

Constitution of
Australian Ethical Moderate Fund

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

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Constitution of Australian Ethical Moderate Fund

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

Fund	Name	Australian Ethical Moderate Fund
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Terms

This trust deed is dated 2023 and is declared by the Responsible Entity to be the constitution of Australian Ethical Moderate 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: (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 the Tax Act.
AMIT Income Year	means an Income Year in which the Fund is an AMIT.
AMIT Regime	means the regime for the taxation of AMITs, as set out in the following legislation: (a) the Tax Act;

	<ul style="list-style-type: none"> (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 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 6.1.
ASIC	the Australian Securities and Investments Commission (or its successor body having regulatory authority over the Fund).
ASIC Instrument	<p>means:</p> <ul style="list-style-type: none"> (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 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 Class Orders 13/655, 13/656 and 13/657.</p>
Assets	<p>all of the Property of the Responsible Entity as the responsible entity of the Fund:</p> <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 (b) including: <ul style="list-style-type: none"> (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 5.2(d).
Clearly Defined Rights	<p>means rights to income and capital arising from a Unit issued in the Fund that are:</p> <ul style="list-style-type: none"> (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, <p>disregarding:</p> <ul style="list-style-type: none"> (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 the Fund required under the Corporations Act.
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	<p>in respect of a Distribution Period, means:</p> <ul style="list-style-type: none"> (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 14.2(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.
Entry Fee	the entry fee payable to the Responsible Entity not exceeding 5% of the Application Price for a Unit issued by the Responsible Entity.
Financial Year	means: <ul style="list-style-type: none"> (a) for the first financial year, the period on and from the date defined in clause 4.1 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 Moderate 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 <i>A New Tax System (Goods and Services Tax) Act 1999</i> (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 14 or clause 16, as applicable.
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

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:

- (a) including:
 - (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:
 - (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 money in the Application Account representing subscription money for Units not yet issued.

Liquid

has the same meaning as in section 601KA(4) 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).

Management Fee

the management fee payable to the Responsible Entity under, and in accordance with, clause 23.2(a).

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 5.4.
Net Asset Value	means the Gross Asset Value less the total value of the Liabilities.
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 Withdrawal 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 immoveable 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 clause 11.2 or pursuant to a withdrawal offer made under clause 11.6, the total Redemption Price of all Units the subject of the redemption.
Redemption Date	subject to clause 12, the date on which a Unit the subject of a Redemption Request accepted by the Responsible Entity will be 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 clause 11.2, the next Valuation Time after the Responsible Entity determines to accept the Redemption Request; and (b) in respect of a Unit the subject of a Redemption Request made in response to a withdrawal offer and accepted by the Responsible Entity under clause 11.6, the time the relevant withdrawal offer closes.
Redemption Price	the price at which a Unit the subject of a Withdrawal Request is to be redeemed, being the amount calculated in accordance with clause 10.1.
Redemption Request	a request by, or on behalf of, a Unitholder to redeem wholly or partly from the Fund, in writing (which may include by electronic means).
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 27.2.
Regulatory Requirement Amendment	has the meaning given in clause 27.2(a).
Related Body Corporate	has the same meaning as in the Corporations Act.
Representative	has the meaning given in 9.6(a).
Required Majority	except where this Constitution or any applicable law provides otherwise, a simple majority.
Required Part	has the meaning given in clause 27.2.
Responsible Entity	Australian Ethical Investment Ltd until it is replaced as trustee under this deed and while the Fund is a Registered Scheme, means the person entered on the ASIC register as the responsible entity of the Fund.
Retail Clients	has the same meaning as in section 761G of the Corporations Act.
Special Resolution	<p>(a) while the Fund is a Registered Scheme, has the same meaning as in the Corporations Act; and</p> <p>(b) while the Trust is not a Registered Scheme, a resolution passed at a meeting of Unitholders:</p> <p>(i) 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</p> <p>(ii) 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.</p>
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).
Transaction Costs	<p>when calculating, as at any date:</p> <p>(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</p> <p>(b) the Redemption Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the</p>

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, and, subject to the Corporations Act, the Responsible Entity may in connection with an application or request for redemption of Units deem the Transaction Costs to be a lesser sum or zero.

