

# Constitution for The Airlie Concentrated Share Fund

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**Airlie Funds Management Pty Ltd**  
ACN 159 022 974

This is an unexecuted consolidated working copy of the Trust Deed for The Airlie Concentrated Share Fund, as at 11 June 2018.

It consists of the Trust Deed dated 27 September 2012 as amended by the first supplemental deed dated 27 September 2012, the second supplemental deed dated 26 May 2017 and the third supplemental deed dated Supplemental Deed dated 11 June 2018.

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EXECUTION

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## DEED POLL

### By

Airlie Funds Management Pty Ltd (**Responsible Entity**) ACN 159 022 974 of Level 8, 333 George Street, Sydney, NSW 2000.

## TERMS

### 1 Interpretation

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#### 1.1 Definitions

The following words have the following meanings in this Constitution, unless the context requires otherwise.

**Accounting Standards** means:

- (a) all accounting standards and principles required by Australian law to be complied with in respect of the Fund; and
- (b) except to the extent that it is inconsistent with paragraph (a) above, generally accepted accounting principles applying in Australia, subject to any variation approved by the Auditor.

**“AMIT”** or **“attribution managed investment trust”** has the meaning given by the Income Tax Assessment Act 1997.

**“AMMA Statement”** means an AMIT Member Annual Statement as defined in and issued under subdivision 276-H of the Income Tax Assessment Act 1997.

**Applicant** means an applicant for a Unit.

**Application** means an application for a Unit made in a form approved by the Responsible Entity.

**Application Money** means any form of valuable consideration received by the Responsible Entity for Units and any application fee and other money paid upon Application for any Units.

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

**ASIC Relief** has the meaning given in clause 1.5.

**Assets** means, from time to time, all the Property of the Fund including subscriptions paid in respect of each issued Unit but, for the avoidance of doubt, excluding any subscription amount paid in connection with an Application for a Unit which has not been issued.

**“Attribution Amount”** means for a Period, any amount calculated by the Responsible entity and attributed to a Unitholder on a fair and reasonable basis and

in accordance with this constitution and the Fund's constituent documents, for the purposes of Division 276 of the Income Tax Assessment Act, and may include or be adjusted by:

- (i) components of an income character (including assessable, exempt and non-assessable, non-exempt characters;
- (ii) components of a tax offset character;
- (iii) any amount the Responsible Entity determines; and
- (iv) an Under or Over.

**Auditor** means the auditor for the Fund, from time to time.

**Business Day** means a day other than a Saturday, Sunday or public holiday on which banks are generally open for business in New South Wales.

**Cash** includes a cheque, bank cheque, payment order or electronic transfer of funds (but not currency unless the Responsible Entity otherwise determines).

**Closing Time** means 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 as at that day or any other day prescribed by the Responsible Entity.

**Compliance Committee Member** means a member of the compliance committee, if any, established by the Responsible Entity in connection with the Fund.

**Constitution** means this deed, as amended from time to time.

**Consultant** means any adviser including any counsel, lawyer, accountant, auditor, valuer, banker, broker, underwriter, tax adviser, contractor and any other professional adviser.

**Corporations Act** means the Corporations Act 2001 (Cth) subject to any applicable ASIC Relief.

**Costs** means all direct and indirect costs, charges, disbursements, expenses, outgoings, fees (including all legal, professional, accounting, expert, investment manager, custodian, Consultant fees, valuation fees and registration fees), commissions, brokerage, Taxes and all financing costs (including bank charges and fees, interest charges, discount fees and guarantee fees).

**Custodian** means the custodian, if any, appointed by the Responsible Entity to hold the Assets.

**"Determined Member Component"** has the meaning given to it in the Income Tax Assessment Act 1997;

**"Determined Trust Components"** has the meaning given to it in the Income Tax Assessment Act 1997.

**Disclosure Document** means a product disclosure statement, information memorandum or any other form of disclosure document used to offer Units for subscription or invite subscriptions for Units.

**Distributable Amount** means:



- (a) such amount as the Responsible Entity determines for a Financial Year; and
- (b) otherwise, the Net Taxable Income of the Fund for the Financial Year.

If the Distributable Amount is to be calculated for a Period that is part of a Financial Year, it must be calculated as if the Period was a Financial Year.

**Financial Year** means, unless the Responsible Entity determines otherwise, a financial year in respect of the Fund being:

- (a) for the first financial year, the period commencing on the date on which the Fund commences to the next 30 June;
- (b) for the last financial year, the period commencing on the 1 July immediately before the date the Fund terminates to the date the Fund terminates; and
- (c) for all other periods, the 12 months period ending 30 June in each year.

**Financial Year End Distribution** means, in respect of a Period which ends on the last day of a Financial Year, an amount calculated by the Responsible Entity as the positive amount, if any, by subtracting from the Distributable Amount for the Financial Year, the sum of the Interim Distributions paid in respect of previous Periods forming part of the same Financial Year (if any).

**First Disclosure Document** means the first Disclosure Document for the offer of Units.

**Fund** means the trust constituted under this Constitution.

**Gross Asset Value** means the total value of the Assets determined in accordance with this Constitution.

**GST** means any goods and services tax including the tax imposed under the GST Law.

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

**in issue** means in respect of a Unit, that the Unit has been issued and not redeemed.

**Interim Distribution** means, in respect of a Period ending on a day other than the last day of a Financial Year, an amount determined by the Responsible Entity equal to what would have been the Distributable Amount for the Period if the Period were a Financial Year.

**Issue Price** means the issue price per Unit being:

- (a) for Units issued to commence the Trust, \$1.00 per Unit;
- (b) subject to paragraph (c) of this definition, for any subsequent issue of Units, a price per Unit equal to:

Net Asset Value

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+ Transaction Costs

Number of Units in issue

using the value of each of the variables determined by the Responsible Entity as properly referable to the Class to which the Unit for which the Issue Price is being calculated belongs, at the next Valuation Time after the Responsible Entity accepts the Application for issue of the Unit; and

- (c) for Units issued pursuant to clause 5.4, an issue price per Unit determined by the Responsible Entity in accordance with that clause.

**Liabilities** means all liabilities of the Fund including all liabilities accrued but not yet paid, borrowings, Costs, contingent liabilities, unpaid amounts due to a Unitholder including Redemption Amounts and Distributable Amounts, unpaid remuneration due to the Responsible Entity and any provision which the Responsible Entity determines should be taken into account in determining the liabilities of the Fund, but excluding Unitholder Liabilities.

**Liquid** has the meaning given in section 601KA(4) of the Corporations Act.

**Loss** includes, in each case whether of a direct, indirect or consequential nature:

- (a) any liability, damage, cost (including reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, any thing; and
- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss under, or in relation to, any other contract.

**Minimum Holding** means the number of Units (or Cash value equivalent) specified in the First Disclosure Document as being the minimum subscription or holding of Units or such other amount prescribed by the Responsible Entity from time to time.

**Minimum Redemption** has the meaning given in clause 7.3(a).

**Net Asset Value** means the Gross Asset Value less the total value of the Liabilities.

**Net Taxable Income** means, for a Financial Year the net income of the Fund for the Financial Year as determined in accordance with the principles applicable under Division 6 of Part III of the Tax Act, reduced to the extent of Non-Cash Income, and increased to the extent of any Non-Taxed Income.

**New Responsible Entity** means a person appointed as Responsible Entity under this Constitution.

**Non-Cash Income** means any amount that is included in the net income of the Fund in respect of franking credits.

**Non-Taxed Income** means any amount that is received by the Fund as income or capital gain that is not otherwise included in net income, including but not limited to the discount on capital gains.

**Old Responsible Entity** means a Responsible Entity of the Fund, who is removed or retires.

**Ordinary Resolution** means a resolution passed at a meeting of Unitholders:

- (a) on a show of hands, by greater than 50% of Unitholders present in person or by proxy and entitled to vote on the resolution; or
- (b) on a poll, by persons who together hold greater than 50% of the number of Units held by Unitholders present in person or by proxy and entitled to vote on the resolution.

**“Over”** has the meaning given to it in the Income Tax Assessment Act 1997.

**Pay** includes apply, transfer, assign, convey or credit a monetary amount.

**Period** means:

- (a) where a distribution is made in accordance with clause 11, any period determined by the Responsible Entity so long as the period is all or part of one Financial Year and commences and ends during, or at the same time as, the Financial Year; and
- (b) where a distribution is made in accordance with clause 11A, a period determined by the Responsible Entity for the purposes of a making a distribution under clause 11A.

**Property** means property, assets and rights of any kind including real, personal, moveable and immovable property of any nature, wherever situated, including income, financial products, insurance policies, currency, Cash, bank accounts and choses in action.

**Redemption Amount** means, in respect of a redemption of Units of a Unitholder, the Redemption Price of the Units multiplied by the number of Units redeemed.

