



Supplemental deed

Forager Australian Shares Fund (ARSN 139 641 491)

—

The Trust Company (RE Services) Limited

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Supplemental deed

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Details

Date 16 NOVEMBER 2016

Parties

Name	The Trust Company (RE Services) Limited in its capacity as responsible entity of the Forager Australian Shares Fund (ARSN 139 641 491)
ABN	45 003 278 831
Short form name	Manager

Background

- A The Manager is the responsible entity of the registered managed investment scheme known as the Forager Australian Shares Fund ARSN 139 641 491 (**Fund**). The Fund was established under a constitution dated 22 September 2009, as amended from time to time (**Constitution**). The Trust Company (RE Services) Limited became the responsible entity of the Fund on 19 October 2016.
- B Clause 21.1 of the Constitution provides the Manager may amend the Constitution by supplemental deed.
- C Clause 21.4 of the Constitution requires the approval of members of the Fund for any amendment under clause 21.1 of the Constitution if required by *Corporations Act 2001* (Cth) (**Corporations Act**).
- D Under paragraph 601GC(1)(a) of the Corporations Act, the constitution of a registered scheme may be modified by special resolution of the members of the Fund.
- E At a meeting of the Fund, members of the Fund approved a special resolution to make the amendments to the Constitution contained in this deed.
- F The amendments to the Constitution contained in this deed are intended to take effect when a copy of this deed is lodged with the Australian Securities and Investments Commission (**ASIC**).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

- (a) **Effective Time** means the date and time at which a copy of this deed is lodged with ASIC in accordance with subsection 601GC(2) of the Corporations Act; and
- (b) unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.

1.2 Interpretation

Clause 23.2 of the Constitution applies to this deed as though that clause was set out in full.

2. Amendments to the Constitution

On and from the Effective Time, subject to clause 3, the Constitution is amended in the form of the Schedule to this deed, so that the words, numbers and symbols which are:

- (a) underlined are inserted into the Constitution; and
- (b) struck through are deleted from the Constitution.

3. Operation of this deed

3.1 No redeclaration etc

The Manager confirms that it is not, by clause 2 of this deed:

- (a) redeclaring the Fund;
- (b) resettling the Fund;
- (c) settling or declaring a trust;
- (d) causing the transfer, vesting or accruing of property in any person; or
- (e) entering into a new constitution.

Other than the amendments made in this deed, the Constitution continues in full force and effect.

3.2 Remaining provisions unaffected

Except as amended by this deed, all terms and conditions of the Constitution remain in full force and effect. With effect from the Effective Time, the Constitution amended by this deed is to be read as a single integrated document incorporating the amendment effected by this deed.

3.3 Binding provisions

The provisions of this deed are binding on and are made for the benefit of the Manager, each member of the Fund and all persons claiming through them as if each party were a party to this deed.

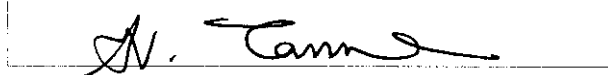
3.4 Governing law and jurisdiction

This deed is governed by the laws of New South Wales. The Manager irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

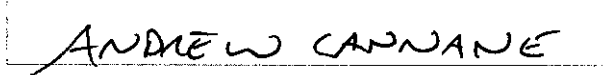
Signing page

EXECUTED as a deed poll.

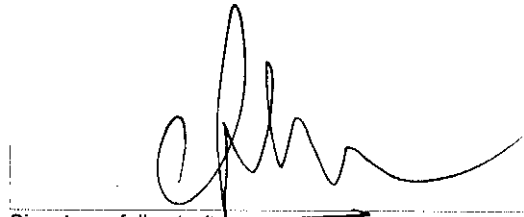
Executed by The Trust Company (RE Services) Limited in accordance with Section 127 of the *Corporations Act 2001*



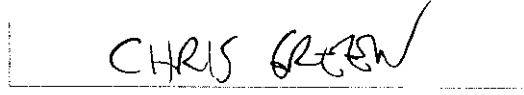
Signature of director



Name of director (print)



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



Name of director/~~company secretary~~ (print)

Schedule

**Fundhost LimitedThe Trust
Company (RE Services) Limited¹**

ABN 69 092 517 08745 003 278 831

Consolidated Constitution for

**Forager Australian Shares
Fund (formerly known as the
Intelligent Investor Value
Fund)**

ARSN 139641491

¹ Fundhost Limited ceased to be responsible entity of the Fund under the Corporations Act and was replaced by The Trust Company (RE Services) Limited as the new responsible entity of the Fund on 19 October 2016.

Constitution

Forager Australian Shares Fund

ARSN 139641491

~~Fundhost Limited~~The Trust Company (RE Services) Limited²

ABN ~~69-092-517-087~~45 003 278 831

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² Fundhost Limited ceased to be responsible entity of the Fund under the Corporations Act and was replaced by The Trust Company (RE Services) Limited as the new responsible entity of the Fund on 19 October 2016.

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Recitals

- A. As holder of a financial services licence authorising it to operate a registered managed investment scheme, the **manager** intends to establish a managed investment scheme called the Forager Australian Shares Fund and act as responsible entity.
- B. The **trust** will be promoted to wholesale and retail **investors** as the **Corporations Act** defines this concept and will be registered under the Corporations Act.
- C. The trust will, in general terms, invest primarily in interests in international and domestic equities and some derivatives, currency and cash.
- ~~D. The trust is promoted to retail investors directly and via wrap accounts and master trusts by a product disclosure statement issued by the manager.~~
- ~~E.~~ The investment management is outsourced, to Forager Funds Management Pty Ltd (formerly Intelligent Investor Funds Pty Limited) ACN 138 351 345, an Australian based investment manager.
- ~~F.~~ This document as amended from time to time, governs the Forager Australian Shares Fund.

Operative provisions

1 How to interpret this document

- 1.1 Clause 2623 contains definitions and interpretive provisions.
- 1.2 When a defined term is first used, it is in **bold** ~ look to clause 2623 for its meaning.

2 What the trust is called

- 2.1 The manager determines the name of the trust and can change it from time to time.
- 2.2 If the manager stops being the manager, the new manager must change the name to a name without any material association with the manager or (if the investment manager asks) the investment manager, or their associates or businesses.

3 When the trust starts and ends

- 3.1 The manager declares that it holds the **assets** on trust for investors. The assets vest in the manager.
- 3.2 The trust starts when the manager's nominee gives the manager \$100 for **units**. The manager must issue 100 units in return.
- 3.3 The trust terminates on the first of:
 - (a) the date the manager tells investors it terminates; or
 - (b) any date the law requires.
- 3.4 The trust may otherwise be terminated if there are changes in the market such that the manager believes that the trust will be unable to achieve its investment objectives as set out in the **product disclosure statement** or law allows this to occur.
- 3.5 No units may be issued or redeemed after the 80th anniversary of the day the trust commenced if that issue or redemption would cause a contravention of the rule against perpetuities (if there is one) or any other rule of law or equity.
- 3.6 Following termination, the manager must realise the assets (this is called winding up). See clause 20 for the detail.

4 Investors

Nature of investor's interests

- 4.1 An investor does not have any interest in a particular asset, subject to the rights and obligations attaching to any **class**, only a beneficial interest in the assets as a whole. It follows that an investor:
 - (a) must not interfere with any rights or powers of the manager;
 - (b) must not even try to exercise a right in respect of, or lodge notice (for example a caveat) affecting, an asset, or otherwise even try to claim any interest in an asset, other than as this document contemplates; and
 - (c) cannot require an asset to be transferred to them.
- 4.2 Unless the manager agrees otherwise, investors registered jointly as investors are joint tenants, not tenants in common.

Classes

- 4.3 The manager may issue classes of units with such rights and obligations as it determines (for example, subject to the Corporations Act, with such rights and obligations (for example, as to fee rebates, voting, transfers, distributions and rights on winding up), as are set out in a product disclosure statement), provided however that any issue of classes of units by the manager must not result in the rights of income and capital of any existing investor of the trust being materially diminished or expanded.
- 4.34.4 Subject to the **AMIT Laws**, the manager may determine that each class of units is to be treated as a separate **AMIT** for the purposes of the **Tax Act**.

Partly paid units

- 4.44.5 Subject to this document and the Corporations Act, the manager may determine (in such manner as it determines, for example by disclosure in any product disclosure statement) that any unit or class of units is to be partly paid.

