

Trust Deed

relating to the Awatea Forest Fund

Roger Dickie (N.Z.) Limited

Covenant Trustee Services Limited

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Deed dated 1 March 2022

Parties

- 1 **Roger Dickie (N.Z.) Limited** at Waverley (**'Manager'**)
- 2 **Covenant Trustee Services Limited** at Auckland (**'Supervisor'**)

Background

- A The Manager wishes to establish a managed investment scheme to be known as the Awatea Forest Fund or such other name as the Manager may determine from time to time (**'Fund'**) to acquire interests in forestry and other Authorised Investments.
- B The Manager intends to register the Fund as a managed investment scheme under the Financial Markets Conduct Act 2013 (**'Act'**) and make a regulated offer (as defined in the Act) of Units.
- C The Supervisor is to be appointed the trustee and supervisor, and the Manager is to be appointed the manager, of the Fund, in each case on the terms and conditions set out in this Deed. The terms and conditions set out in this Deed will govern the Fund.
- D Accordingly, the Supervisor and the Manager have agreed to enter into this Deed.

Covenants

1 Interpretation

1.1 Defined terms

In this Deed unless the context otherwise requires:

'Act' means the Financial Markets Conduct Act 2013;

'Adjusted NAV' means the net asset value of the Fund calculated by the Manager in accordance with clause 24.1;

'Amount' means the amount of all or part of the Net Income or capital of the Fund calculated in accordance with clause 25;

'Applications Bank Account' means a trust account in the name of the Manager (or, if the Manager determines and the Supervisor agrees, the name of the Supervisor or Custodian) and maintained in accordance with the Act for the purposes of holding application moneys paid pursuant to this Deed;¹

'Approved Valuer' means an appropriately qualified and independent valuer chosen by the Manager and notified to the Supervisor;

¹ Section 87 of the Act and regulation 49 of the Regulations.

'Assets' means any investment made or money, property, right, or other assets of any kind (including Cash) held at any relevant time by the Fund, whether in possession or not;

'Associated Person' has the meaning given to that term in the Act;²

'Auditor' means the auditor of the Fund appointed pursuant to clause 28.1;

'Authorised Investments' means any Cash, property, security, right, or interest, whether in New Zealand or any other country and whether legal or equitable, corporeal or incorporeal, freehold, leasehold, or some other tenure as agreed between the Manager and the Supervisor from time to time that the Fund may hold or be invested in pursuant to the SIPO for the Fund;

'Bank Account' has the meaning given to that term in clause 3.3a;

'Borrow' means to borrow money, or to raise money by way of the drawing, acceptance, discount, or sale of bills of exchange or promissory notes or other financial instruments, or in any other manner, whether in New Zealand currency or any other currency and **'Borrowing'** and **'Borrowed'** each have a corresponding meaning;

'Business Day' means a day on which registered banks are open for business in Auckland, New Zealand, other than a Saturday, Sunday, or public holiday;

'Cash' means cash and includes cheques, bank cheques, bank deposits, bank transfers, and bank drafts;

'CPI' means the Consumers Price Index, as published by Statistics New Zealand;

'Custodian' has the meaning given to that term in clause 19 and includes, to the extent the context permits, any Sub-Custodian;

'Distribution Date' means such date (if any) as the Manager may fix from time to time for the purpose of distributing an Amount to Unit Holders;

'Distribution Period' means the period:

- a from the commencement of the Fund to its first Distribution Date; and
- b thereafter, the period from a Distribution Date to the next Distribution Date,

including the first date, but excluding the final date, in each period;

'Electronic Communication' means a transmission of an instruction, request, notice, or information by telephone, facsimile, computer (including email), videophone, or other electronic medium approved by the Manager subject to such conditions as the Manager considers appropriate as to identification of the person making the communication or verification of the content of the communication;

'Entitlement' means, in relation to a Unit, the proportionate Amount to be distributed to a Unit Holder in respect of that Unit in accordance with clause 25;

² Section 12(1) of the Act.

'Exchange' means any official or formally constituted share, security, unit, or other equity ownership interest, futures, or options exchange on which a relevant Asset is quoted in any country, and includes a licensed market (as defined in the Act) on which such an Asset is quoted;

'Expenses' means all costs and expenses incurred by the Manager and the Supervisor in connection with the Fund including fees, costs, and expenses for which the Manager and the Supervisor are entitled to reimbursement under this Deed;

'Financial Statements' means financial statements as that term is defined in the Financial Reporting Act 2013;

'Financial Year' means a year ending on 31 March or such other date as the Manager determines and notifies to the Supervisor as permitted by law, or that part of such a year occurring at the commencement or termination of the Fund;

'FMA' means the Financial Markets Authority or any successor entity;

'Forestry Fund' means any entity established with the principal purpose of investment in forestry and related assets which the Fund is permitted to invest in pursuant to the SIPO for the Fund (as determined by the Manager, acting reasonably);

'Forestry Fund Unit' means a unit, share, or other investment parcel in a Forestry Fund;

'Forestry Right' has the meaning given to that term in the Forestry Rights Registration Act 1983;

'Fund' means the managed investment scheme governed by this Deed;

'Gross Income' means the income earned by the Fund from its Assets, as determined by the Manager in accordance with NZ GAAP and NZ IFRS;

'GST' means goods and services tax payable under the Goods and Services Tax Act 1985;

'Issue Date' means the first Business Day of every month (or any other day specified by the Manager in writing to the Supervisor from time to time, provided that for so long as Units are offered for subscription there must be at least one Issue Date every 12 months);

'Issue Price' has the meaning given to that term in clause 7.1a, subject to clause 13.5;

'Liabilities' means each liability which should be classified as such by NZ GAAP but does not include:

- a a contingent liability (other than any fee or other charge properly accrued by the Manager and except to the extent the Manager, following consultation with the Auditor, decides that an allowance shall be made for contingent liabilities);
- b a Unit; or
- c PIE Tax, except for PIE Tax recovered from a Unit Holder and held pending payment to Inland Revenue;

'Manager' means Roger Dickie (N.Z.) Limited or such other person for the time being appointed to act as manager of the Fund pursuant to this Deed;

'NAV' means the net asset value of the Fund, calculated by determining the Adjusted NAV in accordance with clause 24 but disregarding any adjustment to the Fund's net asset value pursuant to clause 24.10;

'Net Income' means Gross Income less the Fund's Liabilities. Net Income may be a negative amount, and may include current or retained earnings of the Fund;

'Non-SP Assets and Liabilities' has the meaning given to that term in clause 8.11b;

'NZ GAAP' means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013;

'NZ IFRS' means the accounting standards for application by New Zealand entities as issued by the External Reporting Board from time to time;

'Offer Document' means the document or documents, however described, issued by the Manager by which Units are offered for issue or subscription, and includes a PDS and a register entry (as defined in the Act);

'Ordinary Resolution' means a resolution approved by Unit Holders at a meeting duly convened and held in accordance with this Deed and carried by a majority of more than 50% of the votes cast on the resolution;

'PDS' means the product disclosure statement or PDS, as defined by the Act,³ for the Fund;

'Person' means and includes a natural person, a company, a corporation, a corporation sole, a managed investment scheme, a fund within a managed investment scheme, a government, or a body of persons (whether corporate or unincorporated);

'PIE' means portfolio investment entity as defined in section YA 1 of the Tax Act;

'PIE Rebate' means a rebate of Tax received by the Fund in respect of Unit Holders;

'PIE Tax' means, in relation to the Fund, Tax payable by the Fund, the Supervisor, or the Manager (whether provisional, deferred, or current) which is determined by reference to PIRs of Unit Holders or is otherwise determined by the Supervisor or the Manager to be payable on Net Income attributed to Unit Holders;

'PIR' means prescribed investor rate as defined in section YA 1 of the Tax Act;

'Properties' means all land (and existing forest or related Forestry Rights, if applicable) purchased by the Fund in accordance with the SIPO for the Fund from time to time, and

'Property' means whichever of the Properties is relevant in the context;

'Register' means a register maintained pursuant to the Act⁴ and referred to in clause 10;

'Regulations' means the Financial Markets Conduct Regulations 2014;

³ Section 12(1) of the Act.

⁴ Section 215 of the Act.

'Related Party' has the meaning given to that term by the Act;⁵

'Related Party Benefit' has the meaning given to that term by the Act;⁶

'Relevant Tax Person' means a Unit Holder and the Unit Holder's personal representatives or successors;

'SP Arrangements' has the meaning given to that term in clause 8.12;

'SP Assets and Liabilities' has the meaning given to that term in clause 8.11a;

'SP Date' has the meaning given to that term in clause 8.11;

'SP Units' has the meaning given to that term in clause 8.11b;

'SIPO' has the meaning given to that term by the Regulations;⁷

'Special Resolution' has the meaning set out in paragraph (d) of the definition of that term in the Act;⁸

'Sub-Custodian' has the meaning given to that term in clause 19.2;

'Supervisor' means Covenant Trustee Services Limited or such other person who is for the time being appointed as trustee and supervisor under the provisions of this Deed and, where the context requires or allows such interpretation, this expression includes any Custodian and/or Sub-Custodian;

'Suspension Notice' means a notice given in accordance with clause 8.10;

'Tax' includes all taxes, duties, levies, and other charges made by a governmental agency including penalties, fees, and interest, and includes PIE Tax;

'Tax Act' means the Income Tax Act 2007;

'Tax File Number' has the meaning given to that term by section YA 1 of the Tax Act;

'Taxation Amount' means, in relation to a Relevant Tax Person:

- a any Tax payable by or on account of that person or in respect of that Relevant Tax Person's Units; and
- b any withholding Tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Unit Holder;

'Taxing Acts' means:

- a the Tax Act;
- b the Tax Administration Act 1994;

⁵ Section 172(2) of the Act.

⁶ Section 172(1) of the Act.

⁷ Regulation 5 of the Regulations.

⁸ Section 6 of the Act.

- c the Goods and Services Tax Act 1985;
- d any applicable double tax treaties entered into by the New Zealand Government from time to time; and
- e any other relevant taxation legislation enacted in New Zealand from time to time;

'Total Assets' means the average month-end value of all Assets of the Fund during all or part of the relevant year calculated in accordance with NZ GAAP;

'Transaction' means the:

- a issue of Units; and/or
- b withdrawal of Units,

as is applicable in the context;

'Trust Fund' means the aggregate of all Assets, Liabilities, and obligations for the time being owned or held by, or owing to or by, the Supervisor under this Deed;

'Trusts Act' means the Trusts Act 2019;

'Unit' means an undivided part or share in the Trust Fund as described in clause 4.1 and includes parts of a Unit;

'Unit Holder' means a person for the time being entered on the Register as the holder of any Unit;

'Unit Minimum' means such aggregate Unit Value of Units expressed as either a number of Units or a monetary amount, as may be determined by the Manager from time to time and disclosed in the PDS or another document provided to Unit Holders as the minimum aggregate Unit Value which may be held by a Unit Holder or which may be the subject of a Transaction, and which may differ between class of Unit Holder and class or type of Transaction;

'Unit Value' means, in relation to any Valuation Day, such amount as is ascertained by dividing:

- a the Adjusted NAV on the relevant Valuation Day; by
- b the number of Units on issue on that Valuation Day,

rounded down if necessary to the fourth decimal place (or such other number of decimal places as may be specified by the Manager from time to time) of a dollar, **provided that** the Assets used to determine the Adjusted NAV on a Valuation Day for the purposes of calculating the Unit Value shall:

- c include Withdrawal Amounts for Units which have not been cancelled, at the time of such determination; and
- d not include subscription amounts received for which no Units have been issued;

'Valuation Day' means a day on which the Adjusted NAV and Unit Value is to be determined, being:

- a the last Business Day of each calendar quarter; or
- b any other day, whether periodical or otherwise, specified by the Manager in writing to the Supervisor from time to time as a Valuation Day,

provided that the Manager must specify a Valuation Day pursuant to paragraph b where the Manager or the Supervisor determines, acting reasonably, that as a result of a material change relating to the Fund's Assets and/or Liabilities, it is necessary or desirable for the Adjusted NAV and Unit Value to be determined more frequently than the then-prevailing Valuation Day frequency;⁹

'Withdrawal Amount' has the meaning given to that term in clause 8.3;

'Withdrawal Date' means a Valuation Day specified by the Manager in writing to the Supervisor from time to time;

'Withdrawal Request' has the meaning given to that term in clause 8.3; and

'Withdrawal Value' means the price payable for the redemption or purchase of Units, such amount to be ascertained by dividing:

- a the Adjusted NAV calculated with effect on the relevant Withdrawal Date or on another date selected by the Manager which is no more than 30 Business Days before the relevant Withdrawal Date (unless the Supervisor approves another date for that calculation to be made); by
- b the number of Units on issue on the date of calculation of the Adjusted NAV for the purposes of paragraph a,

as adjusted in accordance with clause 8.5b, rounded down if necessary to the fourth decimal place (or such other number of decimal places as may be specified by the Manager from time to time) of a dollar.

1.2 Implied terms

Any statutory provisions or other terms implied in this Deed under the Act or otherwise at law applicable to the Fund apply for so long as they are implied in this Deed despite anything to the contrary in this Deed and any provision in this Deed that is contrary to any such implied term is void to the extent that it is contrary.¹⁰

⁹ Section 135(1)(d) of the Act.

¹⁰ Regulation 84 and clauses 1 to 3 of Schedule 13 of the Regulations.

1.3 Frameworks or methodologies

Where any frameworks or methodologies that must be complied with in respect of the Fund are specified in notices issued by the FMA under subpart 4 of part 9 of the Act, the following shall apply:

- a Where such frameworks or methodologies relate to any matter which is required by the Act to be provided for adequately in this Deed, the provisions of this Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Fund.¹¹
- b Where such frameworks or methodologies require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies, and any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this Deed and the provisions of this Deed shall be construed accordingly.¹²

1.4 Requirements reflected in Deed

Where:

- a a provision of this Deed replicates or refers to a specific compulsory requirement of the Act (whether or not in its entirety); but
- b such requirement of the Act is repealed, replaced, or amended, or an exemption or other regulatory relief from that requirement applies to the Fund, the Manager, or the Supervisor in respect of the Fund,

the provisions of this Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make this Deed consistent with such amended requirement other than to the extent that doing so would be void under the Act (including section 139 of the Act). For the avoidance of doubt, the application of this clause 1.4 in respect of an exemption or other regulatory relief is subject to the compliance by the Manager or Supervisor (as applicable) with any conditions of such exemption or regulatory relief.

1.5 General construction

In this Deed, unless the context otherwise requires:

- a words importing the singular include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa;
- b references to statutes, regulations, and other legislative instruments includes all amendments, re-enactments, and replacements thereof;
- c references to any statute includes statutory regulations or legislative instruments promulgated or otherwise made from time to time and in force under that statute and, in

¹¹ Section 135(3) of the Act.

¹² Section 568 of the Act.

the case of the Act, includes the Regulations and any framework or methodology issued by the FMA under the Act;

- d a reference to any document, including this Deed, includes a reference to that document as amended or replaced from time to time;
- e headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed;
- f references to time are to New Zealand time;
- g a Business Day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm;
- h where anything is to be done under or pursuant to this Deed on or by a certain date, and that date is not a Business Day, it shall be done on the following Business Day;
- i a reference to a party to this Deed or any other document includes that party's personal representatives, successors, and permitted assigns;
- j footnotes used in this Deed do not form part of this Deed, are a guide only, and where they refer to legislative provisions, they are not intended to incorporate those provisions in this Deed or affect the interpretation of this Deed (although often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Deed to comply with a particular Act or legislation generally); and
- k if it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may reasonably select.

1.6 Application of Trusts Act

- a Any default duties under the Trusts Act which are applicable to the Fund, the Manager, or the Supervisor are excluded to the maximum extent permitted by the Act and the Trusts Act.
- b To the extent that any provision of this Deed is inconsistent with any provision of the Trusts Act which (**'Default Provision'**):
 - i may be modified or excluded in respect of the Fund in accordance with the Trusts Act; and
 - ii is not referred to in clause 1.6a,

the applicable Default Provision shall be modified in respect of this Deed and the Fund to the extent of that inconsistency.

- c Except to the extent modified or excluded by clauses 1.6a and 1.6b or any other term of this Deed in accordance with the Trusts Act, the Manager and the Supervisor each have the rights and powers of a trustee specified in the Trusts Act in relation to the Fund, including all rights and powers of a trustee in relation to the Courts under the Trusts Act.

2 Purpose and name of Fund

2.1 Purpose

This Deed governs a managed investment scheme under which Persons may acquire interests in a Fund which owns forestry Assets and other Authorised Investments.

2.2 Name of Fund

The managed investment scheme governed by this Deed shall be known as the Awatea Forest Fund or such other name as the Manager may determine from time to time by notice in writing to the Supervisor.