Unit	an undivided beneficial interest in the Assets (subject to the Liabilities) as provided for in this Constitution.
Unitholder	(a) a person whose initial Application has been accepted by the Responsible Entity and whose name is recorded in the Register as the holder of a Unit in accordance with clause 8.1(a); or (b) if required by the Corporations Act, a person holding an interest in the Fund and determined under the Corporations Act to be a member of the Fund.
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.
Wholesale Clients	has the same meaning as in section 761G 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; and
 - (m) headings have been inserted only for convenience and do not affect any interpretation of this Constitution.
- 1.3 This trust deed 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 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 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 If this Fund is a Registered Scheme, a provision in this Constitution which is inconsistent with a provision in the Corporations Act, does not operate to the extent of any inconsistency.
- 1.7 If a provision of this deed is expressed as being "subject to the Corporations Act", the limitation applies only whilst the Fund is a Registered Scheme.

2. Rights and obligations of Unitholders

2.1 Enforceability

This Constitution:

- (a) is executed as a trust deed 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 Moderate Fund or such other name as the Responsible Entity determines.

3.2 **Appointment of the Responsible Entity**

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, the responsible entity of, the Fund.

3.3 **Declaration**

- (a) The Responsible Entity 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 Responsible Entity (or its custodian) during the continuance of the Fund.

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 in 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; 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. Commencement, duration and winding-up

4.1 Commencement of Fund

The Fund commences on the date when, following execution of this Constitution by the Responsible Entity, the Responsible Entity accepts the first Application for the issue of a Unit.

4.2 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 while the Fund is a Registered Scheme, 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 4.2(a), the Responsible Entity must not accept any Applications.

4.3 Procedures on termination

- (a) While the Fund is a Registered Scheme, it may only be wound up in accordance with the Corporations Act.
- (b) Subject to clauses 4.3(a) and 4.3(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.

4.4 Distribution following termination

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

4.5 Audit of final accounts

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.

4.6 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.

4.7 Rights and obligations of the Responsible Entity on termination

- (a) Subject to clause 4.5, on final distribution of the net proceeds of realisation of the Assets in accordance with clause 4.4, 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 wind up of the Fund.

5. Interests of Unitholders

5.1 Application of clause 5

This clause 5 applies subject to when the Fund is, or is seeking to qualify as, an AMIT, in which case clause 16 applies to the extent of any inconsistency with this clause 5.

5.2 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 deed 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 in respect of the matters required by section 601GA of the Corporations Act which are set out in this Constitution, determine the rights, liabilities, obligations and restrictions which attach to each class. A Unitholder holds a Unit subject to this Constitution and the rights, liabilities, obligations and restrictions attaching to that Unit.

5.3 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 the proportions of unitholdings 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.

5.4 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.

5.5 Powers of the Responsible Entity

- (a) Subject to the Corporations Act, the Responsible Entity may hold Units and trade them as the Responsible Entity determines.
- (b) The Responsible Entity may, in accordance with 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.

6. Application price

6.1 Application Price

A Unit must only be issued at its Application Price calculated in accordance with this clause 6.

- (a) The Application Price for a Unit issued to commence the Fund pursuant to clause 4.1 is \$1.00.
- (b) Subject to clauses 6.1(c) and 6.1(d), the Application price for a Unit issued after the issue of Units referred to in paragraph 6.1(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:

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

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; and

N = number of Units on issue in that 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 5.5(d)) and Transaction Costs will be determined on a proportionate basis based on the number of Units on issue in that class to the total number 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 6.1(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 a specified criteria or a formula.
- (d) Without limiting clause 6.1(b), the Responsible Entity may issue Units under a reinvestment facility or arrangement in accordance with clause 14.7 or clause 16.8, respectively, at an Application Price determined by the Responsible Entity, being a price other than the Application Price calculated in accordance with clause 6.1(b).

7. Application for Units

7.1 Application procedure

Except as otherwise provided in this Constitution and subject to the Corporations Act (including any ASIC Instrument), a person intending to apply for Units must (other than in relation to reinvestment of distributions in accordance with clause 14.7 or 16.8 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.

7.2 Payment other than by money

- (a) The Responsible Entity may, subject to clause 7.2(b), in its absolute discretion, 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 7.1(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 determined by Valuer;
- B = the transaction Costs of transferring the Property; and
- C = the Application Price calculated as at that time.

7.3 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

7.4 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, in its absolute discretion.

7.5 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.

8. Issue of Units

8.1 Issue of Units

- (a) Subject to clause 8.2, Units the subject of an Application are taken to be issued to a person when:
 - (i) the person's name is recorded in the Register as the holder of the Units; and
 - (ii) the Application is accepted by the Responsible Entity.