Nature of units

- 4.54.6 The beneficial interest in the trust is divided into units. Subject to the rights and obligations attaching to any class, each unit confers an equal undivided interest. Units may be consolidated or divided as determined by the manager.
- 4.64.7 The manager may issue fractions of a unit. Where there is an issue or redemption of units so that there is a fraction, the manager may round the fraction up or down to the nearest whole unit as it determines. As far as is practicable, but subject to the Corporations Act, this document applies to fractions in the proportion which the fraction bears to a unit.

Transfer of units

- 4.8 The following transfer provisions apply while units are not **officially quoted**:
- (a) Subject to the rights and obligations attaching to any class, investors may transfer units using any form acceptable to the manager which complies with the Corporations Act;
 - (b) Transfers given to the manager for processing must be complete and properly stamped and comply with the Corporations Act;
 - (c) Transfers are not effective until registered by the manager; and
 - (d) The manager may refuse to register all or part of any transfer without giving reasons, but must tell the investor as the

Corporations Act requires. If a transfer or transmission includes a fractional unit and the transferee or the transmittee already holds a fractional unit, both fractional units shall be treated as being consolidated into a unit and if the sum of those fractional units exceeds one unit, the excess is a fractional unit.

4.9 The following transfer provisions apply while units are officially quoted:

- (a) subject to this document and the **Listing Rules**, all transfers of units must be effected in accordance with the Listing Rules.
- (b) except as provided by the **ASX Settlement Operating Rules**, a transfer is not effective until registered by the manager.
- (c) subject to clause 4.9(d)(iii) and 4.11, the manager must not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of units effected under clause 4.9(a).
- (d) in relation to units which are **CHESS Approved Securities**:
 - (i) subject to clauses 4.9(d)(ii) and 4.9(d)(iii), the manager must not prevent, delay or in any way interfere with the registration of a proper **ASX Settlement** transfer;
 - (ii) the manager may apply a holding lock to specified **CHESS Approved Securities** where permitted under the Listing Rules; and
 - (iii) the manager may refuse to register a transfer where permitted under the Listing Rules and must refuse to register a transfer if required under the Listing Rules.

Restricted Securities

4.10 If the Listing Rules so require, an investor may not transfer **Restricted Securities** during the applicable escrow period.

4.74.11 Except as permitted by the Listing Rules or **ASX**, the manager must refuse to register a transfer which would be in breach of clause 4.9(a).

What if an investor dies or becomes subject to a legal disability?

4.12 If an investor dies or becomes subject to a legal disability (such as bankruptcy or insanity), only the survivor (where the deceased was a joint holder) or the legal personal representative (otherwise) need be recognised by the manager as having any claim to the investor's units.

5 Becoming an investor

Promoting the trust and application forms

- 5.1 The manager may promote the trust any way it wishes but any offer of units to retail investors must comply with the Corporations Act ~~(so a product disclosure statement is generally needed)~~.
- 5.2 A person becomes an investor, and units in the trust are issued, when their name is recorded as such by the manager.
- 5.3 By becoming an investor, they are telling the manager they have read, understood and agree to any terms of issue (for example, in the current product disclosure statement and any supplementary product disclosure statement).
- 5.4 The manager determines the other procedures for becoming an investor and may change them from time to time (for example, by requiring completion of an application form or the giving of certain information or material if the manager so requires). Such procedures do not need to be the same for all potential investors.
- 5.5 The manager may refuse to accept all or part of any application without giving reasons, but must tell the applicant.
- 5.6 Unit certifications (if any) and transaction confirmations must be completed and delivered as and by the time the Corporations Act requires.

Application money

- 5.7 Application money must be dealt with as the Corporations Act requires. The manager determines the other procedures for paying application money and may change them from time to time, for example by:
 - (a) requiring a bank cheque or funds transfer, or acceptable transfer of acceptable property, to accompany the application or be received by a particular time and
 - (b) setting a minimum application amount,and may change them from time to time, and procedures do not need to be the same for all potential investors.
- 5.8 Application money must be held and, where relevant, returned as the Corporations Act requires.
- 5.9 If application monies are paid by way of a transfer of property (such transfer must be able to be vested in the manager or a custodian appointed by them), then the manager can require

some or all of the associated costs to be paid by the investor or can take these into account calculating the number of units in a particular class to be issued.

- 5.10 A unit issue is void if the relevant application money is not received or transfer fails.

Cooling off

- 5.11 Retail investors have cooling off rights as the Corporation Act contemplates.

Issue price of units

- 5.12 Subject to this clause 5, the **issue price** of a unit is:

- (a) subject to clauses 5.12(b) to 5.12(e), while units are not officially quoted, in accordance with the following formula:

$$\frac{\text{value of the net assets}}{\text{number of units on issue}} + \text{Spread}$$

- (b) subject to clauses 5.12(c) to 5.12(e), while units are officially quoted, equal to the weighted average **market price** of units during the 5 **business days** immediately prior to the date on which or as which the issue price is to be calculated;

- (c) in the case of pro rata offer (including a rights issue), in accordance with clause 5.15;

- (d) in the case of a placement of units while units are officially quoted and not suspended from quotation, in accordance with clause 5.20; and

- (e) in the case of reinvestment of income while units are officially quoted, in accordance with clauses 5.21 to 5.22.

- 5.13 Subject to the Listing Rules, the issue price may be rounded up or down up to 1% or 1 cent as the manager chooses.

- ~~5.12 The trust is forward priced – that is, subject to the rights and obligations attaching to any class, each of these must be calculated by the manager using the most recently available information as at the next **time the trust is valued** after the **pricing cut off time**. However, the time is adjusted for reinvestments (see clause 9.10), and for unsuccessful payments and transfers (see clause 10.4).~~

- 5.13 ~~The issue price may be rounded up or down up to 1% or 1 cent as the manager chooses.~~

Minimum holding~~Calculation time when units are not officially quoted~~

- 5.14 ~~When the issue price is determined under clause 5.12(a), the trust is forward priced ~ that is, subject to the rights and obligations attaching to any class, each of these must be calculated by the manager using the most recently available information as at the next **time the trust is valued** after the **pricing cut off time**. However, the time is adjusted for reinvestments (see clause 9.21), and for unsuccessful payments and transfers (see clause 10.4).~~

Pro rata rights issues

- 5.15 ~~Subject to the Corporations Act and the Listing Rules, the manager may offer units for subscription at a price determined by the manager to persons who are investors on a date determined by the manager, provided that:~~
- ~~(a) subject to paragraph (b) of this paragraph, all investors are offered units in proportion to the value of the investor's units or, where the offer is made only to investors who hold units in a class, to the value of the investor's units in that class, at that date; and~~
 - ~~(b) the manager may exclude an investor from the pro rata offer if it is not a contravention of paragraph 601FC(1)(d) of the Corporations Act,~~

~~whether or not the right of entitlement is renounceable.~~

- 5.16 ~~If the manager is making an offer of units to investors which is otherwise in compliance with clause 5.15, the manager is not required to offer units to persons whose address on the register of investors is outside Australia or New Zealand (or who holds units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable **Relief** and the Listing Rules.~~

Terms of pro rata issues

- 5.17 ~~Any offer made under clause 5.15 must specify the period during which it may be accepted. It must be made to investors in proportion to the value of their respective unit holdings on the date determined by the manager under clause 5.15. The manager may adjust any entitlement to accord with the Listing Rules and, in case of fractions, the manager must offer the next higher whole number of units. Any investor may renounce their~~

entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

- 5.18 Any units offered for subscription under clause 5.15 which are not subscribed for within the period for acceptance set by the manager may be offered for subscription by the manager to any person. The issue price payable in relation to such further offer must not be less than that at which units were originally offered to investors.
- 5.19 If an underwriter has underwritten any offer for subscription of units under clause 5.15, the underwriter may take up any units not subscribed for by investors.

Placements

- 5.20 The manager may at any time issue units by way of a placement (whether to retail or wholesale investors) at a price and on terms determined by the manager, provided that the manager complies with the Listing Rules applicable to the issue and the conditions and restrictions under any applicable Relief.

Reinvestment

- 5.21 Subject to the Listing Rules, the issue price for each additional unit issued or transferred upon reinvestment is the price determined by the manager.
- 5.22 If the amount to be reinvested in additional units results in a fraction of a unit, the number of units to be issued will be rounded down to the nearest whole unit and any remaining amounts become the assets of the trust.