3 Creation of the Fund

3.1 Appointment of Supervisor

The Supervisor agrees to act as trustee and supervisor of the Fund for the Unit Holders for the purposes of the Act.¹³ In that capacity, the Supervisor will hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions contained or implied in this Deed and the Act.¹⁴

3.2 Appointment of Manager

The Manager agrees to act as the manager of the Fund for the purposes of the Act¹⁵ upon and subject to the terms and conditions contained or implied in this Deed, the Act, and any other applicable legislation, and will observe and perform the manager obligations under this Deed, the Act, and any other applicable legislation.

3.3 Bank accounts

- a The Supervisor must (or must instruct a Custodian or Sub-Custodian to) open a bank account or accounts with a registered bank in the name of the Supervisor or its Custodian or Sub-Custodian ('**Bank Account**'). All moneys belonging to the Fund and coming into the hands of the Manager or the Supervisor must be paid to the credit of the Bank Account.
- b An Applications Bank Account must be maintained outside the Fund.¹⁶ All Cash consideration for Units that is paid, prior to the issue or purchase of those Units in accordance with this Deed, must be paid to the credit of the Applications Bank Account in accordance with the Act.¹⁷ Such Cash consideration shall be held in the Applications Bank Account until:
 - i Units for those amounts are issued, at which point such Cash consideration shall be credited to the Bank Account or otherwise applied for the purpose for which it was paid (including to complete settlement of a Property);

¹³ Section 127(1)(d) of the Act.

¹⁴ Sections 152(1)(c), and 156 to 159 of the Act and regulations 85 to 88 of the Regulations.

¹⁵ Section 127(1)(c) of the Act.

¹⁶ Regulation 49 of the Regulations.

¹⁷ Section 87 of the Act and regulation 49 of the Regulations.

- ii the relevant application is rejected, at which point the Cash consideration must be refunded in accordance with clause 6.8; or
 - iii the Cash consideration is otherwise applied in a manner permitted by the Act and agreed between the Manager and the Supervisor.
- c The Supervisor, in consultation with the Manager, is to determine the Persons authorised to operate the Bank Account and the Applications Bank Account. Those Persons may, for the avoidance of doubt, include the Manager and any investment manager or forest manager that is a Related Party of the Manager.

4 Units

4.1 Beneficial interest

The beneficial interest in the Trust Fund shall be divided into Units.

4.2 Equal but not specific interests

Each Unit shall be used for the calculation of the relevant Unit Holder's entitlement and shall not confer any interest in any particular part of the Trust Fund. No Unit Holder shall be entitled to require the transfer to the Unit Holder of any of the Assets or other part of the Trust Fund, to lodge a caveat against the record(s) of title to the Properties, or otherwise give directions in relation to any of the Assets or other part of the Trust Fund.

4.3 No interference in management etc

Subject to the rights of the Unit Holders created by this Deed, the Act, or any other applicable legislation, no Unit Holder shall be entitled to interfere with the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities, or discretions conferred upon them or either of them by this Deed, or in respect of the Trust Fund or any part or parts thereof, or to exercise any right, power, or privilege in respect of any Asset.

4.4 Provisions benefit and bind Unit Holders

Except where expressly provided to the contrary in this Deed or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to be for the benefit of and bind Unit Holders) contained in this Deed, are for the benefit of and bind each Unit Holder.

4.5 Part Units and classes of Units

If the Manager determines in its sole discretion:

- a parts of a Unit may be created and can exist under this Deed and be denoted by figures up to such denotation as the Manager determines from time to time, such part Units to rank and confer entitlements in proportion to the fractional proportion they represent; and
- b different classes of Units may be issued with such rights, obligations, and restrictions attaching to the Units of such classes as the Manager determines and notifies to the

Supervisor, and this Deed shall be construed accordingly. Any such issue is subject to, and must be in accordance with, the Act and any other relevant law governing the Fund.

4.6 Values binding

Unit Values, Issue Prices, and Withdrawal Values determined pursuant to this Deed are, in the absence of manifest error and subject to clause 13.5, final and binding on all Unit Holders and any other Persons claiming a beneficial interest in the Trust Fund.

5 Issue of Units

5.1 Manager may invite offers¹⁸

The Manager may at any time and from time to time invite offers, subscriptions, or applications for Units created pursuant to this Deed upon and subject to the terms and conditions contained in or pursuant to this Deed and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine (including, without limitation, additional restrictions on or removal of the right of a Unit Holder to make a withdrawal under clause 8).

5.2 Compliance with relevant law

The Manager must not make any regulated offer (as defined in the Act) of any Units unless an Offer Document in relation to the Units has been issued in accordance with the requirements of applicable law.¹⁹ Each PDS must be in a form that the Supervisor has reviewed and had the opportunity to provide comments to the Manager on. The Manager must provide a draft of any PDS to the Supervisor within a reasonable period in advance of its intended release date (usually being a minimum of 5 Business Days) to allow the Supervisor to consult with the Manager on its content.

5.3 Manager may consolidate or subdivide Units

- a The Manager may, at any time, by notice in writing to the Unit Holders and the Supervisor, cause the Units at the date specified in that notice to be consolidated or subdivided. Each such notice shall specify the:
 - i date on which such consolidation or subdivision is to take place ('**Operative Date**'); and
 - ii ratio which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision ('**Ratio**').
- b As from the Operative Date, each Unit Holder shall be deemed to hold a number of Units equivalent to the number held before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, parts of a Unit beyond such number of

¹⁸ Section 135(1)(b) of the Act.

¹⁹ Including Part 3 of the Act.

decimal places as may be specified by the Manager shall be rounded down and disregarded.

5.4 **Issue may be underwritten**

Any proposed issue of Units may in the Manager's discretion be underwritten by an underwriter (which may be the Manager or an Associated Person of the Manager) and such underwriter and its nominees or any of them may take up the Units not otherwise subscribed for, and charge underwriting fees or commission and all costs and disbursements of the issue as may be agreed with the Manager.

5.5 **Cessation of issues**

Without limiting the Manager's discretion under clause 5.1, the Manager may at any time or times by notice in writing given to the Supervisor determine that, from a date specified in that notice, no further Units shall be issued pursuant to this Deed for any specified period. In such event the Manager will not after the date specified in the notice issue any further Units under this Deed for the period specified.

6 **Application for Units²⁰**

6.1 **Application procedure**

Every person wishing to apply for Units shall:

- a complete and lodge with the Manager an application for Units in writing or by Electronic Communication that is:
 - i in such form and complies with such specifications; and
 - ii signed, authorised, or authenticated by or on behalf of the applicant in such manner, as the Manager may from time to time prescribe; and
- b forward or credit to the Applications Bank Account (in the case of Cash consideration) or to the Manager, Supervisor, or an administration manager appointed by the Manager (in the case of non-Cash consideration), the consideration (which may be Cash or non-Cash consideration in a form acceptable to the Manager) in respect of the Units applied for. The Manager may in its discretion accept an application for Units that is not accompanied by the required consideration, provided that consideration is received before the Manager gives effect to the application.

6.2 **Standing applications**

If the Manager agrees in its sole discretion, an application may be designated as an application for the issue of Units on a regular and periodic basis for an amount per month (or such other period as the Manager shall determine) at least equal to any applicable Unit Minimum, and may include an authorisation to the Manager to initiate direct debits to a bank account nominated by the applicant for relevant application amounts to be credited to the

²⁰ Section 135(1)(a), (b), and (c) of the Act.

Supervisor. The Manager may at any time at its discretion waive any applicable Unit Minimum, either generally or in a particular case or cases.

6.3 Issue or purchase of Units

Applications for Units may at the option of the Manager be treated as either or a combination of:

- a a subscription for Units to be issued from the Fund at the Issue Price determined in accordance with clause 7.1b; and/or
- b a request for the purchase from a Unit Holder nominated by the Manager (which may be the Manager or an Associated Person of the Manager, including a Person who holds such Units as underwriter) of Units in the Fund:
 - i at the Issue Price determined in accordance with clause 7.1b; or
 - ii if the Manager and the relevant Unit Holder agree and such price is lower than the Issue Price determined in accordance with paragraph i, at the issue price originally paid or deemed to have been paid by the nominated Unit Holder for such Units (and this Deed shall be construed accordingly).

6.4 Manager's discretion on non-Cash consideration

Any payment for Units satisfied by non-Cash consideration shall only be accepted at the sole discretion of the Manager. The Manager may refuse to accept any non-Cash consideration as satisfaction of the payment for Units in whole or in part and the Manager shall not be required to give any reason or ground for such refusal. The Manager must refuse to accept any non-Cash consideration if the consideration will not constitute an Authorised Investment or if accepting that consideration would otherwise breach the SIPO for the Fund. Any application for Units made by non-Cash consideration shall (if accepted by the Manager) at the option of the Manager be treated as either or a combination of:

- a a subscription for Units to be issued from the Fund; and/or
- b a request for the purchase from a Unit Holder nominated by the Manager of Units in the Fund, who has confirmed to the Manager that (or in respect of whom, pursuant to the terms of this Deed) the purchase price for those Units may be met by a transfer of the relevant non-Cash consideration.

The Manager shall determine the value of any non-Cash consideration accepted for payment of Units in accordance with this Deed as if that non-Cash consideration was an Asset of the Fund. The relevant date on which the Asset will be valued will be determined by the Manager. The Manager shall notify in writing the person wishing to apply for Units of the relevant date and the value of the non-Cash consideration, and may do so in any number of separate notifications.

6.5 Acceptance of applications and redemption of Units

The Manager may, in its discretion:

- a refuse to accept in whole or in part any application and shall not be required to give any reason or ground for such refusal; and
- b subject to relevant law, redeem Units, or treat as void ab initio the issue of Units, which:
 - i would or could result in the Fund losing its status as a PIE if remedial action was not taken; or
 - ii are held by a Unit Holder the Manager has given notice to pursuant to clause 8.17d.

To the extent necessary, each affected Unit Holder will be deemed to have given a Withdrawal Request in respect of any Units the Manager determines to redeem pursuant to paragraph b and the provisions of clause 8 will otherwise apply to the redemption of such Units.

6.6 Uncleared funds and non-Cash consideration

Units issued against application money provided other than in cleared funds may be treated as void ab initio if the funds are not subsequently cleared. Units issued against non-Cash consideration may be treated as void ab initio if that non-Cash consideration is not subsequently transferred to the Supervisor, Custodian, or Sub-Custodian (as applicable).

6.7 Units issued in error

Units that the Manager determines have been issued in error are void ab initio, unless any relevant Unit Holders have in good faith altered their position to their detriment in reliance on the validity of those Units in circumstances where:

- a relevant law does not require the Units to be treated as void; and
- b the Units do not result in the Fund losing its status as a PIE.

6.8 Refunds and void Units

The Manager shall refund or arrange for the Supervisor to refund any application moneys received in respect of a rejected application or voided Units in accordance with the Act.²¹ Where Units are redeemed or voided under clause 6.5b, the Manager must request the Supervisor to pay the Withdrawal Value for such Units and such other compensation (if any) as the Manager considers appropriate. Subject to compliance with relevant law and maintenance of equity as between Unit Holders, following consultation with the Supervisor the Manager shall have all powers necessary to restore the Trust Fund to the position it would have been in if the rejected application moneys had never been received or if Units determined to be void or redeemed had never been issued.

²¹ Section 87 of the Act and regulation 49 of the Regulations.

6.9 Registration and issue of Units

The Manager shall:

- a pay all monies paid on account of the subscription price of Units to the Applications Bank Account promptly on receipt of such moneys;²²
- b comply with all applicable laws relating to notifying the relevant bank and any other interested parties that money in the Applications Bank Account is trust money;
- c make a decision in respect of an application, issue the relevant Units, and pay, or procure the payment of, all application moneys in accordance with clause 3.3b as soon as is reasonably practicable after the Issue Price applicable to the Issue Date for that application (determined in accordance with clause 7.1b) is available;
- d transfer, or procure the transfer of, all non-Cash consideration provided by a Unit Holder in return for Units to the Supervisor, Custodian, or Sub-Custodian (as applicable) as soon as is reasonably practicable after receipt;
- e on acceptance of an application and issue of Units, enter the name of the Unit Holder on the Register (or, where the Unit Holder is already on the Register, cause the Register to be altered accordingly); and
- f provide the Unit Holder with any confirmations required under clause 11.²³

6.10 Unit Minimums

The Manager may from time to time determine a Unit Minimum in respect of applications for Units. The Manager may at any time at its discretion waive any applicable Unit Minimum, either generally or in a particular case or cases.

6.11 Joint Holders of Units

The Manager may, but shall not be bound to, register multiple Persons as joint Unit Holders of any Unit. Where multiple Persons are registered as the Unit Holders of any Unit, they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- a the joint Unit Holders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- b on the death of a joint Unit Holder, the survivor or survivors shall be the only Person or Persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- c any one of such joint Unit Holders may complete and give Withdrawal Requests, execute a transfer of Units, or give effectual receipts for any Withdrawal Amount or distribution payable to such joint Unit Holders, but the Manager may require from time to time in respect of the Fund that all joint Unit Holders complete such documentation;

²² Section 87 of the Act and regulation 49 of the Regulations.

²³ Regulations 65 to 68 of the Regulations.

- d a notice from the Supervisor or Manager given to any one of the joint Unit Holders shall be deemed notice to all the joint Unit Holders;
- e to the extent permitted at law, unless the Manager determines otherwise at any meeting of Unit Holders, only the Person whose name stands first in the Register or their duly authorised nominee shall be entitled to vote either personally or by duly authorised representative or by attorney or proxy in respect of such Unit, to the exclusion of the votes of the other joint Unit Holders; and
- f for the purposes of calculating the Fund's PIE Tax and attributing such liability to joint Unit Holders and the allocation of PIE Income or losses and PIE Rebates, the Manager may in its absolute discretion either treat the Unit Holders as separate Unit Holders (in shares reflecting their legal interests), or treat the joint Unit Holders as a single Unit Holder with a PIR equal to the highest PIR of the joint Unit Holders if they are different or at the rate of one of the joint Unit Holders if they have the same rate.

7 Issue Price and issue of Units²⁴

7.1 Issue Price

- a The Manager will determine an '**Issue Price**' for each Valuation Day, which shall be calculated as:
 - i in respect of the initial issue of Units from the Fund (as described in the Offer Document pursuant to which the initial offer of Units is made), unless the Manager determines otherwise, \$1.00; and
 - ii in respect of each additional issue of Units, the Unit Value for the applicable Valuation Day as adjusted in accordance with clause 7.1c.

Subject to the terms of this Deed, the Issue Price determined in accordance with this paragraph shall remain in force on and from the relevant Valuation Day until the effective date of the next determination of the Issue Price.

- b If accepted by the Manager, a valid application for Units will become effective and will be processed and Units will be issued with effect on (and at the Issue Price determined for the most recent Valuation Day to occur prior to) the next Issue Date occurring after the later of the date that:
 - i the Manager accepts that application; or
 - ii the consideration against which Units are to be issued is transferred to the Supervisor, Custodian, or Sub-Custodian (as applicable),

unless the Manager considers it necessary or desirable to defer processing of that application until a subsequent Issue Date (including to align with the closing date for an offer of Units or settlement of a Property).

²⁴ Section 135(1)(a), (b), and (d) of the Act.

- c Each Unit shall be issued in accordance with clause 6.9 at the Issue Price in effect on the Issue Date referred to in clause 7.1b for that application, **provided that**, before applying the Issue Price to an application for Units, the Manager may adjust the Issue Price by an amount the Manager thinks appropriate to reflect the fees, expenses, taxes, costs or other liabilities associated with the application, including the costs of investing the application proceeds for the relevant Unit (which may include the difference between the price paid for an Asset and its value determined in accordance with this Deed immediately after its acquisition). Such additional amount may be set by the Manager (following consultation with the Supervisor) as a standard amount or percentage reflecting the Manager's estimate of such costs generally, and may be rounded as the Manager thinks fit.

7.2 Number of Units²⁵

The number of Units sold or issued pursuant to an application shall be that number of Units (rounded down if necessary to four decimal places (or such other number of decimal places as may be specified by the Manager from time to time)) that have an aggregate Issue Price effective for the relevant Issue Date equal to the application moneys (less applicable fees) or (if applicable) the value of the non-Cash consideration determined by the Manager under clause 6.4.

7.3 Application moneys subject to trusts

All consideration received by or on behalf of the Manager in payment or satisfaction of the Issue Price for Units pursuant to clause 7.1 shall become subject to the trusts created by this Deed upon:

- a in the case of Cash, payment to the Bank Account; and
- b in the case of non-Cash consideration, transfer to the Supervisor, Custodian, or Sub-Custodian on behalf of the Fund,

but, for the avoidance of any doubt, that consideration shall only become an Asset of the Fund upon the issue of the relevant Units.

8 Withdrawals²⁶

8.1 Availability of withdrawals

- a No Unit Holder can submit a Withdrawal Request prior to the end of the second full Financial Year following the date of this Deed or such other date as determined by the Manager ('**Initial Lock-up Date**') and any Withdrawal Request submitted prior to that date shall be invalid and of no effect.
- b Without limiting clause 8.1a, the Manager may (but is under no obligation to) offer redemptions in accordance with clause 8.2 from the Initial Lock-Up Date and each quarter after that date (or such other period determined by the Manager). In determining

²⁵ Section 135(1)(c) of the Act.

