deed, the Original Deed may be amended, deleted, added to or repealed and replaced with a new Constitution, by a supplemental deed executed by the Trustee if:

- (a) early - the amendment is made before the issue of any Units in addition to the original Units issued pursuant to clause 4.1 (*Commencement of Fund*) of the Original Deed;
- (b) approved - Unitholders have resolved to amend the Constitution by Special Resolution;
- (c) not adverse - the Trustee reasonably considers the change is not materially adverse to Unitholders; or

- (d) notice - the Trustee has given Unitholders at *least twenty-eight (28) days'* prior notice of the proposed amendments and *less than twenty-five percent (25%)* of those Unitholders have within that period requested a meeting be called to consider and to approve those amendments.

2.2 Approval

The party to this deed poll further acknowledges that, before the execution of this deed poll, the sole holder of all the Units on issue has resolved (as a Special Resolution) in a document entitled '*Unitholder Acknowledgement & Consent A*', to approve the changes to the Original Deed effected by this deed poll and to amend the Original Deed in that way.

2.3 Amendments

Under clause 27 of the Original Deed, the party to this deed poll declares that:

- (a) changes - *except for clause 3.2 (Declaration) of the Original Deed, the Original Deed will, with effect on and from the Effective Date, be amended and restated in the form set out in the attached Annexure A (Amended & Restated Deed) (the "Amended & Restated Deed") and that the Amended & Restated Agreement will replace the provisions of the Original Deed (other than clause 3.2 of that deed) in all respects; and*
- (b) clause 3.2 - *for the avoidance of doubt, clause 3.2 (Declaration) of the Original Deed is not amended, restated or replaced.*

2.4 No resettlement and the like

Regardless of any provision of this deed poll:

- (a) resettlement - *this deed poll does not resettle, and does not constitute a resettlement of, the Fund;*
- (b) invalidity - *to the extent that any one (1) or more provisions of this deed poll may result in a resettlement of the Fund, those provisions will be invalid and of no effect, and this deed poll and the Original Deed must be read to the exclusion of those provisions;*
- (c) deletion - *any such provisions are deleted from this deed poll to the extent necessary to ensure that the amendments to the Original Deed made by this deed poll do not result in a resettlement of the Fund and are deemed to have occurred after the deletion referred to in this clause 2.4(c); and*
- (d) deed poll - *the Trustee is not by this deed poll:*
- (i) *restatement* - *restating the Original Deed;*
 - (ii) *declaration* - *declaring any trust, or making a statement that purports to be a declaration of trust, or an acknowledgement of trust or of the vesting of assets for the purposes of section 8AA (Imposition of duty on acknowledgment of trust) of the Duties Act 1997 (NSW); or*
 - (iii) *property* - *causing the transfer, vesting or accruing of property in any person.*

3. GENERAL

3.1 Supplement

As regards the Original Deed:

- (a) intention - the party to this deed poll wishes to supplement the terms of the Original Deed as they apply to the parties to whom the Original Deed applies, on the terms set out in this deed poll;
- (b) supplement - this deed poll is supplemental to the Original Deed;
- (c) priority - this deed poll takes priority over the Original Deed to the extent of any inconsistency; and
- (d) effect - *except* as expressly supplemented by this deed poll as it applies to the parties to whom the Original Deed applies, the Original Deed will remain in full force and effect.

3.2 Application

The following clauses of the Original Deed will be read as applying to this deed poll, with any necessary changes having been made:

- (a) clause 24 (*Notices*); and
- (b) clause 27 (*General*).

3.3 Electronic execution

This clause 3.3 permits the execution of this deed poll by the use of Electronic Signature (where "**Electronic Signature**" means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this agreement by electronic or mechanical means, and "**electronically signed**" has a corresponding meaning) in accordance with the following:

- (b) Electronic Signature - the party to this deed poll consents to this deed poll being signed by or on behalf of the party by an Electronic Signature in the English language;
- (c) execution - for the purpose of the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* (Cth), the party to this deed poll may execute this deed poll under section 127 (*Execution of documents (including deeds) by the company itself*) of the Corporations Act by the requisite number of its officers electronically signing this deed poll;
- (d) intention - where this deed poll is electronically signed by or on behalf of the party to this deed poll, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature;
- (e) exchange - the party to this deed poll consents to the exchange of this deed poll by delivery by electronic mail or such other electronic means as may be agreed in writing; and

-
- (f) physical - the party to this deed poll must upon request promptly deliver a physical counterpart of this deed poll with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on the party's behalf, but a failure to comply with the request does not affect the validity of this deed poll.



Signing

EXECUTED as a deed poll on the date first (1st) written in Schedule 1 (*Key Terms*)..

(1) **Trustee:**

SIGNED, SEALED and DELIVERED as a **DEED**)
POLL by **AUSTRALIAN ETHICAL**)
INVESTMENT LTD (ACN 003 188 930) (as)
trustee of the Australian Ethical Growth)
Opportunities Fund) in accordance with)
section 127 of the *Corporations Act 2001* (Cth):)

Signature of Director

John McMurdo

Name of Director
(Please print)

Signature of Company Secretary
(Delete as applicable)

Karen Hughes

Name of Company Secretary
(Please print)

Schedule 1 Key Terms

| Item | Information |
|-------------------------|--|
| 1. Date | 1.1. <u>Date of deed poll</u> - 23 March 2026. 1.2. <u>Effective Date</u> - The date of this deed poll. |
| 2. Original Deed | 'Constitution' relating to the <u>Australian Ethical Growth Opportunities Fund</u> dated 15 November 2024 and entered into by the Trustee, as amended by a 'Supplemental Deed' dated 28 March 2025 and entered into by the Trustee. |
| 3. Trustee | <p>Name: Australian Ethical Investment Ltd (ACN 003 188 930, AFSL 229949) (as trustee of the <u>Australian Ethical Growth Opportunities Fund</u> (formerly called the <i>Australian Ethical Sustainable Opportunities Fund</i> (ABN 82 679 220 828))</p> <p>Attention: the Directors</p> <p>Address: Level 8, 124-130 Pitt Street, Sydney NSW 2000, <u>Australia</u></p> <p>Telephone number: +61 (0)2 7229 0499</p> <p>Facsimile number:</p> <p>Mobile number:</p> <p>Email address: investors@australianethical.com.au</p> <p>Website: www.australianethical.com.au.</p> <div style="text-align: right;">  </div> |



Annexure A Amended & Restated Deed

See attached document.

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Amended & Restated Constitution of
Australian Ethical Growth Opportunities Fund

(23 March 2026)

**Australian Ethical Investment Ltd ACN 003 188 930
(Trustee or Responsible Entity)**

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Amended & Restated Constitution of Australian Ethical Growth Opportunities Fund

| | | |
|---------------------------------|---------|--|
| Responsible Entity / Trustee | Name | Australian Ethical Investment Ltd |
| | ACN | 003 188 930 |
| | Address | Level 8, 130 Pitt St, Sydney NSW 2000 |

| | | |
|------|------|---|
| Fund | Name | Australian Ethical Growth Opportunities Fund |
|------|------|---|

Terms

This trust deed was originally dated 15 November 2024 and declared by the Trustee to be the constitution of the Australian Ethical Growth Opportunities Fund.

1. Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these terms have the following meanings:

| | |
|-------------------------|---|
| Adviser | any provider of professional, specialist or technical advice or services including accounting, actuarial, architecture, broker, computing, construction, engineering, insurance, investment management, legal, quantity, taxation or valuation advice or services. |
| Affiliate | in relation to a person: <ul style="list-style-type: none">(a) an "associate" of the person within the meaning of section 11 of the Corporations Act; or(b) a "related party" of the person within the meaning of section 228 of the Corporations Act (as modified by section 601LA of the Corporations Act). |
| Agent | a person appointed by the Responsible Entity to act as its delegate, sub-delegate, agent, sub-agent, attorney, sub-attorney, custodian or nominee or any other person to hold title to any Asset, perform any act for, or on behalf of, or exercise any Power of the Responsible Entity and, in the case of a joint appointment, means a person so appointed jointly and severally. |
| AMIT | an attribution managed investment trust as defined in Division 276 (<i>Australian managed investment trusts: attribution managed investment trusts</i>) of the Tax Act. |
| AMIT Income Year | means an Income Year in which the Fund is an AMIT. |

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| AMIT Regime | means the regime for the taxation of AMITs, as set out in the following legislation: <ul style="list-style-type: none"> (a) the Tax Act; (b) the <i>Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016</i> (Cth); (c) the <i>Income Tax Rates Amendment (Managed Investment Trusts) Act 2016</i> (Cth); (d) the <i>Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016</i> (Cth); and (e) the <i>Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016</i> (Cth). |
| Applicant | an applicant for a Unit. |
| Application | an application for a Unit. |
| Application Account | an account in which money paid for an Application is held in accordance with section 1017E (<i>Dealing with money received for financial product before the product is issued</i>) of the Corporations Act. |
| Application Money | means any form of valuable consideration, including cash or other Property, received by the Responsible Entity for Units and any other money paid upon Application for Units. |
| Application Price | the price at which a Unit the subject of an Application is issued, being an amount calculated in accordance with clause 7.1. |
| ASIC | the Australian Securities and Investments Commission (or its successor body having regulatory authority over the Fund). |
| ASIC Instrument | means: <ul style="list-style-type: none"> (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 (<i>Exemptions and modifications</i>) of the Corporations Act; or (b) any other instrument issued by ASIC which applies or relates to the Responsible Entity or the Fund, or which the Responsible Entity has determined it wishes to rely on in respect of the Fund, <p>whether in the form of a class order or a specific instrument and whether modifying the Corporations Act, exempting the Responsible Entity from provisions of the Corporations Act or otherwise, and includes (without limitation) <i>ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693</i> and <i>ASIC Corporations (Equality of Treatment Impacting on the Acquisition of Scheme Interests and CCIV Shares) Instrument 2023/697</i>.</p> |
| Assets | all of the Property of the Fund: <ul style="list-style-type: none"> (a) excluding any amount held in the Application Account or any other subscription amount paid in connection with an Application for a Unit which has not yet issued; and |

| | |
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| | (b) including: |
| | (i) proceeds intended to be used for paying the Redemption Price in respect of Units that have not yet been redeemed; and |
| | (ii) any unpaid distributions. |
| Auditor | the auditor of the Fund. |
| Business Day | a day, other than a Saturday or Sunday, a bank holiday or public holiday in Sydney, New South Wales or such other days as determined by the Responsible Entity. |
| Class Rights | in respect of a class of Units, the rights attaching to that class of Units in accordance with clause 6.2(d). |
| Clearly Defined Rights | means rights to income and capital arising from a Unit issued in the Fund that are: |
| | (a) the same as the rights to income and capital arising from other Units issued in the Fund where there is only one class of Units; or |
| | (b) in all other cases, the same as the rights to income and capital arising from other Units issued within the same class of Units, |
| | disregarding: |
| | (c) fees or charges imposed by the Responsible Entity on the Unitholders; |
| | (d) issue and redemption prices of Units; and |
| | (e) exposure of Units to foreign exchange gains and losses. |
| Compliance Plan | the compliance plan for a Registered Scheme required under the Corporations Act. |
| Compliance Plan Auditor | means, while the Fund is a Registered Scheme, the last person appointed under clause 19.2(b)(ii) to audit the Compliance Plan as required by section 601HG (<i>Audit of compliance plan</i>) of the Corporations Act. |
| Compliance Provision | has the meaning given in clause 4.2(a)(ii). |
| Constitution | this trust deed, which is the constitution of the Fund. |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth) and regulations made under it, as modified in their application to the Fund by any declaration, modification or exemption granted by ASIC. |
| Cost | includes all direct and indirect costs, charges, disbursements, expenses, outgoings, fees (including all legal, professional, accounting, expert, investment manager (including project manager and asset manager), custodian, valuation, registration and Consultant fees), commissions, brokerage, Taxes and all financing costs (including bank charges and fees, interest charges, discount fees and guarantee fees). |
| Distributable Income | in respect of a Distribution Period, means: |
| | (a) where the Fund is not an AMIT, the net income of the Fund for the Distribution Period calculated under section 95 of the Tax Act, less |

amounts attributable to franking credits, foreign tax credits and other notional and deemed amounts unless the Responsible Entity in its discretion before the end of the Distribution Period determines or specifies another amount to be the Distributable Income;

- (b) where the Fund is an AMIT, the net income of the Fund for the Distribution Period calculated as if section 95 of the Tax Act applied to the Fund, adjusted to take account of Prior Year Adjustment Amounts, less amounts attributable to franking credits, foreign tax credits, and other notional and deemed amounts, unless the Responsible Entity in its discretion before the end of the Distribution Period determines or specifies another amount to be the Distributable Income.

Distribution Period unless clause 16.2(b) applies, a period, determined by the Responsible Entity, in respect of which income of the Fund is to be distributed to Unitholders in accordance with this Constitution.

Distribution Period End Date in respect of a Distribution Period, the last day of the Distribution Period.

Financial Year means:

- (a) for the first financial year, the period on and from the date defined in clause 5.1 to and including the next 30 June;
- (b) for the last financial year, the period on and from 1 July immediately before the date of final distribution to and including the date of final distribution on termination of the Fund; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year,

or such other period determined by the Responsible Entity.

Fund the Australian Ethical Growth Opportunities Fund constituted under this Constitution.

Government Agency means a government, governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal or agency whether foreign, federal, state, territorial or municipal.

Gross Asset Value the total gross value of the Assets determined in accordance with this Constitution and, for the avoidance of doubt, disregarding all Liabilities.

GST has the same meaning as in the GST Law and includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.

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

GST Law has the same meaning as in the GST Act.

Income Entitlement in respect of a Unitholder, or former Unitholder, for a Distribution Period, their pro-rated share of the Distributable Income for the Distribution Period calculated in accordance with clause 16 or clause 18, as applicable.

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| Income Year | has the same meaning as in the Tax Act. |
| Information Provider | has the meaning given in clause 1.4. |
| Joint Unitholders | has the meaning given in clause 3.5(c). |
| Law | includes: <ul style="list-style-type: none"> (a) principles of law or equity established by decisions of courts; (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency, including the Corporations Act (where applicable); and (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law. |
| Liabilities | all liabilities of the Fund: <ul style="list-style-type: none"> (a) including: <ul style="list-style-type: none"> (i) liabilities accrued and unpaid; (ii) provisions which the Responsible Entity reasonably believes, in accordance with generally accepted accounting principles and applicable accounting standards, should be made when determining the liabilities of the Fund; and (iii) all Costs and Losses incurred, suffered or sustained by the Responsible Entity in respect of which the Responsible Entity has a right to be indemnified out of the Assets; but (b) excluding: <ul style="list-style-type: none"> (i) all liabilities of the Responsible Entity to any Unitholder (other than an unpaid distribution amount); (ii) all amounts representing the value of the rights of a Unitholder (other than an unpaid distribution amount) payable in respect of any redemption of Units that has not been accepted by the Responsible Entity and regardless of whether the Units are characterised as equity or debt in the accounts of the Fund; and (iii) any obligation to pay money in the Application Account representing subscription money for Units not yet issued. |
| Liquid | has the same meaning as in section 601KA(4) (<i>Liquid schemes</i>) of the Corporations Act. |
| Loss | includes any loss, damage, Cost, claim, liability, charge, penalty, outlay, demand and expense incurred, suffered or sustained by the Responsible Entity howsoever arising and to whomever and regardless of whether it is actual or contingent, past, present or future and ascertained or unascertained (including unascertainable). |

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| Management Fee | the management fee payable to the Responsible Entity under, and in accordance with, clause 25.2. |
| Minimum Application Amount | means the number of Units (or cash value equivalent) prescribed by the Responsible Entity from time to time as being the minimum application amount. |
| Minimum Holding | means the number of Units (or cash value equivalent) prescribed by the Responsible Entity from time to time as being the minimum holding of Units. |
| Minimum Redemption Amount | means the number of Units (or cash value equivalent) prescribed by the Responsible Entity from time to time as being the Minimum Redemption Amount for Units. |
| Mortgage | has the meaning given in clause 6.4. |
| Net Asset Value | means the Gross Asset Value less the total value of the Liabilities. |
| Original Constitution | means the trust deed dated 15 November 2024 declared by the Trustee to be the constitution of the Fund at that time. |
| Power | any and all powers, rights, discretions and authorities of the Responsible Entity. |
| Prescribed Application Time | a day and time, from time to time, prescribed by the Responsible Entity by which an Application must be received in order to be accepted by the Responsible Entity. |
| Prescribed Redemption Time | a day and time, from time to time, prescribed by the Responsible Entity by which a Redemption Request must be received in order to be accepted by the Responsible Entity. |
| Prior Year Adjustment Amounts | in relation to an AMIT Income Year, an under, over, rounding adjustment deficit, rounding adjustment surplus, trust component deficit or carry-forward trust component deficit as those terms are defined in the Tax Act, or any other adjustment required under Division 276 of the Tax Act. |
| Property | property, assets, interests and rights of any kind including real, personal, moveable and immovable property of any nature, wherever situated, including income, capital, financial products, insurance policies, currency, cash, bank accounts and choses in action. |
| Redemption Amount | in respect of a Redemption Request of a Unitholder which has been accepted by the Responsible Entity under clauses 12.3 or 13.2(b) (as applicable) or under a Withdrawal Offer made under clauses 12.8 or 13.4 (as applicable), the total Redemption Price of all Units the subject of the redemption. |
| Redemption Cap | has the meaning given in clause 13.2(b)(ii)(A). |
| Redemption Date | subject to clauses 12.8, 13.4 and 14, the date on which a Unit is (or is taken to be) redeemed, being: <ul style="list-style-type: none"> (a) in respect of a Unit the subject of a Redemption Request accepted by the Responsible Entity under clauses 12.3 or 13.2(b), the next Valuation Time after the Responsible Entity determines to accept the Redemption Request; and |