8.2 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; or
 - (iv) the Application was accepted in error.
- (b) If Units are cancelled under clause 8.2(a), the Responsible Entity is not required to adjust any Application Price or Redemption Price determined before the cancellation of the Units.

8.3 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.

8.4 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.

8.5 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.

8.6 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 for Units as the Responsible Entity determines and notifies to Unitholders.

8.7 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. 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 8.7(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 8.7(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.

9. Transfer of Units

9.1 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 reasonable 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.

9.2 Responsible Entity may refuse transfer

Subject to the Corporations Act and any applicable ASIC Instrument, the Responsible Entity may in its absolute discretion refuse to record a transfer of Units in the Register without giving any reason for the refusal including 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); or
- (d) any amount payable by the transferee to the Responsible Entity in respect of any of the transferor's Units remains unpaid.

9.3 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.

9.4 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.

9.5 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.

9.6 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 9.6(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.

9.7 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.

9.8 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.

10. Redemption Price

10.1 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 next Valuation Time after the Responsible Entity accepts the Redemption Request for withdrawal of the Unit, except 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:

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

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; and

N = number of Units on issue attributable to that 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 Redemption Request for withdrawal of the Unit, except 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 5.5(d)) and Transaction Costs will be determined on a proportionate basis based on the number of Units on issue in that class to the total number of Units on issue in the Fund.

11. Withdrawal Procedures

11.1 Request for redemption

Subject to clause 12, a Unitholder may request that the Responsible Entity redeem Units of the Unitholder by giving the Responsible Entity a Redemption Request. If a Unitholder gives a Redemption Request in accordance with clause 11.2, the Responsible Entity has an absolute discretion whether or not to accept or reject a Redemption Request (in whole or part) and may redeem some or all of the Units the subject of a Redemption Request.

11.2 Redemption procedure while the Fund is Liquid

While the Fund is Liquid and subject to clauses 11.4, 11.9 and 12:

- (a) the Responsible Entity must determine whether it will accept or reject a Redemption Request within 30 days of receipt of the Redemption Request, failing which the Responsible Entity will be deemed to have rejected the Redemption Request (unless it decides otherwise); and
- (b) if the Responsible Entity determines to accept the Redemption Request, the Responsible Entity must:
 - (i) redeem the number of Units specified in the accepted Redemption Request on the Redemption Date applicable to the Units;
 - (ii) cancel the Units by making appropriate changes to the Register with affect as at the Redemption Date; and
 - (iii) pay the relevant Redemption Amount within 21 days after the relevant Redemption Date.

11.3 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.

11.4 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.

11.5 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.

11.6 Redemption procedure while the Fund is not Liquid

- (a) While the Fund is not Liquid:
 - (i) a Unitholder may only withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with this Constitution (and if the Fund is a Registered Scheme, in accordance with the relevant Corporations Act provisions regulating such offers);
 - (ii) a Unitholder has no right to require that its Units be redeemed if there is no withdrawal offer currently open for acceptance by Unitholders;
 - (iii) the Responsible Entity is not at any time obliged to make a withdrawal offer; and
 - (iv) the Responsible Entity may determine the manner in which notice of any withdrawal offer is given to Unitholders.
- (b) If the Fund is a Registered Scheme, a withdrawal offer must contain the information required by the Corporations Act. The withdrawal offer must be sent to all Unitholders or to all Unitholders of a particular class in any manner permitted under clause 24 (which for the avoidance of doubt is to include by electronic means).
- (c) Subject to this clause 11 and the Corporations Act, the Responsible Entity may determine the terms of a withdrawal offer.
- (d) The Responsible Entity may cancel a withdrawal offer. If the Fund is a Registered Scheme, such cancellation must be in accordance with the Corporations Act.
- (e) Subject to the Corporations Act and clauses 11.9 and 12, the Responsible Entity must pay to a Unitholder or former Unitholder on acceptance of a Redemption Request made in response to a withdrawal offer, out of the Assets, the relevant Redemption Amount within 21 days after the relevant Redemption Date.

11.7 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.

11.8 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 11. The Assets being transferred must be valued in accordance with clause 13 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).

11.9 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 15.2.

11.10 Purchasing Units

- (a) The Responsible Entity may, in its absolute discretion, 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 11.10(a) either in whole or in part, out of its own funds.

11.11 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.

11.12 Order of redemption

Subject to the Corporations Act, Units withdrawn under this clause 11 shall be withdrawn in the order in which they were issued, or in such other order as determined by the Responsible Entity.