**Redemption Date** has the meaning given in clause 7.2(c).

**Redemption Fee** means the fee described in clause 17.1(d).

**Redemption Price** means the redemption price of a Unit to be calculated in relation to the particular class of Units as follows:

$$\frac{\text{Net Asset Value}}{\text{Number of Units in issue}} - \text{Transaction Costs}$$

using the value of each of the variables determined by the Responsible Entity as properly referable to the Class to which the Unit for which the Redemption Price is being calculated belongs, at the next Valuation Time after the Responsible Entity accepts the redemption request for redemption of the Units.

Each of the variables in this definition must be determined in accordance with:

- (i) while the Trust is Liquid, as at the next Valuation Time after the Responsible Entity receives and accepts the relevant redemption request; and
- (ii) while the Trust is not Liquid, as at the time the relevant withdrawal offer closes.

**Register** means the register of Unitholders maintained by, or on behalf of, the Responsible Entity.

**Reinvestment Arrangement** has the meaning given in clause 11.12(a).

**Related Party** has the meaning set out in section 228 of the Corporations Act, as if the relevant person was a public company.

**Representative** has the meaning given in clause 6.4.

**Required Part** has the meaning given in clause 21.2.

**Responsible Entity** means, from time to time:

- (a) if the Fund is Registered, the responsible entity of the Fund; and
- (b) otherwise the trustee of the Fund who is called the "Responsible Entity" in this Constitution.

**Tax or Taxes** means every kind of tax, duty, rate, levy, withholding, deduction and charge imposed at any time by any fiscal, national, state or local authority or entity, together with interest and penalties including, for the avoidance of doubt, any GST.

**Tax Act** means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

**Termination Event** has the meaning given in clause 24.1.

**Transaction Costs** means the transaction costs determined by the Responsible Entity to be associated with an issue or a redemption of a Unit in a class being:

- (a) when calculating the Issue Price of a Unit, the Responsible Entity's estimate of the total cost which would be incurred in investing the Application Money and are attributable to the Unit; and
- (b) when calculating the Redemption Price of a Unit, the Responsible Entity's estimate of the total cost which would be incurred in realising Assets to make the redemption and are attributable to the Unit,

provided that, subject to the Corporations Act, the Responsible Entity may in connection with any particular application or request for redemption of Units in its absolute discretion deem the Transaction Costs to be a lesser sum, an estimated average percentage or zero.

**Trust Fund** means, at any time, all of the Assets but subject to the Liabilities at that time.

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

**Unit** means an undivided beneficial interest in the Trust Fund as provided for in this Constitution.

**Unitholder** means a person who has been issued Units in accordance with clause 5.3.

**Unitholder Liabilities** means the amount representing Unitholders' capital, undistributed profits, interest attributable to Unitholders accruing on Unitholder capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable regardless of whether characterised as equity or debt in the accounts of the Fund (but excluding Redemption Amounts and Distributable Amounts).

**Valuation Time** means a time as at which the Responsible Entity calculates the Net Asset Value for the purposes of determining any amount or item in accordance with this Constitution.

## 1.2 Interpretation

The following apply in the interpretation of this Constitution, unless the context requires otherwise.

- (a) A reference to this Constitution, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Constitution.
- (f) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Constitution, their substitutes and assigns.
- (h) **Includes** means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this constitution.

- (l) A reference to time is to the time in place where a thing is to be done, unless specified otherwise.
- (m) A heading is for reference only. It does not affect the meaning or interpretation of this Constitution.
- (n) Where this Constitution includes an example of the operation of a provision, the example is not taken to be exhaustive and if the example is inconsistent with the provision, the provision prevails.
- (o) Words defined in the Corporations Act not otherwise defined in this Constitution, have the same meaning in this Constitution.

### 1.3 Schedules

Any schedule attached to this Constitution forms part of it. If there is any inconsistency between any clause of this Constitution and any provision in any schedule or attachment, the clause of this Constitution will prevail.

### 1.4 If the Fund is a registered scheme

- (a) A clause in this Constitution which is stated to be subject to the Corporations Act or apply except as the Corporations Act provides otherwise, is only subject to, or its application restricted by, the Corporations Act at any time whilst the Fund is a registered scheme.
- (b) The Responsible Entity declares that this Constitution is the constitution of the Fund for the purposes of the Corporations Act at any time that the Fund is a registered scheme.

### 1.5 Statutory requirements

If the Corporations Act requires that this Constitution contain certain provisions or ASIC grants relief or an exemption from, or modification to, the provisions of the Corporations Act (**ASIC Relief**) on condition that this Constitution contain 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 Relief to apply and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the ASIC Relief is granted by class order (rather than specifically in relation to the Fund or the Responsible Entity) then the provisions required for the class order to apply will only be taken to be incorporated if they automatically apply to the Fund or the Responsible Entity otherwise declares in writing that the ASIC Relief is to apply.

### 1.6 Rounding

The Responsible Entity may round (either up or down) a Unit fraction, the Issue Price, Redemption Price, distributions to be made or any other amounts to be calculated or paid under this Constitution to such number of decimal places, to a whole cent or to a whole Unit as determined by the Responsible Entity.

### 1.7 Interpretation of references to the Income Tax Assessment Act

A reference in this Constitution to an Income Tax Assessment Act is a reference to the Income Tax Assessment Act when and to the extent to which it applies to this Constitution, the Fund, the Responsible Entity or the Unitholders in the Fund, as the case may be. For the purposes of this Constitution, if the provisions of the Income Tax Assessment Act and this Constitution conflict on the same matter, the provisions in the Income Tax Assessment Act prevail.

## **2 Establishment of the Trust**

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### **2.1 Name of the Fund**

- (a) The Fund formed under this Constitution is called The Airlie Concentrated Share Fund or any other name the Responsible Entity determines.
- (b) If a Responsible Entity retires or is removed, the New Responsible Entity must, unless otherwise approved by the Old Responsible Entity, change the name of the Fund to a name that does not imply an association with the Old Responsible Entity or its business, and must do so within 1 month (or a longer period approved by the Old Responsible Entity) after the Old Responsible Entity retires or is removed.

### **2.2 Declaration of trust**

The Responsible Entity declares that it will hold the Trust Fund on trust for the Unitholders on, and subject to, the terms and conditions of this Constitution.

### **2.3 Commencement of the Fund**

The Fund commences on the date that a person specified by the Responsible Entity Pays to the Responsible Entity or Custodian \$100 to establish the Trust Fund. On the payment of that amount, 100 Units will automatically be issued to that person.

### **2.4 Duration of the Fund**

The Fund ends when the winding up of the Fund under this Constitution is completed, the final distribution is made to Unitholders and all Liabilities have been paid.

### **2.5 Assets not available to another trust**

- (a) The Assets are not available to meet any liabilities of any trust other than the Fund.
- (b) The Responsible Entity must, if required by the Corporations Act, but not otherwise, ensure that the Assets are clearly identified as Assets and held separately from the Property of the Responsible Entity and the Property of any other trust.

- (c) If not required by clause 2.5(b) to hold Assets separately, the Responsible Entity may hold the Assets of the Fund together with other Property.

## **2.6 Vesting of Assets**

The Assets vest in the Responsible Entity or Custodian on trust for the Unitholders throughout the continuance of the Fund.

## **3 Unitholders and responsible entity bound by deed**

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### **3.1 Constitution enforceable**

This Constitution is executed for the benefit of the Unitholders and is legally enforceable as between the Unitholders and the Responsible Entity.

### **3.2 Unitholders bound**

All Unitholders (and all persons claiming through them) from time to time will be entitled to the benefit of, and will be bound by, this Constitution as if each Unitholder were a party to this Constitution.

## **4 Units**

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### **4.1 Beneficial interest divided into Units**

The beneficial interest in the Trust Fund is divided into Units.

### **4.2 Interest conferred by Units**

- (a) Each Unit confers on its Unitholder an equal undivided interest in the Trust Fund as a whole.
- (b) A Unit does not confer any interest in any particular part of the Trust Fund or in any Asset.
- (c) The right of each Unitholder is limited to the right to require the due administration of the Fund in accordance with this Constitution.
- (d) If the Responsible Entity breaches or threatens to breach any duties or obligations to a Unitholder, the Unitholder's recourse against the Responsible Entity is limited to a right to recover damages or compensation from the Responsible Entity in the courts, and the Unitholders acknowledge that damages or compensation from the Responsible Entity is an adequate remedy for such breach or threatened breach.
- (e) Any power, right or discretion conferred on the Responsible Entity under the terms of this Constitution must be read down or regarded as void to the extent necessary to ensure that this Trust Fund has clearly defined rights to income and capital arising from each Unit in the Trust Fund for the purposes of section 276-10(b) of the Income Tax Assessment Act.



#### 4.3 Rights

A Unitholder holds a Unit subject to the rights, obligations and restrictions attaching to that Unit as set out in this Constitution.