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| | (b) in respect of a Unit the subject of an acceptance made in response to a Withdrawal Offer under clauses 12.8 or 13.4, the time the relevant Withdrawal Offer closes. |
| Redemption Price | the price at which a Unit the subject of a Redemption Request is to be redeemed, being the amount calculated in accordance with clause 11.1. |
| Redemption Request | a request by, or on behalf of, a Unitholder to withdraw (be redeemed) wholly or partly from the Fund, in writing (which may include by electronic means). |
| Redemption Request Period | has the meaning given in clause 13.2(b)(ii)(A). |
| Register | the register of Unitholders established under clause 3.5(a) that is maintained by, or on behalf of, the Responsible Entity. |
| Registered | recorded in the Register as a Unitholder. |
| Registered Scheme | a managed investment scheme registered with ASIC under Chapter 5C of the Corporations Act. |
| Regulatory Requirement | has the meaning given in clause 29.3. |
| Regulatory Requirement Amendment | has the meaning given in clause 29.3(a). |
| Related Body Corporate | has the same meaning as in the Corporations Act. |
| Representative | has the meaning given in clause 10.6(a). |
| Required Majority | except where this Constitution or any applicable law provides otherwise, a simple majority. |
| Required Part | has the meaning given in clause 29.3. |
| Required Provision | has the meaning given in clause 4.2(a)(i). |
| Responsible Entity | Australian Ethical Investment Ltd or its successor as entered on the ASIC register as the responsible entity of the Fund, while the Fund is a Registered Scheme. |
| Responsible Entity Minimum Term | means, where the Fund is a Registered Scheme, three (3) years following the date on which the Fund became registered as a Registered Scheme. |
| Responsible Entity Removal Fee | means the total fees that would be payable to the Responsible Entity under clause 25 had the Responsible Entity maintained the office of responsible entity of the Fund for the remainder of the Responsible Entity Minimum Term, on the basis that (for the purposes of calculation) the Assets and Liabilities remain the same as at the date the Responsible Entity is removed for the balance of that term. |

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| Special Resolution | <ul style="list-style-type: none"> (a) while the Fund is a Registered Scheme, has the same meaning as in the Corporations Act; (b) while the Fund is not a Registered Scheme, means a resolution: <ul style="list-style-type: none"> (i) passed at a meeting of Unitholders: <ul style="list-style-type: none"> (A) on a show of hands, by greater than 75% of Unitholders present in person or by proxy and entitled to vote on the resolution; or (B) on a poll, by persons who together hold greater than 75% of the number of Units held by Unitholders present in person or by proxy and entitled to vote on the resolution; and (ii) in writing, signed by persons who together hold greater than 75% of the number of Units held by Unitholders entitled to vote on the resolution. |
| Tax | every kind of tax, duty, levy, impost, rate, charge and deduction imposed by any fiscal, national, state or local authority, entity or governmental or quasi-governmental body at any time applying and any interest, penalties or fines imposed in connection with them. |
| Tax Act | the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth), as the context requires. |
| Total Assets | means the total value of Assets of the Fund. |
| Transaction Costs | <p>when calculating, as at any date:</p> <ul style="list-style-type: none"> (a) the Application Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity to represent the Responsible Entity's estimate of the total Costs that would be incurred to buy all of the Assets on that date (excluding the purchase price of the Assets); and (b) the Redemption Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity to represent the Responsible Entity's estimate of the total Costs that would be incurred to sell all of the Assets on that date, <p>and, subject to the Corporations Act, the Responsible Entity may in connection with an application or request for redemption of Units deem these costs to be a lesser sum or zero.</p> |
| Trustee | Australian Ethical Investment Ltd or its successor as trustee of the Fund whilst the Fund is an unregistered managed investment scheme. |
| Unit | a unit in the Fund. |
| Unitholder | the holder of a Unit. |
| Unitholder Objection Choice | means a choice made by a Unitholder under the AMIT Regime in respect of the Unitholder's determined member component under sub-section 276-205(5) of the Tax Act. |

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| Valuation Time | a time as at which the Responsible Entity calculates the value of Assets, Liabilities, the Gross Asset Value or the Net Asset Value for the purposes of determining any amount or item in accordance with this Constitution. |
| Valuer | means a valuer appointed by the Responsible Entity that is independent of the Responsible Entity and has experience in valuing the particular kind of asset or property. |
| Withdrawal Offer | a withdrawal offer made, where the Fund: <ul style="list-style-type: none"> (a) Is not a Registered Scheme, under clause 13.4; or (b) where the Fund is a Registered Scheme, under clause 12.8 and in accordance with section 601KB (<i>Non-liquid schemes - offers</i>) of the Corporations Act. |
| Withdrawal Offer Amount | has the meaning given in clause 13.4(d). |
| Withdrawal Offer Period | has the meaning given in clause 13.4(d). |
| Wholesale Client | has the same meaning as in section 761G (<i>Meaning of retail client and wholesale client</i>) or 761GA (<i>Meaning of retail client - sophisticated investors</i>) of the Corporations Act. |

1.2 Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used as defined;
- (b) a reference to a statute, regulation or other law, an agreement or an instrument includes a reference to them as amended, supplemented, re-enacted, rewritten or replaced;
- (c) the singular includes the plural and vice-versa;
- (d) "person" includes a firm, body corporate, an unincorporated association or an authority;
- (e) "determine", "prescribe" or "specify" and any variations or other grammatical forms of them means as determined, prescribed or specified from time to time;
- (f) if a word or phrase is defined, another part of speech or grammatical form of the word or phrase has the corresponding meaning;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars or \$ is a reference to the currency of Australia;
- (i) if the Responsible Entity has the Power to determine, prescribe or specify a matter it may do so, without limitation, by:
 - (i) giving notice to Unitholders including by disclosure on or through a website; or
 - (ii) determining, prescribing or specifying the matter in an offer document for Units;

- (j) when preceding a list of items, "include" and any variation of it does not exclude a reference to other items, whether of the same class or genus or not;
- (k) words defined in the GST Law have the same meaning in clauses concerning GST;
- (l) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (m) headings have been inserted only for convenience and do not affect any interpretation of this Constitution; and
- (n) where the Fund is not a Registered Scheme, a reference to Responsible Entity is taken to be a reference to the Trustee.

1.3 Constitution

This Constitution is the constitution of the Fund for the purposes of the Corporations Act at any time that the Fund is a Registered Scheme.

1.4 Currency

If it is necessary for the calculation or ascertainment of any amount under this Constitution to determine the value of Australian currency in, or the Australian equivalent of, the currency of another country, the Responsible Entity may adopt or use a rate of exchange quoted by a bank, a relevant market data provider or information vendor or any equivalent service or any other electronic index information provider (**Information Provider**) that it considers appropriate. If the nominated Information Provider is closed for business as at the date of calculation, the rate of exchange to be adopted is to be on the nearest preceding day on which the nominated Information Provider was open for business.

1.5 Distribution Period

For any Distributable Income for a Distribution Period that is not a Financial Year, any amount or item to be calculated in respect of that Distribution Period is to be calculated as if the Distribution Period were a Financial Year.

1.6 Corporations Act prevails

If the Fund is a Registered Scheme, a provision in this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of any inconsistency.

1.7 Certain provisions apply only to Registered Scheme

If a provision of this Constitution is expressed as being "subject to the Corporations Act" or references a provision of the Corporations Act that applies only to a registered managed investment scheme (including any provision of Chapter 5C (*Managed investment schemes*) of the Corporations Act), that provision applies only while the Fund is a Registered Scheme.

1.8 Constitution binding

This Constitution binds the Responsible Entity, each Unitholder and any other person with an interest in the Fund, and any person claiming through any of them, as if each of them had been a party to this Constitution.

2. Rights and obligations of Unitholders

2.1 Enforceability

This Constitution:

- (a) is executed as a trust deed and for the benefit of the Unitholders; and
- (b) is legally enforceable as between the Unitholders and the Responsible Entity.

2.2 No agency or partnership created

Nothing in this Constitution makes the Responsible Entity the agent of any Unitholder nor creates any relationship other than that of beneficiary and trustee.

2.3 Benefit and burden of Constitution

- (a) Each Unitholder has the benefit of, and is entitled to enforce, this Constitution even though the Unitholder is not a party to, or may not be a Unitholder at the time of execution of, this Constitution.
- (b) Each Unitholder (and all persons claiming through a Unitholder) will be bound by this Constitution as if they were a party to this Constitution.

2.4 No interference by Unitholders

No Unitholder is entitled to:

- (a) interfere with the Powers of the Responsible Entity or its dealings with the Fund, the Assets or any part of them;
- (b) exercise, or purport to exercise, any Powers, rights or privileges in respect of any Asset;
- (c) interfere in any way with the Assets or any part of the Fund; or
- (d) lodge a caveat in respect of, or otherwise claim an interest in, any Asset.

3. The Fund

3.1 Name of the Fund

The Fund formed under this Constitution is called the Australian Ethical Growth Opportunities Fund or such other name as the Responsible Entity determines.

3.2 Declaration

- (a) The Trustee declares that it will hold the Assets, subject to the Liabilities, upon trust for the Unitholders on, and subject to, the provisions of this Constitution.
- (b) The Assets vest in the Trustee (or its custodian) during the continuance of the Fund.

3.3 Appointment of the Responsible Entity

- (a) Australian Ethical Investment Ltd (ACN 003 188 930) is appointed, and agrees to act, as the Trustee, and whilst the Fund is a Registered Scheme, as the Responsible Entity, of the Fund.
- (b) Subject to clause 21 and the Corporations Act, the appointment of the Responsible Entity under clause 3.3(a) will continue for at least the Responsible Entity Minimum Term.
- (c) Subject the Corporations Act, if the Responsible Entity is removed as responsible entity or trustee of the Fund for any reason, the Responsible Entity will be entitled to be paid (and may deduct from the Assets) the Responsible Entity Removal Fee, unless such removal is in accordance with:
 - (i) clause 21.3(a); or
 - (ii) clause 21.3(b), where one or more of the circumstances in clause 21.3(a) applies to the Responsible Entity,

in which case no Responsible Entity Removal Fee will be payable (or deductible).

3.4 Assets

- (a) All accretions to the Assets and all Property into which those Assets may be converted are to be included in the Fund.
- (b) The Assets are not available to meet any liabilities of the Responsible Entity (including as trustee of other funds) other than those which the Responsible Entity is entitled to pay or be indemnified for out of the Fund.
- (c) Subject to clause 3.4(d), the Responsible Entity must on an accounting basis keep the Assets separate and apart from the Property of other funds of, and the personal Property of, the Responsible Entity.
- (d) The Responsible Entity may, to the extent permitted by the Corporations Act or an ASIC Instrument, maintain or cause to be maintained a single bank account into which the cash of different funds may be deposited as long as the Responsible Entity (or its agent) maintains adequate records to enable the Property of a fund within that bank account to be readily identified. Nothing contained in this Constitution shall in any way prejudice or limit the rights of the Responsible Entity to invest in joint interests or in Property for and on behalf of two or more funds.
- (e) To the extent permitted by the Corporations Act or an ASIC Instrument, nothing in this Constitution shall require the Responsible Entity to physically segregate the Assets, provided that the Responsible Entity segregates them in its books.

3.5 Register

- (a) The Responsible Entity must keep and maintain, or cause to be kept and maintained, the Register. If the Fund is a Registered Scheme, the Register must be maintained in compliance with the Corporations Act.
- (b) Each Unitholder must promptly notify the Responsible Entity of any change of the Unitholder's name or address and supply such supporting documentation as the Responsible Entity may require and the Responsible Entity must alter, or must cause to be altered, the Register accordingly.
- (c) When two or more persons are registered as the holders of a Unit (**Joint Unitholders**):

- (i) any one of the Joint Unitholders may give effectual receipts for any distribution or other payment from the Fund; and
- (ii) only the person whose name stands first in the Register as one of the Joint Unitholders is entitled to delivery of any certificate or confirmation that may be issued relating to the Unit or to receive notices, cheques or other communications from the Responsible Entity and any certificate, confirmation, notice, cheque or other communication given to that person is deemed to be given to all the Joint Unitholders.

4. Compliance

4.1 Subject to Law including the Corporations Act

A provision of this Constitution which is inconsistent with a provision of the Law, including the Corporations Act, does not operate to the extent of the inconsistency.

4.2 Regulatory requirements

- (a) If:
 - (i) the Corporations Act or any relief from the provisions of the Corporations Act granted by an ASIC Instrument requires that this Constitution contain certain provisions whether as an absolute requirement or in order to gain the benefit of a concession, exemption or the relief (**Required Provision**); or
 - (ii) any part of this Constitution is included to comply with the requirements of the Corporations Act or any ASIC relief (**Compliance Provision**) and that Compliance Provision ceases or changes,

then, unless the Responsible Entity determines otherwise in writing:

- (iii) subject to clause 4.2(b), the Required Provisions are deemed to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency; and
 - (iv) this Constitution is taken to be amended so that this Constitution reflects the amended Compliance Provision.
- (b) If the relief granted by ASIC is by ASIC Instrument (rather than specifically in relation to the Fund) then the ASIC Instrument (and the provisions it requires) will only be taken to be incorporated if the Responsible Entity declares in writing that this is the case.

5. Commencement, duration and winding-up

5.1 Commencement of Fund

The Fund commenced on the date when, following execution of the Original Constitution by the Responsible Entity, the Responsible Entity accepted the first Application for the issue of a Unit.

5.2 Termination and winding up of Fund

- (a) The Fund will terminate on the earliest to occur of the following:
 - (i) two days before the 80th anniversary of the date of this Constitution;
 - (ii) the date on which an event occurs which under the Corporations Act or this Constitution obliges the Responsible Entity to wind up the Fund; or
 - (iii) a date determined by the Responsible Entity, being a date of which at least one month's prior written notice has been given to the Unitholders.
- (b) Subject to the Corporations Act, the Responsible Entity must give each Unitholder written notice of the termination and of its intention to wind up the Fund.
- (c) On and from termination of the Fund under clause 5.2(a), the Responsible Entity must not accept any Applications or redeem any Units.

5.3 Procedures on termination

- (a) Whilst the Fund is a Registered Scheme, it may only be wound up in accordance with the Corporations Act.
- (b) Subject to clauses 5.3(a) and 5.3(c), the Responsible Entity must realise the Assets:
 - (i) if practicable and in the best interests of the Unitholders, within 18 months of the termination of the Fund; or
 - (ii) otherwise, as soon as reasonably practicable after the termination.
- (c) The Responsible Entity has the Power to postpone the realisation of Assets to maximise the net proceeds of the realisation of those Assets provided that while the Fund is a Registered Scheme, the Responsible Entity considers that the postponement is not inconsistent with its duties under the Corporations Act. The Responsible Entity will not be responsible for any loss attributable to the postponement.
- (d) Despite termination of the Fund and the commencement of winding up of the Fund:
 - (i) this Constitution continues with full force and effect;
 - (ii) the Responsible Entity retains all its Powers under this Constitution including any entitlement to remuneration, indemnification and reimbursement and any right of recovery; and
 - (iii) the Responsible Entity may retain any Assets for the purpose of discharging Liabilities. Any Assets retained under this clause that are ultimately not required will remain subject to the Fund for conversion and distribution in accordance with this Constitution.

5.4 Change in Taxation

If at any time legislation is enacted the result of which is that the Responsible Entity is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Fund, other than income not distributed to Unitholders, the Responsible Entity may call a meeting of the Unitholders to consider winding up the Fund and if by Special Resolution the meeting so decides, the Responsible Entity may wind up the Fund.