²⁶ Section 135(1)(a), (b), and (e) of the Act.

whether to offer redemptions, the Manager may take into account the Fund's available cashflows.

- c Notwithstanding clause 8.1a, the Manager may (but is under no obligation to) offer redemptions in accordance with clause 8.2 to a Unit Holder who the Manager is reasonably satisfied has suffered, is suffering, or is likely to suffer from financial hardship.

8.2 If withdrawals are available

If the Manager offers withdrawals, then subject to the provisions of this clause 8:

- a the amount available to satisfy Withdrawal Requests received for a quarter will be (**'Quarterly Available Funds'**):
 - i 1% of the Adjusted NAV (as calculated at the Business Day immediately before the date of the payment of Withdrawal Requests); or
 - ii any other amount determined by the Manager from time to time having regard to the future requirements of the Fund (which may be greater or lesser than the amount referred to in paragraph i);
- b the Withdrawal Requests received before 5:00pm three Business Days prior to the Withdrawal Date will be processed on that Withdrawal Date if the total amount of the Withdrawal Requests received for that quarter are less than or equal to the Quarterly Available Funds;
- c if the aggregate value of the Withdrawal Requests received during the quarter exceeds the Quarterly Available Funds:
 - i each Withdrawal Request is to be processed on the Withdrawal Date on a pro-rata basis so that the aggregate amount of Withdrawal Requests paid for the relevant quarter does not exceed the Quarterly Available Funds **provided that** all Withdrawal Requests that relate to an unmet portion of a Withdrawal Request (as contemplated by clause 8.2cii) shall take priority over all other Withdrawal Requests; and
 - ii the unmet portion of each Withdrawal Request is to be carried forward and deemed to be a Withdrawal Request received in the following quarter and is subject to the procedure for Withdrawal Requests in this clause 8.2, unless the relevant Unit Holder provides notice that they wish to withdraw their Withdrawal Request before 5:00pm on the third Business Day prior to the Withdrawal Date in the following quarter; and
- d a Withdrawal Request received after 5:00pm on a Business Day is deemed to be received on the next Business Day.

If the Manager offers withdrawals but subsequently ceases to offer withdrawals, any then-outstanding Withdrawal Requests (or portions thereof) that have not been processed shall be deemed to be cancelled and of no further effect.

8.3 Process for making a Withdrawal Request

If any Unit Holder wishes to effect a withdrawal from the Fund, the Unit Holder shall give notice in writing or by Electronic Communication (**'Withdrawal Request'**) to the Manager to that effect. Such Withdrawal Request shall specify either a monetary amount or the number of Units in respect of which the Unit Holder desires to effect withdrawal (**'Withdrawal Amount'**), and shall be in such form or comply with such specifications (if any) as may be prescribed by the Manager from time to time, and subject to clause 8.2cii shall not be able to be revoked by the Unit Holder by whom it has been given once received by the Manager (unless the Manager agrees).

8.4 Unit Minimums

- a No Withdrawal Request shall be given in respect of an amount less than any applicable Unit Minimum and, except where all Units held by a Unit Holder are to be redeemed, no Withdrawal Request shall be given if the effect of the withdrawal would be that the Unit Holder who gave the same would hold less than any applicable Unit Minimum. The Manager may at any time at its discretion waive the requirements of this clause, either generally or in a particular case or cases.
- b Where the number or value of Units held by a Unit Holder drops below any applicable Unit Minimum, the Manager may deem the Unit Holder to have given a Withdrawal Request for those Units in accordance with clause 8.3.

8.5 Payment of Withdrawal Amount

- a Subject to the provisions of this Deed, each portion of a Withdrawal Amount payable pursuant to this clause 8 must be paid within 10 Business Days (or any longer period approved by the Supervisor) after the later of:
 - i the Withdrawal Date applicable to the relevant Withdrawal Request, as determined in accordance with clause 8.2; and
 - ii the date the Withdrawal Value applicable to such Withdrawal Date has been determined,
 except that:
 - iii Withdrawal Requests relating to regular withdrawals (if permitted by the Manager) will become effective and be processed in accordance with their terms; and
 - iv where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not cause the redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.
- b Each relevant Unit shall be redeemed in accordance with clause 8.6 at the Withdrawal Value, **provided that**, before applying the Withdrawal Value to a withdrawal, the Manager may deduct from the Withdrawal Value an amount the Manager thinks appropriate to reflect fees, expenses, taxes, costs or other liabilities associated with the

redemption, including the costs of realising Assets to meet the Withdrawal Value (which may be the difference between the price received for the Assets so realised and the value (on the date of realisation) of such Assets). Such deducted amount may be set by the Manager (following consultation with the Supervisor) as a standard amount or percentage reflecting the Manager's estimate of such costs generally, and may be rounded by the Manager as it thinks fit, in each case as notified by the Manager to the Supervisor from time to time.

8.6 Redemption of Units

- a Subject to clauses 8.10 to 8.16 and 10.7 the Manager shall, in order to pay a Withdrawal Amount pursuant to clause 8.5, request the Supervisor to redeem the number of Units, or Units of at least aggregate Withdrawal Values equal to the Withdrawal Amount. Any amount realised in excess of the required amount shall be paid to the Unit Holder with the Withdrawal Amount.
- b Subject to the other provisions of this Deed, the price payable to the Unit Holder for each Unit shall always be the Withdrawal Value.

8.7 Manager's obligation

Without limiting the generality of clauses 8.6 and 22.1, the obligation of the Manager pursuant to clause 8.6 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 22.1. The Manager is not obliged to offer to repurchase Units at any time.

8.8 Manager to direct Supervisor

In connection with redemption of Units under clause 8.6a the Manager shall have the right:

- a subject to clause 23.5, to direct the Supervisor to realise sufficient Assets of the Fund pursuant to clause 23.4; and/or
- b subject to clauses 18.3, 18.4 and 23.5, to direct the Supervisor to Borrow on behalf of the Fund pursuant to clause 18.2 a sufficient amount,

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clauses 18.4 and 23.5, the Supervisor shall forthwith realise Assets and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the Fund.

8.9 Cancellation of Units

Units redeemed pursuant to this clause 8 shall cease to exist from the date of redemption and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the Register in respect of such cancellation.

8.10 Suspension Notice

- a Subject to relevant law, if the Manager in good faith determines that giving effect to Withdrawal Requests:
 - i is not practicable;

- ii would or may be prejudicial to the general interests of the Unit Holders in the Fund;
or
- iii is not desirable for the protection of the Fund,

then the Manager may give a withdrawal suspension notice (**'Suspension Notice'**) to any Unit Holder or Holders and the Supervisor.

- b A Suspension Notice shall have the effect of suspending the operation of all Withdrawal Requests until the earlier of:
 - i the Manager giving notice to the relevant Unit Holders to the effect that the Suspension Notice is cancelled; or
 - ii 90 days after the date of the Suspension Notice or such other date that is approved by the Supervisor, acting reasonably.
- c If a Suspension Notice is given and lapses (whether through the passing of time or by an earlier cancellation), the Withdrawal Value payable to Unit Holders in respect of any redemption which has been suspended shall be determined as if the Withdrawal Request was made on the first Business Day immediately following the date of termination of the Suspension Notice.

8.11 **Manager may side-pocket**

Subject to relevant law, where the Manager considers that it is in the interests of the Unit Holders in the Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Asset that might otherwise lead to the Manager giving a Suspension Notice), the Manager may, with the approval of the Supervisor, with effect from a particular date (**'SP Date'**), without the agreement of, or consultation with, Unit Holders:

- a determine that particular Assets and Liabilities of the Fund should be quarantined in accordance with these clauses 8.11 to 8.16 (**'SP Assets and Liabilities'**); and
- b reclassify, divide or otherwise reconstruct the Units of Unit Holders in the Fund as at the SP Date so that those Units consist of:
 - i Units that relate to the Assets and Liabilities of the Fund that are not SP Assets and Liabilities (**'Non-SP Assets and Liabilities'**); and
 - ii Units that relate to the SP Assets and Liabilities (**'SP Units'**),
 all on a pro rata basis.

8.12 **Special Arrangements**

The provisions of this Deed will apply, with such modifications as are necessary, to the SP Assets and Liabilities and the SP Units as if the Fund consisted solely of the SP Assets and Liabilities and the SP Units, provided that the Manager may, with the approval of the Supervisor, determine and apply special arrangements relating to the SP Assets and

Liabilities and the SP Units ('**SP Arrangements**'). Without limiting the generality of the proviso to the previous sentence, the SP Arrangements may include:

- a arrangements preventing Unit Holders from giving Withdrawal Requests in relation to the SP Units;
- b arrangements for the treatment of Withdrawal Requests that remain outstanding as at a SP Date (including, without limitation, the cancellation of any such Withdrawal Requests);
- c arrangements preventing further Unit Holders from obtaining (including by way of issue) any Units in the Fund relating to the SP Assets and Liabilities;
- d arrangements for the realisation or discharge (as applicable) of the SP Assets and Liabilities;
- e arrangements relating to the distribution or application of the net proceeds of realisation of the SP Assets and Liabilities;
- f arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of the SP Units);
- g arrangements relating to the fees and expenses associated with, and any further Liabilities that may be incurred in respect of, the SP Assets and Liabilities and the SP Units;
- h arrangements relating to the recovery of tax (including PIE Tax) from Unit Holders holding SP Units (including where applicable the recovery of tax relating to SP Assets and Liabilities from those Unit Holders by way of arrangements relating to Units (if any) held by such Unit Holders that relate to the Non-SP Assets and Liabilities) and the payment of the Fund's tax liabilities;
- i approval for treating SP Units held by Unit Holders as a different class of Units in the Fund;
- j arrangements that the Manager, after consultation with the Supervisor, considers appropriate in relation to the Fund's status as a PIE; and
- k such other arrangements as the Manager, after consultation with the Supervisor, considers to be appropriate and in the interests of Unit Holders in the Fund generally in relation to the side-pocketing arrangements contemplated by these clauses 8.11 to 8.16.

8.13 **SP Arrangements to prevail**

Where any conflict arises between the SP Arrangements and any other provision of this Deed, the SP Arrangements will prevail (other than those provisions setting out the Manager's duties to act in the interests of the Unit Holders generally and corresponding liability provisions).

8.14 Notice to Unit Holders

The Manager must give written notice to the Unit Holders as soon as reasonably practicable after the SP Date. The notice must state that side-pocketing has occurred in relation to the Fund and include such other information as the Manager, after consultation with the Supervisor, considers necessary.

8.15 No new fund created

For the avoidance of doubt, while the side-pocketing arrangements contemplated by these clauses 8.11 to 8.16 may involve the creation of a different class of Unit in the Fund, those arrangements operate within the Fund and do not create a new and separate trust fund. Unless required by law, the Manager need not prepare separate Financial Statements relating to the Non-SP Assets and Liabilities and the SP Assets and Liabilities provided that the Manager must prepare accounts in such form as necessary to provide adequate disclosure to Unit Holders.

8.16 Fund's PIE status

Where the Fund is a PIE, these clauses 8.11 to 8.16 will take effect subject to clause 29 and must be read accordingly. In addition, these clauses 8.11 to 8.16 will not apply to any adjustment of Unit Holder interests under clause 29.

8.17 Compulsory sale

If, at any time, the Manager determines, after consultation with the affected Unit Holder, that there is a reasonable likelihood that the continuing holding of Units by any Unit Holder:

- a might have a material adverse effect on the Fund; or
- b as a result of applicable law, might become illegal or is likely to become illegal,

then:

- c such Unit Holder will, upon the written request of the Manager, use its best efforts to dispose of all of its Units to any person in a transaction that complies with clause 9 of this Deed; or
- d the Manager may, after giving notice in writing to the Unit Holder, redeem or treat as void ab initio all of the Unit Holder's Units in accordance with clause 6.5bii.

8.18 Other withdrawal terms may be applied

Notwithstanding any other provisions of this Deed, the Manager may in its discretion determine from time to time and must specify in any PDS or other Offering Document for the Fund, other limitations on withdrawals or prohibitions on withdrawals or the transfer of Units, which will take effect in accordance with their terms.

9 Transfer and transmission of Units²⁷

9.1 Transfer generally

All or any of the Units held by any Unit Holder may be transferred with the consent of the Manager by instrument in writing in accordance with clause 9.2, provided that, unless the Manager determines in its sole discretion to instead effect the transfer by registering a transfer of Units from the transferor to the transferee:

- a Subject to clauses 9.1b and 29, any transfer of Units pursuant to this clause 9 will be processed as a withdrawal of the number of Units to be transferred in accordance with clause 8 and a subsequent application for an equal number of Units in the Fund in accordance with clause 6, provided that:
 - i a transfer will be processed on the basis that:
 - A the restrictions on the ability to make a withdrawal and the amount that may be withdrawn during a quarter set out in clauses 8.1 and 8.2 shall not apply to any transfer (and such transfers shall not be counted as Withdrawal Requests for the purposes of those clauses); and
 - B the relevant withdrawal shall be processed on the next Withdrawal Date to occur following the Manager's decision to register the transfer pursuant to clause 9.5 and the subsequent application shall be processed on the next Issue Date to occur after that Withdrawal Date (regardless of the requirements relating to prior notice in clauses 8 and 6 that would otherwise apply),

and clauses 8 and 6 shall be construed accordingly for this purpose;
 - ii the Manager's discretion to reject that subsequent application under clause 6.5 is subject to the provisions of the Act;²⁸ and
 - iii if the Manager rejects the application under clause 6.5, the transfer request will be deemed to be cancelled (such that neither the Manager nor the Supervisor is under any obligation to give effect to the relevant withdrawal or subsequent application).
- b In processing any such transfer the Issue Price for each Unit issued pursuant to that transfer will be the Withdrawal Value per Unit of those Units redeemed to facilitate the transfer.

9.2 Instrument of transfer

A transfer of Units shall be in such form as the Manager may approve from time to time and shall be signed by the transferor.

²⁷ Section 135(1)(a) and (b) of the Act.

²⁸ Section 379 of the Act.

9.3 Incomplete instruments

An instrument of transfer in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to relevant law and this clause 9) shall be registered when the errors or omissions have been rectified.

9.4 Manager may decline transfers

Subject to relevant law, the Manager may decline to register any transfer:

- a which does not comply with relevant law;
- b which is given in respect of less than the Unit Minimum;
- c if the effect of the transfer would be that the transferor or the transferee would hold less than the Unit Minimum;
- d during any period when the Register is closed;
- e which, in the opinion of the Manager, would or could threaten the Fund's status as, or eligibility to be, a PIE;
- f if any PIE Tax payable in respect of the Unit Holder or the Unit Holder's Units has not been paid;
- g if there are unpaid amounts owing from the transferor of the Units to the Supervisor or the Manager or there is any unpaid duty, Tax, commission, fees or charges in respect of the transaction or any other transaction; or
- h if the transferee is subject to any statutory, regulatory or other restrictions, ruling requirements or conditions that could detrimentally affect the Fund or its affairs, including restrictions under foreign securities laws.

The Manager may at any time at its discretion waive any applicable Unit Minimum, either generally or in a particular case or cases.

9.5 Registration of transfers

The instrument of transfer shall be delivered or transmitted to the place specified by the Manager from time to time. On being satisfied that the provisions of this clause 9 and all applicable statutory provisions have been complied with, and subject to clause 10.7, the Manager will register the transfer in the Register and provide any confirmation required by clause 11. No transfer shall be effective until entered in the Register.

9.6 Manager to retain instrument of transfer and may decline to register a transfer

Every instrument of transfer of a Unit which is registered shall be retained by the Manager for such period as the Manager may determine but any instrument of transfer which the Manager declines to register shall within 10 Business Days after the date on which the transfer is declined be returned to the person lodging that transfer.

9.7 Suspension of registration

Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding 30 Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably withheld).

9.8 Transmission of Units of deceased Unit Holder

The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. However, if that Unit Holder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of such Units and the transfer of Units is not registered before the death of the deceased Unit Holder, the Manager may register that transfer notwithstanding that the Manager at the time of such registration has notice of that Unit Holder's death.

9.9 Transfer by operation of law

The property manager of a Unit Holder who is subject to a Court order under the Protection of Personal and Property Rights Act 1988 and any Person becoming entitled to any Units in consequence of the insolvency, bankruptcy, liquidation, or other event of analogous effect of any Unit Holder may, upon producing such evidence of capacity or of title as the Manager shall think sufficient, be registered as the holder of such Units and, subject to the provisions as to transfer contained in this clause 9, may transfer such Units. This provision shall apply in the case of a Person who becomes entitled as a survivor of Persons registered as joint Unit Holders.

9.10 Payment of sums owed a condition to transfer

No transfer of any Units can be registered unless the Unit Holder has paid all duties, Tax (including GST), and other commissions, fees, and charges (in cleared funds) in respect of the transfer of the relevant Units.