#### 4.4 No interference by Unitholders

No Unitholder, other than as provided by the Corporations Act or as expressly provided in this Constitution, is entitled to:

- (a) interfere with the rights or powers of the Responsible Entity, the Custodian or their dealings with the Trust Fund, the Assets or any part of them;
- (b) purport to exercise any rights, powers or privileges in respect of any Asset;
- (c) interfere in any way with the Fund, the Assets or the Trust Fund;
- (d) require that any Asset be transferred to any Unitholder; or
- (e) lodge a caveat in respect of any Asset.

#### 4.5 Classes of Units

- (a) The Responsible Entity may in accordance with the Corporations Act and provided that such action does not have a material adverse effect on the rights or obligations of any existing Unitholders:
  - (i) issue different classes of Units and may determine the rights, obligations and restrictions which will attach to the Units within each class; and
  - (ii) alter the class of a Unit by converting the entire class of Units into another class or by re-classifying or re-allocating particular Units to another class.
- (b) At any time, all the Units in a class are of equal value, regardless of when the Units were issued.
- (c) In making a determination, allocation, distribution or determination of a variable pursuant to this Constitution in relation to a class of units in the Fund, the Responsible Entity must make such determination, allocation, calculation or distribution having regard to the terms of the relevant class and, where applicable, to ensure that an item or variable is determined, allocated, calculated or distributed based on what is properly referable to that relevant class.
- (d) Where more than one class is on issue in the Fund, the Responsible Entity may make a determination that:
  - (i) a particular fee (or part or class of fee) is referable to a particular class of Units in the Fund; or
  - (ii) any particular cost, charge, expense or outgoing (or part of class or cost, charge, expense or outgoing) is referable to a particular class.
- (e) Where more than one class is in issue in the Fund, the Distributable Amount referable to each particular class in the Fund will be in the proportion of Distributable Amount properly referable to that class, including

after deducting any fees, costs, charges, expenses or outgoings properly referable to that class.

#### **4.6 Issue and reconstruction of Units**

The Responsible Entity may at any time issue further Units, cancel, consolidate or divide Units or grant options to subscribe for Units provided that such action does not have an adverse effect on the rights or obligations of any existing Unitholders.

### **5 Applications for Units**

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#### **5.1 Application for Units**

To subscribe for a Unit, an Applicant must complete an Application and Pay the Application Money by way of subscription to the Responsible Entity or Custodian.

#### **5.2 Responsible Entity may determine a Closing Time for Applications and may reject Applications**

The Responsible Entity may:

- (a) from time to time, determine that Applications to subscribe for Units will only be accepted if received by a Closing Time; and
- (b) in its absolute discretion, reject an Application, in whole or in part, without reason and irrespective of whether the Application has been received by the Closing Time that applies to that Application.

#### **5.3 Issue of Units**

A Unit is issued to a person upon the earlier of when:

- (a) the Application and Application Money is accepted by the Responsible Entity; and
- (b) the Responsible Entity causes the person's name to be recorded on the Register.

#### **5.4 Issue of Units in accordance with ASIC Relief**

- (a) Notwithstanding any other clause of this Constitution, but subject to the Corporations Act, the conditions of any applicable ASIC Relief being satisfied and clause 5.4(b), the Responsible Entity may offer for subscription and an Applicant may subscribe for, a Unit to be issued at an issue price determined by the Responsible Entity in circumstances outlined in the applicable ASIC Relief.
- (b) The issue price determined by the Responsible Entity under clause 5.4(a) must not be less than 50% of the Issue Price of a Unit calculated as at that time in accordance with paragraph (b) of the definition of Issue Price.

#### **5.5 Number of Units created**

Subject to clause 5.10, the number of additional Units which will be created in respect of an Application accepted by the Responsible Entity is the number calculated by the Responsible Entity by dividing the Application Money (less any application fee) by the Issue Price for the Units.

#### **5.6 Uncleared funds**

Notwithstanding any other act of the Responsible Entity or any of its agents, the Responsible Entity may 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 subscription amount to the Applicant if:

- (a) a subscription amount for Units is tendered by way of uncleared funds or cheque and the funds are not cleared or the cheque is dishonoured;
- (b) the Applicant is not entitled to hold Units; or
- (c) the Application was accepted in error.

#### **5.7 Fractional Units**

The Responsible Entity may issue and allow to remain on issue fractional Units. The provisions of this Constitution relating to Units and Unitholders apply to fractional Units and holders of fractional Units in the proportion which the value of the relevant fractional Unit bears to the value of a Unit (calculated to such number of decimal places as the Responsible Entity determines). The Responsible Entity may add any fractional Unit held by a Unitholder to, and consolidate it with, any other fractional Units held by that Unitholder.

#### **5.8 Confirmations**

The Responsible Entity may promptly issue written confirmations to Unitholders in respect of Units that are issued.

#### **5.9 Certificates**

The Responsible Entity is not required to issue Unit certificates.

#### **5.10 Transfer of Property**

- (a) The Responsible Entity may, subject to clauses 5.10(b) and 14.2(b), in its absolute discretion, accept a transfer of Property to the Fund (rather than Cash) as payment of part or all of the Issue Price for Units for which a person is subscribing.
- (b) If clause 5.10(a) applies, the Responsible Entity must value the Property in accordance with clause 14.2 and all costs incurred in valuing and transferring the Property must be deducted from that value before the number of Units to be issued is calculated.

### 5.11 Restriction on new Units

The Responsible Entity must not issue any Units after the 80th anniversary from the day before the Fund commenced (being the perpetuity period specified for the Fund) if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. This clause prevails over all other provisions of this Constitution.

## 6 Transfer and transmission of Units

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### 6.1 Transfer or transmission of Units

- (a) The Responsible Entity may refuse to register any transfer of Units in its absolute discretion without providing any reason.
- (b) Subject to this Constitution, Units may be transferred or transmitted if no Unitholder would as a result of the transfer hold less than the Minimum Holding.

### 6.2 Form of transfer

All transfers of Units must be in writing and be made in such a usual form or the form as required under the Corporations Act or that the Responsible Entity may from time to time accept.

### 6.3 Recognition of title

- (a) The transferor of a Unit remains the Unitholder until the name of the transferee is entered in the Register as the new Unitholder in respect of the Unit.
- (b) If a Unitholder dies, the survivors or survivor where the deceased was a joint holder and the executors or administrators of the deceased where the Unitholder was a sole holder or held Units as tenants in common, are the only persons entitled to be recognised by the Responsible Entity as having any title to the Units registered in the Unitholder's name.

### 6.4 Registration of new holder in certain circumstances and election

- (a) Any person becoming entitled to any Units in consequence of the death, bankruptcy 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 6.4(a) must deliver or send to the Responsible Entity an election notice in writing in a form approved 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 and the 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 as if the death, bankruptcy, or disability of the Unitholder had not occurred and the election notice was a transfer executed by the Unitholder.

#### 6.5 **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.

#### 6.6 **Assistance with sales**

The Responsible Entity is not responsible for selling any Unit or the enforcement of any terms of sale of any Unit.

#### 6.7 **Suspension**

The Responsible Entity may suspend the registration of transfers and transmissions of Units for up to 1 month in aggregate in each calendar year.

### 7 **Redemption of Units**

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#### 7.1 **Redemption Price**

Subject to clause 7.5 a Unit must only be redeemed at the Redemption Price.

#### 7.2 **Request for redemption**

- (a) A Unitholder may request the Responsible Entity to redeem some or all of its Units in a manner approved by the Responsible Entity. A Unitholder may not withdraw a redemption request without the consent of the Responsible Entity.
- (b) The Responsible Entity is under no obligation to redeem any Units.
- (c) If the Responsible Entity decides to accept a redemption request, the Responsible Entity must determine the date and time on which the Units the subject of the redemption request are to be redeemed (**Redemption Date**).
- (d) Subject to clause 8, the Redemption Date must be a date within 30 days of receipt of the relevant redemption request.
- (e) Units the subject of a redemption request accepted by the Responsible Entity will be deemed to have been redeemed on the relevant Redemption Date and from the Redemption Date will cease to carry any rights (except for the obligation of the Responsible Entity to Pay the Redemption Amount in respect of the Units redeemed and any right to receive a portion of any Financial Year End Distribution or Interim Distribution in accordance with clauses 11.2 and 11.3).

### 7.3 Minimum redemption

- (a) The Responsible Entity may determine that redemption requests will only be accepted if the requests relate to a minimum number of Units or a minimum dollar amount (**Minimum Redemption**).
- (b) Without limiting any other provision, the Responsible Entity may refuse a redemption request if the number of Units or dollar amount the subject of the request is less than the Minimum Redemption.
- (c) If the redemption of Units the subject of a redemption request by a Unitholder would result in the Unitholder having a Unit Holding of less than the Minimum Holding, the Responsible Entity may, without receiving a request from the Unitholder, redeem all of the Units held by the Unitholder.