5.5 Distribution following termination

Subject to any Class Rights and the Unitholders' Income Entitlements (as provided for by this Constitution), following the discharge of all outstanding Liabilities (including those associated with the termination and winding up), the net proceeds of realisation of the Assets are to be distributed by the Responsible Entity (subject to the rights, obligations and restrictions attaching to any particular Units or classes of Units) pro rata to Unitholders according to the number of Units held by them. The proceeds of realisation may be distributed in instalments.

5.6 Audit of final accounts

- (a) If the Corporations Act or ASIC policy so requires, the Responsible Entity must arrange for an independent audit of the final accounts of the Fund by a registered company auditor or an audit firm.
- (b) Where the Fund is not a Registered Scheme, the Responsible Entity may arrange for an independent audit of the final accounts of the Fund by a registered company auditor or an audit firm.

5.7 Liquidator appointed

If the Fund is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet all of the Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the Powers of the Responsible Entity under this Constitution to facilitate the winding up.

5.8 Rights and obligations of the Responsible Entity on termination

- (a) Subject to clause 5.6, on final distribution of the net proceeds of realisation of the Assets in accordance with clause 5.5, the Responsible Entity is, subject to the Corporations Act, discharged, to the maximum extent permitted by Law, from all duties and obligations imposed by, or arising under, this Constitution and Law.
- (b) The Responsible Entity is entitled to be fully indemnified out of the Assets in respect of all Costs incurred in connection with termination and winding up of the Fund.

6. Interests of Unitholders

6.1 Application of clause 6

This clause 6 applies subject to when the Fund is, or is seeking to qualify as, an AMIT, in which case clause 18 applies to the extent of any inconsistency with this clause 6.

6.2 Units and Classes of Units

- (a) The beneficial interest of the Fund is divided into Units.
- (b) A Unit does not confer any interest in any particular part of the Fund or any particular Asset but only an equal undivided interest in the Fund and the Assets as a whole, subject to any Class Rights and the Liabilities.
- (c) The rights of a Unitholder under this Constitution are limited to the right to require the due administration of the Fund in accordance with this Constitution.

- (d) The Responsible Entity may issue classes of Units and (other than, where the Fund is a Registered Scheme, in respect of the matters required by section 601GA (*Contents of the constitution*) of the Corporations Act which are set out in this Constitution), determine the rights, liabilities, obligations and restrictions which attach to each class. A separate class of Units does not create a separate trust. A Unitholder holds a Unit subject to this Constitution and the rights, liabilities, obligations and restrictions attaching to that Unit.
- (e) While the Fund is a Registered Scheme, the Responsible Entity must treat Unitholders who hold Units of the same class equally and Unitholders who hold Units of a different class fairly, in accordance with section 601FC(1)(d) (*Duties of a responsible entity*) of the Corporations Act.
- (f) The Responsible Entity may by notice to a Unitholder redesignate, reclassify, consolidate or divide the Class of Units held by that Unitholder. Without limiting Clause 16.3(b), a redesignation, reclassification, consolidation or division must not result in any defeasance of a Unitholder's existing entitlement to income or capital of the Fund.
- (g) For the avoidance of doubt, any redesignation, reclassification, consolidation or division of Units under Clause 6.2(f) may result in a change to the associated class of Units and the relevant Class Rights but will not affect any Clearly Defined Rights.

6.3 Fractions of Units and rounding

- (a) The Responsible Entity may:
 - (i) create and issue fractions of Units or part of a Unit; and
 - (ii) may consolidate or divide Units,

provided that, subject to clauses 6.3(b) and (c), the proportions of Unit holdings in each class of Units are maintained.
- (b) If any calculation performed under this Constitution, or the terms of a Withdrawal Offer, results in the issue, redemption or holding of a fraction or part of one Unit, the number of Units to be issued, redeemed or held may be rounded up or down to the nearest number of whole Units as the Responsible Entity determines. Any excess subscription for other money or property which results from rounding any provision of this Constitution forms part of the Assets.
- (c) If any fractions of Units are on issue, the Responsible Entity may, in its discretion, cancel the fractions of Units on issue in respect of a class of Units or a particular fraction of a Unit on issue and any money or property attributable to the cancelled fractions of Units will form part of the Assets.

6.4 Mortgage of Units

On the request of a Unitholder, the Responsible Entity may, but is not obliged to, record in the Register a mortgage or other security interest (**Mortgage**) over the Unitholder's Units. Withdrawal proceeds, capital distributions and distributions on termination of the Fund may be paid to the mortgagee. Any transfer of or other dealing in relation to Units is subject to any Mortgage and the consent of the mortgagee. The Responsible Entity, however, is not taken to have notice of the terms of any Mortgage and has no liability under any circumstances to any mortgagee of Units.

6.5 Powers of the Responsible Entity

- (a) Subject to the Corporations Act, the Responsible Entity and/or any of its Affiliates may hold Units and trade them as they determine.
- (b) The Responsible Entity may, subject to the Corporations Act, buy-back Units in a particular class on any terms and conditions determined by the Responsible Entity. The consideration paid for a buy-back of Units in a particular class may include specific assets, including financial products of the Fund or of any other corporation, trust or entity.
- (c) Subject to this Constitution and the Corporations Act, the Responsible Entity may determine (in such manner as it determines, for example by disclosure in any product disclosure statement) that any Unit or class of Units is to be partly paid.
- (d) The Responsible Entity may:
 - (i) determine that a Liability is properly attributable to a class of Units; and
 - (ii) subject to the Corporations Act, allocate the Liabilities (excluding Liabilities that are properly attributable to a class of Units) among the classes of Units on issue in such shares and proportions as the Responsible Entity determines in accordance with the Application Price and Redemption Price.

7. Application price

7.1 Application Price

A Unit must only be issued at its Application Price calculated in accordance with this clause 7.

- (a) The Application Price for a Unit issued to commence the Fund pursuant to clause 5.1 is \$1.00.
- (b) Subject to clause 7.1(c), the Application Price for a Unit issued after the issue of Units referred to in paragraph 7.1(a) is calculated as follows:
 - (i) if the Fund has one class of Units on issue, the amount calculated using the following formula:

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

using the value of each of the variables determined by the Responsible Entity as at the next Valuation Time after the Responsible Entity accepts the Application for issue of the Unit.

- (ii) if the Fund has more than one class of Units on issue, the amount calculated using the following formula:

$$\text{Application Price} = \frac{(A - B) + T}{N}$$

where:

A = the value of the Assets attributable to the class of Units to which the Application relates,

B = the Liabilities attributable to the class of Units to which the Application relates;

N = number of Units on issue in that class of Units; and

T = the proportion of total Transaction Costs properly attributable to the class of Units,

using the value of each of the variables determined by the Responsible Entity as at the next Valuation Time after the Responsible Entity accepts the Application for issue of the Unit.

For the purpose of this definition the Assets attributable to a class of Units, Liabilities attributable to a class of Units (subject to clause 6.5(d)) and Transaction Costs will be determined on a proportionate basis based on the value of Units on issue in that class to the total value of Units on issue in the Fund.

- (c) Subject to the terms of the Corporations Act as modified by any applicable ASIC Instrument, the Responsible may issue Units at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clause 7.1(b) in accordance with the conditions and restrictions of any applicable ASIC Instrument. This includes specifying an Application Price by amending this Constitution, or, to the extent permitted by the Corporations Act as modified by any applicable ASIC Instrument, determining the Application Price by reference to specified criteria or a formula.
- (d) Without limiting clause 7.1(b), the Responsible Entity may issue Units under a reinvestment facility or arrangement in accordance with clause 16.7 or clause 18.8, respectively, at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clause 7.1(b).

8. Application for Units

8.1 Application procedure

Except as otherwise provided in this Constitution and subject to the Corporations Act (including any form of ASIC relief), a person intending to apply for Units must (other than in relation to reinvestment of distributions in accordance with clause 16.7 or 18.8 as applicable):

- (a) apply in a form and manner approved by the Responsible Entity; and
- (b) pay the Application Money in the form and manner, and within a time, specified by the Responsible Entity.

8.2 Payment other than by money

- (a) The Responsible Entity may, subject to clause 8.2(b) accept payment in respect of an Application in the form of a transfer of Property (rather than cash) of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity (or a custodian appointed by it).
- (b) If clause 8.1(a) applies:
 - (i) the Application cannot be accepted unless the Property is vested in the Responsible Entity (or a custodian appointed by it); and
 - (ii) the number of Units to be issued is to be calculated as follows:

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

where:

A = the value of the Property ;

B = the Transaction Costs of transferring the Property; and

C = the Application Price calculated as at that time.

For this purpose, the value attributed to the Property must be equivalent to a price at which the Responsible Entity could properly buy the Property and, if the Responsible Entity requires, is to be determined by a Valuer at the expense of the applicant for Units.

8.3 Responsible Entity may determine a Prescribed Application Time

The Responsible Entity may from time to time, determine that Applications will only be accepted if received by a Prescribed Application Time, and that if an Application is received after a Prescribed Application Time on a day, it will not be accepted until after the Valuation Time following its receipt.

8.4 Minimum amounts

Subject to the Corporations Act, the Responsible Entity may prescribe a Minimum Application Amount and a Minimum Holding for the Fund and alter or waive those amounts from time to time.

8.5 Discretion of the Responsible Entity

- (a) The Responsible Entity may determine to accept or reject all, or part of, an Application and the associated application payment, and the Responsible Entity need not provide any reasons for its determination.
- (b) Subject to the Corporations Act and this Constitution, upon the issue of the Units that are the subject of an Application, the application payments are vested in the Responsible Entity (or a custodian appointed by it) and become the property of the Fund.

9. Issue of Units

9.1 Issue of Units

Subject to clause 9.2, Units the subject of an Application are taken to be issued to a person on the earlier of the time when:

- (a) the person's name is recorded in the Register as the holder of the Units; or
- (b) the Application is accepted by the Responsible Entity and the Application Money is received by or on behalf of the Responsible Entity.

9.2 Cancellation of Applications and Units

- (a) Notwithstanding any other act of the Responsible Entity or any of its agents, the Responsible Entity may cancel Units, elect to treat an Application as not having been made or accepted, make appropriate entries in the records of the Fund and, if applicable, return the Application Money to the Applicant if:
- (i) an Application Money is not cleared or effectively vested in the Responsible Entity (or a custodian appointed by it);
 - (ii) the Application was incorrectly executed or executed without power or authority;
 - (iii) the Applicant is not eligible to hold Units;
 - (iv) the Responsible Entity is of the reasonable opinion that the issue of the Units would cause adverse Tax consequences for the Fund or a current or future Unitholder; or
 - (v) the Application was accepted in error.
- (b) If Units are cancelled under clause 9.2(a), the Responsible Entity is not required to adjust any Application Price or Redemption Price determined before the cancellation of the Units.

9.3 Number of Units issued

The number of Units issued at any time in respect of an Application will be calculated by dividing the Application Money by the applicable Application Price and then rounded as the Responsible Entity may determine under clause 6.3(b).

9.4 No Unit certificates

No certificates for Units will be issued unless the Responsible Entity determines otherwise. The entry of a Unitholder's name in the Register is prima facie evidence of ownership.

9.5 Return of Units

Upon a Unitholder exercising his or her right to return Units in accordance with the Corporations Act, the Responsible Entity must pay to the Unitholder the amount required under the Corporations Act in respect of the return of those Units.

9.6 Application procedures

- (a) For the purpose of an Application, the Responsible Entity may establish and notify to Unitholders procedures as to the basis upon which the Responsible Entity will accept any such Application and as to the time or intervals on which such Application shall be processed.
- (b) Subject to Law, the Responsible Entity shall not be liable for any loss howsoever arising by reason of the Responsible Entity either accepting or failing to accept an Application or by reason of any delay in accepting such Application and the Unitholder agrees to bear all costs and expenses incurred by the Responsible Entity in accepting an Application as the Responsible Entity determines and notifies to Unitholders.

9.7 Application payments

- (a) Application Money may be in the form of cash or in any other form as determined by the Responsible Entity in its absolute discretion.
- (b) If Application Money is in the form of a cheque, that cheque shall be made payable to the Responsible Entity or its custodian, as the Responsible Entity may determine. Units issued against consideration paid other than in cleared funds (for example issued against a commitment to provide consideration) 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.
- (c) The Responsible Entity shall establish and maintain in its name (or its custodian's name) an Application Account for the Fund and shall keep a record of the debits from and credits to the Application Account in respect of the Fund.
- (d) Subject to clause 9.7(b), the Responsible Entity shall pay any Application Money received for an Application into the Application Account no later than the next Business Day. The Responsible Entity may apply any money held in the Application Account for the purposes of payment for an Application. Application Money is otherwise held on trust for the benefit of the Applicant.
- (e) Subject to the Corporations Act, clause 9.7(d) does not apply in the event that Units are issued at the same time as or immediately following the receipt of the relevant Application Money.
- (f) Any interest earned on the Application Money payment held in an Application Account shall form part of the Assets.

10. Transfer of Units

10.1 Transfer of Units

- (a) Units may be transferred subject to this Constitution and any Class Rights.
- (b) A transfer of Units must be:
 - (i) in the form prescribed by the Responsible Entity;
 - (ii) accompanied by any evidence the Responsible Entity reasonably requires to show the right of the transferor to make the transfer; and
 - (iii) if the Responsible Entity requires, be presented for registration duly stamped.

10.2 Responsible Entity may refuse transfer

Subject to the Corporations Act and any applicable ASIC Instrument, the Responsible Entity may refuse to record a transfer of Units in the Register without giving any reason for the refusal including, but without limitation, if:

- (a) the transfer results in the Unitholder holding less than the Minimum Holding;
- (b) the transferee does not meet the Responsible Entity's criteria for a Unitholder;
- (c) the transfer is not duly stamped (if required);

- (d) any amount payable by the transferee to the Responsible Entity in respect of any of the transferor's Units remains unpaid; or
- (e) such an issuance or transfer would:
 - (i) cause the Fund to become a "public unit trust" as defined in section 102P (*Public unit trusts*) in Division 6C (*Income of certain public trading trusts*) of Part III (*Liability to taxation*) of the Tax Act; or
 - (ii) otherwise cause adverse Tax consequences for the Fund or any current or future Unitholder, or the Responsible Entity reasonably considers that it would have one or more of those effects.

10.3 Suspension of transfers

The Responsible Entity may suspend registration of transfers of Units at any time and for any period as it determines from time to time.

10.4 When transfer is effective

A transfer of Units takes effect only when recorded in the Register. The transferor of a Unit remains the Unitholder until the Register is updated to record the name of the transferee as the new Unitholder in respect of the Unit.

10.5 Transmission on death or legal disability

If a Unitholder dies or becomes subject to a legal disability (including bankruptcy), only the survivor (in the case if the deceased was a joint tenant either in their own right or as a co-trustee) or the legal personal representative (in any other case) of the Unitholder will be recognised as having any claim to the Units registered in the Unitholder's name.

10.6 Registration of new holder in certain circumstances

- (a) Any person becoming entitled to any Units in consequence of the death or other disability of a Unitholder (**Representative**) may upon such evidence being produced as is required by the Responsible Entity, elect either to be registered as the holder of the Units or to have some other nominated person registered as the holder of the Units.
- (b) A Representative who wishes to make an election pursuant to clause 10.6(a) must deliver or send to the Responsible Entity an election notice in writing in a form determined by the Responsible Entity and signed by the Representative.
- (c) If the Representative elects to have the Representative's nominee registered, the election notice must also be signed by the Representative's nominee.
- (d) All the provisions of this Constitution relating to the registration of transfers of Units apply to an election notice or transfer under this clause so far as they can with such changes as are necessary as if the death or disability of the Unitholder had not occurred and the election notice was a transfer executed by the Unitholder.

10.7 Representative's rights

- (a) A Representative is entitled to receive, and may give a discharge for, all money payable in respect of the Units of the Unitholder represented.

- (b) A Representative is not entitled to receive notices of, or to attend or vote at, any meetings of Unitholders until the Representative's name is entered in the Register as the Unitholder in respect of the relevant Units.

10.8 Costs

Unless the transferor and transferee agree otherwise, the transferee shall bear all Costs and Taxes in relation to the transfer and must indemnify the Responsible Entity on demand for such Costs and Taxes.

11. Redemption Price

11.1 Redemption Price

A Unit must only be redeemed at its Redemption Price calculated as follows:

- (a) if the Fund has one class of Units on issue, the amount calculated using the following formula:

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

using the value of each of the variables determined by the Responsible Entity as at the last Valuation Time before the Redemption Date for the Unit, except in the case of a Withdrawal Offer (while the Fund is not Liquid), in which case it will be as at the time the relevant Withdrawal Offer closes;

- (b) if the Fund has more than one class of Units on issue, the amount calculated using the following formula:

$$\text{Redemption Price} = \frac{(A - B) - T}{N}$$

where:

A = the value of the Assets attributable to the class of Units to which the Redemption Request relates;

B = the Liabilities attributable to the class of Units to which the Redemption Request relates;

N = number of Units on issue attributable to that class of Units; and

T = the proportion of total Transaction Costs properly attributable to the class of Units,

using the value of each of the variables determined by the Responsible Entity as at the last Valuation Time before the Redemption Date for withdrawal of the Unit, except in the case of a Withdrawal Offer (while the Fund is not Liquid), in which case it will be as at the time the relevant Withdrawal Offer closes.