9.11 Manager may require sale

In the event that a Unit Holder becomes bankrupt, goes into receivership or liquidation, has a statutory manager appointed or enters into a compromise with the Unit Holder's creditors then the Manager may require that Unit Holder to sell any one or more of the Unit Holder's Units as the Manager deems fit.

10 The Register

10.1 Manager to keep Register²⁹

- a The Manager must keep a register of Unit Holders in a form and manner required by the Act, and may appoint a person to keep the Register on its behalf.

²⁹ Sections 215 to 226 of the Act.

- b The Register must be kept in New Zealand or any other place permitted by the Act, and may be:
 - i an electronic register; or
 - ii kept in any other reasonable manner the Manager thinks fit.
- c The Register is prima facie evidence of the matters required by the Act to be entered in it.

10.2 **Content of Register**³⁰

The Register must contain:

- a the name and address of each Unit Holder, or in the case of joint Unit Holders the names of the joint Unit Holders and the address of at least one of the joint Unit Holders (and, for the purposes of this Deed, such address or addresses provided shall be deemed to be the address for any joint Unit Holder in respect of which no address has been provided);
- b the number and nature of Units held by each Unit Holder;
- c the date on which each Unit was issued or transferred (as applicable) to the relevant Unit Holder;
- d the due date of each Unit (if any);
- e the date on which the Person first became a Unit Holder and the date on which the Person ceased to be a Unit Holder;
- f the Tax File Number and PIR of each Unit Holder; and
- g any other information required by the Act or any other relevant law, or that the Manager may consider to be desirable.

10.3 **Audit of the Register**³¹

- a The Manager must ensure that the Register is audited by the Auditor in accordance with the Act (being at intervals of not more than 12 months or as otherwise required by the Act).
- b The Auditor, in completing its audit of the Register, shall perform any other functions required by the Act, and comply with any obligations it has under the Act.

10.4 **Changes of name or address**

Any change of name or address of any Unit Holder shall be notified by such Unit Holder in writing (including by Electronic Communication in such form and to comply with such specifications as may from time to time be prescribed by the Manager) who shall alter the Register accordingly.

³⁰ Section 217 of the Act.

³¹ Sections 218 and 219 of the Act and regulations 108 to 110 of the Regulations.

10.5 Inspection and copies of Register

Any person entitled to do so may inspect the Register or request a copy of the Register in accordance with the Act³² or any other relevant law.

10.6 Reliance upon Register

Each of the Manager and the Supervisor shall be entitled:

- a to rely absolutely on the Register as being correct;
- b subject to relevant law, for all purposes to treat a person whom it believes to be the person entered on the Register as the Unit Holder as the legal and beneficial owner of those Units without further enquiry; and
- c to effect transfers, withdrawals, or other dealings of any nature with Units on the basis of the information recorded in the Register without requiring production of any form of confirmations or other evidence of ownership that may have been issued from time to time in respect of those Units.

10.7 Evidence of entitlement

Notwithstanding clause 10.6, the Manager shall be entitled, at its absolute discretion, before giving effect to any transfer, withdrawal, or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the Register as the holder of the Units in question or the personal representative of the Unit Holder in question. If confirmations have been provided in respect of the Units in question, such evidence may (but need not) be the production by that person of a confirmation relating to those Units.

10.8 No notice of trust etc

Except as required by the Act and any other relevant law, neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express, implied, or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in the Register as the Unit Holder, and accordingly no notice of any trust (express, implied, or constructive), charge, pledge, or equity shall be entered upon the Register.

11 Confirmations

11.1 Manager to provide required confirmations and may provide other confirmations

- a Where required by law, the Manager shall issue confirmations recording the issue, transfer, or redemption of Units, in such form and within such time frames as the Manager shall decide, subject to the Act, the Regulations, and any applicable legislation.³³

³² Sections 221 to 226 of the Act and regulations 111 and 112 of the Regulations.

³³ Section 100 of the Act and regulations 65 to 68 of the Regulations.

- b In addition to the provision of confirmations under clause 11.1a, the Manager may provide confirmations recording the issue, transfer, or redemption of Units, in such form and within such time frames as determined by the Manager, even if it is not required to do so by law.

11.2 Confirmation not evidence of title

A confirmation shall not constitute evidence of the title of the person named therein to the Units referred to therein. The Manager and the Supervisor shall in accordance with clause 10.6c be free to effect any dealing with Units on the basis of information contained in the Register without requiring production of a confirmation provided in respect of those Units, and shall be entitled to provide a fresh confirmation for Units without requiring the production or surrender of any previous confirmation in respect of the same Units.

12 Qualifications of Manager³⁴

The Fund must have a single Manager who must:

- a hold a licence under the Act that covers management of the Fund;
- b not be the Supervisor or an Associated Person of the Supervisor; and
- c otherwise be entitled in accordance with the Act³⁵ and by law to act as the manager of the Fund.

Roger Dickie (N.Z.) Limited is the Manager of the Fund as at the date of this Deed.

13 Manager's duties, responsibilities, and powers

13.1 Manager's responsibilities

- a The Manager is designated as the manager of the Fund for the purposes of the Act and is responsible for performing the functions for which responsibility is attributed to it as manager under the Act³⁶ and, in particular, is responsible for the following functions:
 - i offering Units in the Fund;
 - ii issuing Units in the Fund;
 - iii managing the Assets; and
 - iv administering the Fund.
- b The Fund shall be managed by the Manager and the Manager hereby agrees to carry out, comply with, and perform the duties and obligations on its part contained in this

³⁴ Section 135(1)(h) of the Act.

³⁵ Sections 127(1)(c) and (e) and 135(1)(h) of the Act.

³⁶ Sections 133 and 142 of the Act.

Deed, the Act,³⁷ and any other applicable legislation, and to observe and perform the manager obligations under this Deed and the Act.

13.2 Prime services of the Manager

Without limiting the generality of clause 13.1, the prime services of the Manager in respect of the Fund shall be the issuing and redeeming or arranging of the purchase of Units, investment of the Trust Fund, and processing related cash flows. All other services of the Manager carried out pursuant to this Deed shall be regarded as necessary incidents of the Manager carrying out those prime services, except where an additional service in respect of the Fund is separately agreed between the Manager and the Supervisor.

13.3 Manager's powers

Subject to this Deed and without prejudice to the prime services of the Manager being as described at clause 13.2, the Manager shall in the performance of its functions under clause 13.1 and the Act,³⁸ manage and administer the Fund for the benefit of Unit Holders with full and complete power of management. In particular, the Manager shall take all steps which in its discretion are necessary or desirable, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Assets and Liabilities of the Fund. The Manager shall, without limiting the Manager's discretion and full powers of management and administration but subject to the other provisions of this Deed and in particular clauses 14 and 23.5, have full and absolute power to do the following:

- a manage and make all decisions in relation to the acquisition and disposal of Authorised Investments upon such terms as it sees fit;
- b attend and vote at meetings relating to any Asset;
- c lend money, provided that where the lending does not relate to an Authorised Investment, the Manager may only lend with the consent of the Supervisor, such consent not to be unreasonably withheld or delayed;
- d instruct solicitors and other advisers to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- e make and carry out any takeover proposal, offer, or invitation;
- f pay all rates, taxes, interest, insurance premiums, legal and accounting fees, and expenses in respect of the Fund;
- g promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- h create, grant, renew, alter, or vary any mortgage, lien, charge, lease, or other encumbrance over all or any Assets for any purpose whatsoever, subject to clause 18.3 and 18.4 where Borrowings of the Supervisor are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;

³⁷ Sections 143 to 151 of the Act.

³⁸ Section 142 of the Act.

- i initiate or agree to any one or more of the following:
 - i the creation, release, modification, or variation of any rights, privileges, or liabilities of or in relation to any Authorised Investments (including Forestry Rights and contractual arrangements relating to Forestry Rights);
 - ii the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - iii the amalgamation or merger of any corporation with any other corporation; and
 - iv the sale or other disposition of all or any part of the property or undertaking of any corporation;
- j attend and vote for and represent the Fund at any meeting or meetings of creditors of any bankrupt or any insolvent Person or under the liquidation of any company or companies or otherwise in respect of any debt or claim which the Fund may have or in which the Fund may be interested and to prove debts and receive compositions or dividends and to take or join in taking proceedings for having any debtor adjudicated bankrupt or for obtaining a liquidation order in respect of any company, corporation, association, or syndicate and for all or any of the purposes as aforesaid to sign, make, and do all such notices applications, declarations, petitions, and things as the Manager may consider necessary or expedient and for any of the purposes aforesaid to appoint any person or persons as the Manager's proxy or proxies and to sign all necessary documents for such purposes;
- k enter into any arrangements with any government, public body, or authority to obtain any rights, authorities, or concessions or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out, exercise, and comply with any of the same;
- l acquire and accept for the Fund any equity of redemption;
- m participate in the rights and obligations (including obligations to contribute in any manner) to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- n enter into, perform, and enforce agreements;
- o institute, prosecute, compromise, and defend legal proceedings;
- p pay all outgoings connected with the Fund or this Deed or which are not otherwise payable by the Manager; and
- q take all steps necessary for the Fund to become a PIE or to terminate the Fund's PIE status (as the case may be) and conduct all necessary administration to that end and consequent upon it, where the Manager has determined that the Fund should become or cease to be a PIE.

In exercising the above powers, the Manager shall act in accordance with the terms of this Deed and the Act.

13.4 Manager's treatment of money

The Manager must:

- a pay all Cash from time to time held on behalf of the Fund into the Bank Account promptly after receipt thereof, with such accounts at all times maintained in credit unless the Supervisor provides its prior consent in writing to an overdraft or such Borrowing is otherwise permitted by this Deed;
- b ensure that Cash is held in trust and subsequently applied or repaid in accordance with the Act; and
- c otherwise administer such cash and other moneys from time to time received subject to the trusts governing the Fund as set out in this Deed.

13.5 Manager's powers in respect of Unit pricing errors or non-compliances

The Manager has the powers to:

- a alter a Unit Holder's Unit holding to address partly or entirely the impact of any Unit pricing error³⁹ provided such alteration does not adversely affect the relevant Unit Holder's Unit holding or the position of other Unit Holders, as compared with the position such Unit Holder or Unit Holders would have been in had the Unit pricing error not occurred; and
- b correct Unit pricing errors or non-compliances with a Unit pricing methodology for Units in the Fund to the extent required by the Act, provided that:
 - i where (after all relevant Unit adjustments and set offs have been made under paragraph a or otherwise) the amount of any reimbursement or compensation required is less than the amount determined on a case-by-case basis by the Manager based on industry guidelines which factor in the size of the error, the type of error, the frequency of the error and the administration costs of paying compensation, then no reimbursement or compensation shall be required to be provided; and⁴⁰
 - ii the Manager will notify the Supervisor of the proposed compensation (including the calculation methodology) of a Unit pricing error at least five days prior to compensation being paid to a Unit Holder.

13.6 Manager's general duties⁴¹

The Manager must:

- a act honestly and in good faith in acting as Manager;
- b in exercising any powers or performing any duties as Manager:
 - i act in the best interests of the Unit Holders; and

³⁹ Section 168(2) of the Act.

⁴⁰ Section 168 of the Act and regulation 99 of the Regulations.

⁴¹ Section 143(1) of the Act.

- ii treat the Unit Holders equitably;
- c not make use of information acquired through being the Manager in order to:
 - i gain an improper advantage for itself or any other person; or
 - ii cause detriment to the Unit Holders; and
- d ensure that no director or senior manager of the Manager:
 - i makes use of information acquired through being a director or senior manager of the Manager in order to:
 - A gain an improper advantage for itself or any other person; or
 - B cause detriment to the Unit Holders; or
 - ii makes improper use of the position as a director or senior manager of the Manager, to gain, directly or indirectly, an advantage for itself, himself, herself or any other person or to cause detriment to the Unit Holders.

13.7 Compliance with relevant requirements⁴²

The Manager must carry out its functions as manager of the Fund in accordance with this Deed, the SIPO for the Fund, all other issuer obligations (as defined in the Act), and all other applicable laws.

13.8 Manager's liability⁴³

The Manager has the same duties and liability in the performance of its functions as manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act).

13.9 Standard of care⁴⁴

The Manager and any investment manager must, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

13.10 Other trusts

Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager, trustee, or supervisor for trusts whether of a nature similar to or different from the trusts of this Deed.

13.11 Delegation by Manager

Without in any way affecting the generality of clause 13.1 but subject to clauses 13.13 and 14, the Manager may in carrying out and performing the duties and obligations on its part which are contained in this Deed and subject to the Manager remaining liable for the acts and

⁴² Section 143(2) of the Act.

⁴³ Section 143(3) of the Act.

⁴⁴ Section 144 of the Act.

omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:⁴⁵

- a delegate all or any of its powers, authorities, functions, and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager;
- b by power of attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers, authorities, and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities, or discretions; and / or
- c appoint any Person in any part of the world (including an Associated Person of the Manager):
 - i to be an agent, investment manager, sub-manager or co-ordinator, arranger or supervisor of any investment manager or sub-manager in respect of the Assets or any of them and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of the Fund (including power for such Person to sub-delegate);
 - ii as an administration manager or forest manager to assist with the administration and management of the Fund; and / or
 - iii as an expert for the provision of services relevant to the Fund.

13.12 Fees and expenses of appointees

Subject to clause 14 in relation to Related Party Benefits and to the Act:⁴⁶

- a any such appointment shall be upon such terms (including as to the fees payable, the extent to which expenses will be reimbursed, and the extent to which the appointee will be indemnified for liabilities or expenses incurred in relation to the performance of its contracted functions) as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment;
- b the fees and expenses of any such appointee may be payable out of the Assets; and
- c those terms will be as agreed between the Manager and the appointee from time to time.

13.13 Manager's obligations in relation to delegates⁴⁷

Where the Manager delegates or contracts out any of its functions as manager, the Manager:

- a must take all reasonable steps to ensure that the functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly;

⁴⁵ Section 146 of the Act.

⁴⁶ Sections 135(1)(f), 136, 146, and 172 to 175 of the Act.

⁴⁷ Section 146 of the Act.

- b must monitor the performance of those functions; and
- c remains liable for the performance of the functions delegated or contracted out.

13.14 Exercise of voting rights by Manager

All rights of voting conferred by the Assets of the Fund shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Unit Holder shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. Neither the Supervisor nor the Manager shall be under any liability or responsibility in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and none of the Supervisor, the Manager, or the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Supervisor, the Manager, or by the holder of such proxy or power of attorney and neither the Supervisor nor the Manager shall be under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

13.15 Insurance

The Manager shall cause buildings and all other Assets owned by the Fund to be insured with such insurer and for such amount as the Manager considers appropriate in the circumstances.

14 Related Party Transactions

14.1 General prohibition on Related Party Benefits

The Manager (or any other person to whom the Manager has contracted out some or all of its functions as manager) must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the Act.⁴⁸

14.2 Notice to Supervisor

The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit in accordance with the Act.

14.3 Effect of permitted benefit

- a Neither the Manager nor any other recipient of a Related Party Benefit shall be liable to account to the Supervisor or any Unit Holder for any profit arising from any transaction permitted by the Act.⁴⁹
- b A failure to comply with clause 14.1 does not affect the validity of a transaction (subject to any Court order to the contrary).⁵⁰

⁴⁸ Sections 172 to 175 of the Act and regulations 100 to 105 of the Regulations.

⁴⁹ Sections 172 to 175 of the Act and regulations 100 to 105 of the Regulations.

⁵⁰ Section 173(6) of the Act.

15 Remuneration of the Manager⁵¹

15.1 Manager's fees

In consideration for the provision of services and performance of the Manager of its obligations under this Deed, the Manager shall be paid out of the Trust Fund of the Fund (unless otherwise specified) the fees set out in this clause 15.

15.2 Fund brokerage fees

The Manager is entitled to be paid a brokerage fee not exceeding 2% plus any GST of the Cash or other consideration forwarded to meet the Issue Price of any Units as determined by the Manager from time to time (to be paid directly out of that Cash or other consideration or out of the Trust Fund, at the Manager's election, and may be paid to a third party or an Associated Person of the Manager).

15.3 Fund Management Fee

The Manager is entitled to be paid a fund management fee equal to 0.75% plus any GST per annum of the Total Assets ('**Fund Management Fee**'), such fee to be calculated and accrued on the basis of the Total Assets at intervals determined by the Manager from time to time and payable quarterly in arrears by the 20th Business Day of the month immediately following the relevant quarter. If the Fund is wound up part way through a quarter, payment of the Fund Management Fee in respect of that quarter shall be pro-rated accordingly. The Fund Management Fee will be payable from the period commencing on the date on which settlement of the acquisition of the first Property by the Fund occurs.

15.4 Fund Performance Fee

The Manager is entitled to be paid a Performance Fee, plus any GST on the following basis:

- a The Performance Fee for a Relevant Period is calculated as follows:
 - i the Benchmark Return is subtracted from the Investor Return and the result is multiplied by the average monthly Adjusted NAV ('**Outperformance**');
 - ii if the Outperformance is a negative amount:
 - A it is added to any negative amounts carried forward from previous periods and represents the carried forward under-performance; and
 - B no Performance Fee is payable in respect of the Relevant Period; and
 - iii if the Outperformance is a positive amount, any carried forward under-performance from previous periods is subtracted and:
 - A if this results in a negative amount, the lower amount represents the carried forward under-performance and no Performance Fee is payable in respect of that period; and

⁵¹ Section 135(1)(f) of the Act.