### 7.4 While the Fund is Liquid

While the Fund is Liquid or not a registered scheme the Responsible Entity may redeem some or all of the Units in respect of which a redemption request has been made by:

- (a) determining the Redemption Date for the redemption;
- (b) within 30 days of the Redemption Date, Paying the relevant Redemption Amount from the Assets; and
- (c) cancelling the Units by making appropriate changes to the Register.

### 7.5 While the Fund is not Liquid

- (a) While the Fund is a registered scheme but 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 Part 5C.6 of the Corporations Act and this Constitution;
  - (ii) a Unitholder has no right to withdraw from the Fund if there is no withdrawal offer currently open for acceptance by Unitholders; and
  - (iii) the Responsible Entity may determine the manner which notice of any withdrawal offer is to be given to Unitholders.
- (b) Unless otherwise provided in a withdrawal offer made by the Responsible Entity and subject to the Corporations Act, the amount payable to a Unitholder on acceptance of a withdrawal request will be the Redemption Amount applicable to the Units referred to in the withdrawal request.

### 7.6 Amounts owed to the Responsible Entity

The Responsible Entity may deduct from the Redemption Amount, any amount due to the Responsible Entity (in its capacity as Responsible Entity) by the Unitholder to whom the Redemption Amount is owed including any Redemption Fee.

### **7.7 Repurchase**

The Responsible Entity may, in its absolute discretion, decide or decide not, to repurchase some, or all, of the Units the subject of any redemption request out of its own funds at the Redemption Price.

### **7.8 No obligation**

The Responsible Entity is not at any time obliged, and may, decide or decide not to:

- (a) redeem any Unit regardless of whether the redemption has been requested;
- (b) satisfy a redemption request under clause 7.2, or to effect a repurchase of any Units under clause 7.7 either in whole or in part, out of the Assets or its own funds; or
- (c) make a withdrawal offer under clause 7.5.

### **7.9 Power of compulsory redemption**

The Responsible Entity may, subject to clauses 7.4 and 7.5 and in accordance with the Corporations Act, purchase Units out of the Assets of the Fund at the Redemption Price and cause the Units to be cancelled.

### **7.10 Allocation of Redemption Price**

The Responsible Entity may determine that the Redemption Price includes an amount which represents a distribution of the income of the Fund and the Responsible Entity must notify the person redeeming Units of such an amount. Such notification may occur after the end of the Financial Year in which the redemption occurs.

## **8 Suspensions**

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### **8.1 Ability to suspend**

The Responsible Entity may at any time suspend the redemption of Units and the payment for the redemption of Units if the Responsible Entity believes that it is in the best interest of the Unitholders as a whole, for example, if:

- (a) the Responsible Entity believes it is desirable for the protection of the Fund; or
- (b) any relevant financial, stock, bond, note, derivative or foreign exchange market is closed or trading on any such market is restricted; or
- (c) it is not reasonably practicable for the Responsible Entity to acquire or dispose of Assets or to determine or to determine fairly the Redemption Price or ability of any of these things is or may be significantly adversely affected; or
- (d) sufficient Assets of the Fund cannot be realised at an appropriate price or on adequate terms or otherwise.

## 8.2 Redemption and conversion following suspension

The Redemption Price for Units the subject of a redemption request accepted during the period of suspension will be the Redemption Price next determined after the end of the period of suspension. A Unitholder's redemption request lodged during the period of suspension is deemed lodged immediately after the end of the period of suspension.

## 9 Powers of the Responsible Entity

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### 9.1 Investment policy for the Fund

The Responsible Entity must determine, and may vary from time to time, the investment policy of the Fund.

### 9.2 Responsible Entity's powers

The Responsible Entity has all the powers in respect of, and in connection with, the Fund, the Trust 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) which it could exercise if it were the absolute and beneficial owner of the Assets, the Liabilities and the Trust Fund;
- (b) to acquire, encumber, develop, maintain or invest in and to sell any Asset;
- (c) to offer Units and to invite offers to subscribe for Units;
- (d) to carry on any business in connection with the Fund's investments and investment policy;
- (e) to incur liabilities and obligations of any kind (including to enter into joint venture arrangements, grant indemnities and guarantees, make representations, give warranties and undertakings and enter into, offer or issue any sort of financial product or futures, derivative, swap, option contract or arrangement or instrument or combination of any of these) and including of a speculative nature;
- (f) to borrow, procure financial accommodation and raise money for the purposes of the Fund and to grant security over, or security interests in, the Assets;
- (g) to grant indemnities to directors and officers of the Responsible Entity and delegates of the Responsible Entity to the extent legally permissible;
- (h) to fetter future discretions; and
- (i) to do all things required in the Responsible Entity's absolute discretion to give effect to clause 11A, including, but not limited to, executing any documents or exercising any discretion for the purposes of clause 11A.



### 9.3 **Absolute discretion**

The Responsible Entity has an absolute discretion as to the manner, mode and time of exercise of the powers, authorities, discretions, rights and duties conferred on it under this Constitution or the Corporations Act.

### 9.4 **Agents**

The Responsible Entity, by power of attorney or otherwise, may authorise any person (whether or not being a Related Party of the Responsible Entity) to do, or delegate to any person, anything that the Responsible Entity may do, including to hold any Asset and to execute documents on its behalf. If the Responsible Entity appoints a Custodian to hold Assets, the Custodian acts as the agent of the Responsible Entity and references in this Constitution to the Responsible Entity being paid Cash or receiving or holding Property includes a reference to the Custodian being paid Cash or receiving or holding Property.

### 9.5 **Appointment of advisers**

- (a) The Responsible Entity may engage a Consultant to advise, provide services to or assist, the Responsible Entity in discharging its duties, exercising its powers, managing the Fund or dealing with the Trust Fund, any Asset or any Liability.
- (b) A Consultant appointed by the Responsible Entity is not an agent of the Responsible Entity and to the extent permitted by law, the liability of the Responsible Entity is limited to exercising reasonable care in the selection of, and in monitoring the activities of, the Consultant.

## 10 **Rights of Responsible Entity**

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### 10.1 **May act in relation to other trusts**

Nothing in this Constitution or the fact of the Responsible Entity acting as responsible entity of the Fund prevents the Responsible Entity from establishing or acting as responsible entity, manager or trustee for trusts or schemes whether of a similar nature to or different from the Fund or to conduct any other business unrelated to the Fund.

### 10.2 **Dealings with associates**

- (a) Subject to the Corporations Act, the Responsible Entity and its Related Parties may without any liability to account to any Unitholder or the Fund:
  - (i) hold Units;
  - (ii) deal with the Fund and any Unitholder;
  - (iii) be interested in any contract or transaction with the Fund and any Unitholder;
  - (iv) invest any Assets in any company, managed investment scheme or trust owned, controlled, managed (or any of its assets are managed

by such a company or trust) or advised by, the Responsible Entity or any of its Related Parties; and

- (v) sell Property to, or acquire Property from, the Fund for Cash or Units or any combination of them.
- (b) A contract, arrangement or transaction referred to in clause 10.2(a) is not void, voidable or unenforceable, and no person is required to account to the Fund for any profit realised or benefit gained through it, by reason only of the interest of the Responsible Entity or any of its Related Parties in that contract, arrangement or transaction.

## **11 Income of the Trust and Distributions**

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### **11.1 Distributions**

- (a) The Responsible Entity may:
  - (i) make an Interim Distribution to Unitholders in respect of a Period which ends on a date other than the last day of the Financial Year;
  - (ii) make a Financial Year End Distribution to Unitholders in respect of a Period which ends on the last day of a Financial Year; and
  - (iii) make a distribution of any other amount, whether of income or capital, or otherwise, at any time and according to such terms, as are determined by the Responsible Entity.
- (b) The Responsible Entity must distribute the Distributable Amount to Unitholders in accordance with this clause 11.1.
- (c) The Responsible Entity must calculate the income of the Fund for each Period and may decide:
  - (i) the classification of any item including as being on income or capital account; and
  - (ii) the extent to which reserves or provisions need to or should be made.
- (d) The Responsible Entity may determine standing principles for calculating the income of the Fund for any Period and may change the principles from time to time. However, the Responsible Entity may not determine standing principles, and may not change any existing standing principles, in such a way as to defease any Unitholder of a vested entitlement to income or capital of the Fund.
- (e) A Unitholder cannot be defeased of any share of Distributable Amount to which the Unitholder is entitled under clause 11.4.
- (f) The Responsible Entity may maintain separate accounts in relation to different categories and sources of income, or deductions or credits for tax purposes and may allocate income or deductions from or attached to a

particular category or source to particular Unitholders from those accounts for the purposes of, amongst other things, Division 6E of the Income Tax Assessment Act 1936.

#### 11.2 Interim Distribution

Any Interim Distribution must be distributed to persons who were Unitholders as at the date determined by the Responsible Entity in proportion to the number of Units held by them at that time compared to the number of Units in issue at that time.

#### 11.3 Financial Year End Distribution

Any Financial Year End Distribution must be distributed to persons who were Unitholders as at the end of the relevant Financial Year in proportion to the number of Units held by them at that time compared to the number of Units in issue at that time.