For the purpose of this definition the Assets attributable to a class of Units, Liabilities attributable to a class of Units (subject to clause 6.5(d)) and Transaction Costs will be determined on a proportionate basis based on the value of Units on issue in that class to the total value of Units on issue in the Fund.

12. Withdrawal Procedures - Registered Scheme

12.1 Withdrawal Procedures while a Registered Scheme

This clause 12 only applies while the Fund is a Registered Scheme.

12.2 Request for redemption

- (a) While the Fund is a Registered Scheme:
 - (i) and Liquid, clauses 12.3 to 12.7 (inclusive) apply;
 - (ii) but not Liquid, clauses 12.8 to 12.11 (inclusive) apply.
- (b) The remaining provisions of this clause 12 apply in all cases while the Fund is a Registered Scheme, to the extent permitted by the Corporations Act.

12.3 While Fund is Liquid

Subject to clauses 12.17 and 14, a Unitholder may request that the Responsible Entity redeem Units of the Unitholder by giving the Responsible Entity a withdrawal form, which will be made available on request from the Responsible Entity.

12.4 Redemption procedure

Subject to clauses 12.7(a), 12.14, 12.17 and 14, the Responsible Entity must:

- (a) redeem Units the subject of the Redemption Request; and
- (b) pay to the relevant Unitholder, out of the Assets, the Redemption Price for each Unit that is redeemed within a reasonable time, but no later than 21 days after the Redemption Date,

with the process for completing such actions being at the Responsible Entity's absolute discretion, subject only to any limitations described in the most recent information memorandum or other offer document for the Fund, and any relevant law.

12.5 Minimum withdrawal and holding

- (a) The Responsible Entity may determine that Redemption Requests will only be accepted if the requests relate to a Minimum Redemption Amount.
- (b) Notwithstanding any other clause of this Constitution, the Responsible Entity may refuse a Redemption Request if the number of Units (or cash value equivalent) the subject of the Redemption Request is less than the Minimum Redemption Amount.
- (c) If, as a result of the redemption of Units the subject of a Redemption Request, a Unitholder's Unit holding or Unit holding of a class would fall below the Minimum Holding, the Responsible Entity may treat the Redemption Request as applying to the Unitholder's entire Unit holding.
- (d) If a Unitholder's Unit holding or Unit holding of a class falls below the Minimum Holding or Unit holding of a class (as applicable) at any time, the Responsible Entity may cause the redemption of the

Unitholder's entire Unit holding or Unit holding of a class as if the Unitholder had given a Redemption Request in respect of the entire Unit holding or Unit holding of a class (as applicable).

12.6 Request may not be withdrawn

- (a) A Unitholder may not withdraw a Redemption Request, unless the Responsible Entity agrees.
- (b) On making a Redemption Request, a Unitholder will have no right to deal with the Units, unless and until the Redemption Request is accepted or rejected by the Responsible Entity.

12.7 Responsible Entity may redeem

- (a) Upon receipt of a Redemption Request from a Unitholder:
 - (i) the Responsible Entity may, at its absolute discretion, deny the Redemption Request or decide to redeem some or all of the Units the subject of the Redemption Request (and notify the Unitholder accordingly); or
 - (ii) the Responsible Entity may, at its absolute discretion, determine what portion of the Redemption Price to be paid to that Unitholder represents a share of Income Entitlement and of the realised capital gains of the Fund for the Distribution Period during which the Unit is redeemed; or
 - (iii) to the extent permitted by the Corporations Act, buy or arrange for another person to buy the number (or value) of Units held by the Unitholder to which the Redemption Request relates.
- (b) If the Responsible Entity makes a determination under clause 12.7(a)(i), the Responsible Entity must notify the Unitholder of the composition of the Redemption Price so determined.

12.8 While Fund is not Liquid

If the Fund is a Registered Scheme but not Liquid:

- (a) a Unitholder may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind; and
- (b) if there is no Withdrawal Offer currently open for acceptance by Unitholders, a Unitholder has no right to redeem Units.

12.9 Cancellation of Withdrawal Offer

- (a) The Responsible Entity may cancel a Withdrawal Offer at any time by giving notice that the offer is cancelled to all Unitholders.
- (b) The cancellation of a Withdrawal Offer by the Responsible Entity does not affect the rights of Unitholders whose acceptance of the offer has been received by the Responsible Entity after the time the Responsible Entity made the offer but before the time the Responsible Entity cancelled the offer to withdraw from the Fund in accordance with the terms of the Withdrawal Offer.

12.10 Time to satisfy

The Responsible Entity must satisfy withdrawal requests that are to be satisfied under clause 12.8 within 21 days after the offer closes, and not any time before, or such other period as required by the Corporations Act.

12.11 Responsible Entity not obliged

- (a) The Responsible Entity is not at any time obliged to make a Withdrawal Offer.
- (b) Subject to the Corporations Act and any ASIC Instrument, the Responsible Entity may, in its discretion, determine to allow and/or accept Redemption Requests from certain types of Unitholders or Unitholders of certain classes of Units.
- (c) Unless the Responsible Entity determines otherwise, the Units first issued to a Unitholder are Units to be first redeemed for that Unitholder.

12.12 Payment from Assets

- (a) The Responsible Entity may, with the consent of a Unitholder, transfer Assets to that Unitholder in place of cash in satisfaction of its obligations under this clause 12.
- (b) The Assets being transferred must be valued in accordance with clause 15 as at the relevant Redemption Date and such value must equal the relevant Redemption Amount and any Costs associated with the transfer (which must be paid for out of, or deducted from, the Assets being transferred).

12.13 Redemption Date

- (a) Units are taken to be redeemed as at 9:00am on the Business Day immediately following the Redemption Date applicable to the Units and from that time payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Unitholder in respect of those Units and is a creditor of the Fund in respect of those redemption proceeds.
- (b) If Units are redeemed at the time referred to in clause 12.13(a), the Responsible Entity must as soon as reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

12.14 Sums owed to Responsible Entity

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer any money due to it by the Unitholder or former Unitholder whose Units have been redeemed and any amount required to indemnify the Responsible Entity for any Tax payable in connection with the Unitholder and the Unitholder's Units in the Fund or by operation of clause 17.2.

12.15 Redemption not after termination

On the earliest of:

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

the Responsible Entity may suspend the redemption of any Units.

12.16 Order of redemption

Subject to the Corporations Act, Units withdrawn under this clause 12 will be withdrawn in the order in which they were issued, or in such other order as determined by the Responsible Entity.

12.17 When Units cannot be redeemed

Subject to any other provision of this Constitution, the Responsible Entity at any time may suspend the redemption or issue of Units, including if:

- (a) it is impracticable for the Responsible Entity to calculate the Net Asset Value, for example because of an inability to value Assets, of closure of, or trading restrictions or suspensions on any stock, commodities, futures or securities exchanges or over-the-counter market on which any significant portion of the investments of the Fund is listed, quoted, traded or dealt, an emergency or other state of affairs;
- (b) if redemption would cause the Responsible Entity to breach any law, regulation or obligation under which the Responsible Entity operates;
- (c) the Fund's investments are suspended, delayed or there is a restriction on the withdrawal, issue or payment of withdrawal proceeds (as applicable), or the issuer of the investment is unable to provide a withdrawal price;
- (d) the realisation of Assets cannot be effected at prices which would be obtained if Assets were realised in an orderly fashion over a reasonable period in a stable market;
- (e) there have been, or the Responsible Entity anticipates that there will be, Redemption Requests that involve realising a significant amount of the Assets 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 Assets or departure from the investment strategy of the Fund;
- (f) the Responsible Entity reasonably considers that it is in the interests of the Unitholders;
- (g) it is allowed by any form of ASIC relief; or
- (h) it is otherwise legally permitted.

12.18 Redemption by Responsible Entity

The Responsible Entity may, upon a minimum of 3 Business Days' notice to a Unitholder, redeem all or a portion of Units held by the Unitholder;

- (a) if the Unitholder is not, or ceases to be, a Wholesale Client;
- (b) if the Unitholder does not hold, or ceases to hold, the applicable Minimum Holding;
- (c) if the Unitholder does not provide information as and when requested by the Responsible Entity
- (d) if any payment or reimbursement required to be made by the Unitholder is not made as and when required;

- (e) if the Responsible Entity reasonably believes that the Units are held in breach of prohibitions contained in this Constitution;
- (f) if the Responsible Entity reasonably believes that the Units are held in circumstances which might result in a breach of an applicable Law, or subject the Fund to taxation or otherwise adversely affect the Fund in any material respect;
- (g) if the Responsible Entity determines it is not financially viable to continue to operate the Fund;
- (h) if a Unitholder made a misrepresentation in acquiring its Units;
- (i) if such a redemption is in connection with any obligation, contractual or otherwise, the Responsible Entity has with any Government Agency or regulatory authority;
- (j) if the Responsible Entity determines that the continued participation of a Unitholder might cause the Responsible Entity or any Unitholder to breach any Law or if any litigation is commenced or threatened against the Responsible Entity or any Unitholder arising out of the participation of the Unitholder in the Fund;
- (k) if the Responsible Entity considers that such compulsory redemption is in the best interests of Unitholders as a whole; or
- (l) if the Fund has terminated in accordance with clause 5.2,

in each case:

- (m) subject to the Corporations Act; or
- (n) as otherwise provided in this Constitution.

12.19 Cessation of rights

- (a) Units which are redeemed will cease to carry any rights (except for the obligation of the Responsible Entity to pay the Redemption Amount in respect of the Units that are to be redeemed) on and from the relevant Redemption Date and from that time until payment of the Redemption Amount, the former holder of the redeemed Units ceases to be a Unitholder in respect of those Units and is a creditor of the Fund in respect of that Redemption Amount.
- (b) The Responsible Entity must as soon as possible after this time arrange for the redemption of Units to be recorded in the Register.

12.20 Buying Units

- (a) The Responsible Entity may decide whether to buy some or all, of the Units the subject of any Redemption Request out of its own funds.
- (b) The Responsible Entity is not at any time obliged to buy Units under clause 12.20(a) either in whole or in part, out of its own funds.

13. Withdrawal Procedures - Not a Registered Scheme

13.1 Withdrawal Procedures while not a Registered Scheme

This clause 13 only applies while the Fund is not a Registered Scheme.

13.2 Request for redemption

- (a) The redemption process under this clause 13.2 applies except during any period when:
- (i) the Responsible Entity has determined under clause 13.4(b) that it will not apply; or
 - (ii) a Withdrawal Offer under clause 13.4 is open for acceptance.
- (b) Subject to clause 14:
- (i) a Unitholder may request that the Responsible Entity redeem some or all of their Units by giving the Responsible Entity a Redemption Request. If a Unitholder gives a Redemption Request in accordance with this clause 13.2, the Responsible Entity may decide whether or not to accept or reject the Redemption Request (in whole or part) and may redeem some or all of the Units the subject of the Redemption Request; and
 - (ii) in determining whether or not to accept or reject a Redemption Request, the Responsible Entity may (but is not required to) establish a process by notice to Unitholders (including in an information memorandum or other offer document or on the Fund's website) whereby the Responsible Entity may:
 - (A) determine the total amount that will be available to meet redemption requests during a period such as a month or quarter (**Redemption Request Period**) expressed either as a number of dollars or a percentage of the Assets (or net assets), which may be a standing determination or differ from period to period (**Redemption Cap**);
 - (B) accept on a pro rata basis Redemption Requests received during the Redemption Request Period with a total value equal to the lesser of the total redemption requests received and the Redemption Cap for that Redemption Request Period, and if the Responsible Entity so determines;
 - (C) a date determined by the Responsible Entity no later than a month after the last day of the relevant Redemption Request Period will be the Redemption Date in respect of those requests, and the requests that are accepted in respect of that Redemption Request Period will be taken to be accepted at the same time on that Redemption Date; and
 - (D) Redemption Requests for the Redemption Request Period, to the extent they are above the Redemption Cap will be taken to be withdrawn and cancelled,and the Responsible Entity must satisfy the requests to the extent they are accepted by payment of the Redemption Amount to the withdrawing Unitholders within one month of the Redemption Date or such longer period permitted under clause 14, redeeming the relevant Units and amending the Register accordingly.

13.3 Redemption procedure where no determination

While clause 13.2 applies but there is no determination in effect under clause 13.2(b)(ii), subject to clauses 13.6, 13.10 and 14:

- (a) the Responsible Entity must determine whether it will accept or reject a Redemption Request in whole or in part within 3 months of receipt of the Redemption Request, failing which the Responsible Entity will be deemed to have rejected the Redemption Request to the extent it has not been accepted (unless it decides otherwise); and
- (b) if the Responsible Entity determines to accept the Redemption Request in whole or in part, the Responsible Entity must:
 - (i) redeem the relevant Units on the applicable Redemption Date;
 - (ii) cancel the Units by making appropriate changes to the Register with effect as at the Redemption Date; and
 - (iii) pay the relevant Redemption Amount within one month after the relevant Redemption Date or such longer period permitted under clause 14.

13.4 Withdrawal Offers

- (a) The Responsible Entity may at any time make a Withdrawal Offer under this clause 13.4. The Responsible Entity is not at any time obliged to make a Withdrawal Offer. A Withdrawal Offer may be made to Unitholders of a single class of Units or all classes.
- (b) The Responsible Entity may determine that the process for redemption on request under clauses 13.2 and 13.3 will cease to be available, but the Withdrawal Offer process under this clause 13.4 will continue to apply. If it does so, the Responsible Entity must give Unitholders at least one month's notice of the change, and from the expiry of that notice period, this clause 13.4 will apply and clause 13.2 and 13.3 will not apply unless and until the Responsible Entity determines otherwise. The Responsible Entity may at any time reinstate the process for redemption on request under clause 13.2 or 13.3 or both by determination and upon one month's notice in the same manner.
- (c) If the Responsible Entity has made a Withdrawal Offer and the offer remains open for acceptance:
 - (i) a Unitholder may only withdraw from the Fund in accordance with the terms of the Withdrawal Offer made by the Responsible Entity in accordance with this clause 13.4; and
 - (ii) a Unitholder has no right to request redemption of their Units other than under the Withdrawal Offer.
- (d) A Withdrawal Offer must specify the period during which the offer will remain open (which must be at least 21 days) (**Withdrawal Offer Period**), and the total amount of money that will be available to meet acceptances of the Withdrawal Offer (**Withdrawal Offer Amount**).
- (e) The Withdrawal Offer must be sent to all Unitholders or to all Unitholders of a particular class in any manner permitted under clause 26 (which for the avoidance of doubt is to include by electronic means) or, if the current information memorandum or other offering document for the Fund specifies, may be published at intervals on the Fund's website.
- (f) Subject to this clause 13, the Responsible Entity may determine the terms of a Withdrawal Offer.

- (g) The Responsible Entity may cancel a Withdrawal Offer by giving notice to Unitholders or publishing the cancellation, in the same manner as the Withdrawal Offer was made.
- (h) If, at the end of the Withdrawal Offer Period the value of acceptances of the Withdrawal Offer exceeds the Withdrawal Offer Amount, the acceptances received during that Withdrawal Offer Period are to be satisfied proportionately in accordance with the following formula:

$$\text{Share of Withdrawal Offer Amount payable to a Unitholder} = \text{Withdrawal Offer Amount} \times \left(\frac{\text{amount Unitholder requested to withdraw}}{\text{total of all amounts all Unitholders requested to withdraw}} \right)$$
- (i) No acceptance of a Withdrawal Offer may be satisfied until the Withdrawal Offer Period has ended. Subject to clauses 13.10 and 14, the Responsible Entity must pay to a Unitholder or former Unitholder who has accepted the Withdrawal Offer, out of the Assets, their share of the relevant Withdrawal Offer Amount within one month after the relevant Redemption Date for that Withdrawal Offer or such longer period permitted under clause 14.

13.5 No revocation

- (a) A Unitholder may not revoke a Redemption Request unless the Responsible Entity agrees.
- (b) On making a Redemption Request a Unitholder will have no right to deal with the Units unless and until the Redemption Request is accepted or rejected by the Responsible Entity.