Minimum Holding

- 5.23 The manager may set and, on notice to investors it considers reasonable, change a minimum unit holding.~~The manager may set and, on notice to investors it considers reasonable, change a minimum unit holding.~~

Suspension of issue

- 5.24 Subject to the Listing Rules, the manager can delay the issue of units (and must inform investors) for 90 days or such other longer or shorter period as appropriate in all of the circumstances if:
- (a) there is a circumstance outside its control which it considers to impact on its ability to properly or fairly calculate price, for so long as the circumstance continues (for example, if the assets

or relevant currencies are subject to restrictions or if there is material market uncertainty);

(b) an emergency or similar state of affairs occurs which, in the manager's reasonable opinion makes it impractical to issue units or which may prejudice the remaining investors;

(c) there is a closure or material restriction on trading on any exchange on which assets may be traded;

(d) a moratorium has been declared;

(e) the acquisition of assets cannot be effected at prices which would be obtained if assets were acquired in an orderly fashion over a reasonable period in a stable market; or

(f) the manager considers it is in the interests of the investors to delay issue of units.

5.25 If the manager delays issue of units:

(a) under clause 5.24(a), (c) to (e), the issue price is the next calculated in accordance with clause 5.12 after the circumstances stop; and

(b) under clause 5.24(b) and (f), the issue price is next calculated in accordance with clause 5.12 after the time or times it determines units will be issued.

Underwriting of issue

5.26 Subject to the Corporations Act, the manager may arrange for a person (including an associate of the manager) to underwrite the subscription of units on such terms as the manager determines.

5.27 The underwriter may take up any units not subscribed for.

5.28 The manager may issue units pursuant to clauses 5.26 to 5.28 at an issue price equal to the issue price at which the units in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

6 Exiting the trust

Procedures

- 6.1 Unless the trust is not liquid, the manager determines the procedures for investors exiting the trust and may change them from time to time, for example by:
- (a) requiring the investor to nominate an account for funds transfer and
 - (b) setting a minimum withdrawal amount,
- and procedures must treat investors of the same class equally and investors of different classes fairly.
- 6.2 The manager may pay cash or transfer assets or both. The manager can borrow to provide the cash.
- 6.3 If a transfer of assets is requested, the manager can require some or all of the associated costs to be paid by the investor or can deduct them from the withdrawal amount, and the value of the relevant assets must have been calculated within one month before the date of the proposed transfer.

Request for redemption

- 6.4 An investor may ask to exit the trust any time, but there is no obligation for the manager to satisfy the request (if it does not, it must tell the investor).
- 6.5 An investor may not withdraw a redemption request unless the manager agrees.

Compulsory redemption

- 6.6 The manager can determine to redeem units without a request in these seven circumstances and if it does so, the **exit price** is the next calculated after it so determines:
- (a) if the investor has breached its obligations to the manager
 - (b) to satisfy any amount of money due to it (as trustee or in any other capacity related to the trust) by the investor
 - (c) to satisfy any amount of money it (as trustee or in any other capacity related to the trust) owes someone else relating to the investor (for example, to the Australian Tax Office);

- (d) if this document otherwise allows (for example, where a minimum holding is or will be breached);
- (e) where the manager suspects that law prohibits the person from legally being an investor; or
- (f) if the investor ceases to maintain a minimum holding as notified to the investor from time to time; or
- (g) such other circumstances as the manager determines in its absolute discretion.

Redemption

- 6.7 When the manager agrees that an investor can exit the trust, it redeems the investor's relevant units. Units can only be redeemed at the exit price. Subject to the Corporations Act, if the manager is not obliged to give effect to a redemption request, it may redeem some or all of the units which are the subject of the request.
- 6.8 If the manager so agrees, it must redeem the investor's units as soon as is practicable and in any event, subject to clause 6.9~~6.9~~, within 90 days.
- 6.9 Except to the extent that cooling off rights might prohibit this, the manager can delay unit redemption (and must inform investors) for 90 days or such other longer or shorter period appropriate in all the circumstances if:
 - (a) there is a circumstance outside its control which it considers impacts on its ability to properly or fairly calculate price, for so long as the circumstance continues (for example, if the assets or relevant currencies are subject to restrictions or if there is material market uncertainty)
 - (b) it has determined to honour redemption requests in relation to a particular time the trust is valued and the total redemption moneys which would be payable at this time represent more than 20% of the value of the net assets of the trust, and in this case the manager can redeem the units at such future time, or at times over such period, as it determines. Payments to each investor must be in the proportion that their redemption moneys bear to all other redemption moneys which were payable at that time or
 - (c) an emergency or similar state of affairs occurs which, in the manager's reasonable opinion makes it impractical to redeem units or which may prejudice the remaining investors;
 - (d) there is a closure or material restriction on trading on any exchange on which assets may be traded;

- (e) a moratorium has been declared;
- (f) the realisation of assets cannot be effected at prices which would be obtained if assets were realised in an orderly fashion over a reasonable period in a stable market;
- (g) assets cannot be disposed of or withdrawn;
- (h) the trust's cash reserves fall and remain below 5% for 10 consecutive business days;
- (i) there is insufficient cash reserves available to meet redemptions and pay the operating expenses of the trust; or
- (j) the manager considers it is in the interests of the investors to delay withdrawal of units.

6.10 If the manager delays unit redemption:

- (a) under clause 6.9(a), (c) to (i), the exit price is the next calculated in accordance with clause 6.15 after the circumstances stop and
- (b) under clause 6.9(b) and (j), the exit price is the next calculated in accordance with clause 6.15 after the time or times it determines units will be redeemed.

6.11 Any redemption payment or transfer must be made as soon as is practicable after the redemption moneys or assets become available and in any event, subject to clause 6.9, within 90 days of payment or transfer becoming due.

6.12 The manager is not obliged to pay any part of the exit price out of its own money.

Monies owed can be deducted

~~6.126.13~~ The manager may deduct from any money payable to an investor, or adjust the value of assets to be transferred, for:

- (a) any money due to it (as trustee or in any other capacity related to the trust) by the investor or
- (b) any money it (as trustee or in any other capacity related to the trust) owes someone else relating to the investor (for example, to the Australian Tax Office).

~~6.136.14~~ For any **partly paid units**, any amount not yet paid in relation to the unit (the **uncalled amount**) must be deducted from the exit price calculated below.

Exit price of units

6.146.15 Other than for cooling off, and subject to clause 20.3 and to the rights and obligations attaching to any class, the exit price is:

value of the net assets

number of units on issue

- Spread

6.156.16 For the price to use when an investor is cooling off (that is, if cooling off rights apply), look to the Corporations Act (generally it is the issue price on the relevant day with certain adjustments and less any administration fees as contemplated by the Corporations Act and the terms of issue).

6.166.17 The trust is forward priced ~ that is, subject to the rights and obligations attaching to any class, each of the variables in the exit price formula must be calculated as at the next time the trust is valued after the pricing cut off time. However, the time is adjusted where unit redemption is delayed for some reason (see clause 6.10), the trust is illiquid (see clause 6.1), or for compulsory redemptions (see clause 6.6).

6.176.18 The exit price may be rounded up or down up to 1% or 1 cent as the manager chooses.

Where the trust is not liquid

6.186.19 If the trust is not liquid, the manager may make a withdrawal offer as the Corporations Act contemplates. Offers may be made any way the manager determines (for example, by e-mail or advertisement). Offers accepted by investors must be dealt with as the Corporations Act requires.

6.196.20 The exit price for a withdrawal offer is the next price calculated after the offer closes.

Consistency with the law

6.21 Any withdrawal must be consistent with Part 5C.6 of the Corporations Act where it applies. This clause applies in spite of anything else in this constitution.

Redemption while the trust is listed

6.22 While the trust is **listed**:

(a) clauses 6.1 to 6.12 do not apply;

- (b) subject to the Corporations Act and the Listing Rules, the manager may make a withdrawal offer under clause 6.19 and the exit price is to be calculated in accordance with clause 6.20; and
- (c) subject to the Corporations Act and the Listing Rules, the manager may purchase units at a price determined in its discretion and cause the units to be cancelled.

Compulsory redemption of all fractions of units

- 6.23 To facilitate units being officially quoted, the manager can determine to redeem all fractions of units and, if it does so, any redeemed amounts become the assets of the trust. The manager may make this determination notwithstanding clause 14.3 and this determination is taken not to materially diminish the rights of any investors to the income and capital of the trust.

7 Calls on partly paid units

Calls on partly paid units

- 7.1 The manager may give at least 14 days notice to investors holding similarly partly paid units requiring payment of same or all of the unpaid amount on those units. The manager may revoke or postpone a call.
- 7.2 The form of notice and the procedures for the call is for the manager to decide.
- 7.3 The non receipt of a notice or accidentally not sending some notices does not invalidate the call.