#### 11.4 Present entitlement to Distributable Amount

- (a) As at the end of each Period, the Unitholders are presently and absolutely entitled to all of the Distributable Amount for the relevant Period. Each Unitholder is entitled to a share of the Distributable Amount calculated as follows:

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

where:

- A = the Distributable Amount for the Period less amounts of income paid as part of the Redemption Price of Units redeemed during the Period as determined pursuant to clause 7.10 and less any income paid pursuant to clause 11.8 during that period;
- B = the number of Units held by the Unitholder immediately before midnight on the last day of the Period; and
- C = the total number of Units held by all Unitholders immediately before midnight on the last day of the Period.
- (b) After the end of each Financial Year, the Responsible Entity must inform each Unitholder of its share of the Distributable Amount.
- (c) The Responsible Entity may deduct or Pay an amount in respect of Tax under clause 13.2 in respect of a Unitholder from the payment of the share of the Distributable Amount that Unitholder is entitled to.

#### 11.5 Manner in which a distribution is effected

Subject to any contrary determination made by the Responsible Entity, the Distributable Amount must be distributed to the Unitholders in accordance with this Constitution.

#### 11.6 **Participation in Distributable Amount**

Subject to the terms of issue of any Units and in particular, to clause 11.4(a), each Unit ranks equally for distribution of the Distributable Amount from the day it was created.

#### 11.7 **Deferral**

Subject to applicable law, if it is not practical to distribute income received in a Period, it may be treated as having been received in the next Period.

#### 11.8 **Return of capital or income**

Without limiting any other clause, the Responsible Entity may at any time distribute, or may direct the Custodian to distribute, any amount of capital or income of the Fund to the Unitholders as at a date specified by the Responsible Entity, and subject to any special rights, in proportion to the number of Units held by them on that date compared to the paid-up proportions of all Units then on issue, by the payment of cash or the issue of Units.

#### 11.9 **Payment of distribution**

The Responsible Entity must Pay:

- (a) an Interim Distribution or a Financial Year End Distribution as soon as practicable after the end of the relevant Period;
- (b) an income distribution within two months of the relevant date for determining entitlements to the distribution; and
- (c) a capital distribution, within two months of the relevant date for determining entitlements to the distribution.

#### 11.10 **Records**

The Responsible Entity may keep separate accounts of different categories or sources of income or capital or deductions or credits for tax purposes.

#### 11.11 **Fund taxed as a company**

Notwithstanding the other provisions of this clause 11, the Responsible Entity has complete and absolute discretion as to how much of the Distributable Amount will be distributed to Unitholders in respect of any Financial Years in which the income of the Fund is subject to tax under the Tax Act as if the Fund were a company.

#### 11.12 **Reinvestment**

- (a) The Responsible Entity may offer Unitholders the right to reinvest some or all of any distribution by acquiring Units in the Fund (**Reinvestment Arrangement**).
- (b) If a Reinvestment Arrangement is offered and a Unitholder elects to participate, the Responsible Entity is deemed to have received and accepted an Application from the Unitholder for the amount to be reinvested

on the day the Unitholder becomes entitled to the distribution or such other date as determined by the Responsible Entity.

- (c) The procedure for reinvestment of distributions is to be determined by the Responsible Entity and notified to Unitholders from time to time.

11.13 This clause 11 applies to each Period where the Trust is not an AMIT.

#### **11A.1 Application**

This clause 11A applies:

- (a) for each Period in which the Fund or a class of Units in the Fund is an AMIT;
- (b) to Attribution Amounts relating to any Period in which the Fund is or was an AMIT: and
- (c) at any other time required to ensure that clause 11A.3 operates as intended.

#### **11A.2 Elections and other powers**

- (a) Without limiting this clause 11A or clause 9, the Responsible Entity may:
  - (i) determine to make a choice for the purposes of subparagraph 276-10(1)(3)(i) or the Income Tax Assessment Act 1997; and/or
  - (ii) determine to treat each class of Units in the Fund as a separate AMIT.
- (b) In addition to any other powers provided for under this constitution, the Responsible Entity has all of the powers and rights which are necessary for or incidental to the Fund being able to be operated as an AMIT in the manner permitted in the Income Tax Assessment Act 1997, including complying with the requirements of Division 276 of the Income Tax Assessment Act 1997 and the issue or amendment of any AMMA Statements.
- (c) The Responsible Entity may issue or amend AMMA Statements and Unitholders acknowledge that amended AMMA Statements may affect the rights or interests of Unitholders, including former Unitholders.

#### **11A.3 Validity of decisions of Responsible Entity**

- (a) Any decision which the Responsible Entity purports to make in reliance on the powers in this clause 11A will not be invalid by reason of the fact that the Fund is not an AMIT in the relevant Period, provided that:
  - (i) the Responsible Entity was not aware that the Fund did not qualify as an AMIT in the relevant Period; and
  - (ii) the Responsible Entity was not grossly negligent in relying on the powers in this clause 11A in purporting to make the relevant decision.
- (b) The Responsible Entity has such powers to make any decisions and take such action to, as far as reasonably possible, put the Unitholders, former Unitholders and the Fund in the same position as if the decisions purported to have been made under the powers in this clause 11A had been validly made under this clause 11A.

#### **11A.4 Attribution**

- (a) The Responsible Entity will attribute an Attribution Amount during the Accrual Period to a Unitholder in accordance with this constitution and any other constituent documents of the Fund.
- (b) The Responsible Entity must attribute all of the Determined Trust Components of the Trust (or the relevant class of Units) in such a manner so as not to be liable for shortfall or excess taxation under subdivision 276-G of the Tax Act.
- (c) The Responsible Entity may attribute an amount to a Unitholder on redemption of a Unit.
- (d) Notwithstanding any other provision in this constitution, the attribution must:
  - (i) be worked out on a fair and reasonable basis in accordance with this constitution and any other constituent documents of the Fund; and
  - (ii) not be worked out because of the tax characteristics of the Unitholder or former Unitholder for the purpose of Division 276 of the Income Tax Assessment Act 1997.
- (e) Where this clause 11A.4 applies, clause 11 in relation to distributions does not apply.

#### **11A.5 Distribution**

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

#### **11A.6 Deemed payment**

For the purposes of clauses 11A.4 and 11A.5 above, any amount the Responsible Entity has paid or remitted in relation to Attribution Amounts attributed to a Unitholder is taken to be made for that Unitholder.

#### **11A.7 Unitholder challenge**

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

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

#### **11A.8 Unders and Overs**

- (a) The Responsible Entity may make an allocation of an Under or Over notwithstanding that a Unitholder at the time of the allocation was not a Unitholder for the Period to which the Under or Over relates.
- (b) Unitholders acknowledge and agree that the choice of allocation of an Under or Over may result in a greater or lesser amount of any one or more of the following being attributed to the Unitholder in the Period in which it is discovered or to which it relates:
  - (i) assessable income; or
  - (ii) tax offset.

#### **11A.9 AMIT indemnity**

- (a) The Responsible Entity is indemnified out of the assets of the Fund in relation to any income tax liability properly incurred by it under the Income Tax Assessment Act 1997 because the Fund, or a class of Units in the Fund, is or was an AMIT.
- (b) The indemnity in this paragraph 11A.9 is in addition to the indemnity in clause 17.

#### **11A.10 Change in law**

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

## **12 Payments to unitholders**

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### **12.1 Money payable**

The Responsible Entity's obligations in respect of any money payable to any Unitholder may be fully discharged by:

- (a) compliance with clause 12.4 or this clause 12.
- (b) (if the Responsible Entity so agrees) deposit into an account with a bank or other financial institution nominated by the Unitholder and approved by the Responsible Entity;
- (c) (if the Responsible Entity so agrees) complying with directions from the Unitholder;
- (d) payment by cheque which the Responsible Entity may prepare or cause to be prepared, posted to the Unitholder; or
- (e) in the case of a payment under a Reinvestment Arrangement, reinvesting the money payable to a Unitholder in additional Units.

### **12.2 Cancel cheques**

The Responsible Entity may cancel cheques drawn by the Responsible Entity that are not presented within 6 months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Unitholder or where the Responsible Entity

attempts to make a payment to a Unitholder by electronic transfer of funds and the transfer is unsuccessful, the money may be:

- (a) reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled or the Responsible Entity determines that an electronic funds transfer has not been successful;
- (b) held by the Responsible Entity for the benefit of the Unitholder;
- (c) paid by the Responsible Entity in accordance with applicable unclaimed money legislation; or
- (d) in the case of an unsuccessful electronic transfer of funds, used to draw a cheque in favour of the Unitholder.

### 12.3 **Joint holders**

A payment to any one of joint Unitholders will discharge the Responsible Entity for the payment.