13.6 Minimum redemption

- (a) The Responsible Entity may determine that Redemption Requests will only be accepted if the requests relate to a Minimum Redemption Amount.
- (b) Notwithstanding any other clause of this Constitution, the Responsible Entity may refuse a Redemption Request if the number of Units (or cash value equivalent) the subject of the Redemption Request is less than the Minimum Redemption Amount.
- (c) The Responsible Entity may treat a Redemption Request as a request to redeem all the Unitholder's Units if the Responsible Entity determines that, after redemption, the Unitholder will hold less than the Minimum Holding.

13.7 Responsible Entity may determine a Prescribed Redemption Time

The Responsible Entity may from time to time, determine that Redemption Requests will only be accepted if received by a Prescribed Redemption Time.

13.8 Redemption Price

- (a) A Unit must only be redeemed at the Redemption Price applicable to that Unit.
- (b) The Responsible Entity may determine that the Redemption Price to be paid to that Unitholder represents a share of Income Entitlement and of the realised capital gains of the Fund for the Distribution Period during which the Unit is redeemed and must notify the person withdrawing Units of such an amount after the end of the Financial Year in which the redemption occurs.

13.9 Payment from the Assets

The Responsible Entity may, with the consent of a Unitholder, transfer Assets to that Unitholder in lieu of cash in satisfaction of its obligations under this clause 13. The Assets being transferred must be valued in accordance with clause 15 as at the relevant Redemption Date and such value must equal the total of the relevant Redemption Amount and any Costs associated with the transfer (which must be paid for out of, or deducted from, the Assets being transferred).

13.10 Sums owed to the Responsible Entity

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a Withdrawal Offer, any money due to it by the Unitholder or former Unitholder whose Units have been redeemed, and any amount required to indemnify the Responsible Entity for any Tax payable in connection with the Unitholder and the Unitholder's Units in the Fund or by operation of clause 17.2.

13.11 Purchasing Units

- (a) The Responsible Entity may decide whether to purchase some or all, of the Units the subject of any Redemption Request out of its own funds.
- (b) The Responsible Entity is not at any time obliged to purchase Units under clause 13.11 either in whole or in part, out of its own funds.

13.12 Redemption not after termination

On the earliest of:

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

the Responsible Entity may suspend the redemption of any Units.

13.13 Redemption by Responsible Entity

The Responsible Entity may, upon a minimum of 3 Business Days' notice to a Unitholder, redeem all or a portion of Units held by the Unitholder:

- (a) if the Unitholder is not, or ceases to be, a Wholesale Client;
- (b) if the Unitholder does not hold, or cease to hold, the applicable Minimum Holding;
- (c) if the Unitholder does not provide information as and when requested by the Responsible Entity;
- (d) if any payment or reimbursement required to be made by the Unitholder is not made as and when required;
- (e) if the Responsible Entity believes that the Units are held in breach of prohibitions contained in this Constitution;

- (f) if the Responsible Entity believes that the Units are held in circumstances which might result in a violation of an applicable Law, or subject the Fund to taxation or otherwise adversely affect the Fund in any material respect;
- (g) if the Responsible Entity determines that it is not financially viable to continue to operate the Fund;
- (h) if a Unitholder made a misrepresentation in acquiring its Units;
- (i) if such a redemption is in connection with any obligation, contractual or otherwise, the Responsible Entity has with any Government Agency or regulatory authority;
- (j) if the Responsible Entity determines that the continued participation of a Unitholder might cause the Responsible Entity or any Unitholder to violate any Law or if any litigation is commenced or threatened against the Responsible Entity or any Unitholder arising out of the participation of the Unitholder in the Fund;
- (k) if the Responsible Entity considers that such compulsory redemption is in the best interests of Unitholders as a whole;
- (l) if the Fund has terminated in accordance with clause 5.2; and
- (m) as otherwise provided in or required under this Constitution.

13.14 Cessation of rights

Units which are redeemed will cease to carry any rights (except for the obligation of the Responsible Entity to Pay the Redemption Amount in respect of the Units that are to be redeemed) on and from the relevant Redemption Date and from that time until payment of the Redemption Amount, the former holder of the redeemed Units ceases to be a Unitholder in respect of those Units and is a creditor of the Fund in respect of that Redemption Amount. The Responsible Entity must as soon as possible after this time arrange for the redemption of Units to be recorded in the Register.

14. Suspensions

14.1 Ability to suspend

Subject to the Corporations Act, the Responsible Entity may at any time suspend the acceptance of Applications, the making of Redemption Requests or Withdrawal Offers, the redemption of Units and/or the payment of Redemption Amounts if the Responsible Entity believes that it is in the best interest of the Unitholders as a whole, including, but without limitation, if:

- (a) it is desirable for the protection of the Fund;
- (b) it suspects or is advised that the payment of the Redemption Amount may result in a contravention of any applicable Law;
- (c) any relevant financial, stock, bond, note, derivative or foreign exchange market (including the ASX) is closed or trading on any such market is restricted in any way;
- (d) any Application, Redemption Request, Withdrawal Offer, redemption of Units or payment of Redemption Amounts, if accepted, made or otherwise undertaken, would:

- (i) cause the Fund to become a “public unit trust” as defined in section 102P (*Public unit trusts*) in Division 6C (*Income of certain public trading trusts*) of Part III (*Liability to taxation*) of the Tax Act;
 - (ii) cause any person to hold 20% or more of the total Units in the Fund; or
 - (iii) otherwise cause adverse Tax consequences for the Fund or any current or future Unitholder, or the Responsible Entity reasonably considers that it would have one of those effects; or
- (e) an emergency (including an emergency caused by a mechanical or electronic malfunction) or such other circumstances exist and as a result:
- (i) it is not reasonably practicable for the Responsible Entity to acquire or dispose of Assets or determine the Application Price or Redemption Price fairly;
 - (ii) the Responsible Entity's ability to acquire or dispose of Assets or determine the Application Price or Redemption Price fairly is, or may be, significantly adversely affected; or
 - (iii) sufficient Assets cannot be realised at an appropriate price, in a timely manner or on adequate terms or otherwise.

14.2 Redemption and payment following suspension

- (a) A Redemption Request lodged during the period of suspension will not be accepted and will lapse.
- (b) Following any period of suspension under this clause 14, the period allowed under clause 12 or clause 13 (as applicable) for payment of the Redemption Amount for Units that have been redeemed may be extended by the number of days during which such circumstances for the suspension apply.

15. Valuation

15.1 Periodic valuations

The Responsible Entity may determine the value of an Asset or appoint a Valuer to value an Asset at any time, and if the Fund is a Registered Scheme, must do so in accordance with, and when required by, the Corporations Act.

15.2 Valuation methods

- (a) Subject to clause 15.3, the Responsible Entity may determine valuation methods and policies for specific or categories of Assets and Liabilities and may change them.
- (b) The Responsible Entity is not to be regarded as, or to be taken as holding out that it has, expertise as regards valuation or estimation.

15.3 Valuation of Assets

Assets must be valued at their market value unless:

- (a) there is no market for an Asset; or

- (b) the Responsible Entity reasonably believes that the market value does not represent the fair value of the Asset,

in which case, the Responsible Entity may use another valuation method or policies in respect of the Asset provided that the method or policies for calculating the value must be consistent with ordinary commercial practice for valuing that type of Asset and produce a value that is reasonably current at the time of valuation.

Unless the Responsible Entity otherwise prescribes, the value of Assets as at a specified day is to be determined using the values as at the close of business on the day.

15.4 Valuation binding

The Responsible Entity's determination of the value of the Fund, of any Asset and of any part of the Fund is, in the absence of fundamental error, final and binding on all Unitholders.

15.5 Net Asset Value

The Responsible Entity may determine the Net Asset Value at any time.

16. Income and Capital Distributions

16.1 Distributions if Fund is not an AMIT

This clause 16 applies in respect of any Financial Year in which the Fund is not an AMIT and is not seeking to qualify as an AMIT.

16.2 Determination of Distributable Income

The Responsible Entity must:

- (a) collect, or cause to be collected, all income in respect of the Fund;
- (b) determine the Distribution Periods for each class of Units, provided that immediately following one Distribution Period, another Distribution Period must commence and in respect of each class of Units, one Distribution Period must end at 11:59pm on 30 June in the relevant calendar year;
- (c) determine the Distributable Income of each class of Units for each Distribution Period; and
- (d) determine the classification of an item as being on income or capital account, and the extent to which the income of the Fund is to be adjusted by allocating such amount as it considers proper in accordance with generally accepted accounting principles to a provision or reserve account for the purpose of meeting anticipated expenses or obligations of the Fund.

16.3 Distributable Income

- (a) The total amount to be distributed in respect of a Distribution Period must be transferred to a distribution account or dealt with in accordance with the Responsible Entity's distribution facility:
 - (i) as soon as reasonably practicable after the Distribution Period End Date; and
 - (ii) in any event, within 90 days after the Distribution Period End Date.

- (b) Unitholders in a class on the Register at 11:59pm on each Distribution Period End Date have an absolute, vested and infeasible interest in the Distributable Income (less any share of income paid to Unitholders under clause 12.7(a)(ii) or clause 13.8(b) (as applicable)) for that class of Units for the relevant Distribution Period. Subject to any Class Rights and any determination made under clause 12.7(a)(ii) or clause 13.8(b) (as applicable), the Income Entitlement of each Unitholder is the Unitholder's pro rata proportion of the Distributable Income, for the relevant Distribution Period calculated according to the number of Units held by the Unitholder in the class compared to the total number of Units in issue in the class, as at 11:59pm on each Distribution Period End Date, less amounts:
- (i) specified in clause 16.4; and
 - (ii) required to be deducted under this Constitution or by Law including all Taxes.

16.4 Limited power to accumulate or defer amounts

- (a) Subject to clause 16.4(b) and 16.4(c), the Responsible Entity has no power to accumulate amounts during or in respect of a Financial Year that is not an AMIT Income Year.
- (b) Any Income Entitlement which it is impractical to distribute in a Distribution Period during a Financial Year that is not an AMIT Income Year because it represents a balance representing a fraction of one cent arising as a consequence of the rounding off of the Income Entitlement to whole cents may be accumulated by the Responsible Entity and, if accumulated, becomes an Asset and is deemed to accrue to the next Distribution Period.
- (c) If the Responsible Entity mistakenly exercises its power under this clause 16.4 to accumulate an amount, other than a balance representing a fraction of one cent as a consequence of rounding off the Income Entitlement to whole cents, during a Financial Year that is not an AMIT Income Year, the Responsible Entity's exercise of that power will be treated as invalid and will, to the extent possible, be treated as if it was an exercise of the Responsible Entity's power to distribute income or capital of the Fund under clause 16.1.

16.5 Responsible Entity to notify Unitholders

The Responsible Entity must notify Unitholders of the composition of their Income Entitlement and the types of income and capital.

16.6 Other distributions

In addition to any Income Entitlement and subject to any Class Rights, the Responsible Entity may, at any time, distribute any amount (capital or income) by way of cash, in specie or bonus Units to Unitholders pro rata to the number of Units held as at a time determined by the Responsible Entity.

16.7 Distribution reinvestment facility

- (a) The Responsible Entity may offer a reinvestment facility under which Unitholders may elect to reinvest all or a proportion of their Income Entitlement in applications for further Units of the same class on each Distribution Period End Date.
- (b) If clause 16.7(a) applies, the Responsible Entity is taken to have received and accepted an Application to reinvest distributions at the time the relevant Unitholder becomes presently entitled to the Income Entitlement which is to be reinvested.

- (c) The procedure for reinvestment of distributions and the Application Price payable for the further Units by a Unitholder is to be determined by the Responsible Entity and is to be notified to Unitholders as and when the facility is offered.
- (d) A request for cancellation of the operation of the reinvestment facility by a Unitholder in respect of a distribution for a particular Distribution Period and those Distribution Periods following, is effective only if the Responsible Entity receives written notice of this request at least 21 days prior to the end of a Distribution Period or such other period determined by the Responsible Entity.
- (e) The Responsible Entity may withdraw or suspend the operation of a reinvestment facility at any time.

16.8 Payment of distributions

- (a) The Responsible Entity must arrange for, and prepare, the payment of the Income Entitlements and any capital distributions to Unitholders.
- (b) Payment of the Income Entitlements and any capital distributions to Unitholders may be paid in any manner the Responsible Entity decides.
- (c) If a cheque is issued by the Responsible Entity and returned unclaimed, or not presented for payment within 6 months, or an attempted deposit is rejected, the cheque or deposit will be cancelled and the Income Entitlement or capital distribution reinvested in Units at the Application Price prevailing at the time the cheque or deposit is cancelled, or paid in accordance with the laws relating to unclaimed monies.
- (d) Income Entitlements must be paid to Unitholders out of the distribution account as soon as practicable after the Distribution Period End Date.

16.9 Fund taxed as a company

Notwithstanding any other provision of this clause 16, the Responsible Entity may determine how much of a distribution will be distributed to Unitholders in respect of any Financial Year in which the income of the Fund is subject to tax under the Tax Act as if the Fund were a company, including under the provisions of Division 6C of Part III of the Tax Act.

17. Taxation

17.1 Payment of Tax

Subject to clause 17.3, the Responsible Entity shall pay out of the Fund such Taxes or instalments thereof as may be payable pursuant to and in accordance with the provisions of the Tax Act in respect of any financial year. The Responsible Entity may realise any investments held by the Fund to pay such Tax. The Responsible Entity shall, in respect of the amount or amounts of such payments, debit the provision for Taxes made pursuant to this clause 17.1 in respect of any financial year being a year of income to which such Taxes relate and:

- (a) if the provision for Taxes made in the financial year (being a year of income) exceeds the Taxes payable in the year of taxation in respect of such year of income, the Responsible Entity shall credit the provision in respect of the next succeeding year of income with such amount or, if the Responsible Entity so determines, treat such amount (or any part thereof) as income of the Fund; and

- (b) if the provision made for Taxes in respect of any year of income is less than the amount of Taxes payable in the year of tax in respect of that year of income, the Responsible Entity shall be entitled, as it sees fit, to debit the excess of Taxes to such provision for Tax as the Responsible Entity may have made in respect of the next succeeding year of income of the Fund, and if any balance thereafter remains to debit the same to such account as the Responsible Entity thinks fit.

17.2 Deduction of Tax amounts owing

The Responsible Entity may deduct from any money payable to a Unitholder any Taxes which it is required or authorised to deduct or which it considers should be deducted.

17.3 Lien for Taxes

The Responsible Entity shall be entitled to:

- (a) deduct, or set aside, from a Unitholder's entitlement to Distributable Income or, in any financial year when the Fund is an AMIT, from a Unitholder's distribution under clause 18.4(c); or
- (b) be reimbursed by a Unitholder for:
 - (i) any Tax which the Responsible Entity is obliged by the Tax Laws to deduct from any Distributable Income of the Fund or, in any financial year when the Fund is an AMIT, from any distributions made under clause 18.4(c), from any Redemption Price payable to that Unitholder or from any amounts attributed to that Unitholder; or
 - (ii) any other amount which in the Responsible Entity's reasonable opinion may become payable in connection with that Unitholder. The Responsible Entity may exercise a lien over any Units of that Unitholder in the Fund and otherwise take steps to recover such monies as a debt due to the Fund.

17.4 Tax Liability of the Responsible Entity

Subject to the Corporations Act, the Responsible Entity shall not incur any liability, be liable to account to anyone (including any Unitholder or former Unitholder) or be liable for any loss or damage as the result of the exercise of the discretion or Power set out in this clause 17 or in respect of any determination of fact or Law made as part of, or as a consequence of, the exercise of the discretion or Power pursuant to this Constitution relating to Tax notwithstanding any error or miscalculation in any provision made for Tax.

17.5 GST

- (a) All payments to be made under this Constitution have been specified without regard to GST. If the whole or any part of any payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- (b) Any reference to a cost or expense in this Constitution excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant payee for which the payee can claim a full or reduced Input Tax Credit.
- (c) The payee will provide to the payer a Tax Invoice.

- (d) For the avoidance of doubt, clauses 17.5(b) to 17.5(c) do not apply to any amounts paid to Unitholders as refunds of application payment, Distributable Income (or, in any financial year when the Fund is an AMIT, distributions under clause 18.4(c)) or withdrawal proceeds.
- (e) For the purposes of this clause 17, the following words have the following meanings, unless the context requires otherwise:

Input Tax Credit means "input tax credit" as defined in the GST Act.

Taxable Supply means "taxable supply" as defined in the GST Act.

Tax Invoice means "tax invoice" as defined in the GST Act.

18. Attribution Managed Investment Trust

18.1 Application of AMIT provisions

Notwithstanding any other provision of this Constitution which relate to the units in, income of, or distributions from, the Fund (including but not limited to clause 20) the provisions of this clause 18 apply when clause 16 does not apply.