11.13 Redemption by Responsible Entity

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

- (a) if the Unitholder does not hold, or cease to hold, the applicable Minimum Holding;
- (b) if the Unitholder does not provide information as and when requested by the Responsible Entity
- (c) if any payment or reimbursement required to be made by the Unitholder is not made as and when required;
- (d) if the Responsible Entity believes that the Units are held in breach of prohibitions contained in this Constitution;
- (e) 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;
- (f) if the Responsible Entity determines that it is not financially viable to continue to operate the Fund;
- (g) if a Unitholder made a misrepresentation in acquiring its Units;
- (h) if such a redemption is in connection with any obligation, contractual or otherwise, the Responsible Entity has with any Government Agency or regulatory authority;

- (i) 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; or
- (j) if the Responsible Entity considers that such compulsory redemption is in the best interests of Unitholders as a whole;
- (k) if the Fund has terminated in accordance with clause 4.2; and
- (l) as otherwise provided in this Constitution.

11.14 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.

12. Suspensions

12.1 Ability to suspend

Subject to any cooling off rights under the Corporations Act, the Responsible Entity may at any time suspend the acceptance of Applications, the making of Redemption Requests, 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 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; or
- (d) 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.

12.2 Redemption and payment following suspension

- (a) A Redemption Request lodged during the period of suspension is deemed to have been received immediately after the end of the period of suspension.

- (b) Following any period of suspension under this clause 12, the period allowed under clauses 11.2(b)(iii) or 11.6(e) for payment of the Redemption Amount may be extended by the number of days during which such circumstances for the suspension apply.

13. Valuation

13.1 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.

13.2 Valuation methods

- (a) Subject to clause 13.3, 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.

13.3 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.

13.4 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.

13.5 Net Asset Value

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

14. Income and Capital Distributions

14.1 Distributions if Fund is not an AMIT

This clause 14 applies in respect of any Financial Year in which the Fund is not an AMIT and is not seeking to qualify as an AMIT.

14.2 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 (in its absolute discretion) 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.

14.3 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 indefeasible interest in the Distributable Income (less any share of income paid to Unitholders under clause 11.7(b)) for that class of Units for the relevant Distribution Period. Subject to any Class Rights and any determination made under clause 11.7(b), 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 14.4; and
 - (ii) required to be deducted under this Constitution or by Law including all Taxes.

14.4 Power to accumulate or defer amounts

Any Income Entitlement which it is impractical to distribute in a Distribution Period becomes an Asset and is deemed to accrue to the next Distribution Period including any balance representing a fraction of one cent arising as a consequence of the rounding off of the Income Entitlement to whole cents.

14.5 **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.

14.6 **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.

14.7 **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 14.7(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.

14.8 **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.
- (d) Income Entitlements must be paid to Unitholders out of the distribution account as soon as practicable after the Distribution Period End Date.

14.9 **Fund taxed as a company**

Notwithstanding any other provision of this clause 14, the Responsible Entity has complete and absolute discretion as to 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.

15. Taxation

15.1 Payment of Tax

Subject to clause 15.3, 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 15.1 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.

15.2 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.

15.3 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 clauses 16.5 and 16.6(a); 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 clauses 16.5 and 16.6(a), 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.

15.4 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 15 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.

15.5 GST

- (a) All payments have been calculated 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 15.5(b) to 15.5(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 clauses 16.5 and 16.6(a)) or withdrawal proceeds.
- (e) For the purposes of this clause 15, 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.

16. Attribution Managed Investment Trust

16.1 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 18) the provisions of this clause 16 apply when clause 14 does not apply.

16.2 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 16.2(a), make a choice to treat each class of Units in the AMIT as being a separate attribution managed investment trust for the purposes of the Tax Act.

16.3 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 16.2.
- (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.

16.4 Attribution under AMIT Regime

- (a) Terms used in this clause 16.4 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 16.4(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 taxable amounts of the Fund to be attributed in relation to the Fund or each class or 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 16.4(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.

16.5 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 AMIT 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 AMIT in relation to the Fund for each Distribution Period.
- (b) The preparation of the accounts of the Fund under clause 17.3 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) to 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.

16.6 Payment of distributions

- (a) Subject to clauses 16.7 and 16.8, the Responsible Entity must arrange for, and prepare, the payment of any amounts determined under clause 16.5 to Unitholders as soon as practicable after the Distribution Period End Date.