### 12.4 **Transfer of Assets**

The Responsible Entity may transfer specified Assets to a Unitholder in lieu of payment of Cash in satisfaction of part or all of a Redemption Amount, pursuant to a withdrawal offer, in payment of Distributable Amount or a distribution of any amount of capital or income of the Fund or on the winding up of the Fund. The aggregate value of the specified Assets and any Cash paid must equal the amount due to the Unitholder, as the case may be, based on the most recent valuation done before the date of the proposed transfer. The Responsible Entity may deduct the cost of transferring the Assets and the cost of any valuation from the amount due to the Unitholder.

## 13 **Deduction of Tax**

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### 13.1 **Payments**

The Responsible Entity may make a payment in respect of any amount of Tax that the Responsible Entity believes is payable or anticipated to become payable by the Responsible Entity being Tax which is referable to a distribution otherwise payable to a Unitholder or for which a Unitholder is primarily liable.

### 13.2 **Deductions**

The Responsible Entity may deduct from any amount payable or distributable to a Unitholder, or received from a Unitholder, any amount of Tax (or an estimate or instalment of it) which, in the Responsible Entity's opinion, is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution. For example, this includes any amount of Tax which may be payable by the Responsible Entity or the Custodian on, or in respect of, the issue of Units to, the redemption, repurchase, forfeiture or cancellation of Units of, or distributions to, a Unitholder.



### 13.3 Notification

The Responsible Entity must advise the Unitholder or cause the Unitholder to be advised, of any payment or deduction made under this clause as soon as possible after the time the payment or deduction is made.

### 13.4 Application

The Responsible Entity may apply a deduction made under this clause towards:

- (a) reimbursement of the Fund for an amount paid or reimbursed out of the Fund;
- (b) reimbursement of the Responsible Entity for an amount paid by the Responsible Entity; or
- (c) the payment of the Tax to the person or authority entitled to it.

### 13.5 Indemnity

The Responsible Entity is entitled to be indemnified out of the Assets in relation to any amount of Tax referred to in clause 13.1 or 13.2 paid (whether or not the amount was due or payable) or payable by it.

## 14 Accounts valuation

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### 14.1 Preparation of accounts

The Responsible Entity must keep proper accounts in respect of the Fund or cause them to be kept in accordance with any applicable Accounting Standards and the Corporations Act or otherwise as approved by the Responsible Entity.

### 14.2 Valuation

The Responsible Entity:

- (a) may cause any Asset or Liability to be valued at any time;
- (b) must cause any Property to be acquired by the Fund in accordance with clause 5.10 to be valued prior to the issue of Units;
- (c) must value an Asset, Property or a Liability in accordance with any applicable Accounting Standards and the requirements of the Corporations Act and ASIC (if any);
- (d) may determine valuation methods and policies for categories of Assets, Property and Liabilities and may change them periodically; and
- (e) is not to be regarded as or be taken as holding out that it has expertise as regards the valuation of the Assets, Property or the Liabilities.

### 14.3 **Calculations**

Any amount or item required to be calculated or determined for the purpose of this Constitution is to be calculated or determined by, or on behalf of, the Responsible Entity, unless the Constitution otherwise provides as at a time prescribed by the Responsible Entity and in accordance with any applicable Accounting Standards.

### 14.4 **Amortisation**

The Responsible Entity may capitalise or amortise Costs in accordance with any applicable Accounting Standards over such periods as it thinks fit.

- 14.5 “Net Asset Value” and “Gross Asset Value” are each that proportion of those variables that the Responsible Entity determines is properly referable to the class to which the Unit in a Fund for which the “Net Asset Value” or “Gross Asset Value” is being calculated belongs to. Where there is only one class in issue in a Fund, the entire “Net Asset Value” or “Gross Asset Value” is taken to be properly referable to that class.

## 15 **The Responsible Entity's liability**

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### 15.1 **Limitation on Responsible Entity's liability**

Except subject to the Corporations Act the Responsible Entity and each director and officer of 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 for any amount, beyond the amount which the Responsible Entity is entitled to recover and is actually indemnified for out of the Trust Fund, through its right of indemnity in respect of the Fund.

### 15.2 **Reliance**

The Responsible Entity is not liable beyond the amount referred to in clause 15.1, for any Loss or damage to one or more or all of the Unitholders, the Fund, any creditors of the Fund or any other person in acting or omitting to act where:

- (a) it exercised, or did not exercise, or proposed to exercise, any trust, right or power under the Constitution;
- (b) it relied upon information or the authenticity of any document, signature or marking, provided that it believed that the information was correct or the document, signature or marking was authentic;
- (c) it relied upon or acted or did not act, or purported to act on the advice, services, information or opinion of any person or Consultant whether or not instructed or engaged by the Responsible Entity, provided that the Responsible Entity believed the person to have relevant expertise;
- (d) it acted or omitted to act in accordance with a resolution or direction of the Unitholders;
- (e) it acted or omitted to act as approved or it acted or omitted to act on a direction of Unitholders;

- (f) in relation to a specific Unitholder, it acted with the agreement of, or on the specific direction of, that Unitholder;
- (g) it relied on any document upon which it was reasonable for it to rely;
- (h) it paid or retained money in good faith;
- (i) it paid or retained money to meet a liability or to pay an amount to a fiscal authority which the Responsible Entity believed in good faith was due or payable to the fiscal authority;
- (j) it acted under the compulsion of a law of the Commonwealth, a State or a Territory or in accordance with the terms of an order or judgment of any competent court; or
- (k) a person (other than a company under its control) failed to carry out or was negligent in the carrying out of any agreement with it or any of its agents in connection with the Fund.

### 15.3 **Contractual limitation of liability**

The Responsible Entity is not required to do anything or refrain from doing anything which involves or could involve the Responsible Entity incurring a liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its Liability is satisfactorily limited.

### 15.4 **Other obligations excluded**

All obligations or Liabilities of the Responsible Entity which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including any obligation of the Responsible Entity in its capacity as trustee or Responsible Entity of the Fund arising under any statute.

### 15.5 **Separate limitations**

Each provision that provides, or relates to, a right of the Responsible Entity to Pay or be reimbursed out of the Assets or indemnified or 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.

### 15.6 **Directors and officers**

Except as the Corporations Act expressly provides otherwise, no director or officer of the Responsible Entity is personally liable to a Unitholder or any other person in connection with acting as a director or officer of the Responsible Entity.

### 15.7 **Additional indemnity**

Any indemnity or right of reimbursement to which the Responsible Entity is entitled under this Constitution is in addition to any indemnity or right of reimbursement available or provided by law. Each indemnity or right of reimbursement available or provided by law is deemed to be included in this Constitution.

### 15.8 **Separate indemnities**

Each indemnity or right of reimbursement to which the Responsible Entity is entitled is to be read separately and does not limit any other indemnity. The Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

### 15.9 **Agents**

To the extent not prohibited by the Corporations Act, the right or entitlement of the Responsible Entity to be reimbursed or indemnified or paid a fee and any limitation of liability in favour of the Responsible Entity applies regardless of whether the Responsible Entity itself or an agent on its behalf has incurred the relevant obligation or liability, acted or omitted to act or perform the relevant function.

### 15.10 **Compliance Committee**

If a person who is or has been a Compliance Committee Member incurs a liability in that capacity in good faith and in the person's proper performance of his or her duties, the person is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act. This indemnity is a continuing obligation and is enforceable even when a person has ceased to be a Compliance Committee Member.

## **16 Retirement of the Responsible Entity**

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### 16.1 **Retirement**

The Responsible Entity:

- (a) must retire as the Responsible Entity when required to do so by law;
- (b) subject to the Corporations Act, may retire as the Responsible Entity at any time; and
- (c) whilst the Fund is not a registered scheme, may retire as the Responsible Entity on giving 30 days notice to the Unitholders and on retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

### 16.2 **Release**

When it retires or is removed, the Old Responsible Entity is released from all Obligations and Liabilities in relation to, or in connection with, the Fund arising after the time it retires or is removed.

### 16.3 Retirement payment

Subject to the Corporations Act, the Old Responsible Entity is entitled to agree with the New Responsible Entity to be remunerated by, or to receive a benefit from, the New Responsible Entity and is not required to account to the Unitholders or the Fund for such remuneration or benefit. The Old Responsible Entity is also entitled to sell part or all of its business relating to managing the Fund to the incoming responsible entity (or a Related Party of the New Responsible Entity) for any consideration the parties may agree.

### 16.4 New Responsible Entity

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

## 17 Remuneration and expenses of the Responsible Entity

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### 17.1 Responsible Entity's fees

The Responsible Entity is entitled, during the period of the Fund to, and is to, be paid out of the Assets, the following fees:

(a) **Management fee**

A management fee calculated and payable in accordance with Schedule 1.

(b) **Performance fee**

A performance fee calculated and payable in accordance with Part B of Schedule 1.

(c) **Application fee**

An application fee not exceeding 5% of the total Issue Price of Units Subscribed for in an Application accepted by the Responsible Entity, which may be paid out of the Trust Fund at any time after the relevant Application is accepted.