Unpaid calls

- 7.4 If a call is not paid when due, the manager will give the investor a notice requiring payment by a certain date (at least 7 days in the future) of any part of the uncalled amount which is due for payment and not paid (**unpaid amount**) together with interest calculated below from the date the call was due if the manager requires this.
- 7.5 The interest rate is 5% above the 90 day bank bill rate offered by the bankers to the manager and is calculated on the daily balance unpaid and accrues daily from the date the call was due until full payment is received.

- 7.6 If the relevant notice is not complied with by the nominated date, the unit is forfeited to the manager to be held on trust for the defaulting investor, and the manager:
- (a) must as soon as practicable, subject to the Corporations Act (and the conditions of any applicable ASIC relief from it), offer to sell or dispose of the units of the defaulting investor
 - (b) must use its best endeavours to sell the unit as soon as is practicable, and in any case to sell within 90 days of the default by the investor
 - (c) may execute a transfer of the relevant units in favour of the purchaser or its nominee, and register the purchaser or its nominee as the holder of the unit, and the investor irrevocably authorises the manager and appoints the manager as its attorney to do so and
 - (d) must apply the proceeds of the sale:
 - (i) to the payment of costs and expenses of the forfeiture and disposal
 - (ii) then to unpaid interest under this constitution
 - (iii) then to any unpaid amount in respect of which the notice was given and
 - (iv) any balance is to be paid to the defaulting investor, within 5 business days of receipt by the manager of the proceed of sale.
- 7.7 Any forfeiture includes any distributions declared but not made and all future distributions.

Remaining liability

- 7.8 The investor whose unit was forfeited ceases to be an investor from the nominated date but remains liable to pay to the manager:
- (a) all unpaid amounts in respect of the forfeited units
 - (b) the costs and expenses of the forfeiture and disposal and
 - (c) interest on the unpaid calls at the rate determined above from the date of forfeiture,
- but their liability in respect of these matters ceases if and when the manager receives payment in full of all amounts owing in respect of the units.

- 7.9 The purchaser of a forfeited unit remains liable to pay the amount equal to the uncalled amount (if any) on the unit in accordance with this constitution.

Cancelling forfeiture

- 7.10 Subject to the Corporations Act, the manager may cancel, sell or forfeit before the units are disposed of or forfeited and cancelled, for an amount equal to the exit price.

Exit price for partly paid units

- 7.11 For so long as units are partly paid, the uncalled amount (including the unpaid amount, if any) must be deducted from the exit price calculated under clause 6.146-15.

8 Investments

- 8.1 The manager may invest in any asset it chooses, subject to what it tells investors from time to time (for example, in the trust's product disclosure statement or telling investors of any material change in investment policy in accordance with the Corporations Act).
- 8.2 Valuations must be at least as frequent as the Corporations Act requires.
- 8.3 Unless the manager determines otherwise, the value of an asset for the purpose of calculating the value of the net assets must be market value. If the manager values at other than market value, or where there is no market value, the valuation methods used by the manager must be capable of calculating an issue price and an exit price that is independently verifiable.
- 8.4 The assets must be clearly identified as property of the trust. Unless the ASIC has modified the Corporations Act (for example, by class order) and the conditions of relief are met, assets of the trust must be held separately from the manager's and any other managed investment scheme's assets.

9 Income attribution and distributions to investors

Application of the AMIT Laws

- 9.1 Clauses 9.3 to 9.23 apply in a financial year for which the trust is an AMIT and the AMIT Laws apply.

9.2 Clauses 9.11 to 9.23 apply in any financial year for which the trust is not an AMIT for the full financial year and the AMIT Laws do not apply.

AMIT election

9.3 The manager may elect the trust to be an AMIT in accordance with the **Tax Act** in respect of a financial year for such election to apply to that financial year and all subsequent financial years, but the election is irrevocable once made.

9.4 The rights to income and capital of investors are clearly defined in this document, and the manager must ensure such rights remain clearly defined in every financial year for which the election in clause 9.3 remains effective.

AMIT attribution of income

9.5 The manager must for each financial year determine the **trust components** of the trust's income in accordance with the AMIT Laws by:

- (a) subject to any adjustment under clause 9.6, determining the trust's assessable income of different **tax** characters including but not limited to interest, unfranked dividends, franked dividends, franking credits, capital gains and other assessable income;
- (b) determining the trust's tax deductions of different tax characters; and
- (c) allocating the tax deductions amongst different tax characters of assessable income to determine the net amounts of different trust components on a reasonable basis.

9.6 If the manager in a particular financial year (**the discovery year**) becomes aware of an under-determination or over-determination (**under or over**) of any trust component in an earlier financial year, as contemplated under the AMIT Laws, then it must:

- (a) compare the amount actually determined for that earlier financial year with what the amount would have been if it were worked out on the basis of an objective application of the law to what the manager should have known in the discovery year, to determine the under or over amount of that earlier financial year; and
- (b) include the under or over amount of that earlier financial year in the discovery year by adjusting the trust component

of the relevant tax character as determined in clause 9.5 for the discovery year.

- 9.7 For each financial year, the manager must attribute the different trust components determined under clause 9.5, including any adjustment under clause 9.6 where relevant, to the investors of the trust and determine the **member components** for that financial year.
- 9.8 An amount of member components attributed to one investor need not be the same as an amount attributed to another, but any attribution must be done on a fair and reasonable basis, considering factors including but not limited to attributing based on the different tax characters of income from investments made for different classes of units, and attributing any gains realised to a particular investor in response to the unit redemption request by that investor.
- 9.9 Based on the member components determined in clause 9.7, and in accordance with clause 11.5, the manager shall provide an annual statement to each investor in accordance with the AMIT Laws showing the **determined member components** as relevant to that investor.
- 9.10 If an investor challenges the manager's determinations of determined member components as the AMIT Laws contemplate, then the manager must manage such challenge in a way consistent with the AMIT Laws.

AMIT and non-AMIT Distributable income

- 9.11 Subject to clauses 9.12 and 9.13, Unless the manager in its discretion determines otherwise, the manager must determine the **distributable income** (as defined in clause 9.2 of this document) of the trust for each financial year.
- 9.12 In each financial year for which the trust is an AMIT for the full financial year, distributable income is determined by the manager in accordance with accounting standards and accounting principles generally applicable to unit trusts such as the trust in Australia.
- 9.13 In each financial year for which the trust is not an AMIT for the full financial year, Distributable income is an amount equal to the **section 95 income** plus amounts of income according to trust law concepts which are **exempt income** or **non-assessable non-exempt income**, plus any amount excluded by section 95 income by Division 115 Part 3-1 of the Tax Act, less any **notional amounts**. These amounts should be prepared in accordance with accounting standards and accounting principles generally applicable to unit trusts such as the trust in Australia.

Income distributions

9.39.14 Subject to the rights and obligations attaching to any class, for a **distribution period** ending other than on 30 June, the manager may determine that the distributable income in accordance with clause 9.12 (in financial year for which the trust is an AMIT) or clause 9.13 (in financial year for which the trust is not an AMIT) to which each investor is presently entitled is calculated as follows as the sum of "A" and "B" where:

"A" equals the amount included in distributable income during the relevant distribution period which in the opinion of the manager has arisen as a direct consequence of the disposal of assets by the trust due to the investor redeeming its units under clause 6 and

"B" is calculated by reference to the following formula:

$$\frac{\text{Investor's units} \times \text{distributable income}}{\text{total units}}$$

where:

Investor's units is the number of units held by the investor at the end of the distribution period

total units is the number of units held by all investors at the end of the distribution period and

distributable income is an estimate of the distributable income for the distribution period calculated as if the distribution period were a year of income less all amounts included (for any investor) under "A" above for that distribution period.

9.49.15 Subject to the rights and obligations attaching to any class, for a distribution period ending on 30 June, income distributions are calculated in the same way except:

distributable income is the amount (if any) by which the distributable income for the financial year exceeds the aggregate of: (a) the amounts calculated under "A" in clause 9.149.3 above for that financial year; and (b) the estimates of distributable income for the previous distribution periods of that financial year under "B" in clause 9.149.3 above.

9.59.16 The investors shall at the end of each distribution period be presently entitled to their share of distributable income to the extent that it has not previously been distributed and income distributions must be paid to an investor as soon as practicable

after the **distribution calculation date**, but in any event within 2 months of the end of the financial year.

Other distributions

~~9.69.17~~ Subject to the rights and obligations attaching to any class, the manager may at any time distribute any amount of capital or income to investors or a class pro rata according to the number of units held as at a time decided by the manager (for example, to avoid the manager (as trustee) becoming assessable to pay tax).

Payment of distributions

~~9.18~~ Distributions may be in cash, by transfer of assets or by additional units, or a mix.