- (b) Payment of any amounts determined under clause 16.5 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 16.5 reinvested in Units at the Application Price prevailing at the time the cheque or deposit is cancelled.

16.7 Power to accumulate or defer amounts

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

16.8 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.

16.9 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 16.4; 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 16.4,

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

17. Accounts and Audit

17.1 Preparation of accounts

The Responsible Entity must:

- (a) prepare, or cause to be prepared, accounts of the Fund in accordance with generally accepted accounting principles and approved accounting standards as they apply to managed investment schemes; and
- (b) ensure that the accounts are maintained, audited and reported on as prescribed by the Corporations Act.

17.2 Audit

The Responsible Entity must appoint an independent registered company auditor to audit the accounts of the Fund. Subject to the Corporations Act, the Responsible Entity may remove and subsequently replace any Auditor.

17.3 Accounting standards

The accounts of the Fund must be kept and prepared by the Responsible Entity in accordance with applicable Australian accounting standards and the Corporations Act. 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.

17.4 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; and
 - (ii) the auditor of the Compliance Plan (if any) to audit and report on the Compliance Plan, and if the Fund is a Registered Scheme, each in the manner required by the Corporations Act.

18. Powers of Responsible Entity

18.1 Powers of investment

Without limiting any other Power, the Assets may be invested in, or represented by, any form of Property. The Responsible Entity is to have regard to clauses 18.1(a) and 18.1(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 must seek out 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 and properly presented 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 must seek to avoid 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.

18.2 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 acquire, develop, maintain, deal with, invest in and sell any property as it sees fit and in its discretion;

- (b) which it could exercise if it were the absolute and beneficial owner of the Assets;
- (c) 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;
- (d) to borrow, procure financial accommodation and raise money for the purposes of the Fund whether or not on the security of the Assets;
- (e) to lend money and on-lend or provide financial accommodation to any person;
- (f) to issue debentures, grant mortgages and grant or give any security over, create any interests in (including security interests), or encumber, the Assets;
- (g) to carry on any business;
- (h) to fetter future discretions;
- (i) 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; and
- (j) to enter into any form of contract in exercise of any Power in paragraphs (a) to (i) above.

18.3 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.

18.4 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 18.4 does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations as responsible entity 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.

18.5 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 is to 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 23).

18.6 Operation

- (a) None of the clauses in this clause 18 limit or restrict the operation of any other clause in this clause 18 or any other clause of this Constitution.
- (b) The Powers, discretions and rights of the Responsible Entity under this clause 18 must be exercised subject to any duties imposed under the Corporations Act.

19. Retirement of Responsible Entity

19.1 While a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity:

- (a) may retire as the responsible entity of the Fund as permitted by Law; and
- (b) must retire as the responsible entity of the Fund when permitted by Law.

Subject to the Corporations Act, the Responsible Entity may appoint in writing, or propose the appointment of, another person to be the Responsible Entity.

19.2 While not a Registered Scheme

While the Fund is not a Registered Scheme, the Responsible Entity:

- (a) may retire as the responsible entity of the Fund on not less than 1 months' notice to Unitholders (or any shorter period as they agree); and
- (b) must retire as the responsible entity of the Fund if required by Law or by all Unitholders.

On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

19.3 **New Responsible Entity**

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

19.4 **Release**

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.

20. **Rights and Liabilities of Responsible Entity**

20.1 **Responsible Entity as a Unitholder**

The Responsible Entity and its Affiliates may hold Units.

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.

20.2 **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 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, 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 and retain for its own benefit any profits or benefits derived from any such contract or transaction;
- (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.

21. Limitation of liability and indemnity of Responsible Entity

21.1 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.

21.2 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.

21.3 Limitation of Responsible Entity's liability

Subject to 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 21.2) any of the opinions, advice, statements, documents or information referred to in clause 21.2;
- (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.

21.4 **Liability not limited**

Clause 21.3 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.

21.5 **Liability limited to Assets**

Subject to the Corporations Act, the liability of the Responsible Entity to one 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.

The Responsible Entity is not required to do anything:

- (a) unless the Responsible Entity is satisfied that its liability is satisfactorily limited; or
- (b) 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.

21.6 **Responsible Entity indemnity**

To the extent permitted by the Corporations Act and in addition to any indemnity the Responsible Entity has under this Constitution (including in respect of any Tax liability) or in 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.

21.7 **Indemnity extends to cover acts or agents to delegates**

To the extent permitted by the Corporations Act, if for any reason (including because of the operation of section 601FB(2) 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 21.6 extends to also include that liability.