(d) **Redemption fee**

A redemption fee not exceeding 2% of the total Redemption Price payable as a result of a redemption of Units.

(e) **Trustee fee**

A trustee fee calculated and payable in accordance with Schedule 1.

### 17.2 Indemnity

The Responsible Entity is indemnified and to be kept indemnified on a full indemnity basis and is entitled to Pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, all Costs and Losses (which are to be calculated on a GST inclusive basis) which it may Pay or incur in connection with the performance of its

duties, in the exercise of its powers, in the course of its office or in relation to the administration or management of the Fund.

### 17.3 **GST**

- (a) If in the Responsible Entity's opinion, the Responsible Entity becomes liable to Pay GST in respect of any supply made by it in connection with the Fund, the fees and expenses referred to in this clause 17 will be automatically adjusted to ensure that the Responsible Entity's fees net of the impact of the GST are the same as set out in clause 17.1.
- (b) For the avoidance of doubt, the Responsible Entity will be entitled to be paid out of the Assets, any fee increased in accordance with this clause.
- (c) Nothing in this clause empowers the Responsible Entity to do any act prohibited by the Competition and Consumer Act 2010 (Cth) or any other law or regulation.

### 17.4 **Payments to Related Parties**

Payments made under this Constitution may be made to a Related Party of the Responsible Entity.

### 17.5 **Differential fee arrangement**

Subject to the Corporations Act and the conditions of any applicable ASIC Relief being satisfied, the Responsible Entity may agree with any Unitholder fee arrangements in respect of the Unitholder which are different to those provided for under this Constitution.

### 17.6 **Units as payment for fees**

Subject to the Corporations Act, the Responsible Entity may elect that it is to be issued Units instead of Cash in payment of its fees or reimbursement of its Costs under this Constitution.

### 17.7 **Payment directly by Unitholder**

The Responsible Entity may charge part or all of the management fee, application fee and/or withdrawal fee directly to the Unitholder with their agreement.

### 17.8 **Deferral and waiver**

The Responsible Entity may accept lower fees than it is entitled to receive under this Constitution, waive, defer, assign or rebate any fees or the reimbursement of any or all expenses to which it is entitled to be Paid or reimbursed under this Constitution.

### 17.9 **Proper performance**

The rights of the Responsible Entity to be paid fees or reimbursed or to be indemnified out of the Assets in relation to the performance of its duties are available:

- (a) only in relation to the proper performance of those duties; and

- (b) regardless of whether the Responsible Entity or its delegate or agent incurs the Cost or Loss.

#### **17.10 Responsible Entity's indemnity**

The right of indemnity of the Responsible Entity out of Assets and, by Unitholders in respect of Tax liability continues to be available after the Responsible Entity retires or is removed as responsible entity of the Fund.

### **18 The Register**

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#### **18.1 Responsible Entity must maintain Register**

The Responsible Entity must maintain and keep, or cause to be maintained and kept, a Register. The Register is to be kept by the Responsible Entity in such jurisdiction as the Responsible Entity determines from time to time.

#### **18.2 No notice of trusts**

The Responsible Entity will not be deemed to be on notice of the existence of any trust and is not required to enter notice of any trust or the interest of any person other than the Unitholder in the Register. Except to the extent that a person is otherwise recognised as a Unitholder pursuant to clause 5.3, the person from time to time entered in the Register as the holder of Units or their Representative will be the only person recognised by the Responsible Entity as entitled to the Units registered in that name or to exercise the rights and privileges attaching to those Units pursuant to this Constitution.

#### **18.3 Joint Unitholders**

The Responsible Entity is not required to register more than three persons as joint Unitholders.

#### **18.4 Joint tenancy**

Persons registered jointly as the holder of a Unit hold the Unit as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

#### **18.5 Change in information**

A Unitholder must advise the Responsible Entity of any change to the information noted in the Register in respect of that Unitholder. Upon receipt of such advice the Responsible Entity must promptly update the information contained in the Register.

#### **18.6 Conclusiveness of Register**

The Register is conclusive evidence of title to Units, except to the extent that a person is otherwise recognised as a Unitholder pursuant to clause 5.3.

#### **18.7 Appointment of third party to maintain Register**

The Responsible Entity may cause the Register to be maintained by a third party on its behalf and require that person to discharge the Responsible Entity's obligations

in relation to the Register. The Responsible Entity is not liable for any act or omission of such person provided the Responsible Entity has taken reasonable steps to select a person to perform this function.

## **19 Meetings of Unitholders**

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### **19.1 Responsible Entity's powers**

Subject to the Corporations Act and this Constitution, meetings of Unitholders may be convened and conducted in such manner as the Responsible Entity determines, including the requirements in relation to the period of notice and proxies and their use.

### **19.2 Notice**

- (a) A meeting of Unitholders must be convened by notice in writing sent to every Unitholder entitled to attend and vote. The notice of meeting need not set out the terms of any resolution unless required under the Corporations Act. If a Unitholder does not receive a notice of meeting (including if the giving of notice was accidentally omitted) the meeting is not invalidated.
- (b) The Responsible Entity must convene a meeting of Unitholders if required by the Corporations Act.

### **19.3 Quorum**

The quorum for a meeting of Unitholders is two Unitholders holding 10% or more of the Units in issue present in person or by proxy and the quorum must be present at all times during the meeting.

### **19.4 No quorum**

- (a) If a quorum is not present 15 minutes after the scheduled time for the commencement of the meeting, the meeting is:
  - (i) if convened on the requisition of Unitholders, dissolved; or
  - (ii) otherwise, adjourned to such place and time as the Responsible Entity decides.
- (b) At any adjourned meeting, those Unitholders present in person or by proxy constitute a quorum.

### **19.5 Chair**

Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Unitholders. The decision of the chair on any matter relating to the conduct of the meeting including any objection to a vote cast at a meeting is final.



#### 19.6 **Adjournment**

The chair has power to adjourn a meeting for any reason and to such place and time as the chair thinks fit. Subject to the Corporations Act, adjournment of a meeting need not be notified to Unitholders.

#### 19.7 **Postponement or cancellation**

The Responsible Entity may postpone or cancel any meeting of the Unitholders, other than a meeting convened on the requisition of Unitholders. The Responsible Entity must as soon as possible after determining that a meeting of Unitholders is to be postponed or cancelled, notify the Unitholders of the postponement or cancellation (as the case may be).

#### 19.8 **Poll**

A poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting.

#### 19.9 **Proxy**

The Responsible Entity may, in its absolute discretion, decide to accept an appointment of a proxy as valid even if it does not comply with all of the requirements of section 252Y(1) of the Corporations Act.

#### 19.10 **Voting**

- (a) The provisions of Division 6 of Part 2G.4 of the Corporations Act govern voting at meetings of Unitholders.
- (b) Subject to this Constitution and the Corporations Act, all questions will be decided by a majority vote.

#### 19.11 **Resolutions**

- (a) A resolution passed by Unitholders at a meeting convened in accordance with this Constitution binds all Unitholders, regardless of whether:
  - (i) the Unitholder was present at the meeting;
  - (ii) the giving of notice of the meeting to that Unitholder was omitted; and
  - (iii) the Unitholder voted in favour of or against the resolution.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

#### 19.12 **Minutes**

The minutes of a meeting of Unitholders signed by the chairperson of the meeting or the meeting at which the minutes were accepted as a true and correct record are conclusive evidence of the matters stated in them unless the contrary is proved.

### 19.13 **Application of Chapter 2G.4 of the Corporations Act**

Subject to clauses 19.1 to 19.12 (inclusive), meetings of Unitholders will be called and held in accordance with Part 2G.4 of the Corporations Act regardless of whether the Fund is a registered scheme. However:

- (a) if at any time, there is only one Unitholder, the quorum for a meeting is one; and
- (b) if an individual is attending a meeting both as a Unitholder and as a proxy or body corporate representative, the Responsible Entity may in determining whether a quorum is present, count the individual in respect of each such capacity.

### 19.14 **Written resolutions**

If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed, is assented to by:

- (a) if an ordinary resolution is required, Unitholders entitled to vote and holding between them more than 50% of the Units on Issue in the Fund; and
- (b) if the Fund has only one Unitholder, that Unitholder,

that act, matter or thing or resolution is to be taken as having been done at or passed by a meeting of the Unitholders of the Fund and the document is to be taken as a minute of the passing of that resolution.

## 20 **Notices**

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### 20.1 **Giving of notices**

Any notice required to be given to a Unitholder under this Constitution or the Corporations Act will be deemed to have been duly given if it is delivered or sent by post in a postage paid envelope addressed to the Unitholder's address appearing in the Register and will be deemed to be served on the day after the notice is posted.

### 20.2 **Service of notice**

Service of any notice or document on any one of several joint Unitholders will be deemed effective service on the other joint Unitholder or Unitholders.

### 20.3 **Other methods**

Subject to the Corporations Act, the Responsible Entity may determine methods including electronic methods of giving notices to Unitholders and may also determine corresponding rules relating to deemed service and proof of service.