~~9.7~~ _____

Separate accounts

~~9.89.19~~ The manager may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular investors or classes or both.

Reinvestment

~~9.99.20~~ The manager determines the procedures for reinvestment (for example it can require reinvestment) and may change them from time to time.

~~9.109.21~~ When units are not officially quoted, units issued for reinvested distributions are priced using the issue price next calculated after the end of the relevant distribution period (for clarity, this is the first net asset value price calculated which has the provision for distribution deducted).

Other matters

~~9.119.22~~ After a distribution is determined and is awaiting payment, the current investor remains entitled to it even if the units are transferred before it is paid.

~~9.129.23~~ The manager may classify any item as income or capital and make reserves or provisions.

10 Payments from the trust

- 10.1 The manager determines the procedures for payments to investors (for example it can pay by cheque or electronic payment) and may change them from time to time. If payment is made in accordance with the manager's procedures (including investor's instructions), an investor will have no recourse to the manager.
- 10.2 Only whole cents need be paid ~ any balance becomes an asset.
- 10.3 Payment to any one of joint investors discharges the manager from the obligation to pay.
- 10.4 When units are not officially quoted, unsuccessful payments can be reinvested. Units issued for reinvested payments are priced using the issue price next calculated.
- 10.5 The manager may deduct any relevant tax from payments made from the trust, under the Tax Act, including any tax withheld in a financial year under the AMIT Laws in respect of member components attributed to an investor in that financial year or an earlier financial year in accordance with clauses 9.5 to 9.10.

11 Registers, records, audit and confirmations

- 11.1 The manager must keep the registers, books and records which the Corporations Act requires (for example, to prepare financial statements).
- 11.2 For each financial year, and if the Corporations Act requires (for example, for disclosing entities) for each half year, the manager must prepare financial statements for the trust as the Corporations Act requires.
- 11.3 The manager must appoint an auditor for the trust to perform such roles as the Corporations Act requires (for example, to prepare a report on the financial statements and the compliance plan).
- 11.4 The manager must give investors financial statements and relevant reports on them and transaction confirmations, as the Corporations Act requires.
- ~~11.4~~ 11.5 The manager must give investors annual statements where required by the Tax Act.

12 Meetings

- 12.1 The manager may at any time convene a meeting of investors or investors of a class to consider any matter, including resolutions. It

must convene a meeting if requisitioned or otherwise required to do so as the Corporations Act contemplates.

Notice

- 12.2 A meeting of investors or a class must be convened by notice sent to every investor entitled to attend and vote at the meeting as well as to other persons the Corporations Act requires. Notices must be resent for adjourned meetings if the Corporations Act requires.
- 12.3 Subject to the Corporations Act the form of the notice, the time and place of the meeting and the manner in which the meeting will be conducted (for example, the order of business and proxy mechanics) is determined by the manager.
- 12.4 For meetings, the manager must give at least the notice period which the Corporations Act requires for the business at that meeting.

Quorum

- 12.5 The quorum for a meeting of investors or a class is at least 2 investors or investors of the class present in person or by proxy together holding at least 10% of all units or units of that class, unless:
 - (a) the trust or class has only 1 investor who may vote on a resolution, in which case that 1 investor constitutes a quorum or
 - (b) there is any proposal to remove the manager, then the quorum is at least 2 investors present in person or by proxy together holding at least 50% of all units that may be cast by members entitled to vote on a proposed resolution, and for so long as the trust is not listed.
- 12.6 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
 - (a) dissolved if it was convened by investors
 - (b) dissolved if it was to consider any proposal to remove the manager or
 - (c) adjourned to such place and time as the manager decides.
- 12.7 At any adjourned meeting, those investors or investors of the class present in person or by proxy constitute a quorum.

Other matters

- 12.8 The manager may appoint a person to chair a meeting of investors. A poll cannot be called by investors on the issue of appointment of the chair unless the manager agrees.
- 12.9 The decision of the chair on any matter relating to the conduct of the meeting (such as who can address the meeting) is final.
- 12.10 The chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit. A poll cannot be called by investors on the issue of adjournment unless the manager agrees.
- 12.11 A resolution binds all investors or investors of a class, whether or not they were present at the meeting.

Voting

- 12.12 Voting is by a show of hands, unless a poll is demanded.
- 12.13 Who can demand a poll, and when, is governed by the Corporations Act.
- 12.14 The value of a vote (on a show of hands or a poll) is governed by the Corporations Act.
- 12.15 The chair of the meeting has no casting vote.
- 12.16 The Corporations Act governs the number or, on a poll the value, of votes required to pass a resolution.

Voting for an investor

- 12.17 An investor which is not a body corporate may be represented at a meeting by proxy. Proxies are governed by the Corporations Act except that proxies may be accepted up to the start of the relevant business being considered, whether at the meeting or any adjournment.
- 12.18 A body corporate may be represented at a meeting by a person appointed in the manner provided in the Corporations Act.

Procedural irregularities

- 12.19 A meeting of investors or class of investors, any notice of meeting or any proceeding at a meeting is not invalidated because of the accidental omission to give notice of the meeting or the non-receipt of the notice or because of any procedural irregularity (including as defined by section 1322 of the Corporations Act).

Minutes

- 12.20 The minutes of a meeting of investors or class of investors signed by the chair of the meeting are conclusive evidence of the matters stated in them, unless the contrary is proved.

Non-physical meetings

- 12.21 Subject to the Corporations Act, the manager may hold meetings any way it determines (for example, phone hook-up, video conference, electronic voting, circular resolution or the necessary investors agreeing in writing (this includes e-mail and fax)).

13 Communications

- 13.1 Formal Communications between investors and the manager (and the other way) must be in writing (subject to the Corporations Act, this includes e-mail and fax).
- 13.2 Communications to an investor must be sent to the investor at the investor's physical or electronic address (cheques may be given to the investor or anyone the manager does not doubt to be authorised by the investor or sent to the investor's physical address).
- 13.3 Communications to the manager must be sent to the manager at the last advised physical or (if the manager allows) electronic address.
- 13.4 For joint investors, the address is that of the investor first named in the register.
- 13.5 Communications: delivered are taken to be received when delivered; by post, are taken to be received the next business day; by fax, are taken to be received 1 hour after receipt by the sender of confirmation of successful transmission; and by e-mail, are taken to be delivered 1 hour after sending provided that the sender does not doubt successful receipt. Proof of actual receipt is not required.
- 13.6 Communications to the manager must carry the actual, facsimile or electronic signature of the investor or someone they authorise, unless the manager does away with this requirement. The manager can rely on signatures without enquiry if it has no reason to doubt authenticity or genuineness.
- 13.7 Subject to the Corporations Act, a document may be sent to an investor electronically, or in place of sending it, an electronic link to it may be sent.

14 What the manager can do

General powers

- 14.1 The manager has all the powers in respect of the trust that are possible to confer on a trustee under the law and as though it was the absolute owner of the assets acting in its personal capacity.
- 14.2 Without limiting this, the manager can borrow or obtain financial accommodation (whether or not on security and including investing in derivatives or financial products with internal leveraging) and incur obligations and **liabilities** (including giving guarantees), and may invest in, dispose of or otherwise deal with assets and liabilities.
- 14.3 Any exercise of powers by the manager must not result in the rights of any investors to the income and capital of the trust being materially diminished or expanded.
- 14.4 In exercising its powers and carrying out its duties, the manager must treat investors who hold units of the same class equally and investors who hold units of a different class fairly.
- 14.5 The manager has power to do all such acts and things which it considers necessary, desirable or reasonably incidental to give effect to the trust being listed, including without limitation determining the final date for accepting redemptions prior to the trust being listed.
- ~~14.3 The manager may decide how and when to exercise its powers in its absolute discretion.~~

Delegates

- ~~14.4~~14.6 The manager may authorise any person (including associates) to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to do anything in the manager's power (including to appoint its own agent or delegate).
- ~~14.5~~14.7 The terms of appointment are for the manager except to the extent the Corporations Act (typically the related party provisions and the manager's Australian financial services licence) governs these.