- B if the result is a positive amount, that amount is multiplied by 20% and represents the Performance Fee payable in respect of that Relevant Period.
- b For the purposes of calculating the Performance Fee under clause 15.4a:
- i **'Benchmark Return'** means an annual percentage return equal to 5% plus the total percentage change in CPI over the Relevant Period. The total percentage change in CPI for a Relevant Period shall be determined by aggregating the quarterly CPI percentage change figures for the four quarters falling within that Relevant Period. Where a Relevant Period is less than 12 months, the Benchmark Return shall be adjusted accordingly.
 - ii **'Investor Return'** is calculated by:
 - A subtracting the Unit Value on the last Business Day of the Relevant Period from the Unit Value on the last Business Day of the preceding Relevant Period (**'Opening Unit Value'**), and adding the aggregate gross distributions paid in respect of a Unit during the Relevant Period; and
 - B dividing the result by the Opening Unit Value to determine the capital performance in percentage terms.
 - iii **'Performance Fee'** is the amount determined in accordance with clause 15.4a.
 - iv **'Relevant Period'** means:
 - A the period commencing on the date of settlement of the Fund's first Property and ending on the first 31 March following that date; and
 - B thereafter, each Financial Year,

provided that if the Fund is wound up part way through a Relevant Period, that Relevant Period shall instead end on the date of termination of the Fund.
- c The Performance Fee shall be paid to the Manager following each Relevant Period in arrears within 20 Business Days after the day that the Financial Statements for the applicable Financial Year are lodged pursuant to clause 27.2. The Fund will use its reasonable endeavours to pay the Performance Fee in cash, however if the Fund is unable to do so the Fund will satisfy payment of the Performance Fee in whole or in part by the issue of Units to the Manager in accordance with this Deed.

15.5 Property disposal fee

Upon a sale of a Property or any part of a Property, including as a result of subdivision (other than upon the winding up of the Fund in accordance with clause 33, or selling or granting a lease in respect of Forestry Rights in connection with a harvest of a Property), the Manager will be entitled to a fee equal to 1.5% plus any GST of the gross sale price, payable either out of the Trust Fund or the proceeds of sale, payable when title to the relevant Property or part of a Property is transferred and the full amount payable to the Fund by the purchaser has been received in cleared funds.

15.6 Wind-up fee

Upon the Fund being wound up in accordance with clause 33, the Manager shall be entitled to charge a fee equal to 2.25% plus any GST of the Fund's Total Assets as at the date of the applicable Termination Event, payable to the Manager within 20 Business Days of the Fund's last Property or Asset (as applicable) transferring to the purchaser(s) and the Fund receiving the proceeds from that sale in accordance with the wind-up procedure set out in clause 33.

15.7 Property acquisition fee

On completion of every acquisition of a Property by the Fund (other than the creation of a Forestry Right on an existing Property), the Manager will be entitled to an acquisition fee paid out of the Trust Fund equal to 2.75% of the purchase price of the Property, plus any GST.

15.8 Administration expenses

The Manager is entitled to be paid:

- a \$12,000 plus any GST per annum per Property for administration services (as determined by the Manager, acting reasonably), such amount to be paid monthly in arrears; and
- b reimbursement of actual time spent on co-ordination and supervision of investment management and administration activities actively coordinated and supervised for the benefit of the Fund which are outside the Manager's regular investment management and administration services with reimbursement to be at \$250/hour.

15.9 Individual Unit Holder fees

The Manager may also charge individual Unit Holders a brokerage fee of up to 2.5% plus any GST of the sale value of the relevant Units, for facilitating and administering the sale of those Units on the Manager's secondary market or auction process. The Manager may vary the amount of such fee with the Supervisor's approval.

15.10 Manager's entitlements

- a The Manager's fees may be reviewed from time to time with any variation in such fees to be approved by an Ordinary Resolution of the Unit Holders, provided that:
 - i the Supervisor may approve the variation or modification of a fee charged to the Fund without approval by Ordinary Resolution if:
 - A it believes the variation or modification to be fair and equitable to both the Manager and the Fund; and
 - B in the Supervisor's opinion the variation does not warrant the time and expense of approval by Ordinary Resolution; and
 - ii the Manager may without approval by Ordinary Resolution adjust either or both of the fees referred to in clauses 15.3 and 15.8, with effect from 1 July in each calendar year, by the percentage change in CPI over the 12 months to that date.

- b The Manager shall be entitled:
 - i at its sole discretion at any time and from time to time to waive or reduce the fees otherwise payable to the Manager pursuant to this Deed, either generally or in relation to a particular Unit Holder or category of Unit Holders or Transaction; and
 - ii to receive, in addition to such fees, any value added Tax or duty or similar Tax payable in respect of such fee including GST.
- c The Manager shall be entitled, in its sole discretion at any time and from time to time but subject to compliance with the Act, to elect to receive Units instead of payment in Cash of any fees payable to the Manager out of the Trust Fund in accordance with this Deed. Such Units will be issued to Manager on such basis as is agreed with the Supervisor from time to time.

15.11 Disclosure of fees

Fees payable pursuant to this clause 15 shall be recorded in any relevant Offer Document issued by the Manager in accordance with the Act.

16 Removal and retirement of Manager

16.1 Removal

- a The Manager shall cease to hold office as manager of the Fund if:⁵²
 - i the Manager is removed by written direction of the Supervisor after the Supervisor certifies that it is in the best interests of the Unit Holders that the Manager be removed;
 - ii the Manager is removed by a Special Resolution of the Unit Holders; or
 - iii the Manager is substituted by the High Court under section 209 of the Act or by such other means as may at any relevant time be prescribed by law.
- b Subject to the Act, any removal in accordance with clause 16.1a is conditional upon:
 - i payment to the Manager of an amount equal to 2.25% of the Fund's Total Assets as at the date of removal as compensation; and
 - ii a new Manager being appointed and executing the deed referred to in clause 16.5.
- c If the Manager ceases to hold office pursuant to clause 16.1a, the Manager and any delegate of the Manager shall immediately desist from all activities related to the Fund unless the Supervisor agrees to the contrary.⁵³

⁵² Sections 185, 209 and 210 of the Act.

⁵³ Section 185(4) of the Act.

16.2 Retirement

The Manager may retire without giving any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 16.5.

16.3 Temporary Manager

The power to appoint a temporary manager under the Act⁵⁴ shall apply upon the occurrence of a vacancy in the office of manager of the Fund.

16.4 Replacement Manager

The Supervisor shall, upon a vacancy in the office of Manager occurring, take all reasonable steps to appoint a replacement manager. If no such appointment is made within 90 days after the vacancy occurs, the Supervisor shall summon a meeting of Unit Holders and shall take such reasonable steps as that meeting or any subsequent meeting of Unit Holders may require to either wind up the Fund in accordance with clause 33.1b or to secure the appointment of a new permanent manager of the Fund entitled by the Act to act as Manager (which may, for the avoidance of doubt but subject to the Act⁵⁵ be any temporary manager appointed pursuant to clause 16.3).

16.5 Retiring Manager released

A new Manager appointed pursuant to clause 16.4 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment. Subject to all applicable laws,⁵⁶ from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

16.6 New manager to lodge notice of change

The new Manager must lodge a notice of change of Manager with the Registrar of Financial Service Providers in accordance with the Act.⁵⁷

16.7 Former manager must hand over records and give reasonable assistance

A former manager must hand over records and give reasonable assistance to the new manager in accordance with the requirements of the Act.⁵⁸

16.8 Former manager's entitlements

Subject to any order of the Court, nothing in this clause 16 shall prevent the former Manager from receiving payment or a benefit which has reasonably and properly accrued to the former

⁵⁴ Sections 186, 187, 189, and 191 of the Act.

⁵⁵ Section 189 of the Act.

⁵⁶ Section 191 of the Act.

⁵⁷ Section 192 of the Act.

⁵⁸ Section 190 of the Act.

Manager pursuant to the terms of this Deed or by applicable legislation prior to the date of or arising on the former Manager's retirement or removal from office.⁵⁹

17 Qualifications of Supervisor⁶⁰

The Fund must have a single supervisor who must:

- a hold a licence under the Financial Markets Supervisors Act 2011 that covers supervision of the Fund;
- b not be the Manager or an Associated Person of the Manager; and
- c otherwise be entitled in accordance with the Act⁶¹ and by law to act as the supervisor of the Fund.

Covenant Trustee Services Limited is the Supervisor of the Fund as at the date of this Deed.

18 Supervisor's powers and duties

18.1 Supervisor's general powers and duties

The Supervisor shall have the powers conferred on it by the Act (including the power to engage advisers or experts),⁶² and must comply with its duties under the Act when exercising its powers and performing its functions and duties as supervisor of the Fund.⁶³

18.2 Power to Borrow

Subject to clauses 18.3, 18.4, and 23.5, the Supervisor has the power to and must, if so directed by the Manager:

- a Borrow and raise money for any of the purposes of the Fund, on such terms and conditions as the Manager thinks fit, including to issue notes, bonds, obligations, and securities of all kinds;
- b enter into loan documents or securities and take all other steps necessary to give effect to any such Borrowing; and
- c mortgage, charge, pledge, or otherwise create a security interest over all or any of the Assets of the Fund,

and no lender shall be concerned to enquire as to whether the necessity for any such Borrowing has arisen or as to the purpose for which it is required or as to the application of the money Borrowed.

⁵⁹ Section 191 of the Act.

⁶⁰ Section 135(1)(g) of the Act.

⁶¹ Sections 127(1)(c) and (e) and 135(1)(h) of the Act.

⁶² Section 155 of the Act.

⁶³ Sections 152 to 155 and 160 of the Act.

18.3 Limitations on Borrowings

The following restrictions on the power to Borrow conferred by clause 18.2 apply:

- a the aggregate of the principal moneys Borrowed and outstanding from time to time in respect of the Fund may not exceed the amount or amounts specified in the SIPO for the Fund from time to time; and
- b Borrowings shall only be entered into or made where the Manager in good faith determines that the Borrowing is necessary or desirable for the sole purpose of conducting the operation of the Fund pursuant to this Deed, including to provide liquidity for the redemption of any Units from time to time or for the purposes of distributing Amounts.

The Supervisor and any lender may rely upon a certificate given by the Manager as to any determination made under this clause 18.3 without further enquiry.

18.4 Conditions of Borrowing

Without limiting clause 23.5, there is no obligation upon the Supervisor to comply with any direction given pursuant to clause 18.2 or to complete any loan or security documents unless the Supervisor is satisfied that:

- a the Supervisor's liability is restricted to the Assets from time to time comprising the Fund;
- b any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- c there is or will be compliance with clause 18.3.

18.5 Third parties need not enquire

No Person lending or advancing moneys to the Supervisor in respect of the Fund or completing documents or securities in respect of any such Borrowing need to enquire as to whether or not the limitations set out at clause 18.3 or 18.4 have been observed or complied with.

18.6 Supervisor's general functions

The Supervisor is responsible for the following functions:

- a acting on behalf of the Unit Holders in relation to:
 - i the Manager;
 - ii any matter connected to this Deed or the terms of any regulated offer (as that term is defined in the Act) of Units;
 - iii any contravention or alleged contravention by the Manager of its issuer obligations (as defined in the Act); and
 - iv any contravention or alleged contravention of the Act by any other person in connection with the Fund;

- b supervising:
 - i the performance by the Manager of its functions and its issuer obligations; and
 - ii the financial position of the Manager and the Fund to ascertain that it is adequate;
- c holding the Assets in accordance with the Act, or ensuring those Assets are held in accordance with the Act; and
- d performing or exercising any other functions, powers, and duties conferred or imposed on the Supervisor by or under the Act, the Financial Markets Supervisors Act 2011, and this Deed.

The Supervisor must not delegate its functions under this clause, except to the extent permitted by the Act or the Financial Markets Supervisors Act 2011.

18.7 **Supervisor's general duties**⁶⁴

The Supervisor must:

- a act honestly and in good faith in acting as Supervisor;
- b in exercising its powers and performing its duties as Supervisor, act in the best interests of the Unit Holders; and
- c exercise reasonable diligence in carrying out its functions as Supervisor.

18.8 **Duty to act**⁶⁵

The Supervisor must also:

- a do all the things it has the power to do to cause any contravention referred to in clause 18.6a to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Unit Holders); and
- b subject to the Act, act in accordance with any direction given by a Special Resolution of Unit Holders that is not inconsistent with any enactment, rule of law, or this Deed, in relation to:
 - i seeking a remedy to a contravention referred to in clause 18.6a; and
 - ii any other matter connected with the Supervisor's functions.

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Unitholders.

⁶⁴ Section 153(1) of the Act.

⁶⁵ Section 153(2) of the Act.

18.9 Supervisor's liability⁶⁶

The Supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act).

18.10 Standard of care⁶⁷

The Supervisor must, in exercising its powers and performing its duties as the Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

18.11 Supervisor may engage experts⁶⁸

The Supervisor is entitled, in the performance of the Supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- a determine the financial position of the Manager or the Fund; or
- b review the business, operation, or management systems, or the governance, of the Manager or the Fund.

18.12 Manager's obligations in relation to expert

If the Supervisor engages an expert under clause 18.11:

- a the Manager must provide reasonable assistance to the expert to allow the expert to provide the assistance under clause 18.11;
- b the Manager must pay the fees and expenses of the expert, which must be reasonable in the circumstances; and
- c subject to clause 22.9, the Manager is entitled to be indemnified for those fees and expenses out of the Assets of the Fund.

18.13 Manager to provide information

- a The Manager shall report and provide information to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, Unit pricing errors and non-compliances with the applicable Unit pricing methodology for Units) to the extent required by the Act and comply in all respects with the Manager's obligations, including as to the frequency and content of such reports.⁶⁹
- b The Manager and Supervisor may agree on other reporting to be provided, in which case the details relating to the frequency or content of the reports (or both) will be set out in a separate written agreement between the Manager and the Supervisor.

⁶⁶ Section 153(4) of the Act.

⁶⁷ Section 154 of the Act.

⁶⁸ Section 155 of the Act.

⁶⁹ Sections 135(1)(j), 147 to 151, 167 and 168 of the Act and regulations 83, 94 to 98 and 100 of the Regulations.

19 Custody

19.1 Supervisor may appoint Custodian

The Supervisor is entitled to, with the agreement of the Manager, appoint a person (a 'Custodian') from time to time on such terms as the Supervisor may determine to hold any Assets of the Fund where the Custodian:⁷⁰

- a is a body corporate that the Supervisor believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Assets; and
- b is not the Manager or an Associated Person of the Manager.

19.2 Custodian may appoint Sub-Custodian

A Custodian shall be entitled, if authorised in writing by the Supervisor with the Manager's agreement, to appoint another person (a 'Sub-Custodian'), to hold those Assets of the Fund that would otherwise be held by the Custodian where the Sub-Custodian:

- a is a body corporate that the Custodian believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Assets; and
- b is not the Manager or an Associated Person of the Manager.

19.3 Duties of appointing entity

If a person contracts the holding of Assets to another person (in this clause, the 'nominee') under this clause 19, the person contracting out that function:

- a shall take all reasonable steps to:
 - i ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if the person were performing it directly;⁷¹
 - ii monitor the performance of that function; and
 - iii ensure that the nominee complies with sections 157 to 160 of the Act; and
- b is jointly and severally liable with the nominee (and any other person who has contracted out that function) for the performance of that function in accordance with clause 19.3a.

19.4 Terms, fees, and expenses of appointment of Custodian and Sub-Custodian

The terms of appointment of any Custodian or Sub-Custodian shall be agreed between the Supervisor, Manager, the Custodian, and the Sub-Custodian (as applicable) from time to time provided that those fees are determined on an arm's-length basis.⁷² Subject to clause 22.5, if the Manager agrees (such agreement not to be unreasonably withheld) the fees and expenses of a Custodian or Sub-Custodian may be payable out of the Assets of the Fund. The terms of appointment of a Custodian or Sub-Custodian may indemnify the Custodian or

⁷⁰ Sections 127(1)(f) and 156 of the Act and regulations 86 to 88 of the Regulations.

⁷¹ Sections 157 to 159 of the Act.

⁷² Section 135(1)(f) of the Act.

Sub-Custodian for liabilities or expenses incurred in relation to the performance of its contracted functions.

19.5 Other matters relating to custody

- a The Manager will promptly provide all practicable support reasonably requested to the Supervisor, Custodian, or Sub-Custodian (as applicable) to enable the relevant entity to fulfil its obligations under regulations 86 to 88 of the Regulations, to the extent that those obligations apply to the Fund.
- b Where Assets are held by a person other than the Supervisor, a Custodian, or a Sub-Custodian in accordance with the Act (including, for the avoidance of doubt, any exemption granted by the FMA under the Act), the Supervisor, a Custodian, or a Sub-Custodian (as applicable) will be entitled to take security over such Assets on the terms set out in the Act and any relevant exemption (and the Manager shall provide all practicable support reasonably requested by the Supervisor to enable the relevant entity to take such security).