## **21 Amendment**

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### **21.1 Power to amend**

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:

- (a) the amendment is made by a deed executed by the Responsible Entity before the issue of any Units in addition to the original 100 Units issued;
- (b) the Fund is not a registered scheme, the Unitholders have consented in writing to the amendment subject to clause 21.1(f);
- (c) the provisions of the supplemental deed have been approved by a special resolution of the Unitholders;
- (d) the Responsible Entity reasonably considers that the provisions of the supplemental deed will not adversely affect the rights of the Unitholders;
- (e) clause 21.2 applies; or

### **21.2 Required Part**

If any part of this Constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act or ASIC Relief and that requirement ceases or changes the Unitholders:

- (a) agree that unless the Responsible Entity determines otherwise, this Constitution may be amended by removing the Required Part (or amending it to reflect the altered requirement) and authorise the Responsible Entity to make that amendment in a deed made for that purpose; and
- (b) agree and acknowledge that an amendment to this Constitution in accordance with clause 21.2 will not adversely affect their rights.

## **22 Limitation of liability of Unitholders**

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### **22.1 General limitation**

The liability of each Unitholder is limited to the amounts subscribed and agreed to be subscribed by the Unitholder for Units. A Unitholder need not indemnify the Responsible Entity, the Custodian or any other person if there is a deficiency in the Assets as compared to Liabilities or to meet the claim of the Responsible Entity, any creditor of the Responsible Entity in respect of, or in connection with the Fund, the Assets or Liabilities. Subject to clause 22.2 recourse of the Responsible Entity and any creditors of the Fund is limited to the Assets.

### **22.2 Tax indemnity**

The Responsible Entity is entitled to be indemnified by a Unitholder to the extent that the Responsible Entity incurs any liability for Tax as a result of the Unitholder's action or inaction.

### **22.3 Joint Unitholders tax indemnity**

Joint Unitholders are jointly and severally liable in respect of all payments of, or liability for, Taxes referred to in clause 22.2.

## **23 Complaints handling**

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### **23.1 Complaints**

A Unitholder may make a complaint to the Responsible Entity, in relation to the Fund including where the Unitholder has been, or the Unitholder believes or contends that the Unitholder has been, adversely affected by a breach of:

- (a) the Corporations Act;
- (b) this Constitution; or
- (c) an undertaking, representation or statement on which the Unitholder relied made by the Responsible Entity in any Disclosure Document issued by the Responsible Entity.

### **23.2 Form of complaint**

A Unitholder's complaint must:

- (a) be made by any reasonable means, including by letter, telephone, email or in person;
- (b) identify the relevant Unitholder; and
- (c) specify the nature of the complaint and how the Unitholder believes or contends that the Unitholder has been adversely affected.

### **23.3 Acknowledgment**

The Responsible Entity must, within 14 Business Days of receipt of any complaint made in accordance with clauses 23.1 and 23.2 acknowledge in writing receipt of the complaint to the complainant.

### **23.4 Time for determination of complaint**

The Responsible Entity must within 45 days of receiving the complaint:

- (a) make a determination;
- (b) give the complainant written notice of:
  - (i) that determination;
  - (ii) any action the Responsible Entity has or will take in respect of the complaint;

- (iii) any rights the Unitholder may have in respect of any external complaints resolution scheme; and
- (iv) other remedies (if any) available to the Unitholder.

### **23.5 Review of determination**

- (a) Subject to applicable law and any applicable ASIC regulatory guide, if the complainant is not satisfied with the Responsible Entity's determination, then the complainant may refer the complaint to an external complaints resolution scheme referred to in the notice given in accordance with clause 23.4(b).
- (b) Subject to applicable law and any applicable ASIC regulatory guide, if the complainant does not otherwise receive a final determination in accordance with clause 23.4 then the complainant may refer the complaint to an external complaints resolution scheme.

## **24 Winding up of the Trust**

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### **24.1 Termination Event**

Each of the following is a Termination Event:

- (a) the Unitholders by extraordinary resolution direct the Responsible Entity to wind up the Fund;
- (b) the Court makes an order directing the Responsible Entity to wind up the Fund;
- (c) Unitholders pass, in accordance with section 601FM of the Corporations Act, an extraordinary resolution to remove the Responsible Entity but do not, at the same meeting, pass an extraordinary resolution choosing a company to be the new responsible entity that consents to becoming the Fund's responsible entity;
- (d) the Responsible Entity gives notice under section 601NC of the Corporations Act and no meeting of the Unitholders is called in accordance with that section within 28 days of the Responsible Entity giving notice; and
- (e) the Responsible Entity determines that the Fund is to terminate and specifies the date of termination in a notice given to Unitholders.

### **24.2 No further dealings in Units**

Following the occurrence of a Termination Event the Responsible Entity has no further obligation to redeem, accept transfers of, or issue Units.

### **24.3 Notice of Termination Event**

Within a reasonable time before, or as soon as practicable after, a Termination Event, the Responsible Entity must give to each Unitholder notice of the termination and of its intention to distribute the Trust Fund.

#### **24.4 Realisation**

Within 180 days after a Termination Event if practical, and in any event as soon as practicable after that, the Responsible Entity must realise the Assets and satisfy the Liabilities. The Responsible Entity may agree with a Unitholder that the Unitholder's entitlement in whole or in part on winding up be satisfied by transferring specified Assets to that Unitholder in accordance with clause 12.4.

#### **24.5 Final distribution**

- (a) The net proceeds of realisation, after discharging all Liabilities and meeting the Costs (including anticipated expenses and fees of the Responsible Entity) of termination of the Fund must be distributed to the Unitholders. Subject to the terms of issue of any Unit or class of Units, the net proceeds of realisation must be distributed among the persons who are Unitholders as at the date of distribution in proportion to the number of Units held by them.
- (b) Proceeds of realisation may be distributed in instalments. If and to the extent that the Corporations Act requires, the Responsible Entity must ensure that the final accounts in respect of the Fund are subject of an independent audit by a registered company auditor.

#### **24.6 Postponement of realisation**

The Responsible Entity may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interest of Unitholders. The Responsible Entity will not be responsible for any Loss attributable to the postponement.

#### **24.7 Retention**

Subject to this clause and the Corporations Act, the Responsible Entity may retain in its hands or under its control any Assets as in its opinion may be required to meet any Liabilities, provided that any Assets so retained to the extent that they are ultimately found not to be required will remain subject to the Fund for conversion and distribution in accordance with this Constitution.

#### **24.8 Powers and rights continue**

The powers, rights and discretions of the Responsible Entity under this Constitution (including the rights to fees) continue in full effect until there has been a final distribution to Unitholders and all Liabilities have been paid.

#### **24.9 Cancellation of Units**

All Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from realisation is made to Unitholders.

## **25 Merger**

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### **25.1 Application for interests in another trust**

The Unitholders may, by special resolution, resolve that each Unitholder is obliged to apply for units or interests in another trust in return for the transfer or cancellation of the Units or transfer of Assets and any such resolution binds every Unitholder (whether or not the Unitholder voted in favour of the resolution) and each Unitholder appoints the Responsible Entity as its attorney to sign any documents (including Unit transfers and application forms) required to implement the resolution.

### **25.2 Power of Responsible Entity**

The Responsible Entity will have power to do all things it considers necessary, desirable or reasonably incidental to give effect to a resolution referred to in clause 25.1.

## **26 No agency**

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Except as provided for in clause 25, nothing in this Constitution makes the Responsible Entity the agent of any Unitholder nor creates any relationship other than that of beneficiary and trustee.

## **27 Severability**

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If any provision of this Constitution is illegal or invalid because it offends any law:

- (a) if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- (b) in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

## **28 Governing law**

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- (a) This Constitution is governed by the law of New South Wales.
- (b) The Responsible Entity and the Unitholders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## Schedule 1

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### Part A

#### Management Fee

1. The Responsible Entity is entitled, during the period of the Fund, to, and is to be paid out of the Assets, a management fee on the last Business Day of each month, calculated as follows:

$$MF = \left[ \frac{1}{12} \times \left( \frac{4}{100} \times GAV \right) \right] \times (1 + GSTR)$$

%

where:

**MF** is the management fee payable; and

**GAV** is the Gross Asset Value calculated as at the end of that month; and

**GSTR** means the applicable rate of GST (expressed as a fraction) imposed under GST Law.

#### Trustee Fee

2. The Responsible Entity is entitled, during the period of the Fund, to, and is to be paid out of the Assets, a trustee fee on the last Business Day of each month, calculated as follows:

$$TF = \left[ \frac{1}{12} \times \left( \frac{4}{100} \times GAV \right) \right] \times (1 + GSTR)$$

%

where:

**TF** is the trustee fee payable; and

**GAV** is the Gross Asset Value calculated as at the end of that month; and

**GSTR** means the applicable rate of GST (expressed as a fraction) imposed under GST Law.