15 Fees and expenses

Fees

- 15.1 The manager is entitled in respect of each application it accepts to a fee of up to 4% (excluding **GST**) of the application money. It can keep this or pay it to anyone it wishes (including paying it back to the investor in cash or in units or to their adviser). When calculating the number of units to be issued, any application fee must first be deducted from the value of the application money or property.
- 15.2 The manager is entitled to a management fee of up to 4% per annum (excluding GST) of the value of the assets, calculated as at the first time the trust is valued after the end of each month, accrued daily and payable monthly in arrears.
- 15.3 The manager is entitled to a performance fee as set out in Schedule 1 to this document as at the first time the trust is valued after 31 December and 30 June in each year and payable six-monthly in arrears.
- 15.4 The manager is entitled in respect of each withdrawal to a fee of up to 4% of the withdrawal amount.
- 15.5 The manager is entitled, subject to the Corporations Act and its proper performance in providing **Additional Fund Administration Services**, to take and retain for itself a remuneration fee out of assets for time spent by it and **Manager Personnel** in providing Additional Fund Administration Services on the terms set out in this clause 15.5:
- (a) the remuneration fee is to be calculated on the basis of a maximum hourly rate of \$1,000.00 (Australian dollars) per hour, adjusted quarterly to reflect any increase in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter. For the avoidance of doubt, such rates will not exceed its usual commercial rates;
 - (b) the manager is entitled to charge and take the remuneration fee out of the assets, each calendar month;
 - (c) the manager may notify the investors of its current hourly rates for the purposes of clause 15.5(a), and the amounts charged to the assets under clause 15.5(b) from time to time, but its rights to charge and take those amounts are not prejudiced by a failure to do so or a delay in doing so;
 - (d) the manager's rights under clause 15.5 are in addition to:
 - (i) its rights to fees under this clause 15; and

- (ii) its rights under this document and at law to be indemnified in connection with debts, liabilities and expenses incurred by it in the proper performance of its duties as responsible entity of the trust;
- (e) the manager may appoint, engage or otherwise contract with a person other than Manager Personnel to perform any Additional Fund Administration Services;
- (f) an appointment, engagement or other contract under clause 15.5(e) may be sole, joint, several or joint and several and may include a power in turn for a person to delegate the performance of any Additional Fund Administration Services to another person;
- (g) subject to clause 15.5(h), an appointment, engagement or other contract under clause 15.5(e) may be on any terms that the manager determines in its absolute discretion, including in relation to remuneration and other compensation. Subject to this document, the manager is entitled to be indemnified out of the assets in respect of that remuneration and compensation;
- (h) an **Administration Services Delegate** may be an associate of the manager or an officer or employee of an associate of the manager. If and for so long as the trust is a registered managed investment scheme, the terms on which an associate is appointed, engaged or contracted must not contravene Chapter 2E of the Corporations Act (as modified by section 601LC of the Corporations Act);
- (i) to the extent permitted by law, the manager may waive or excuse on any terms it thinks fit any breach by any Administration Services Delegate of their obligations to the manager in connection with the trust; and
- (j) the appointment, engagement or other contracting of an Administration Services Delegate under clause 15.5(e) does not relieve the manager from the obligation to properly perform all of its duties and obligations, including to ensure that the services delegated are properly performed.

~~15.5~~ 15.6 The manager may accept lower fees than it is entitled to receive under this document or may defer payment: for any period; generally; for an investor; or for any type of class of investor. It can take interest on deferred fees at the rate the banker to the trust pays on the trust's deposits plus 5%. Where payment is deferred, then as relevant the fee accrues daily until paid.

Compliance committee

~~15.6~~15.7The manager must appoint a compliance committee for the trust if the Corporations Act requires.

~~15.7~~15.8If any member of the compliance committee incurs a liability in that capacity in good faith, then if the manager permits, they are entitled to be indemnified out of the assets for that liability to the extent permitted by the Corporations Act.

Expenses

~~15.8~~15.9All expenses incurred by the manager in relation to the proper performance of its duties in respect of the trust are payable or reimbursable out of the assets and, if appropriate, such expenses may be attributed to a particular investor or class of investors. This includes (without limitation) trust and manager establishment, promotion and reporting (including product disclosure statements, advertising and promotional material and printing), licensing, custodian, registry, technology systems, audit, taxation advice, any relevant tax, insurance, external consultants, accounts, stationery, postage, hedging costs, bank charges, telegraphic transfers, providing a copy of this document to an investor and termination costs, compliance and compliance committee costs, the admission of the trust to the official list of ASX and compliance with the Listing Rules, the payment of fees and expenses to any investment managers of the trust or underlying funds that the trust invests in, including, without limitation performance fees, as well as unit holder meetings and legal proceedings.

Amendment

~~15.9~~15.10Subject always to clause 21, the manager may from time to time change any fee by notice to the relevant investors and as necessary disclosing it in any product disclosure statement or supplementary product disclosure statement.

Corporations Act

~~15.10~~15.11So long as the Corporations Act requires, the manager's rights to fees and to expense reimbursement are only available in the proper performance of its duties.

16 GST

16.1 Consideration for supplies under or in connection with this document (including the supply of any goods, services, rights, benefits or things) do not include any amount referable to GST.

- 16.2 If the manager is or becomes liable to pay GST in respect of any supply then (in addition to any fee, other amount or consideration payable to the manager in respect of the supply), the manager is entitled to be paid an additional amount on account of GST.
- 16.3 The amount is calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.
- 16.4 The manager is entitled to be reimbursed or indemnified for such amount of GST out of the assets.

17 Liability of the manager

Limitation

- 17.1 Subject to clause 17.7, the manager enters into this deed in its capacity as responsible entity of the trust and not in its personal capacity. Subject always to any liability which the Corporations Act might impose on the manager, if the manager acts in good faith and without gross negligence it is not liable in equity, contract, tort or otherwise to investors for any loss suffered in any way relating to the trust.
- 17.2 Subject always to any liability which the Corporations Act might impose on the manager, the liability of the manager to any person other than an investor in respect of the trust is limited to the manager's actual indemnification from the assets for that liability.

Indemnities

- 17.3 The manager is entitled to be indemnified out of the assets for any liability including tax liability properly incurred by it in relation to the trust (including any liability incurred because of a delegate or agent).
- 17.4 This indemnity is in addition to any indemnity under law. It continues to apply after the manager retires or is removed as trustee.
- 17.5 So long as the Corporations Act requires, the manager's rights to indemnification are available only in respect of the proper performance of its duties.

Holding units

- 17.6 The manager and its associates may hold units in any capacity.

Other capacities

- 17.7 Subject to the Corporations Act, the manager may:
- (a) deal with itself (as trustee of the trust or in any other capacity), any associate or any investor
 - (b) be interested in any contract or transaction with itself (as trustee of the trust or in any other capacity), any associate or investor and
 - (c) act in the same or a similar capacity in relation to any other trust or managed investment scheme,
- and retain any benefit or benefits from doing so.

Manager may rely

- 17.8 The manager may take and may act (or not act as relevant) on any advice, information and documents which the manager has no reason to doubt as to authenticity, accuracy or genuineness, and subject always to any liability which the Corporations Act might impose on the manager, is not liable for so acting or not acting on such basis.

Limit on duties

- 17.9 Subject always to any liability which the Corporations Act might impose on the manager, all obligations of the manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law.

18 Change of manager

- 18.1 The manager may retire in the way the Corporations Act contemplates. The manager must retire when required by the Corporations Act. Investors have no right to remove the manager other than the right granted by the Corporations Act.
- 18.2 When the manager changes, the investors may choose a replacement as the Corporations Act contemplates.
- 18.3 Any proposed replacement must agree to be bound by this document as if it had originally been a party.
- 18.4 When the manager changes, the manager is released from all obligations in relation to the trust arising after the time it retires or is removed except those which the Corporations Act continue to impose.

19 Liability of investors

- 19.1 Subject to this document, an investor's liability is limited to the amount (if any) which remains unpaid for their units.
- 19.2 An investor need not indemnify the manager if there are not enough assets to meet the claim of any creditor of the manager. In the absence of separate agreement with an investor, the recourse of the manager and any creditor is limited to the assets.
- 19.3 Joint investors and former joint investors are jointly and severally liable in respect of all payments required to be made by or for an investor or former investor.
- 19.4 Each investor indemnifies the manager for all liability incurred by the manager arising directly or indirectly from the investor's breach of its obligations to the manager.

20 Winding up

- 20.1 This clause applies once the trust has terminated.
- 20.2 Unless it decides to distribute some or all assets to investors, the manager must dispose of them.
- 20.3 After paying or making allowance for all actual and anticipated liabilities, subject to the rights and obligations attaching to any class, the net proceeds (or assets equal to their value) must be distributed pro rata to investors according to the number of units they held at termination. The manager may deduct relevant moneys under clauses 6.13 and 6.14. A partly paid unit must be counted as a fraction of a unit of which the numerator is the amount paid up in respect of the unit and of which the denominator is the total issue price for that unit as determined in accordance with clauses 5.12 to 5.14.
- 20.4 Assets (rather than cash) can be distributed to some investors or class and not others. Costs related to this are payable from the money payable to the investor unless the manager determines otherwise.
- 20.5 The manager may distribute proceeds of realisation in instalments.
- 20.6 Winding up must be completed as soon as is practicable.
- 20.7 Any obligation to redeem units ceases on termination. The manager may not exercise any discretion to redeem during winding up.
- 20.8 To assist the manager to wind up the trust, the following clauses survive termination: 4.8(c), 4.9, 6.3, 8, 10-17 and 19-26~~23~~.