18.2 AMIT election

The Responsible Entity may, in accordance with the Tax Act, resolve to:

- (a) make a choice with respect to the Fund to be an attribution managed investment trust for the purposes of the Tax Act; and
- (b) if the Responsibility Entity has made a choice under clause 18.2(a), make a choice to treat each class of Units in the Fund as being an AMIT for the purposes of the Tax Act and the provisions of this clause 18.

18.3 Clearly defined interests

- (a) Where the Fund is not a Registered Scheme, the rights to income and capital that a Unitholder has in the Fund will be Clearly Defined Rights at all times on and from the Income Year in which an AMIT election was made under clause 18.2.
- (b) If necessary, the Responsible Entity agrees not to exercise a right or power under this Constitution which would result in the Unitholders' rights to income and capital of the Fund to subsequently not be 'clearly defined' under paragraph 276-10(1)(b) of the Tax Act.

18.4 Attribution under AMIT Regime

- (a) Terms used in this clause 18.4 that are not otherwise defined in this Constitution take their meaning from the Tax Act.
- (b) The attribution model of taxation as set out in Division 276 of the Tax Act (or any successor provisions) applies to the Fund for each AMIT Income Year.

- (c) Subject to clause 18.4(d), and without limiting its other rights and Powers provided for under this Constitution, the Responsible Entity may make any determination or choice, and may take any action which it can or is required to make or take under the Tax Act for the relevant AMIT Income Year, including, but not limited to:
- (i) the determination of the income and gains of the Fund to be attributed in relation to the Fund or each class of Units; and
 - (ii) the determination of those Assets and Liabilities allocated to a class of Units; and
 - (iii) the determination of the trust components and determined trust components of a particular character for the Fund or for each class of Units, including the determination of the particular character of an item and the timing of its inclusion in a trust component and a determined trust component; and
 - (iv) the attribution of the member component of a particular character for each Unitholder (including a former Unitholder); and
 - (v) the making of alterations to the relevant trust components and determined trust components and the relevant member components and determined member components as a result of any unders or overs (those terms having the definitions attributed to them in Division 276 of the Tax Act); and
 - (vi) the giving of an annual statement, within the period set out in the Tax Act, to each Unitholder (including a former Unitholder for the relevant AMIT Income Year) which includes information that reflects:
 - (A) the amount and character of each member component of the Unitholder (or a former Unitholder); and
 - (B) any cost base adjustment in respect of the Units of the Unitholder (or of a former Unitholder); and
 - (vii) the amendment of an annual statement that has been issued to a Unitholder (or a former Unitholder) within the time specified in the Tax Act, and the basis upon which the annual statement issued is to be amended.
- (d) In making a determination or choice, or in taking an action, as contemplated by clause 18.4(c), the Responsible Entity must ensure that any determination, allocation or attribution is made on a fair and reasonable basis.
- (e) The Responsible Entity is entitled to attribute the determined trust component to determine the member component and determined member component of a particular character in respect of an AMIT Income Year to be attributed to a Unitholder as a result of a redemption or withdrawal (or any other similar action) of Units by that Unitholder.
- (f) Notwithstanding any other provision of this Constitution, if the Responsible Entity has given a statement to a Unitholder in accordance with Division 276 of the Tax Act (or any successor provisions), the Responsible Entity is not required to otherwise notify a Unitholder of their proportionate share of the Fund's income or capital, including income of the trust estate or net income calculated under Division 6 of Part III of the Tax Act.

18.5 Distributable Income and distributions

- (a) The Responsible Entity must:
 - (i) collect, or cause to be collected, all income in respect of the Fund;
 - (ii) determine the Distribution Periods for each class in relation to the Fund, provided that immediately following one Distribution Period, another Distribution Period must commence; and
 - (iii) determine the Distributable Income of each class in relation to the Fund for each Distribution Period.
- (b) The preparation of the accounts of the Fund under clause 19.1 is not to be regarded as a determination of the method for calculating the Distributable Income.
- (c) Notwithstanding any other provision of this Constitution, the Responsible Entity is entitled to determine the amount to be distributed to Unitholders for an AMIT Income Year including, but not limited to, after taking into consideration:
 - (i) the extent to which reserves or provisions need to be made; and
 - (ii) any distributions (income or capital) in addition to the Distributable Income by way of cash, in specie distribution or bonus Units to Unitholders pro rata to the number of Units held as at a time determined by the Responsible Entity.

18.6 Payment of distributions

- (a) Subject to clauses 18.7 and 18.8, the Responsible Entity must arrange for, and prepare, the payment of any amounts determined under clause 18.5 to Unitholders as soon as practicable after the Distribution Period End Date.
- (b) Payment of any amounts determined under clause 18.5 to Unitholders may be made in any manner the Responsible Entity decides.
- (c) If a cheque is issued by the Responsible Entity and returned unclaimed, or not presented for payment within 6 months, or an attempted deposit is rejected, the cheque or deposit will be cancelled and the amount determined under clause 18.5 reinvested in Units at the Application Price prevailing at the time the cheque or deposit is cancelled, or paid in accordance with the laws relating to unclaimed monies.

18.7 Power to accumulate or defer amounts

Subject to the Corporations Act and the terms of issue of the relevant class of Units, the Responsible Entity has the discretion to accumulate and not distribute an amount to Unitholders for an AMIT Income Year.

18.8 Distribution reinvestment arrangements

- (a) Subject to the approval of the Responsible Entity, a Unitholder may elect to reinvest some or all of any distribution payable to that Unitholder by acquiring additional Units in accordance with this Constitution in which case:
 - (i) the Responsible Entity will be treated as having received and accepted an application to reinvest distributions; and

- (ii) Units issued in respect of such application are to be issued at an Application Price determined by the Responsible Entity.
- (b) The procedure for reinvestment of distributions (and any changes in the procedure) shall be determined by the Responsible Entity and notified to Unitholders from time to time.
- (c) The Responsible Entity may withdraw or suspend the operation of a reinvestment arrangement at any time.

18.9 Responsible Entity indemnity

Subject to the Corporations Act, the Responsible Entity is entitled to be indemnified out of the Assets for:

- (a) any tax liabilities incurred by the Responsible Entity as a result of the application of clause 18.4; and
- (b) any liability that results from a Unitholder (or a former Unitholder) making a claim against the Responsible Entity in relation to a tax liability of the Unitholder (or a former Unitholder) that results from the application of clause 18.4,

together with any other Costs, expenses or liabilities incurred by the Responsible Entity as a result of incurring any such liability.

18.10 Unitholder objections

If the Fund is an AMIT and a Unitholder or former Unitholder makes an objection or proposed objection to how the Responsible Entity attributes the determined trust components of the Fund or a class to the Unitholder or former Unitholder under the AMIT Regime, including by making a Unitholder Objection Choice:

- (a) the Unitholder or former Unitholder must:
 - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Unitholder is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Unitholder's or former Unitholder's objection or proposed objection;
 - (iii) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection. This paragraph (iii) does not limit the Responsible Entity's other rights to indemnification under this Constitution.
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Unitholders or former Unitholders of the Fund to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Unitholders or former Unitholders based on the Responsible Entity's determination of what attribution is appropriate and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing attribution managed investment trust member annual statements (AMMA Statements) to Unitholders or former Unitholders.

19. Accounts and Audit

19.1 Preparation of accounts

The Responsible Entity must prepare (or cause to be prepared) accounts of the Fund which correctly record and explain the transactions and financial position of the Fund.

19.2 Audit

- (a) The Responsible Entity must ensure that the accounts prepared in accordance with clause 19.1 are audited, if and as prescribed by the Corporations Act.
- (b) If the Fund is a Registered Scheme, the Responsible Entity must appoint:
 - (i) an independent registered company auditor to audit the accounts of the Fund; and
 - (ii) a Compliance Plan Auditor.
- (c) If the Fund is not a Registered Scheme, the Responsible Entity may appoint an independent registered company auditor to audit the accounts of the Fund.
- (d) Subject to the Corporations Act, the Responsible Entity may remove and subsequently replace any Auditor or Compliance Plan Auditor.

19.3 Accounting standards

- (a) The accounts of the Fund must be kept and prepared by the Responsible Entity in accordance with generally accepted accounting principles and approved Australian accounting standards as they apply to managed investment schemes and as prescribed by the Corporations Act, whether (despite clause 1.7) the Fund is or is not a Registered Scheme.
- (b) The Responsible Entity may in relation to the recording of Liabilities record any provision or reserve as contemplated by the definition of Liabilities as it deems necessary to give a true and fair view of the financial position of the Fund.

19.4 Reporting

- (a) The Responsible Entity must report to Unitholders concerning the affairs of the Fund and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing the report may determine the form, content and timing of it.
- (b) The Responsible Entity will cause:
 - (i) the Auditor to audit and report on the accounts;
 - (ii) the Compliance Plan Auditor (if any) to audit and report on the Compliance Plan; and
 - (iii) if the Fund is a Registered Scheme, each in the manner required by the Corporations Act.

20. Powers of the Responsible Entity

20.1 Powers of investment

Without limiting any other Power, the Assets may be invested in, or represented by, any form of Property. The Responsible Entity may have regard to clauses 20.1(a) and 20.1(b) in exercising its discretion as to the types of Property into which the Fund is to be invested.

- (a) Subject to the Corporations Act, the Responsible Entity may consider investments which provide support for:
 - (i) the development of workers' participation in the ownership and control of their work organisations and places;
 - (ii) the production of high quality products and services;
 - (iii) the development of locally based ventures;
 - (iv) the development of appropriate technological systems;
 - (v) the amelioration of wasteful and polluting practices;
 - (vi) the development of sustainable land use and food production;
 - (vii) the preservation of endangered eco-systems;
 - (viii) activities which contribute to human happiness, dignity and education;
 - (ix) the dignity and well-being of non-human animals;
 - (x) the efficient use of human waste;
 - (xi) the alleviation of poverty in all its forms; or
 - (xii) the development and preservation of appropriate human buildings and landscapes.
- (b) The Responsible Entity may seek to limit investments which it considers to unnecessarily:
 - (i) pollute land, air or water;
 - (ii) destroy or waste non recurring resources;
 - (iii) extract, create, produce, manufacture or market materials products, goods or services which have a harmful effect on humans, non-human animals or the environment;
 - (iv) market, promote or advertise products or services in a misleading or deceitful manner;
 - (v) create markets by the promotion or advertising of unwanted products or services;
 - (vi) acquire land or commodities primarily for the speculative gain;
 - (vii) create, encourage or perpetuate militarism or engage in the manufacture of armaments;
 - (viii) entice people into financial over commitment;

- (ix) exploit people through the payment of low wages or the provision of poor working conditions;
- (x) discriminate by way of race, religion or sex in employment, marketing or advertising practices;
or
- (xi) contribute to the inhibition of human rights generally.

20.2 Powers of the Responsible Entity

The Responsible Entity has all the Powers in respect of the Fund, the Assets and the Liabilities that it is legally possible for a natural person, trustee or corporation to have including all and any Powers:

- (a) to register the Fund as a Registered Scheme;
- (b) to acquire, develop, maintain, deal with, invest in and sell any property as it sees fit and in its discretion;
- (c) which it could exercise if it were the absolute and beneficial owner of the Assets;
- (d) to incur liabilities and obligations of any kind (including to grant indemnities and guarantees, to make representations, to give warranties and undertakings and enter into any sort of futures, derivative, swap, option contract or arrangement or instrument or combination of any of these) and including of a speculative nature;
- (e) to borrow, procure financial accommodation and raise money for the purposes of the Fund whether or not on the security of the Assets;
- (f) to lend money and on-lend or provide financial accommodation to any person;
- (g) to issue debentures, grant mortgages and grant or give any security over, create any interests in (including security interests), or encumber, the Assets;
- (h) to carry on any business;
- (i) to fetter future discretions;
- (j) to sell, transfer, encumber or otherwise deal with, any of the Assets or any interests in the Assets as part of any securitisation or repurchase arrangement undertaken in connection with the Fund;
- (k) without limiting clause 22.2, to enter into co-investment arrangements and establish co-investment vehicles with other persons, including (but not limited to) Unitholders and their Affiliates, on such terms and conditions as the Responsible Entity may determine in its absolute discretion;
- (l) to enter into any form of contract in exercise of any Power in paragraphs (a) to (k) above.

20.3 When and how the Responsible Entity may exercise Powers

The Responsible Entity may decide how and when to exercise its Powers in its absolute discretion.

20.4 Agents

- (a) The Responsible Entity may appoint or engage Agents to act on behalf of the Responsible Entity including to exercise any Power under this Constitution for, on behalf of and in the name of the Responsible Entity.

- (b) The appointment or engagement of an Agent may be on such terms as the Responsible Entity determines in its absolute discretion.
- (c) Subject to the Corporations Act, an Agent may be an associate or Related Body Corporate of the Responsible Entity.
- (d) To the extent permitted by Law, the Responsible Entity may waive or excuse on the terms as it thinks fit any breach by an Agent or other person of their obligations to the Responsible Entity in connection with the Fund.
- (e) The appointment, engagement or other contracting of an Agent under this clause 20.4 does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations as responsible entity or trustee (as the context requires) of the Fund, including to ensure that all services that are to be provided, or any Powers that are to be exercised, by an Agent on behalf of the Responsible Entity are properly provided, exercised or otherwise performed.

20.5 Advisers

- (a) The Responsible Entity may engage or appoint any Adviser to provide it with advice or specialist services or to otherwise assist it in managing the Fund, exercising any Power, discharging any duty or obligation or dealing with any Asset or Liability.
- (b) Subject to the Corporations Act:
 - (i) an Adviser may be an associate or Related Body Corporate of the Responsible Entity; and
 - (ii) the Responsible Entity is not liable for the acts or omissions of an Adviser if the Responsible Entity exercised reasonable care in selecting the Adviser.
- (c) An Adviser who is an associate or Related Body Corporate of the Responsible Entity must be engaged on arm's length terms and may be remunerated out of the Assets for such services (which is to be in addition to any remuneration payable to the Responsible Entity under clause 25).

20.6 Side Letters

- (a) Subject to the Corporations Act, and notwithstanding any other provision of this Constitution to the contrary (whether express or implied), the Unitholders acknowledge and agree that the Trustee, on its own behalf or on behalf of the Fund, may enter into any side letters or side arrangements in relation to the operation and management of the Fund without the consent of any other person.
- (b) The Trustee and the Unitholders agree that the terms of any such side letter or side arrangements with a Unitholder, which may include rights to payments from the Trustee (in its personal capacity) and waiver or delay by the Unitholder of rights under this Constitution, are binding on such Unitholder and the Trustee and the Fund, notwithstanding any provision of this Constitution.
- (c) Any right granted to a Unitholder in any such side letter or side arrangements is not assignable without the prior written consent of the Trustee.
- (d) The Trustee in its absolute discretion may determine whether or not to disclose the terms of any such side letter or side arrangements to another Unitholder.

20.7 Operation

- (a) None of the clauses in this clause 20 limit or restrict the operation of any other clause in this clause 20 or any other clause of this Constitution.
- (b) The Powers, discretions and rights of the Responsible Entity under this clause must be exercised subject to any duties imposed under the Corporations Act.

21. Retirement of Responsible Entity

21.1 Responsible Entity retirement - while a Registered Scheme

- (a) Retirement - While the Fund is a Registered Scheme, the Responsible Entity:
 - (i) *on notice* - may retire as the responsible entity of the Fund as permitted by Law; and
 - (ii) *required* - must retire as the responsible entity of the Fund when required by Law.
- (b) Replacement - Subject to the Corporations Act, on retirement, the Responsible Entity may appoint in writing another person to be the responsible entity of the Fund.

21.2 Responsible Entity retirement - while not a Registered Scheme

- (a) Retirement - While the Fund is not a Registered Scheme, the Responsible Entity:
 - (i) *on notice* - may retire as the trustee of the Fund on not less than one (1) month's notice to Unitholders (or any shorter period as they may agree with); and
 - (ii) *required* - must retire as the trustee of the Fund if required by Law or by all Unitholders.
- (b) Replacement - On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

21.3 Responsible Entity removal

Subject at all times to the requirements of any relevant Law, if:

- (a) negative action - the Fund is not a Registered Scheme and the Responsible Entity:
 - (i) has committed fraud; or
 - (ii) has committed a substantial material act of:
 - (A) gross negligence;
 - (B) wilful misconduct; or
 - (C) breach of law,in relation to its operation of the Fund;
 - (iii) becomes Insolvent; or

- (iv) is prohibited by law from performing its obligations:
 - (A) in the management of the Fund under this Constitution or the current information memorandum or other offering document for the Fund; or
 - (B) as trustee of another fund vehicle that invests in the Fund,

then Unitholders representing *more* than five percent (5%) in aggregate of the Units of all classes collectively on issue may call a meeting of Unitholders to vote on removing the Responsible Entity as trustee of the Fund, and if at that meeting Unitholders representing *more* than fifty percent (50%) in aggregate of the Units of all classes collectively on issue (*including*, for the avoidance of doubt, any Unitholders which are Related Bodies Corporate of the incumbent Responsible Entity) vote in favour removing the Responsible Entity as trustee of the Fund, the Responsible Entity must resign as trustee of the Fund in favour of such suitably qualified replacement trustee of the Fund as may be nominated by Unitholders representing *more* than fifty percent (50%) in aggregate of the Units of all classes collectively on issue, *subject* to payment to the Responsible Entity of any fees (*other* than any accrued performance fees) due to it for the proper performance of its duties and *provided that* in the reasonable opinion of the incumbent Responsible Entity (in the exercise of its fiduciary duties to the Unitholders) the replacement trustee of the Fund is suitable in all respects to act as trustee of the Fund; and

- (b) Unitholder's removal - the Fund is a Registered Scheme, the Unitholders may determine to remove the Responsible Entity as responsible entity of the Fund in accordance with section 601FM (*Removal of responsible entity by members*) of the Corporations Act.