20 Remuneration of the Supervisor

20.1 Remuneration basis⁷³

The Supervisor shall be paid out of the Trust Fund:

- a a one-off establishment fee, payable from the Trust Fund upon entry into this Deed, of such amount agreed between the Manager and the Supervisor plus any GST; and
- b commencing on the date of this Deed, an annual fee calculated on the basis agreed between the Manager and the Supervisor from time to time (plus any GST) for its services as Supervisor of the Fund (including custodial services provided by the Supervisor and its Associated Persons).

20.2 Supervisor's entitlements

The Supervisor shall be entitled:

- a to receive, in addition to its fees, any value added Tax or duty or similar Tax payable in respect of such fee including GST;
- b to adjust its annual fee, with effect from 1 July in each calendar year, by the percentage change in CPI over the 12 months to that date;
- c to a special duties fee at its usual time in attendance rates for any non-routine matters, as agreed with the Manager from time to time; and
- d without prejudice to paragraph b, to review its annual fee on an annual basis, and to increase its fee with the agreement of the Manager and after giving at least 90 days' prior notice to that effect to all Unit Holders.

⁷³ Section 135(1)(f) of the Act.

20.3 Calculation of Supervisor fees

The fee referred to in clause 20.1b shall be calculated and accrued quarterly on the basis of the Total Assets as at the last Business Day of each calendar quarter, and shall be paid quarterly in arrears by such date as is agreed between the Supervisor and the Manager from time to time.

21 Removal and retirement of Supervisor⁷⁴

21.1 Removal generally

Subject to clause 21.3, the Supervisor may be removed from office as Supervisor by:

- a FMA, if FMA is satisfied that the Manager and the Supervisor no longer meet the requirements of section 127(1)(e) of the Act;
- b FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011;
- c a Special Resolution of the Unit Holders;
- d the Manager with the FMA's consent, if the Supervisor:
 - i ceases to carry on business or if a liquidator or provisional liquidator is appointed (except for the purpose of amalgamation or reconstruction); or
 - ii has a receiver or receiver and administrator appointed who is not removed or withdrawn within thirty days after appointment; or
- e any other person entitled to do so by relevant law.⁷⁵

21.2 Resignation

Subject to clause 21.3, the Supervisor may resign at any time without assigning any reason upon giving 90 days' notice (or such lesser period of notice as the Manager may agree) in writing to the Manager of its intention to do so.

21.3 Restrictions on removal or resignation

Subject to the Act, the Supervisor may not be removed under clauses 21.1c or 21.1d or resign under clause 21.2 unless one of the following applies:⁷⁶

- a all functions and duties of the position have been performed;
- b a new Supervisor has been appointed, and accepted the appointment, in its place; or
- c the High Court consents.

⁷⁴ Section 135(1)(g) of the Act.

⁷⁵ Section 193(1) of the Act.

⁷⁶ Section 193(2) of the Act.

21.4 Conditions on removal or resignation

Any removal under clause 21.1 or resignation under clause 21.2 shall be conditional upon and not be effective until:

- a a new Supervisor has been appointed as supervisor pursuant to clause 21.5 and has executed the deed referred to in clause 21.6; and
- b the transfer to or at the direction of the new Supervisor of all of the Assets of any nature of the Fund (to the extent required by the Act and relevant exemptions), and all Fund records and other relevant documentation (which on the direction of the Manager the Supervisor shall promptly procure).

21.5 Appointment of new Supervisor

The power of appointing a new Supervisor (in place of a Supervisor which has resigned pursuant to clause 21.2 or been removed from office pursuant to clause 21.1) shall be vested in the Manager. If the Manager fails or refuses to appoint a new Supervisor within 90 days of the resignation, removal, or discharge (as applicable) of the former Supervisor, such new Supervisor may be appointed by a Special Resolution at a meeting of Unit Holders.

21.6 Retiring Supervisor released

A new Supervisor appointed pursuant to clause 21.5 shall forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and Unit Holders to be bound by all the covenants on the part of the Supervisor hereunder from the date of such appointment and from such date, subject to the Act, the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such new Supervisor had been originally named as a party hereto.

22 Supervisor's and Manager's indemnities

22.1 Supervisor and Manager in representative capacity

Except as otherwise expressly provided in this Deed, the Supervisor and the Manager, in incurring any debts, liabilities, or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of the Fund, are each, and shall each be deemed to be, acting for and on behalf of the Unit Holders and not in their own respective capacities.

22.2 No personal liability

Except as otherwise expressly provided in this Deed, neither the Manager nor the Supervisor shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Fund, and the Fund only shall be liable or subject to execution.

22.3 Indemnity

Except as otherwise expressly provided in this Deed, if contrary to the provisions of clauses 22.1, 22.2, and 22.6, but subject to clause 22.4 and the indemnity limitations under the Act,⁷⁷ either the Manager or the Supervisor shall be personally liable to any other person in respect of any debt, action taken or omitted in connection with the Fund, or liability or obligation incurred by or on behalf of the Fund, including in respect of the establishment of the Fund, then the Manager or the Supervisor (as the case may be) shall be entitled to be indemnified out of the Fund, to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined in priority to the claims of any Unit Holder.

22.4 Liability for default

Except as otherwise expressly provided in this Deed and subject to the indemnity limitations under the Act, the Manager and the Supervisor shall each be liable for any breach of trust arising from such party's dishonesty or wilful misconduct, but subject thereto and to clause 22.9 neither the Manager nor the Supervisor shall be liable to the Fund or to any Unit Holder as a result of acting as Manager or Supervisor (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Fund.

22.5 Reimbursement

Without limiting the generality of the indemnity provided at clause 22.3, but subject to the indemnity limitations under the Act⁷⁸ (including clauses 22.4 and 22.9), the Manager, Supervisor, Custodian, and Sub-Custodian shall each be entitled to be reimbursed out of the Fund for all direct and indirect expenses, losses, costs or liabilities properly incurred by them respectively in or about acting as Manager, Supervisor, Custodian, or Sub-Custodian (as the case may be) under this Deed, **provided that:**

- a in the case of the Supervisor, it has consulted with the Manager prior to incurring such expenses, losses, costs, or liabilities;
- b in the case of the Manager, it may elect to fix any set-up fees and expenses incurred (as disclosed in the Offer Document pursuant to which Units are offered), in which case the Manager will bear the responsibility for any discrepancies in the event the actual set-up fees or expenses incurred are higher or lower than the fixed amounts; and
- c a prudent professional supervisor or manager would consider it reasonable to incur such expenses, losses, costs or liabilities in order to assist the Manager, Supervisor, Custodian, or Sub-Custodian (as the case may be) to comply with its respective obligations and duties under this Deed and at law.

Without prejudice to the generality of the foregoing, the Manager and the Supervisor shall be entitled to be indemnified against:⁷⁹

⁷⁷ Sections 135(1)(f) and 136(1)(b) of the Act.

⁷⁸ Sections 135(1)(f) and 136(1)(b) of the Act.

⁷⁹ Section 135(1)(f) of the Act.

- d all costs, charges, disbursements, and expenses incurred in connection with the acquisition, registration, custody, holding, disposal, investment in or through, or other dealing with, an Authorised Investment (regardless of whether the relevant transaction ultimately proceeds), including without limitation commission, bank charges, management and other fees associated with the Authorised Investment, and stamp duty;
- e all income Tax other than PIE Tax recovered from Unit Holders, capital gains Tax, stamp duties, financial institutions duties, and bank account debits, or any other duty or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other person) in connection with the Trust Fund;
- f any underwriting fees, commission, brokerage, expenses, costs, and disbursements in respect of the underwriting of an issue of Units;
- g all costs of convening and holding any meeting of Unit Holders;
- h except where the Manager agrees to pay such costs out of its fees or the Manager's own funds, administration costs incurred in relation to the Fund, including:
 - i the costs of the preparation and execution of any deeds that amend or replace this Deed, including the fees of solicitors and other advisers;
 - ii any expense or liability which may be incurred by the Manager, the Supervisor, the Custodian, or the Sub-Custodian (as the case may be) in bringing or defending any action or suit in respect of the Fund or the provisions of this Deed as they relate to the Fund;
 - iii costs of postage in respect of all accounts, distribution statements, notices, reports and other documents provided to all or any Unit Holders;
 - iv the fees and expenses of the Auditor;
 - v expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Register; and
 - vi all costs, charges, and expenses incurred in the advertising and promotion of the Fund; and
- i any other amounts specified in this Deed as being payable from the Assets and/or the Trust Fund (including, without limitation, the fees and expenses of any Person appointed pursuant to clause 13).

22.6 Limitation on liability

Without prejudice to the generality of clauses 22.1 to 22.4, and except as otherwise expressly provided in this Deed or the Act:

- a the Supervisor, Custodian, and Sub-Custodian shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Manager or any agent of the Manager nor shall the Supervisor, Custodian, or Sub-Custodian be responsible to check any information, document, form, or list supplied to it by the Manager or any agent of the Manager;

- b the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form, or list supplied to it by the Supervisor or any agent of the Supervisor;
- c the Manager, Supervisor, Custodian, and Sub-Custodian may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker, or other person believed by the Manager, Supervisor, Custodian, or Sub-Custodian to be expert in relation to the matters on which that person is consulted (irrespective of whether the opinion, advice, statement, or information in question is obtained by the Manager, Supervisor, Custodian, or Sub-Custodian or all of them) and none of them shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- d whenever pursuant to any provision in this Deed any certificate, notice, direction, or other communication is to be given by the Manager to the Supervisor, Custodian, or Sub-Custodian, the Supervisor, Custodian, and Sub-Custodian may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary, officer, or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager, and the Supervisor, Custodian, and Sub-Custodian is not liable for anything done or suffered by it in good faith in reliance upon any such certificate, notice, direction, or other communication;
- e unless expressly provided in this Deed, the Manager, Supervisor, Custodian, and Sub-Custodian shall as regard all the trusts, powers, authorities, and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise of those functions whether in relation to the manner or as to the mode of or time for the exercise subject, in the case of the Manager, to the giving of any required notice to the Supervisor, Custodian, or Sub-Custodian and the approval of or supervision by the Supervisor wherever required by the provisions of this Deed;
- f nothing in this Deed shall be deemed to prohibit the Supervisor or any Associated Person of the Supervisor or any shareholder or officer of the Manager, Supervisor, Custodian, or Sub-Custodian or any Associated Person of any of them or any shareholder or officer of the Manager ('**Relevant Persons**') from being a Unit Holder or from acting in any representative capacity for a Unit Holder. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney, or agent or in any other fiduciary, vicarious, or other professional capacity for a Unit Holder and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- g the Supervisor shall be at liberty to deposit all documents evidencing any Assets, or evidencing title to any Assets with any person considered by the Supervisor to be of good repute; and
- h the Unit Holders of the Fund may by Special Resolution further release the Manager, Supervisor, Custodian, or Sub-Custodian or any or all of them from any liability incurred in relation to the Fund and sanction the Manager, Supervisor, Custodian, and Sub-

Custodian or all or any of them being indemnified out of the Fund from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Manager, Supervisor, Custodian, and Sub-Custodian ceasing to act in relation to the Fund.

22.7 **Supervisor's and Manager's limited liability to Unit Holders**

Subject to clauses 22.4 and 22.9 but notwithstanding any other provision contained in this Deed, in no event is the Manager, Supervisor, Custodian, or Sub-Custodian bound to make any payment to Unit Holders except out of the Trust Fund or liable to the Unit Holders to any greater extent than the Assets of the Fund vested in or received by the Supervisor, Custodian, or Sub-Custodian in accordance with this Deed.

22.8 **No waiver**

The Manager, Supervisor, Custodian, or Sub-Custodian may at any time elect not to seek reimbursement from the Trust Fund for any expense, cost, or liability, without prejudicing the right of such person to be reimbursed for any other expense, cost, or liability (whether or not of a similar nature).

22.9 **Degree of care and skill required**

No provision of this Deed shall have the effect of exempting the Manager, Supervisor, Custodian, or Sub-Custodian or any director or officer of any of them from, or indemnifying the Manager, Supervisor, Custodian, or Sub-Custodian or any such director or officer against, any liability or expense to the extent that any liability to the extent that doing so would be void under the Act or any other applicable legislation (including where the expense or liability is caused by the failure of the Manager or the Supervisor (as the case requires) to show the degree of care and diligence required by the Act).⁸⁰

22.10 **Power to indemnify investment managers and administration managers**

The Manager may agree:

- a to limit the liability (in connection with its services in respect of the Fund) of; and/or
- b to indemnify and reimburse out of the Fund's Assets in accordance with clause 22.5,

any investment manager or administration manager appointed in respect of the Fund, to the fullest extent permitted by the Act, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Fund or any action taken or omitted to be taken in connection with the Fund (including, without limitation, legal fees and disbursements).⁸¹

22.11 **Power to indemnify Custodians**

The Supervisor may agree, with the Manager's consent:

- a to limit the liability (in connection with its services in respect of the Fund) of; and/or

⁸⁰ Sections 136, 143, 144, 153, and 154 of the Act (as applicable).

⁸¹ Section 135(1)(f) and 136(2) of the Act.

- b to indemnify and reimburse out of the Assets in accordance with clause 22.5, any Custodian or Sub-Custodian appointed in respect of the Fund, to the fullest extent permitted by the Act, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian or Sub-Custodian in respect of the Fund or any action taken or omitted to be taken in connection with the Fund (including without limitation, legal fees and disbursements).⁸²

23 Investments

23.1 SIPO

- a The Manager will:
- i ensure that there is a SIPO for the Fund which complies with the Act;⁸³ and
 - ii comply with that SIPO.
- b The Manager may amend or replace the SIPO from time to time provided that:
- i the Manager must obtain the Supervisor's prior approval of the proposed amendment or replacement (such approval not to be unreasonably withheld or delayed); and
 - ii the Manager must provide Unit Holders with at least one month's notice before implementing any change in the SIPO (unless the Manager and the Supervisor agree the change is not material).
- c The Manager must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the Act.⁸⁴

23.2 Manager to invest in accordance with SIPO

The Fund shall be invested only in Authorised Investments in accordance with the SIPO for the Fund.

23.3 Action on limit breaks

The Manager must take any action required by the Act if a limit break (within the meaning of section 167 of the Act) or material pricing error or non-compliance (in terms of section 168 of the Act) occurs.

23.4 Manager directs Supervisor

The Manager will manage the Fund and as and when required may, from time to time, but subject to clause 23.5, direct the Supervisor in respect of:

- a the investment and management of any Assets;

⁸² Sections 135(1)(f) of the Act.

⁸³ Section 164 of the Act.

⁸⁴ Sections 165 and 166 of the Act.

- b the purchase, acquisition, sale, transfer, replacement, and disposition of Assets;
- c the amendment or modification of any Assets; and
- d the entering into of any commitments or liabilities that are related to Authorised Investments,

and the Supervisor will from time to time, to the extent of the Fund in its possession or control (including, for the avoidance of doubt, to the extent held or controlled by a Custodian or Sub-Custodian), act as directed in writing by the Manager. The Manager will provide to the Supervisor a written notice setting out the names and specimen signatures of all persons authorised to give directions under this clause or otherwise in respect of this Deed, and the Supervisor and each Custodian and Sub-Custodian are entitled to rely on the identity and authority of any person specified in such notice until they receive a replacement notice from the Manager to the contrary.

23.5 **Supervisor's limited duty to refuse to act**⁸⁵

Notwithstanding clause 23.4, the Supervisor shall not act, and will direct any Custodian and Sub-Custodian not to act, on a direction of the Manager to acquire or dispose of any Authorised Investment if in the opinion of the Supervisor conveyed in writing to the Manager, the proposed acquisition or disposition would be:

- a manifestly not in the interests of the Unit Holders; and/or
- b in breach of the provisions of this Deed, any rule of law, or any enactment.

The Supervisor, Custodian, and Sub-Custodian shall not be liable to the Unit Holders or the Manager for so refusing to act on any direction or for acting on any direction (and in the case of the Supervisor, for so directing any Custodian or Sub-Custodian).

23.6 **Vesting and custody of Assets**

- a Any Assets shall as soon as reasonably practicable after acquisition by the Supervisor be vested in the Supervisor, Custodian, or Sub-Custodian (as applicable), and the documents (if any) evidencing the Assets shall be held in safe custody by the Supervisor or by some person selected by the Supervisor in accordance with clause 22.6g, and shall remain so vested and held until the same shall be sold or disposed of pursuant to the provisions of this Deed.
- b The Supervisor will (or will procure that any Custodian or Sub-Custodian appointed from time to time will) without delay forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets.

23.7 **Limitation of liability**

The Supervisor may, before entering into any transaction, security, or liability require that its liability is restricted or limited to its satisfaction to Assets for the time being of the Fund.