- 20.9 If and to the extent that the ASIC's policy so requires, the manager must arrange for independent audit of the final accounts of the trust by an auditor.
- 20.10 Winding up must be consistent with Part 5C.9 of the Corporations Act. This clause applies despite anything else in this constitution.

21 Amendments to this document

- 21.1 The manager may amend this document by supplemental deed.
- 21.2 When amendments take effect is governed by the Corporations Act.
- 21.3 If:
- (a) the Corporations Act requires or
 - (b) the manager considers that any relief from the Corporations Act made available by the ASIC a condition of which is that this document contain certain provisions should be complied with
- then those provisions are deemed to be incorporated as so required or for so long as the manager has that view and, to the extent of any inconsistency, prevail over any other provision of this document.
- 21.4 Approval of investors to any amendment under clause 21.1 or deeming under clause 21.3 is needed if the Corporations Act requires.

22 Complaints

- 22.1 If an investor submits a complaint to the manager relating to the trust (this date is C+0 days), the manager must:
- (a) if the complaint is in writing, acknowledge it by C+14 days
 - (b) if the complaint is made verbally, acknowledge the complaint verbally at the time the complaint is made (i.e. C+0 days)
 - (c) properly consider the complaint, whether written or verbal, as soon as practicable and act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties and

- (d) in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint
 - (ii) an apology or
 - (iii) compensation for loss incurred by the investor as a direct result of the breach (if any) and
- (e) tell the complainant by C+45 days progress, remedies (if any) and alternative avenues they can pursue (such as external resolution).

23 Listing Rules

23.1 While the trust is listed:

- (a) notwithstanding anything contained in this document, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this document prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this document to contain a provision and it does not contain such a provision, this document is deemed to contain that provision;
- (e) if the Listing Rules require this document not to contain a provision and it contains such a provision, this document is deemed not to contain that provision; and
- (f) if any provision of this document is or becomes inconsistent with the Listing Rules, this document is deemed not to contain that provision to the extent of the inconsistency.

23.2 In accordance with the Corporations Act and any applicable Relief for so long as it applies to the trust, a change in the text of this document because of the operation of clause 23.1 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

24 Restricted Securities

- 24.1 Clause 24.2 only operates to the extent that it is not inconsistent with the Corporations Act.
- 24.2 During a breach of the Listing Rules or of a restriction agreement relating to units which are Restricted Securities, the investor who holds the units which are Restricted Securities is not entitled to any distribution from the trust, nor any voting rights, in respect of those units.

25 Small holdings

- 25.1 Subject to the provisions of this clause 25, the manager may in its discretion from time to time sell or redeem any units held by an investor which comprise less than a marketable parcel as provided in the Listing Rules without request by the investor.
- 25.2 The manager may only sell or redeem units under this clause 25 on one occasion in any 12 month period.
- 25.3 The manager must notify the investor in writing of its intention to sell or redeem units under this clause 25.
- 25.4 The manager will not sell or redeem the relevant units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 25.3; or
 - (b) if, within the 6 weeks allowed by clause 25.4(a), the investor advises the manager that the investor wishes to retain the units.
- 25.5 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 25.6 The manager or the purchaser of the units must pay the costs of the sale as the manager decides.
- 25.7 The proceeds of the sale or redemption will not be sent to the investor until the manager has received the certificate (if any) relating to the units, or is satisfied that the certificate has been lost or destroyed.
- 25.8 The manager is entitled to execute on behalf of an investor any transfer of units under this clause 25.

2326 Interpretation of this document

Definitions

~~23.1~~26.1 In this document these words and phrases have the following meaning unless the contrary intention appears:

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

Administration Services Delegate means a person appointed, engaged or otherwise contracted by the manager as contemplated by clause 15.5(e).

AMIT means a managed investment trust that is an attribution managed investment trust in accordance with the AMIT Laws.

AMIT Laws means those provisions of the Tax Act governing attribution managed investment trusts, and include any Australian Taxation Office tax rulings or published guidelines relating to those laws.

assets: all the property, rights and income of the trust, but not application money or property in respect of which units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in any distribution account.

ASX: ASX Limited.

ASX Settlement: ASX Settlement Pty Limited.

ASX Settlement Operating Rules: the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the units are CHESS Approved Securities, each as amended or replaced from time to time.

business day: means

- ♦ while units are not officially quoted, a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; or
- ♦ while units are officially quoted, a day on which ASX is open for trading. ~~:- a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney.~~

CHESS: the clearing house electronic sub-register system as defined in the ASX Settlement Operating Rules.

CHESS Approved Securities: securities approved under the ASX Settlement Operating Rules to participate in CHESS.

class: means a class of units of the trust created under clause 4.3.

Corporations Act: the *Corporations Act 2001 (Cth)*, as amended from time to time.

distributable income: has the meaning given to it in clause 9.

distribution calculation date: the last day of each financial year and such other days as the manager determines.

distribution period:

- ♦ for the first distribution period, the period from the establishment of the trust to the next distribution calculation date
- ♦ for the last distribution period, the period from the day after the preceding distribution calculation date to the date of distribution on winding up of the trust and
- ♦ in all other circumstances, the period from the day after the preceding distribution calculation date to the next occurring distribution calculation date.

exempt income: has the meaning in the Tax Act.

exit price: the price of units calculated in accordance with clauses 6.15 to 6.18.

financial year:

- ♦ for the first financial year, the period from the establishment of the trust to the next 30 June
- ♦ for the last financial year, the period from 1 July before the date the trust terminates to the date of distribution on winding up of the trust and
- ♦ in all other circumstances, the 12 month period ending on 30 June in each year.

GST: a goods and services tax, value added tax or consumption tax.

investor: the person registered as the holder of a unit (including persons jointly registered).

issue price: the price of units calculated in accordance with clauses 5.12 to 5.225.14.

liabilities: all present liabilities of the trust including any provision which the manager decides should be taken into account in determining the liabilities of the trust, but does not include:

- ◆ any amount representing investors' capital
- ◆ undistributed profits
- ◆ interest attributable to investors accruing on investors' 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 trust.

listed: admitted to the official list of ASX.

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

manager: the trustee of the trust from time to time, but after registration of the trust under the Corporations Act, the entity entered on the ASIC's register as the responsible entity.

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

market price: of a unit in respect of any business day means:

- (a) the last sale price per unit recorded on the ASX on that business day (whether or not a sale was recorded on that business day); or
- (b) if the manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a unit on that business day, the mid-point of the bid and offer prices per unit recorded on the ASX at the close of trading on that business day (whether or not a sale is recorded on that business day); or
- (c) if the manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a unit on that business day, the price determined by an independent expert whose identity and instructions are to be determined by the manager.

non-assessable non-exempt income: has the meaning in the Tax Act.

notional amounts: means those amounts such as foreign tax credits and franking credits which give rise to assessable income but do not result in the receipt of any cash or property.

officially quoted: admitted for quotation by ASX under the Listing Rules, including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

partly paid units: a unit in respect of which a portion of its issue price remains unpaid.

pricing cut off time: the time or times the manager determines that applications or redemption requests for investors or any group or class of investors must be received to obtain a unit price calculated at a particular time.

product disclosure statement: a document complying with Part 7.9 of the Corporations Act or any other unregulated offer document issued by the responsible entity with respect to the trust from time to time.

Relief: a class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the manager or the trust and includes any amended or substituted class order, exemption, declaration, modification or other instrument.

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

section 95 income: means "net income" as defined by section 95 of the Tax Act or, if repealed or replaced, any concept enacted to replace this definition.

spread:

- ◆ when calculating the issue price of a unit, the manager's estimate of the total cost of acquiring the assets (including costs associated with brokerage, stamp duty or other costs) and
- ◆ when calculating the exit price of a unit, the manager's estimate of the total cost of selling the assets (including costs associated with brokerage, stamp duty or other costs),

but, subject to the Corporations Act, the manager may (for a particular application or request for redemption or group or generally) deem these to be less.

tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the manager by way of reimbursement of GST or any amount included either expressly or impliedly in an

amount paid or payable by the manager on account of GST, together with interest and penalties.