21.4 Affiliates not entitled to vote

- (a) No entitlement - While the Fund is a Registered Scheme, subject to the Corporations Act and despite any provision in this clause 21, no Affiliate of the Responsible Entity is entitled to vote on a decision to remove the Responsible Entity from its position as trustee or responsible entity of the Fund.
- (b) Percentages - in calculating any percentage of Units or Unitholders for the purposes of this clause 21, any Units held by an Affiliate of the Responsible Entity are to be disregarded and the calculation is to be made as if any Affiliate of the Responsible Entity was not a Unitholder.

21.5 New Responsible Entity

- (a) Facilitation - On the retirement or removal of the Responsible Entity, the Responsible Entity must do all things reasonably necessary to facilitate the change of responsible entity or trustee (as the context requires) of the Fund.
- (b) Becoming bound - Any replacement responsible entity or trustee (as the context requires) of the Fund must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.

21.6 Release

Subject the requirements of any relevant Law, when the Responsible Entity retires or is removed as responsible entity or trustee (as the context requires) of the Fund, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.

21.7 Insolvency Event

In this clause 21, “**Insolvent**” means, in relation to a person, when the person:

- (a) debts - is unable to pay its debts as and when they become due and payable;
- (b) insolvency - is ‘insolvent’ as that term is defined in section 9 (*Dictionary*) of the Corporations Act;
- (c) administration - is an ‘insolvent under administration’ or suffers the appointment of a ‘controller’, ‘administrator’, ‘receiver’, ‘manager’, ‘liquidator’ or ‘provisional liquidator’ as those terms are defined in section 9 (*Dictionary*) of the Corporations Act;
- (d) presumptions - is the subject of an event described in sections 459C(2)(a) to (f) (*inclusive*) (*regarding presumptions to be made in certain proceedings*) or section 585 (*Insolvency of Part 5.7 body*) of the Corporations Act (or the person makes a statement from which another party may reasonably deduce the person is so subject);
- (e) arrangements - enters into any arrangement, reconstruction or composition with any of its creditors;
- (f) winding up - being a body corporate, is wound up, or the members of the body corporate pass a resolution to wind up the body corporate;
- (g) dissolution - is dissolved (*other* than to carry out an amalgamation or reconstruction while solvent);
- (h) bankruptcy - being a natural person, commits or suffers an act of bankruptcy;
- (i) other - without limiting the operation of the events referred to in the remainder of this definition, the person enters into some other form of insolvency or administration (whether voluntary, formal or informal) or any event analogous to the events referred to in the remainder of this definition takes place in relation to the person, *including* the summoning of a meeting, or other steps being taken, for the purpose of placing the person into some form of insolvency or administration; and/or
- (j) overseas - takes or suffers a similar consequence in debt to those in the remainder of this definition under the law of any jurisdiction.

22. Rights and Liabilities of Responsible Entity

22.1 Responsible Entity as a Unitholder

- (a) Subject to the Corporations Act (while a Registered Scheme), the Responsible Entity and its Affiliates may hold Units.
- (b) When the Responsible Entity is a Unitholder, the Responsible Entity is entitled to all of the benefits and rights of any other Unitholder under this Constitution and, if the Fund is a Registered Scheme, the Corporations Act.

22.2 Other capacities

Despite any other provision in this Constitution but subject to the Corporations Act, the Responsible Entity or its Affiliates are permitted to:

- (a) deal with their Affiliates, the Fund or any Unitholders including to acquire or deal with any interest in, or Property of, a fund, scheme or trust of which the Responsible Entity or any of its Affiliates is the manager or, trustee or responsible entity;
- (b) deal with itself in relation to the Fund if, in respect of such dealing, it is acting in different capacities;
- (c) be interested in any contract or transaction with its Affiliates, the Fund or any Unitholder;
- (d) act as investment manager in relation to the Fund; or
- (e) act as responsible entity, trustee, investment manager or a similar capacity in relation to any other fund, scheme or trust.

The Responsible Entity and its associates may retain and are not liable to account to the Unitholders or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in paragraphs (a) to (e) above.

23. Limitation of liability and indemnity of Responsible Entity

23.1 No limitation on other statutory protection

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

23.2 Responsible Entity may obtain and rely on advice etc.

In respect of the operation and administration of the Fund or otherwise in connection with the Fund, 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 believed by the Responsible Entity in good faith to have the relevant expertise in relation to the matters upon which they are consulted;
- (c) any document believed by the Responsible Entity in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for the purposes of or in connection with the Fund; and
- (d) any other document or information from any Unitholder 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.

23.3 Limitation of Responsible Entity's liability

Subject to clause 23.4 and the Corporations Act, the Responsible Entity is not liable to one or more or all of the Unitholders, the Fund, any creditors of the Fund or any other person in contract, tort, statute or otherwise for any Loss or damage suffered in relation to the Fund (regardless of how that Loss or damage has arisen), including, without limitation, Loss or damage arising because of any of the following acts or omissions:

- (a) investing in any Assets that are or become illiquid or long term in nature;
- (b) the Responsible Entity obtaining or relying on (in accordance with clause 23.2) any of the opinions, advice, statements, documents or information referred to in clause 23.2;
- (c) the Responsible Entity performing or not performing its duties or exercising or not exercising any of its Powers;
- (d) the Responsible Entity doing or omitting to do any act because it is impracticable or impossible and such impracticability or impossibility is beyond the control of the Responsible Entity;
- (e) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity), including fraudulent or unauthorised acts or omissions;
- (f) the Responsible Entity doing or omitting to do any act by reason of Law; or
- (g) the Responsible Entity doing or omitting to do any act at the request of a Unitholder.

23.4 Liability not limited

Clause 23.3 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 or gross negligence or wilful default of the Responsible Entity and while the Fund is Registered Scheme, a failure of the Responsible Entity to properly perform its duties.

23.5 Liability limited to Assets

- (a) Subject to the Corporations Act, the liability of the Responsible Entity to any or more or all of the Unitholders, the Fund, any creditors of the Fund or any other person in respect of the Fund, is limited to the extent to which the Responsible Entity is actually indemnified out of the Assets for that liability.
- (b) The Responsible Entity is not required to do anything:
 - (i) unless the Responsible Entity is satisfied that its liability is satisfactorily limited; or
 - (ii) for which it does not have a full right of indemnity out of the Assets available for that purpose and in respect of which there are, in the Responsible Entity's opinion, sufficient Assets to fully discharge any such liability.

23.6 Responsible Entity indemnity

To the extent permitted by the Corporations Act, in addition to any indemnity the Responsible Entity has under this Constitution (including in respect of any Tax liability) or at Law, the Responsible Entity is entitled to be indemnified and is entitled to be reimbursed in full out of the Assets for, or pay from the Assets, any liability, Loss, Tax, or Cost incurred by it in the proper performance of its duties in relation to the Fund, whether incurred by exercise of its Powers under this Constitution or by any other act, omission or circumstance. The Responsible Entity may realise any Assets in whole or in part for the purposes of such indemnity.

23.7 Indemnity extends to cover acts of agents or delegates

To the extent permitted by the Corporations Act, if for any reason (including because of the operation of section 601FB (*Responsible entity to operate scheme*) of the Corporations Act), the Responsible Entity is liable for the direct or indirect acts or omissions of any person (whether or not the person is appointed or

otherwise engaged by the Responsible Entity), then the indemnity in clause 23.6 extends to also include that liability.

23.8 Indemnity continues

The indemnity in clause 23.6 continues to apply after the Responsible Entity retires or is removed as responsible entity or trustee (as the context requires) of the Fund.

23.9 Separate limitations

Each clause of this Constitution that provides, or relates to, either a right of the Responsible Entity to be indemnified or to pay or be reimbursed out of the Assets or to a limitation of the Responsible Entity's liability:

- (a) is separate and independent of any other right, indemnity or limitation of liability;
- (b) does not limit any other provision of this Constitution; and
- (c) applies to the maximum extent permitted by Law.

The Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

23.10 Right of indemnity applies even if unrelated breach of trust

The Responsible Entity's right of indemnity and reimbursement under this Constitution in respect of a matter will not be lost or impaired by reason of a separate matter (whether arising before or after the indemnified matter) in respect of which those rights of indemnity and reimbursement do not apply.

24. Liability of Unitholders

24.1 Limitation

Subject to clauses 24.3 and 24.4, the liability of a Unitholder is limited to the amount, if any, that remains unpaid on the Unitholder's Units.

24.2 Claims of creditors

Subject to clause 24.3, a Unitholder need not indemnify the Responsible Entity or any creditor of the Fund if the Assets are not sufficient to discharge the Liabilities or meet the claim of any creditor of the Fund or the Responsible Entity in respect of the Fund.

24.3 Indemnification of Responsible Entity

The Responsible Entity is entitled to be indemnified by a Unitholder to the extent that the Responsible Entity incurs any liability for Tax or Cost as a result of:

- (a) that Unitholder's action or inaction; or
- (b) an act or omission requested by that Unitholder; or
- (c) any other matter arising in connection with the Units held by that Unitholder.

24.4 Recourse limited to Assets

Except as provided in this Constitution, the recourse of the Responsible Entity and any creditor is limited to the Assets.

25. Remuneration and expenses

25.1 Proper performance

Despite any other provision of this Constitution, the right of the Responsible Entity to be paid fees out of the Assets or to be indemnified out of the Assets for the Liabilities or any liabilities or expenses incurred in relation to the performance of its duties is available only in relation to the proper performance of those duties.

25.2 Fees

Subject to clauses 25.1 and 25.6, the Responsible Entity is entitled to receive and retain the following fees for its own use being fees which (unless stated otherwise) are to be paid out of the Assets:

- (a) A management fee may be charged at a rate of up to 4% per annum of the Net Asset Value of the Fund. The management fee is calculated and accrues daily and is payable within 30 days of the end of each month. The Responsible Entity may determine whether this fee is payable out of income or out of the capital of the Fund or both.
- (b) A performance fee may be charged as set out in the current information memorandum or other offering document for the Fund.

25.3 Expenses

Subject to clauses 25.1, in addition to the remuneration payable to the Responsible Entity and any other rights to indemnity or reimbursement which the Responsible Entity may have under this Constitution or at Law, the Responsible Entity is indemnified, and is to be kept indemnified, out of the Assets for all Costs, liabilities, damages and Losses reasonably and properly incurred by the Responsible Entity in connection with the Fund, the Assets and the Liabilities or in performing its duties and obligations including in connection with:

- (a) this Constitution and the formation of the Fund, any modification, repeal or replacement of this Constitution and lodgement with ASIC;
- (b) the preparation, review, printing, distribution and promotion of any disclosure document, product disclosure statement or information memorandum in respect of Units and any material supplemental, or in replacement of, such document;
- (c) the identification, acquisition, disposal, sale, purchase, transfer, insurance, custody of, management, supervision, repair, maintenance and any other dealing with, the Assets. Without limitation, this includes the due diligence costs associated with an acquisition of Property which may or may not become an Asset;
- (d) any registry services associated with the Fund;
- (e) any proposed or actual investment;

- (f) the operation, administration, management, investment or promotion (including in connection with any proposed or actual issue of Units) of the Fund, the Assets or the Liabilities, including investment management, property and project management Costs and any fees payable to ASIC;
- (g) the preparation, printing and postage of distribution statements or any other communications with Unitholders;
- (h) convening and holding meetings of, and dealings with, Unitholders (other than expenses payable under section 252C(4) (*where responsible entity is responsible for costs*) of the Corporations Act), and the implementation of any resolutions passed at a meeting of Unitholders;
- (i) all Taxes (provided the Tax is not income tax on the personal account of the Responsible Entity) including any goods and services tax or value added tax payable in respect of the fees payable to the Responsible Entity or another person and bank fees and other Costs;
- (j) appointing or otherwise engaging Advisers and Agents;
- (k) preparation and audit of the taxation returns, financial statements and reports and accounts of the Fund;
- (l) computer and other facilities relating to the matters in paragraphs (c), (f) and (k);
- (m) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a new Responsible Entity;
- (n) the initiation, prosecution, defence and compromise of any court proceedings, arbitration, claim or other dispute concerning the Fund or any Asset or Liability including proceedings against the Responsible Entity (except to the extent that a court has found that the Responsible Entity is not entitled to recover the amounts from the Assets);
- (o) any Costs incurred in connection with, or as a result of, any agreement in connection with the Fund to which the Unitholders are parties and any Costs which any such agreement provides are to be borne by the Fund or paid for out of the Assets;
- (p) the establishment, operation and maintenance of the Register, including without limitation, any Costs of any person employed or appointed by the Responsible Entity in connection with that Register (notwithstanding it may be the Responsible Entity's agent);
- (q) preparing, changing and auditing the Responsible Entity's compliance with the Compliance Plan;
- (r) fees (including insurance premiums) of external directors of the Responsible Entity, or external members of the Responsible Entity's compliance committee;
- (s) the fees of any external investment manager, including base fees and performance fees;
- (t) the preparation and lodgement of accounts, applications and returns with ASIC;
- (u) the Liabilities;
- (v) any amounts payable by the Responsible Entity pursuant to any agreement entered into by it for the benefit of, otherwise relating to or in connection with, the Fund;
- (w) any Costs in connection with borrowings, securities lending or other financial accommodation (including capital repayments, interest and discount and other bank fees) and any other bank account or services offered by any financial institution (including electronic funds transfer and other electronic

banking or payment services or any other method of making payments to Unitholders) in connection with the Fund;

- (x) any Costs (including an apportionment of such Costs) of handling complaints from Unitholders and resolving disputes with them, including all Costs in connection with the Responsible Entity being a member of an external complaints handling scheme to which a dispute may be referred under clause 28 (including as required by the terms of the Responsible Entity's licence, in applying for membership, application and ongoing membership fees, in maintaining membership and any Costs in connection with any complaints or matters to or to be, or proposed to be, dealt with by, the manager of such a scheme in accordance with the terms of such a scheme);
- (y) the termination and winding up of the Fund; and
- (z) complying with any Law, and any request or requirement of ASIC or an exchange.

25.4 Sharing of fees

The Responsible Entity may, in its absolute discretion, pay from the remuneration and fees it receives in accordance with this clause 25, fees or commissions to its advisers, agents, delegates and employees or any licensed or authorised dealer, broker or adviser.

25.5 Power to realise Assets or make provisions

The Responsible Entity may:

- (a) realise any Asset of the Fund in whole or in part; and/or
- (b) from the Fund, set aside and make a provision or provisions,

in order to meet any Costs that are required to be made under this Constitution in connection with the Fund. The Responsible Entity may pay any items referred to in this clause directly out of the Assets or it may pay them itself and be reimbursed out of the Assets.

25.6 Waiver of fees and expenses and differential fees

- (a) The Responsible Entity may waive or take a lower fee than it is entitled to under this Constitution, and may defer payment for any period. If payment is deferred, the fee still accrues daily or monthly (as applicable) until paid.
- (b) Subject to the Corporations Act or any ASIC Instrument, and without limiting clauses 25.2 or 25.6(c) the Responsible Entity may agree fee arrangements (including, without limitation, fees under clause 25.2) with one or more Unitholders, or class of Unitholders, on a basis that differs from those applying to other Unitholders who hold Units of the same class on such terms and conditions as the Responsible Entity determines.
- (c) The Responsible Entity may, to the extent permitted under the Corporations Act or any ASIC Instrument, agree with a Unitholder, or a class of Unitholders to rebate a percentage of the remuneration or fees charged to the account of a Unitholder or class of Unitholders. The Responsible Entity may either pay such rebated amounts to the Unitholder in such manner as determined by the Responsible Entity or reinvest the rebated amounts into additional Units of the same class for the benefit of the relevant Unitholder as elected by the Unitholder.