⁸⁵ Section 160 of the Act.

24 Valuations⁸⁶

24.1 Adjusted NAV of the Fund

The Manager shall calculate the Adjusted NAV using the following formula:

$$\text{NAV} = A - L \text{ (plus or minus any adjustments in accordance with clause 24.10)}$$

Where:

- A = the value of all Assets and any other amounts which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the total value of the Fund having due regard to NZ GAAP as applied to the Assets; and
- L = all Liabilities and any other amounts which, in the opinion of the Manager, shall be included in such aggregate for the purpose of making a fair and reasonable determination of the total net value of the Fund having due regard to NZ GAAP as applied to the Assets.

24.2 Determining the value of Assets

For the purpose of determining the Adjusted NAV under clause 24.1, the Manager shall determine the value of each Asset on such basis as the Manager considers to be fair and equitable having regard to NZ GAAP (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and may from time to time engage any Approved Valuer or other suitably qualified person for the purpose of fixing the market value of any such Asset (but is not under any duty to do so), provided that the value shall be:

- a in the case of trees, land, and Forestry Rights, the most recent value determined by an Approved Valuer;
- b in the case of New Zealand units (as defined in the Climate Change Response Act 2002), the closing spot price for such Assets as at a date chosen by the Manager on or prior to the date as at which the valuation is to be determined;
- c in the case of cash or a bank deposit, its face value plus any accrued interest;
- d in the case of a Forestry Fund Unit which is not listed on an Exchange:
 - i the most recent unit price issued by the Forestry Fund of which the Manager is aware on or prior to the relevant date; or
 - ii where the Forestry Fund does not issue a unit price, the amount calculated with reference to the most recent Financial Statements of the Forestry Fund using the following formula:

$$(A \div B) \times C$$

Where:

⁸⁶ Section 135(1)(d) of the Act.

- A = the net equity of the Forestry Fund;
- B = the total number of Forestry Fund Units on issue in the relevant Forestry Fund; and
- C = the total number of Forestry Fund Units of the Forestry Fund held by the Fund;
- e in the case of any Assets not included in paragraphs a to d above which are valued by or for the issuer of those Assets, the most recent valuation made of those Assets of which the Manager is aware;
- f in the case of derivative financial instruments, the mark to market valuation provided by a financial institution or valuer or commercially accepted valuation system; and
- g in the case of any other Asset, the amount agreed upon between the Manager and the Supervisor as the estimated market value after taking account of the most recent material sales, valuation, and other information that the Manager and the Supervisor consider to be appropriate or, failing such agreement, the fair market value determined by an Approved Valuer,

provided that, if, in the Manager's opinion, any such valuation is not an accurate measure of the value of that Asset, the value determined using some other form of appropriate determination as to the value in respect of any specific Asset from time to time as the Manager (acting reasonably) determines and which is agreed to by the Supervisor may be used.

24.3 Determining Assets

For the purposes of determining the Adjusted NAV under clause 24.1, the Manager may include in the value of the Fund's Assets, the value of any other amounts which, in the Manager's opinion, should be included for the purpose of making a fair and reasonable determination of the net asset value of the Fund and, where the Manager considers it appropriate to do so, exclude any credit against a person's tax liability provided for under the Tax Act, or any other similar credit (including, if the Fund is a PIE, a refund payable to the Fund in respect of losses or excess tax credits which is attributable to a Unit Holder).

24.4 Frequency of valuations

The Assets of the Fund shall be valued in accordance with clause 24.2 at such frequency as the Manager considers necessary or desirable from time to time and whenever the Supervisor, acting reasonably, requests it, provided that:

- a if required in order for the annual Financial Statements to be prepared and audited in accordance with clause 27.1, Assets will be valued at the same time as those Financial Statements are prepared and audited;
- b land owned by the Fund must be valued at least once every Financial Year; and
- c trees and Forestry Rights owned by the Fund must be valued at least once every calendar quarter.

24.5 Adjusted NAV and Unit Value to be ascertained

The Manager:

- a may ascertain the Adjusted NAV and Unit Value on any Business Day;
- b shall ascertain the Adjusted NAV and Unit Value for each Valuation Day and at least once every 12 months; and
- c shall ascertain such Adjusted NAV and Unit Value within 20 Business Days of the applicable Business Day or Valuation Day (as applicable).

24.6 Manager's decision is final

Subject to clause 24.7 and in the absence of a manifest error, Asset values and the Adjusted NAV of the Fund ascertained by the Manager is final and binding on all persons, including, without limitation, the Supervisor and any applicant or subscriber for, or purchaser of, Units, and all Unit Holders.

24.7 Valuation on a consistent basis

The Manager shall ascertain the Adjusted NAV on a consistently applied basis accepted as being appropriate by the Supervisor. The Manager shall however be entitled at any time or times to alter that basis and the application to another basis accepted as being appropriate by the Supervisor, provided that the Manager first consults with the Supervisor on the alterations proposed by the Manager.

24.8 Determination remain in force

Determinations of the value of an Asset pursuant to clause 24.2 shall remain in force from the time it takes effect until the time determined by the Manager on the next Business Day that a determination of the value of the Asset is made by the Manager.

24.9 Reliance by Supervisor

The Supervisor shall be entitled to rely on the Manager's calculations under this clause 24, and will not be required to verify those calculations or the methods and procedures used by the Manager in relation to them, except to the extent that such verification is required in order for the Supervisor to meet its obligations under relevant law.

24.10 Adjustments to NAV

The Liabilities and Assets of the Fund for the purposes of calculating the Adjusted NAV are to be adjusted to take into account the Fund's policy of spreading establishment costs, capital raising costs and the cost of acquiring Assets over time, as follows:

- a establishment costs, capital raising costs, and acquisition costs such as the acquisition fee, brokerage fees, due diligence costs, and legal costs will be gradually written off on a "straight line" basis over five years from the time the Asset is acquired, provided that on the sale of all or part of the Asset, any remaining amount will be reduced to zero; and
- b where an Asset has been purchased by the Fund, a provision will be recorded against the value of the Asset for the anticipated proportionate costs of selling that Asset. This

provision will be gradually recognised over five years from the time the Asset is first acquired. This provision for any particular Asset will be amended to reflect the actual costs of selling the Asset once known and reduced to zero once the Asset is sold.

25 Distributions

25.1 Distributions

Subject to clause 23.4, the Manager may in its sole discretion from time to time determine to distribute Amounts to Unit Holders in accordance with this clause 25. Amounts may comprise all or part of the Net Income or capital of the Fund in such proportions as the Manager sees fit, and may be funded in part or whole by Borrowings permitted by this Deed.

25.2 Determination on Distribution Dates

On or within 20 Business Days after each Distribution Date, the Manager, after giving prior notice to the Supervisor, will determine the Amount for the Distribution Period ending on that date, and in respect of each Unit Holder, the Unit Holder's Entitlement calculated in accordance with this clause 25.

25.3 Determination of distributable Amounts

Except where the Manager determines otherwise from time to time, in determining the Amount of the Fund (if any) to be distributed to Unit Holders for any period the Manager may in its sole discretion take into account, amongst other matters:

- a Net Income attributable to Unit Holders;
- b any PIE Tax or other Tax or duties that are or may become payable;
- c the cash flow requirements of the Fund;
- d the liquidity needs of the Fund;
- e any provisions approved by the Auditor; and
- f an amount of capital per issued Unit considered optimal or desirable by the Manager.

25.4 Distribution

All distributable Amounts calculated in accordance with clause 25.3 shall be distributed to the Unit Holders at such time or times and in such manner as may be nominated by the Manager from time to time.

25.5 Entitlements

Unless the Manager determines, following consultation with the Supervisor, that some other manner of distribution is appropriate from time to time in respect of the Fund and notifies affected Unit Holders accordingly, each Unit Holder's Entitlement will be calculated and distributed in proportion to the number of Units held by them.

25.6 Reinvestment of Entitlements

- a Unit Holders may, if reinvestment of Entitlements is permitted by the Manager from time to time in its absolute discretion, elect to reinvest their Entitlements (less any Tax which the Manager is obliged or permitted to deduct) by purchasing further Units by making a written request to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including by Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by giving at least 10 Business Days' (or such other period as the Manager determines and notifies to Unit Holders from time to time) notice to the Manager. The Manager may at any time in its discretion waive the requirement for Unit Holders to provide notice of such a variation or termination in accordance with this clause, either generally or in a particular case or cases.
- b The Manager will treat such a request as though it were an application to purchase further Units with the relevant Entitlement (less any deductions in accordance with clause 25.6a above) and accordingly the provisions of clause 7, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- c Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

25.7 Determination by Manager

If any question shall arise as to whether any money or property constitutes Gross Income or not or whether any expense is chargeable against Gross Income or not such question shall be determined by the Manager having regard to NZ GAAP. However, nothing in this Deed nor in NZ GAAP shall require realised or unrealised gains in the value of Assets to be classified as Gross Income unless the Manager in its sole discretion so determines.

25.8 One-off distributions

- a In addition to Entitlements, the Manager may (but is not obliged to) make a one-off distribution that is attributable to the interest earned on behalf of the Fund during the time that Cash paid as consideration for the issue of Units were held on trust pending settlement of a Property and issue of the relevant Units.
- b Any distribution in accordance with this clause:
 - i shall be made to Unit Holders having regard to the amount of interest that is attributable to that particular Unit Holder's Cash held on trust pending settlement of the relevant Property and issue of the relevant Units; and
 - ii may, if the Manager permits in its absolute discretion, be reinvested in accordance with clause 25.6 as if the relevant distribution were an Entitlement.

25.9 Bonus Units

If the Manager recommends at any time and the Supervisor in its discretion accepts that recommendation, the Supervisor will capitalise the whole or any part of the Net Income or capital of the Fund and apply it in or towards paying in full new Units to be issued and

distributed as fully paid bonus Units to and amongst Unit Holders as if those Units were distributed as Amounts.

26 Limitation of Unit Holders' liability

Subject to clause 29.3 but notwithstanding anything else contained in this Deed or any rule of law:

- a no Unit Holder shall in any circumstances other than those described in paragraph d be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Fund;
- b nothing in this Deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders;
- c subject to clauses 22.1 and 29, neither the Supervisor nor the Manager shall be or act as agent for the Unit Holders in respect of Units in the Fund, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder beyond the extent of their investment in the Fund; and
- d Unit Holders are personally liable for any PIE Tax on Net Income attributed to them which has not been satisfied by redeeming Units or by deduction from monies paid to them.

27 Accounts and reporting

27.1 Manager to keep accounts and records

The Manager shall keep or cause to be kept:

- a proper accounting records for the Fund that comply with the Act and allow for inspection of those records to the extent required by the Act;⁸⁷ and
- b true accounts of all sums of money received and expended by or on behalf of the Fund and the matters in respect of which such receipt and expenditure takes place and of all the sales, purchases and other transactions relating to the Investments and the Liabilities of the Fund, the issue or transfer of Units and of all other matters for which accounting records should properly be kept.

The Manager must establish and maintain a satisfactory system of control of the Fund's accounting records. The Supervisor shall provide to the Manager from time to time any information necessary for the above purposes.

27.2 Annual Financial Statements

The Manager shall arrange for the preparation, audit, and lodgement of Financial Statements for the Fund in accordance the Act.⁸⁸

⁸⁷ Sections 455 to 459 of the Act.

⁸⁸ Sections 461D to 461H of the Act.

27.3 Annual reports

The Manager shall prepare and lodge the Fund's annual reports in accordance with the requirements of the Act.⁸⁹

27.4 Regulatory compliance⁹⁰

- a The Manager and the Supervisor (as applicable) shall, by the date specified in the relevant requirement:
 - i file, lodge, or report or cause to be filed, lodged, or reported with or to the relevant authority; and
 - ii send or otherwise make available to every Unit Holder,
any information required by the Act or any other law to be filed, lodged, reported, sent, or made available.
- b Unless the parties agree otherwise, the Manager and Supervisor will each provide the other with drafts of any information to be sent or otherwise made available to Unit Holders under this clause 27.4 for comment at least five Business Days before that information is to be sent or otherwise made available provided that where such information is to be sent or otherwise made available to Unit Holders in substantially the same form but with personalised details in respect of each Unit Holder, it shall be sufficient to provide a sample of such information. The party receiving the information for comment will provide any such comments in a timely manner.
- c The Manager and Supervisor shall at all relevant times keep copies of documents in accordance with the Act.

27.5 Reports to Unit Holders

The Manager shall provide Unit Holders with such information, notices, and disclosures as are required to be given to them under the Act and the Taxing Acts, or ensure that such information, notices, and disclosures are so provided.⁹¹

28 Auditor

28.1 Appointment

- a The Manager shall, after consultation with the Supervisor, appoint an auditor or auditors of the Fund, who shall be a licensed auditor or a registered audit firm (each as defined in the Act) entitled by law to act as auditor of the Fund.⁹²

⁸⁹ Regulations 62 and 63 of the Regulations.

⁹⁰ Subpart 4 of Part 4 of the Act.

⁹¹ Sections 96, 97, and 100 of the Act and regulations 56, 62 and 65 of the Regulations.

⁹² Section 461E of the Act.

- b The Manager and the Supervisor must agree upon the services to be performed by the Auditor, and reports to be provided by the Auditor, and their scope having regard to requirements under the Act.⁹³
- c An Auditor may also be auditor of the Manager or the Supervisor.
- d Such appointment shall be made in respect of the Fund as soon as practicable after the establishment of the Fund.

28.2 Remuneration

The remuneration of the Auditor of the Fund shall be fixed by the Manager on an arm's length basis and shall be paid out of the Trust Fund.

28.3 Removal and retirement

- a The Auditor may at any time be removed from office by either the Manager or the Supervisor following consultation between them, or by a Special Resolution of Unit Holders of the Fund.
- b The Manager shall use reasonable endeavours to ensure that, under the terms governing the appointment of the Auditor made pursuant to clause 28.1, the Auditor may only retire upon the expiration of not less than 90 days' notice in writing to the Supervisor and the Manager.

28.4 Vacancy

Any vacancy in the office of the Auditor must be filled by the Manager after consultation with the Supervisor in accordance with clause 28.1.

28.5 Compliance with Act's auditor requirements

The Manager must comply with the requirements in the Act relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.⁹⁴

29 Taxation

29.1 Deductions

The Supervisor or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Tax Person an amount equal to the Taxation Amount of that Relevant Tax Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from the Trust Fund. On payment of the net amount to the Relevant Tax Person, the full amount payable to the Relevant Tax Person will be deemed to have been duly paid and satisfied.

⁹³ Section 218 of the Act and regulations 108 and 109 of the Regulations.

⁹⁴ Clauses 1 to 3 of Schedule 13 to the Regulations.

29.2 Application of deduction

Subject to clause 29.5, amounts deducted under clause 29.1 shall be applied in:

- a payment of the Taxation Amount to the Person entitled thereto; or
- b reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and
- c any balance shall be refunded to the Relevant Tax Person.

29.3 Indemnities

- a Each Relevant Tax Person shall indemnify the Supervisor and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Supervisor in respect of that Relevant Tax Person.
- b Without limiting paragraph a, if a Unit Holder's balance in the Fund is insufficient to meet any liability for Tax payable by the Fund (whether current or deferred) which is:
 - i attributed under the Tax Act to the Unit Holder; or
 - ii determined by the Manager to be attributable to the Unit Holder,then the Unit Holder must indemnify the Supervisor and the Manager for that shortfall.

29.4 Interest

Any Taxation Amounts paid on behalf of a Relevant Tax Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Tax Person to the Supervisor or the Manager as the case requires.

29.5 Interest on Taxation Amounts

Any interest earned on Taxation Amounts held pending payment in accordance with clause 29.2 will be dealt with as the Manager, in its sole discretion, sees fit.