Tax Act means the *Income Tax Assessment Act 1936 (Cth)*, the *Income Tax Assessment Act 1997 (Cth)* and the *Taxation Administration Act 1953 (Cth)*, as appropriate.

time the trust is valued: a time at which the manager calculates value of the net assets.

trust: means the managed investment scheme established by this document.

uncalled amount: has the meaning given to it in clause 6.14.

unit: an undivided share in the beneficial interest in the trust as provided in this document and, subject to this document, where the Corporations Act or the rights attaching to a class require, includes a reference to a class.

unpaid amount: has the meaning given to it in clause 7.4 of this document.

value of the net assets: the value of the assets less the liabilities.

Interpretation

23.226.2 Unless the contrary intention applies, in this document:

- (a) terms defined in the Corporations Act are used with their defined meaning
- (b) a reference to this document or another instrument includes any variation or replacement of any of them
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (d) the singular includes the plural and vice versa
- (e) person includes a firm, a body corporate, an unincorporated association or an authority
- (f) amend includes delete or replace
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, any persons taking by novation) and assigns

- (h) the words "**including**" or "**includes**", "**for example**" or "**such as**" when introducing a list of items do not exclude a reference to other items whether of the same class or genus or not
- (i) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it
- (j) a reference to a year (other than a financial year) means a calendar year and
- (k) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

Investor information

23.326.3 Investors must give all information that the manager reasonably requests to perform its functions.

Rounding

23.426.4 Any excess application or other money or property which results from rounding becomes an asset of the trust.

Headings

23.526.5 Headings are for convenience, not for interpretation.

Governing law

23.626.6 This document must be interpreted in accordance with New South Wales laws. The parties submit to the non-exclusive jurisdiction of the courts there.

Severability

23.726.7 If the whole or any part of any part of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction.

23.826.8 The remainder of this document has full force and effect and its validity or enforceability in any other jurisdiction is not affected.

23.926.9 This clause has no effect if the severance alters the basic nature of the trust or is contrary to public policy.

Other documents

~~23.10~~26.10A document does not become part of this document by reason only of that document referring to this document or vice versa, or any electronic link between them.

Constitution legally binding

~~23.11~~26.11This document binds the manager and each present and future investor and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this document.

Excluded obligations

~~23.12~~26.12Except as required by the Corporations Act, all restrictions on the exercise of the manager's powers or the obligations of the manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any such restriction or obligation of the manager in its capacity as responsible entity of the trust arising under any statute.

EXECUTED as a deed.

Signed sealed and delivered

~~Fundhost Limited~~The Trust Company
(RE Services) Limited³
by a director and secretary/director:

Signature of director

Signature of director

Name of director (please print)

Name of director (please print)

³ Fundhost Limited ceased to be responsible entity of the Fund under the Corporations Act and was replaced by The Trust Company (RE Services) Limited as the new responsible entity of the Fund on 19 October 2016.

Schedule 1 ~ performance fee calculations

Period ends are 30 June and 31 December of each year.

Obtain appropriate year end price

1. Calculate period end unit price in the usual way (this takes into account various fee and expense accruals including performance fee accrual) (all period end prices are pre distribution or add back distribution for current period). The unit price is the value of the net assets divided by the number of units on issue as calculated in accordance with the manager's unit pricing policy.
2. Express the performance fee accrual (if any) in amount per unit (as a positive value)
3. Add the figure determined by paragraph 1 and the figure determined by paragraph 2. This is the period end unit price pre-performance fee ("P1")

Calculate the performance for the period

4. Obtain prior period end unit price ("P0")
5. Calculate unit price performance. $\text{Performance} = (P1/P0 - 1) \times 100$ expressed as a percentage

Calculate the performance fee payable

6. Calculate the Hurdle Return. $\text{Hurdle Return} = \text{days in period} / 365 \times 8\%$, expressed as a percentage
7. Calculate the current period performance fee ("F"). $F = (\text{Performance} - \text{Hurdle Return}) \times \text{daily-average net asset value for the period} \times 10\%$ (note that this value may be negative).
8. If there is a Prior Period Deficit, subtract the deficit from F calculated above to obtain the Net Performance Fee (NPF).
9. If NPF is greater than zero, the performance fee is payable. If NPF is less than zero, the deficit is carried forward to the next period (Prior Period Deficit).

Schedule 2 ~ Additional Fund Administration Services

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

- (a) the trust itself, including:
 - (i) the establishment and formation of the trust;
 - (ii) any structural or strategic changes to the trust;
 - (iii) registering or deregistering the trust as a managed investment scheme;
 - (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the trust, including any supplementary or replacement disclosure document relating to the trust;
 - (v) any form of equity raising and debt refinancing associated with the trust;
 - (vi) obtaining and maintaining a rating from any ratings agency;
 - (vii) the retirement, removal or replacement of the manager; and
 - (viii) the termination or winding up of the trust and the associated taking of accounts, discharging of liabilities and expenses and distribution of asset;
- (b) this constitution and any other document to which the manager is a party in its capacity as the responsible entity of the trust (**Fund Documents**), including:
 - (i) reviewing, negotiating, settling and executing Fund Documents;
 - (ii) dealing with or considering any request for any amendment, restatement, waiver or consent under a Fund Document or the termination of a Fund Document;
 - (iii) investigating circumstances which the manager reasonably believes may be a default or breach by any person of a Fund Document; and
 - (iv) the actual or contemplated enforcement of, or the preservation or consideration of any right or power under, any Fund Document;
- (c) the assets, including:
 - (i) the actual, attempted or proposed acquisition, investment, disposal or other dealing in, of or with assets which are, were or are to become assets of the trust;

- (ii) taking out and maintaining all insurances in relation to the trust and the asset which the manager reasonably believes are appropriate; and
 - (iii) the receipt, collection, management, maintenance, custody, holding, supervision, insurance, repair, valuation and distribution of assets;
- (d) the liabilities, including:
 - (i) raising and complying with the terms of financial accommodation of any kind, including all dealings with the providers of that accommodation;
 - (ii) appointing or engaging, negotiating with and instructing advisers and experts; and
 - (iii) appointing or engaging, negotiating with and instructing third parties to perform any of the activities described in this definition;
- (e) accounting, compliance, recordkeeping and taxation, including:
 - (i) complying with all obligations and requirements under tax laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the trust, any taxation audit, and the management of the tax affairs of the trust;
 - (ii) preparing and maintaining the books, records and accounts of the trust;
 - (iii) the preparation and audit of the taxation returns and accounts of the trust;
 - (iv) the establishment and maintenance of the compliance committee and the preparation, implementation, amendment and audit of the compliance plan; and
 - (v) liaising with compliance plan auditors in relation to any breaches, incidents or events which have occurred in respect of the trust;
- (f) dealing with investors, including:
 - (i) offering the trust and dealing with applications and redemption requests;
 - (ii) facilitating, convening and holding meetings of investors and implementing resolutions of investors;
 - (iii) corresponding and communicating with investors;
 - (iv) maintaining and operating any register of the trust; and
 - (v) establishing and administering complaints handling procedures and obtaining and maintaining membership of an external dispute resolution scheme;
- (g) other dealings, including:
 - (i) complying with all applicable laws;
 - (ii) dealings with any securities exchange;

- (iii) dealings with regulators, taxation authorities and other governmental agencies, whether in the ordinary course or in relation to requests, requirements, complaints, investigations, enquiries or disputes;
 - (iv) dealings with service providers of the trust, including work performed by the manager in respect of potentially reportable breaches caused by service providers and completing ad-hoc monitoring visits of service providers of the trust as a result of systemic incidents or performance issues reported;
 - (v) initiating, prosecuting, defending and compromising any court, arbitration, mediation or other dispute resolution action, claim or proceedings concerning the manager (in that capacity), the trust or the assets, whether commenced or to be commenced by the manager or not; and
 - (vi) approaching any court of competent jurisdiction to seek opinion, advice or direction on any question in connection with the management or administration of the trust or the assets or in connection with the interpretation of a Fund Document; and
- (h) all matters incidental to any of the above.

Corporations Act compliance

Subject	Sections	Clauses
consideration paid	601GA(1)(a)	5.12 to 5.134
powers	601GA(1)(b)	8.1
complaints	601GA(1)(c)	22
winding up	601GA(1)(d) & 601NA-NF	20
fees & expenses	601GA(2)	15
powers	601GA(3)	14
withdrawal	601GA(4), 601KA(1) & 601KA(2)	6
enforceability	601GB	263.11