25.7 GST

- (a) The fees payable to the Responsible Entity under clause 25.2 are inclusive of GST.
- (b) If the Responsible Entity exercises a Power to transfer Assets to a Unitholder as a distribution, the Responsible Entity may as it sees fit in its absolute discretion either:
 - (i) require the Unitholder receiving the Asset as a distribution, or another Unitholder receiving Assets or cash as a distribution, to pay some or all of any GST on any supply arising from the distribution (and any Unitholder so required must then indemnify the Responsible Entity against that GST, and pay to the Responsible Entity an amount equal to that GST); or
 - (ii) itself pay some or all of that GST and recover the amount of that GST out of the Assets.

26. Notices

26.1 Form of notices to Unitholders

A notice given under this Constitution must be in writing (which includes a fax and any electronic format) and may be given in any form and manner as prescribed by the Responsible Entity (including any electronic means of communication).

26.2 When notice sent to Unitholder is received

A notice is deemed to be received by a Unitholder as follows:

- (a) if posted, within 2 Business Days from the date of postage;
- (b) if sent by facsimile to the correct facsimile number, on receipt of a message from the machine from which it was sent confirming that the notice was sent in its entirety; or
- (c) if sent by electronic mail, one hour after sending provided that no error message has been received.

26.3 Notices to Responsible Entity

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing including by email or other electronic means provided it is given in such manner as the Responsible Entity determines and notifies to Unitholders.
- (b) A notice to the Responsible Entity is effective only at the time of receipt in legible form.
- (c) The notice must bear the actual or electronic signature of the Unitholder or their duly authorised officer or representative unless the Responsible Entity dispenses with this requirement.

27. Unitholders' Meetings

27.1 Convening of meetings

The Responsible Entity may convene a meeting of Unitholders at any time.

27.2 Unitholders' request for meetings

- (a) While the Fund is a Registered Scheme:
 - (i) The Responsible Entity must convene a meeting of Unitholders upon receipt of a Unitholder's request made in accordance with the Corporations Act; and
 - (ii) Unitholders may convene a meeting of Unitholders in accordance with the Corporations Act.
- (b) While the Fund is not a Registered Scheme, the Responsible Entity must convene a meeting of Unitholders upon receipt of a request by Unitholders with at least 20% of the votes that may be cast on the resolution if such request is in accordance with sections 252B(2) and 252B(3) of the Corporations Act (and treating the Fund as if it were a Registered Scheme). Sections 252B(6), 252B(7) and 252B(8) of the Corporations Act apply to a meeting convened under this clause 27.2 as if the Fund were a Registered Scheme.

27.3 Notice of meeting

- (a) While the Fund is a Registered Scheme, notice of a meeting of Unitholders must be given in the manner and form prescribed by the Corporations Act.
- (b) While the Fund is not a Registered Scheme, at least 10 days' notice of a meeting of Unitholders must be given to Unitholders, or such shorter notice as they agree.
- (c) Subject to the Corporations Act, unintentional omission to give notice to, or non-receipt of notice by, a Unitholder does not invalidate a meeting or resolution passed at a meeting, of Unitholders.

27.4 Right to attend and speak

The Responsible Entity, its agents, representatives and advisers are entitled to attend and speak at a meeting of Unitholders.

27.5 Proxies

A Unitholder may appoint a proxy in the manner provided by the Corporations Act to attend and vote at a meeting, applied as if the Fund was a Registered Scheme. An appointment is valid even if it does not contain all the information required by section 252Y(1) of the Corporations Act. A proxy and any authority under which it may be made must be received by the Responsible Entity at a place, facsimile number or electronic address specified in the notice of meeting at least 48 hours, or such shorter time specified by the Responsible Entity in the notice of meeting, before the time of the meeting.

27.6 Corporate representatives

A body corporate may be represented at a meeting by an individual appointed pursuant to the Corporations Act. The appointed person may, subject to the terms of the appointment, exercise all of the powers of the body corporate that the body corporate could exercise at a meeting or in voting for a resolution.

27.7 Chair

- (a) A meeting of Unitholders will be chaired by a person appointed by the Responsible Entity or otherwise in accordance with the Corporations Act.
- (b) The decision of the chair on any matter relating to the conduct of the meeting is final.

- (c) Subject to the Corporations Act, the chair has power to:
 - (i) adjourn a meeting for any reason to a place and time as the chair thinks fit; and
 - (ii) cancel a meeting or postpone a meeting for any reason to a place and time as the chair thinks fit.

27.8 Quorum

- (a) The quorum for a meeting of Unitholders of the Fund, or Unitholders of a class of Units is at least 2 Unitholders (or 2 members of that class, as applicable) in person or proxy, unless there is only one Unitholder or of a class of Units (as applicable) in which case the quorum is that Unitholder. The quorum must be present at all times during the meeting.
- (b) If a quorum is not present within 30 minutes of the scheduled commencement time of the meeting, the meeting is:
 - (i) if convened pursuant to clause 27.2, dissolved; or
 - (ii) otherwise, adjourned to such date, time and place as the Responsible Entity specifies.
- (c) If a quorum is not present at the resumed meeting within 30 minutes of the scheduled commencement time of the meeting, the meeting is at the discretion of the Responsible Entity dissolved or adjourned to such other date, time and place as the Responsible Entity specifies.

27.9 Majority votes

At any meeting of Unitholders convened pursuant to the provisions of this Constitution, unless the Corporations Act otherwise provides or the express terms of this Constitution otherwise require, a resolution is duly passed if Unitholders holding the Required Majority of votes vote in favour of the resolution.

27.10 Voting - while the Fund is not a Registered Scheme

- (a) While the Fund is not a Registered Scheme, voting is by a show of hands, unless a poll is duly demanded in accordance with clause 27.12 or the proposed resolution is required by this Constitution or by Law to be decided by a percentage of Units.
- (b) Subject to the rights, obligations and restrictions attaching to any particular Units, each Unitholder who is present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each dollar of the value of whole Units held by the Unitholder.

27.11 Voting - while the Fund is a Registered Scheme

While the Fund is a Registered Scheme, voting will be conducted in accordance with Part 2G.4 (*Meetings of members of registered schemes*) of the Corporations Act.

27.12 Demand for a poll

A poll may be demanded on any resolution before a vote is taken, and before or immediately after the voting result on a show of hands are declared by:

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

27.13 Joint holders

The joint Unitholder first named in the Register is entitled to exercise the voting rights of jointly held Units.

27.14 Resolution in writing

To the extent permitted by the Corporations Act, Unitholders may pass a resolution without a meeting being held if all Unitholders entitled to vote on the resolution are given a document setting out the resolution and Unitholders holding the Required Majority of Units, sign a document containing a statement that they are in favour of the resolution set out in the document.

27.15 Resolution binding

A resolution duly passed at a meeting of Unitholders duly convened and held in accordance with the Corporations Act and this Constitution, or duly passed in writing in accordance with this Constitution, binds all Unitholders, or all Unitholders of a class of Units, as applicable (in that capacity) whether or not the Unitholder was present at the meeting (in the case of a resolution passed at a meeting) or whether or not they signed the resolution (in the case of a resolution in writing) and each Unitholder is bound to give effect to the resolution.

27.16 Objections

Any objection made to a vote cast can only be made at the meeting. The chair's decision as to the validity of a vote is final and binding on all Unitholders, or all Unitholders of a class of Units, as applicable, and for all purposes.

27.17 Minutes of meeting

Minutes of a meeting executed by the chair constitutes conclusive evidence of the business transacted at a meeting.

27.18 Meetings of a class

This clause 27 applies to meetings of Unitholders of a class with any necessary modifications.

28. Complaints Handling

28.1 Complaint

- (a) A Unitholder or Applicant who is dissatisfied with the Fund or a service provided by the Responsible Entity in relation to the Fund is entitled to make a complaint to the Responsible Entity.
- (b) For the purposes of this clause 28, a complaint will be taken to be an expression of dissatisfaction made to the Responsible Entity in relation to the products and services being provided to the

Unitholder or Applicant, which in this case relates to the Fund as the product and the services supplied in relation to the Fund, including the complaints handling process itself, if a resolution is explicitly or implicitly expected.

28.2 Procedure

The Responsible Entity must apply the following procedure in relation to a complaint of a Unitholder or Applicant:

- (a) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
- (b) the Responsible Entity will ensure that a complaint is acknowledged in writing within 24 hours and the Unitholder or Applicant making the complaint is treated courteously; and
- (c) the Responsible Entity will ensure that a final written response will be provided to the Unitholder or Applicant as soon as practicable and in a manner that is fair to the Unitholder or Applicant and Responsible Entity or its officers or employees against whom it is made.

29. Amendments to the Constitution

29.1 Power to amend

- (a) While the Fund is a Registered Scheme, subject to the Corporations Act, this Constitution may be amended, deleted, added to or repealed and replaced with a new Constitution, by a supplemental deed executed by the Responsible Entity if:
 - (i) the amendments, deletions or additions to the Constitution as set out in the supplemental deed have been approved by a Special Resolution of the Unitholders;
 - (ii) the Responsible Entity reasonably considers that the provisions of the supplemental deed will not adversely affect Unitholders' rights;
 - (iii) in accordance with the conditions and restrictions of any applicable ASIC Instrument (including the *ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489*); or
 - (iv) clauses 29.3 or 29.4 apply.
- (b) While the Fund is not a Registered Scheme, this Constitution may be amended, deleted, added to or repealed and replaced with a new Constitution, by a supplemental deed executed by the Responsible Entity if:
 - (i) the amendment is made before the issue of any Units in addition to the original Units issued pursuant to clause 5.1;
 - (ii) Unitholders have resolved to amend the Constitution by Special Resolution;
 - (iii) the Responsible Entity reasonably considers the change is not materially adverse to Unitholders;
 - (iv) the Responsible Entity has given Unitholders at least 28 days' prior notice of the proposed amendments and less than 25% of those Unitholders have within that period requested a meeting be called to consider and to approve those amendments;

- (v) in the Responsible Entity's opinion the amendment is reasonably necessary for the purposes of obtaining registration of the Fund as a registered managed investment scheme under the Corporations Act; or
- (vi) clauses 29.3 or 29.4 apply.

29.2 Affiliates not entitled to vote

- (a) **No entitlement** - While the Fund is a Registered Scheme, *subject* to the Corporations Act and despite any provision in this clause 29, no Affiliate of the Responsible Entity is entitled to vote on a decision to amend the Constitution.
- (b) **Percentages** - In calculating any percentage of Units or Unitholders voting on a resolution or Special Resolution for the purposes of this clause 29, any Units held by an Affiliate of the Responsible Entity are to be disregarded and the calculation is to be made as if any Affiliate of the Responsible Entity was not a Unitholder.

29.3 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act, any ASIC Instrument or any form of ASIC relief (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unitholders:

- (a) agree that unless the Responsible Entity determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Responsible Entity to make that amendment in a deed made for that purpose and if required lodge that deed with ASIC (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

29.4 Statutory requirements

- (a) Subject to clause 29.1, if the Corporations Act or any applicable ASIC Instrument requires that this Constitution contain certain provisions or may only be relied on if this Constitution contains certain provisions, then those provisions are taken to be incorporated into this Constitution at all times at which, and to the extent to which, they are required to be included in order to comply with the Corporations Act or for the ASIC Instrument to apply. Any such provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) If the ASIC Instrument is granted by class order (rather than specifically in relation to the Fund or the Responsible Entity) then the provisions required for the class order to apply will only be taken to be incorporated if they automatically apply to the Fund or the Responsible Entity otherwise resolves that the ASIC Instrument is to apply.
- (c) Without limiting the Responsible Entity's powers under this clause 29, and subject to the Corporations Act, the Responsible Entity may make any change to this Constitution, and take any other action, which the Responsible Entity reasonably believes is necessary, desirable or expedient to:
 - (i) facilitate compliance with any preconditions for the operation of the AMIT Regime in relation to the Fund;
 - (ii) facilitate compliance with the terms of the AMIT Regime in relation to the Fund, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Unitholders;

- (iii) facilitate the proper administration and operation of the Fund under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Unitholders that arise under the AMIT Regime; or
 - (iv) comply with the conditions of any ASIC Instrument issued in relation to the AMIT Regime, or to facilitate operation of the Fund in reliance on such ASIC Instrument.
- (d) The Unitholders authorise the Responsible Entity to make any amendments:
- (i) referred to in clauses 29.4(a), 29.4(b) or 29.4(c); or
 - (ii) required by ASIC in order for the Fund to be registered as a registered managed investment scheme,

in a deed made for that purpose and if required lodge that deed with ASIC and acknowledge that those changes will not adversely affect their rights.

30. General

30.1 Severance

Any provision of this Constitution which is illegal, invalid, unenforceable or partly unenforceable because it offends Law (including the Corporations Act) where possible, is to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

30.2 Waiver

The Responsible Entity may only waive a right it has under this Constitution by notice in writing, and:

- (a) no other conduct of the Responsible Entity (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right by the Responsible Entity on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right by the Responsible Entity does not prevent any further exercise of that right or of any other right.

30.3 Consents

Where this Constitution contemplates that the Responsible Entity may agree or consent to something (however it is described), the Responsible Entity may:

- (a) agree or consent, or not agree or consent; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise. In this clause 30.3, agree includes approve.

30.4 Governing Law

- (a) This Constitution and its formation are governed by the laws in force in New South Wales.
- (b) The Responsible Entity and the Unitholders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Signing page

Executed as a trust deed

Executed by Australian Ethical Investment Ltd ACN 003 188 930 as Responsible Entity, in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

[Signed]

[Signed]

Signature of Director

Signature of Company Secretary

John McMurdo

Karen Hughes

Full name (print)

Full name (print)

Annexure A Finding List - Corporations Act

This table cross-references this Constitution against the requirements of sections 601GA (*Contents of the Constitution*) and 601GB (*Constitution must be legally enforceable*) of the Corporations Act (CA), in accordance with the guidance contained in ASIC Regulatory Guide 134 (Managed Investments: Constitutions) issued 31 October 2023 (RG 134), while the Fund is a Registered Scheme.

| Requirement | Reference in CA and RG 134 | Cross-reference in Constitution |
|---|--|---|
| 1. Acquisition of interests - Makes adequate provision for the consideration to acquire an interest in the scheme. | CA s601GA(1)(a) (<i>regarding consideration to acquire interests</i>) RG 134 Section B (<i>Consideration to acquire interests</i>) | Clause 8 (<i>Application for Units</i>) |
| 2. RE powers - Makes adequate provision for the powers and rights of the responsible entity, <i>including</i> for making investments, borrowing or dealing with scheme property. | CA s601GA(1)(b) (<i>regarding powers of responsible entity regarding scheme property</i>) CA s601GA(3) (<i>Powers to borrow, raise money</i>) RG 134 Section C (<i>Class rights in registered schemes</i>) | Clause 20 (<i>Powers of the Responsible Entity</i>) |
| 3. Complaints - Makes adequate provision for the method for dealing with complaints about the scheme. | CA s601GA(1)(c) (<i>regarding members' complaints</i>) RG 134 Section D (<i>Powers and rights of a responsible entity</i>) | Clause 28 (<i>Complaints Handling</i>) |
| 4. Ending - Makes adequate provision for winding up the scheme. | CA s601GA(1)(d) (<i>regarding winding-up</i>) RG 134 Section F (<i>Changing the constitution of a registered scheme</i>) | Clauses 5.2 (<i>Termination and winding up of Fund</i>) and 5.3 (<i>Procedures on termination</i>) |
| 5. RE rights - Makes adequate provision for the powers and rights of the responsible entity, <i>including</i> to be paid fees or be indemnified out of scheme property. | CA s601GA(2) (<i>Fees, indemnities</i>) RG 134 Section C (<i>Class rights in registered schemes</i>) | Clause 20 (<i>Powers of the Responsible Entity</i>) Clause 25 (<i>Remuneration and expenses</i>) Clause 23 (<i>Limitation of</i> |

| Requirement | Reference in CA and RG 134 | Cross-reference in Constitution |
|---|--|--|
| | | <i>liability and indemnity of Responsible Entity)</i> |
| 6. Withdrawals - Makes adequate provision for any rights of members to withdraw from the scheme. | CA s601GA(4) (<i>Right to withdraw</i>) RG 134 Section E (<i>Complaints, disputes and remedies in registered schemes and Australian passport funds</i>) | Clause 12 (<i>Withdrawal Procedures - Registered Scheme</i>) Clause 14 (<i>Suspensions</i>) |
| 7. Enforceability - The constitution of a Registered Scheme must be a document that is legally enforceable between the members and the responsible entity of the scheme. | CA s601GB (<i>Constitution must be legally enforceable</i>) RG 134 Section G (<i>Withdrawal from registered schemes</i>) | Clause 1.8 (<i>Constitution binding</i>) Signing clause |