21.8 **Indemnity continues**

The indemnity in clause 21.6 continues to apply after the Responsible Entity retires or is removed as responsible entity of the Fund.

21.9 **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.

21.10 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.

22. Liability of Unitholders

22.1 Limitation

Subject to clauses 22.3 and 22.4, the liability of a Unitholder is limited to the amount, if any, that remains unpaid on the Unitholder's Units.

22.2 Claims of creditors

Subject to clause 23.3, 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.

22.3 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.

22.4 Recourse limited to Assets

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

23. Remuneration and expenses

23.1 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.

23.2 Fees

Subject to clause 23.1 and 23.6, 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 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) an Entry Fee payable from the relevant application payment within 10 days after the relevant Units are issued; and

23.3 Expenses

Subject to clause 23.1, 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) 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 did not properly perform its duties);
- (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 preparation and lodgement of accounts, applications and returns with ASIC;
- (t) the Liabilities;
- (u) 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;
- (v) 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;
- (w) 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 26 (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);

- (x) the termination and winding up of the Fund; and
- (y) complying with any Law, and any request or requirement of ASIC or an Exchange.

23.4 **Sharing of fees**

The Responsible Entity may, in its absolute discretion, pay from the remuneration and fees it receives in accordance with this clause 23, fees or commissions to its advisers, agents, delegates and employees or any licensed or authorised dealer, broker or adviser.

23.5 **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.

23.6 **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 23.2 or 23.6(c) the Responsible Entity may agree fee arrangements (including, without limitation, fees under clause 23.2) 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, in its absolute discretion, 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.

23.7 **GST**

- (a) The fees payable to the Responsible Entity under clause 23.2 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.

24. Notices

24.1 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).

24.2 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.

24.3 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.

25. Unitholders' Meetings

25.1 Convening of meetings

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

25.2 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 Unitholders' 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 25.2(b) as if the Fund were a Registered Scheme.

25.3 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.

25.4 Right to attend and speak

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

25.5 Proxies

A Unitholder may appoint a proxy in the manner provided by the Corporations Act to attend and vote at a meeting. 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.

25.6 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.

25.7 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.

25.8 Quorum

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.

If a quorum is not present within 30 minutes of the scheduled commencement time of the meeting, the meeting is:

- (a) if convened pursuant to clause 25.2, dissolved; or
- (b) otherwise, adjourned to such date, time and place as the Responsible Entity specifies.

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.

25.9 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.

25.10 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 25.12 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.

25.11 Voting while the Fund is a Registered Scheme

While the Fund is a Registered Scheme, voting shall be conducted in accordance with Part 2G.4 of the Corporations Act.

25.12 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.

25.13 Joint holders

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

25.14 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.

25.15 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.

25.16 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.

25.17 Minutes of meeting

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

25.18 Meetings of a class

This clause 25 applies to meetings of Unitholders of a class with any necessary modifications.

26. Complaints Handling

26.1 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 26, 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.

26.2 Dispute resolution

The Responsible Entity must comply, as an Australian financial services licensee, with the dispute resolution requirements under section 912A(2) of the Corporations Act for Retail Clients in dealing with a complaint of a Unitholder or Applicant that is a Retail Client.

26.3 Procedure

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

- (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 immediately 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.

27. Amendments to the Constitution

27.1 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; or
 - (iii) clauses 27.2 or 27.3 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 4.1;
 - (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 27.2 or 27.3 apply.

27.2 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act, ASIC Relief or ASIC (**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.

27.3 Statutory requirements

- (a) Subject to clause 27.1(a), 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 or legislative instrument (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 27, 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 27.3(a), 27.3(b) or 27.3(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.

28. General

28.1 Severance

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

28.2 Waiver

The Responsible Entity only waives 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.

28.3 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, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

In this clause 28.3, agree includes approve.

28.4 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.

Annexure A Finding List - Corporations Act

This list is included to assist ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act (section number)	Constitution (clause number)
601GA(1)(a)	6.1
601GA(1)(b)	18.2(a) and 18.2(b)
601GA(1)(c)	26
601GA(1)(d)	4.2
601GA(2)	21.6, 23.1, 23.2 and 23.3
601GA(3)	18.2(d) and 18.2(e)
601GA(4)(a)	11.1
601GA(4)(b)	11.2
601GA(4)(c)	11.6
601GB	2.1(b)
601GC	27.1(a)