29.6 PIE tax compliance

The Manager may elect that the Fund be a PIE, or cease to be a PIE, at its complete discretion. The Manager will have the following additional powers and discretions in respect of the Fund for so long as the Fund is a PIE:

- a to determine, on such basis as the Manager thinks appropriate at its complete discretion, classes of Unit Holders, applying the definition of investor class in section HM 5 of the Tax Act;
- b to determine how to attribute and calculate income for the purposes of subpart HM of the Tax Act;
- c to determine, on such basis as the Manager thinks appropriate at its complete discretion, the assessable income (for Tax purposes) of the Fund for an attribution period and to allocate (in such manner and on such basis as the Manager considers appropriate at its

complete discretion having regard to section HM 35B of the Tax Act) such income to each investor class for that attribution period, for the purposes of section HM 35(3) of the Tax Act;

- d to determine, on such basis as the Manager thinks appropriate at its complete discretion, the deductions incurred in deriving the assessable income allocated to an investor class for an attribution period for the purposes of section HM 35(3) of the Tax Act;
- e to determine, on such basis as the Manager thinks appropriate at its complete discretion, the net income or the net loss, as the case may be, for each investor class for an attribution period for the purposes of section HM 35 of the Tax Act;
- f to determine, on such basis as the Manager thinks appropriate at its complete discretion, taxable income or the tax loss, as the case may be, for each investor class:
 - i for an attribution period, for the purposes of section HM 35 of the Tax Act; and
 - ii for an income year, for the purposes of section HM 36 of the Tax Act;
- g to determine each Unit Holder's investor interest for any period, based on what that Unit Holder's proportionate interest in any distribution by the Fund to Unit Holders would be in that period, if such a distribution were to be made;
- h to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Fund's income Tax liability or credit, as the case may be, for the applicable calculation period, for the purposes of section HM 47 of the Tax Act;
- i to elect (taking into account such factors as the Manager considers relevant at its complete discretion) whether to determine the Fund's income Tax liability pursuant to section HM 42 or section HM 43 or section HM 44 of the Tax Act, and to make any elections required to give effect to such determination;
- j to retain any amount to which a Unit Holder otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to section HM 42(4) of the Tax Act;
- k to make any other elections or exercise any options as to the method of calculation, allocation, attribution, or payment of Tax as the Manager thinks fit having regard to the interests of Unit Holders generally and the requirements of the Tax Act;
- l to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any Tax credit available to the Fund under subpart LS 1 of the Tax Act;
- m to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any Tax credit referred to in paragraph l that is attributable to a Unit Holder and to make available to the Unit Holder the benefit of that Tax credit in such manner as the Manager considers appropriate at its complete discretion;
- n to determine, on such basis as the Manager considers appropriate at its complete discretion, the amount of any credit against income Tax payable by the Fund that is available to the Fund by virtue of sections HM 49 to HM 55 of the Tax Act;

- o to determine, on such basis as the Manager considers appropriate at its complete discretion, subject to the requirements of the Tax Act, the amount of any Tax paid or payable by the Fund that is attributable to a Unit Holder;
- p to carry out any other Tax calculations, allocations or attributions required by the Tax Act;
- q to adjust a Unit Holder's investor interest in such manner as the Manager thinks necessary or desirable at its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to paying any benefit), having regard to the effect of:
 - i the Unit Holder's PIR; and
 - ii the Unit Holder's attributed PIE income or loss and associated Tax credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge to the particular Unit Holder,on the Fund's income Tax liability and the amount of any credit under subpart HM of the Tax Act;
- r to allocate Tax relief received by the Fund or anticipated to be received by the Fund to Unit Holders in such manner as the Manager considers appropriate at its complete discretion (subject to the requirements of the Tax Act);
- s to allocate the costs associated with the Fund being a PIE between Unit Holders on such basis as the Manager (in consultation with the Supervisor) thinks appropriate, to the extent practical, at its complete discretion;
- t to take all steps that the Manager considers necessary or desirable to ensure that the Fund is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs, including (at the Manager's complete discretion):
 - i declining applications; or
 - ii treating Units issued to a Unit Holder as void ab initio to the extent to which the Unit Holder's investor interest exceeds the investor interest size requirement prescribed in section HM 15 of the Tax Act;
- u to require that before being accepted into the Fund a Unit Holder provides his or her Tax File Number, PIR and any other information required by the Tax Act or other applicable legislation, and that at any time a Unit Holder must confirm such details on request from the Manager or the Supervisor; and
- v to value Tax losses of the Fund, for the purpose of valuing Units, in such manner as the Manager thinks fit at its complete discretion,

and the Manager may take all other steps and do all things that the Manager thinks necessary or desirable from time to time at its complete discretion to convert the Fund to or from being a PIE, or to carry out functions relating to the Fund as a result of the Fund being a PIE.

29.7 Changes in Tax legislation

Following any amendment to or re-enactment of the Tax Act (a '**Revision**')

- a all of the discretions and powers available to the Manager where the Fund is a PIE, whether under this clause 29.7 or otherwise, will continue to apply with such modifications as are necessary to reflect the Revision;
- b the Manager will have the discretion to apply all of the requirements of the Revision to the Fund and the Unit Holders on such basis as it considers appropriate, taking into account such factors as the Manager considers relevant; and
- c to the extent reasonably possible taking into account the nature of the Revision, any references in this Deed to terms defined in the Tax Act which are amended or replaced as a result of the Revision must be deemed to be references to those defined terms as amended by the Revision.

29.8 Disposals of Units to avoid exceeding investor interest size requirements

If a Unit Holder exceeds the investor interest size requirement prescribed in the Tax Act (for the purposes of this clause, a '**Breach**') in respect of the Fund or an investor class, in order to remedy the Breach within the period determined in accordance with the Tax Act ('**Remedy Period**'), the Manager may take the following steps:

- a as soon as practicable after becoming aware of the Breach, the Manager must give written notice to the relevant Unit Holder(s) of the Breach, including details of the number of Units ('**Excess Units**') giving rise to the Breach;
- b the Unit Holder will have a period consisting of the relevant Remedy Period less 30 days to remedy the Breach, but if the Manager becomes aware of the Breach and determines that there are 30 days or less to remedy the Breach then the Breach will be deemed to have not been remedied under this paragraph b; and
- c if the Breach has not been remedied upon expiry of the period in paragraph b above, then the Manager may, in its discretion, sell or redeem the amount of the Excess Units in order to remedy the Breach, and:
 - i the Manager must account to the relevant Unit Holder for the proceeds of any disposal of the Excess Units after deduction of all expenses arising from such disposal; and
 - ii neither the Manager nor the Supervisor is required to maximise the Unit price for any disposal and, in any event, will not be liable to any Unit Holders for any loss on disposal.

29.9 Provision of information

The Manager may request any Unit Holder to provide information to the Manager to enable the Manager and the Supervisor to meet and comply with the administration requirements of the Tax Act and any other information which the Manager and the Supervisor may reasonably require in order to comply with any other laws in New Zealand and any other country in

relation to the Fund, and, in particular, where the Fund is PIE, the Manager may request any Unit Holder to:

- a provide such information pertaining to any Unit Holder as the Manager considers reasonably necessary to ensure that the Fund can comply with its obligations as a PIE under the Tax Act;
- b provide details of Units held by any associated person (as defined in the Tax Act) of the Unit Holder where the associated person holds 5 per cent or more of the Units in the Fund;
- c confirm that:
 - i the Unit Holder either is or is eligible to be and intends to be an investor in a PIE; or
 - ii the Unit Holder either is or is eligible and intends to be a proxy for an investor under section HM 33 of the Tax Act ('PI'); or
- d if the Unit Holder either is or is eligible and intends to be a PI:
 - i confirm that the Unit Holder has provided the information specified in the Tax Act; and
 - ii provide any other information to establish that the PI has met its obligations under the Tax Act.

If the Manager requests a Unit Holder to provide information to the Manager pursuant to this clause, the Unit Holder must supply such information within 30 days of the request.

29.10 Disclosure of information

The Manager and the Supervisor are hereby authorised to disclose any information, including issuing any statements and providing any information to Unit Holders as required by the Tax Act in respect of their Tax position in relation to the Fund, and make such disclosure as may be required by the Commissioner of Inland Revenue or any other governmental or administrative body, authority, agency or entity in New Zealand or any other jurisdictions, of any information about any Unit Holder, the details of any distributions to Unit Holders, or any other details or information arising out of or in connection with the Fund. Subject to any legal requirement to the contrary, neither the Manager nor the Supervisor is required to notify any Unit Holder of the fact or content of that disclosure.

30 Meetings of Unit Holders

30.1 Manager to call meetings on request

The Manager shall summon a meeting of the Unit Holders of the Fund when required to do so by law,⁹⁵ and in the manner specified in the Act, or upon the request in writing (including by

⁹⁵ Regulation 92 of the Regulations.

Electronic Communication in such form and to comply with such specifications as may from time to time be prescribed by the Manager) of:

- a the Supervisor;
 - b Unit Holders holding Units that have a combined value of no less than 5% of the value of Units on issue in the Fund; or
 - c any other person entitled by the Act or Regulations to summon a meeting,
- and on the basis set out in the Act and Regulations.⁹⁶

30.2 **Manager may convene and vote**

- a The Manager may at any time convene a meeting of the Unit Holders of the Fund.
- b Except where permitted by the Act,⁹⁷ the Manager and its Associated Persons are not entitled to, and must not, vote their Units on a resolution of Unit Holders if they have an interest in the resolution or matter other than as a Unit Holder.
- c For the avoidance of doubt but subject to the Act, paragraph b shall not prevent the Manager or its Associated Persons who are Unit Holders from putting a resolution to the vote of a meeting in that capacity (or seconding a motion to put the resolution to a vote) if the restriction on voting in paragraph b is complied with and:
 - i the resolution was contained in the relevant notice of meeting; or
 - ii the particulars of business to be transacted or considered at the meeting included in the relevant notice of meeting include the matter or matters in respect of which the relevant resolution is to be passed.

30.3 **Proceedings**

- a Notwithstanding anything to the contrary in the Act, the following shall apply to meetings:
 - i For the purposes of clause 5(4) of Schedule 11 to the Regulations, the quorum for a meeting of Unit Holders (other than a meeting at which a Special Resolution is to be submitted) is present if Unit Holders of the Fund holding at least 10% of the number of Units of the Fund on issue at the time are present (with the number of Unit Holders present determined in accordance with the Act). Except where expressly provided to the contrary in this Deed, or required by the Act, all Unit Holder resolutions shall be passed by Ordinary Resolution.
 - ii Schedule 1 of this Deed shall apply to meetings of Unit Holders instead of clause 13 of Schedule 11 of the Regulations.
- b All meetings of Unit Holders shall be convened and held in accordance with the provisions of this Deed, and otherwise in accordance with the requirements of the Act.

⁹⁶ Sections 161 to 163 of the Act and regulations 83 and 91 of the Regulations.

⁹⁷ Section 163 of the Act and regulation 91 of the Regulations.

30.4 Directions

The Unit Holders of the Fund shall, by means of a Special Resolution, have the power to give such directions to the Supervisor as they think proper concerning the Fund, being directions that are not inconsistent with any enactment, rule of law, or the provisions of this Deed (including, where relevant, any directions given by the FMA under the Financial Markets Supervisors Act 2011).

30.5 Discretion

Where any direction is given to the Supervisor pursuant to clause 30.4 in respect of any matter the Supervisor may (but shall not be obliged to) comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Supervisor may at its discretion apply to the High Court for directions in respect of the matter.

30.6 Powers of Unit Holders exercisable by Special Resolution

A meeting of Unit Holders of the Fund shall have the following powers exercisable by Special Resolution:

- a power to sanction the exchange of Units of the Fund for, or the conversion of such Units into shares, stock, debentures, debenture stock, or other obligations or securities of any company formed or to be formed;
- b power to sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement in respect of the rights of the Unit Holders of the Fund howsoever such rights shall arise;
- c power to give any sanction, assent, release, or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
- d subject to the Act (where applicable), power to discharge, release, or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
- e power to sanction the exchange of Units of the Fund for, or the conversion of Units of the Fund into, units or interests in any other unit trust, managed investment scheme, or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution;
- f the powers given to Unit Holders under clauses 16.1aii, 21.1c, 21.5, 22.6h, 28.3a, 30.4, 32.1aii, and 33.1b; and
- g the powers given to Unit Holders by the Act that are expressed as being exercisable by Special Resolution.

31 Notices

31.1 To Unit Holder

- a Without limiting any enabling provision in relevant law or the other provisions of this Deed, any notice and other Fund-related communication to be given to any Unit Holder may be given:
 - i personally;
 - ii by properly addressing, pre-paying, and posting a letter containing the notice or communication and sending it by post to the address of the Unit Holder shown in the Register; or
 - iii by Electronic Communication.
- b Notices and other communications will be deemed to have been received:
 - i if given by personal delivery, when delivered;
 - ii if sent by post, on the third day following the day of posting; or
 - iii if sent by Electronic Communication, without limiting section 214(a) of the Contract and Commercial Law Act 2017, on the Business Day on which it was dispatched or, if dispatched after 5.00 pm (in the place of receipt) or on a non-Business Day, on the next Business Day (in the place of receipt) after the date of dispatch provided in each case the system used to transmit the communication has not generated a record that the communication has failed to be transmitted.

31.2 Notice to manager, legal representative etc

A notice may be given by the Manager to the property manager of a Unit Holder who is subject to a Court order under the Protection of Personal and Property Rights Act 1988, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it by post in a prepaid letter addressed to them by name, or by the title of the property manager of the Unit Holder who is subject to a Court order under the Protection of Personal and Property Rights Act 1988, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

31.3 Notice where no address

If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any notice posted to a Unit Holder is returned to the Manager, then, notwithstanding anything contained elsewhere in this Deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this Deed shall be deemed to be the registered office from time to time of the Manager.

31.4 Calculation of notice period

Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.

31.5 Notice to Supervisor or Manager

Any notice, communication, certificate, or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice provided that the Manager and the Supervisor may agree from time to time as to certain notices or communications that may be given by Electronic Communication.

31.6 Waiver of notices and other obligations

Each of the Supervisor and the Manager may, at any time, expressly waive its right to receive any notices required by this Deed or to receive such notices within any timeframes specified in this Deed. For the avoidance of doubt, unless a party expressly indicates otherwise, no delay, grant of time, release, compromise, forbearance (whether partial or otherwise), or other indulgence by one party in respect of any breach of any other party's obligations under this Deed is to:

- a operate as a waiver or prevent the subsequent enforcement of that obligation; or
- b be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise), or other indulgence in respect of, or a waiver of, any subsequent, or other breach.

31.7 Copy of notice to Unit Holders

A copy of every notice given to Unit Holders under this Deed shall be given, at the same time at which it is given to the Unit Holders, to the Supervisor, provided that where notices are given to Unit Holders in substantially the same form but with personalised details in respect of each Unit Holders, it shall be sufficient to provide the Supervisor with a sample of such a notice.

32 Amendments to Deed

32.1 Power to amend

- a Subject to the Act,⁹⁸ the Supervisor and the Manager may at any time make any alteration, modification, variation, or addition to the provisions of this Deed by means of a deed executed by the Supervisor and the Manager ('**Amendment**'), where:
 - i the Supervisor is satisfied that the Amendment does not have a material adverse effect on the Unit Holders; or

⁹⁸ Sections 139 and 140 of the Act.

- ii the Amendment is approved by, or contingent on approval by, a Special Resolution of the Unit Holders that are or may be adversely affected by the Amendment (or, if applicable, of each separately affected class of Unit Holders).
- b This Deed may also be altered, modified, varied, or added to in any other manner permitted by the Act.
- c Prior to any amendment to or replacement of this Deed being made, the Supervisor will provide and/or obtain any certificates required under the Act.

32.2 Lodgement of Amendment

The Manager must lodge a copy of each Amendment with the Registrar of Financial Service Providers in accordance with the Act.⁹⁹

33 Winding Up¹⁰⁰

33.1 Winding up of the Fund

The Fund shall be wound up upon the occurrence of the earliest of the following events:

- a the Manager resolves to wind up the Fund and gives notice in writing of that resolution to the Supervisor;
- b a Special Resolution of all Unit Holders of the Fund is passed resolving to wind up the Fund;
- c if the Fund is required to be wound up under the Act;¹⁰¹ and
- d if section 155A of the Act (or any substitute or replacement provision) ceases to apply to the Fund, the expiration of a period of 125 years (or any other period permitted by law as the maximum duration of an express trust of the nature of the Fund) from the date of the establishment of the Fund.

33.2 Suspension of applications and withdrawals

With effect from the date of an event under clause 33.1 ('**Termination Event**'), no further Withdrawal Requests or applications for Units will be accepted in respect of the Fund unless the Manager and the Supervisor agree otherwise ('**Wind Up Suspension**').

33.3 Notice to Unit Holders

The Manager shall within 14 days after the occurrence of any Termination Event in respect of the Fund give to each Unit Holder of the Fund notice of the occurrence of that event and of the Wind Up Suspension and the intention of the Supervisor to distribute the Trust Fund.

⁹⁹ Section 141 of the Act.

¹⁰⁰ Section 135(1)(i) of the Act.

¹⁰¹ Sections 195 and 211 of the Act.

33.4 Transfer of Assets

- a A notice given by the Manager pursuant to clause 33.3 may invite some or all affected Unit Holders to request the Manager to transfer Assets of the Fund to the Unit Holder (instead of receiving Cash pursuant to clause 33.5) within such period as the Manager in consultation with the Supervisor may prescribe.
- b If the Manager, in its sole discretion, agrees to transfer the Assets, the Manager shall determine, in its sole discretion, which Assets shall be transferred to the Unit Holder. In exercising its discretion to determine which Assets shall be transferred to the Unit Holder, the Manager shall consider the interests of the Unit Holder requesting the withdrawal and all other remaining Unit Holders of the Fund, and may take into account operational considerations. The Manager shall determine the value of any such Assets in accordance with this Deed, and the price payable to the Unit Holder shall always be the Withdrawal Value less a pro-rata share of the wind-up costs of the relevant Fund calculated in accordance with clause 33.5c.
- c If the Manager does not receive any request within the period prescribed in the notice, or in the absence of such an invitation by the Manager, the Trust Fund shall be dealt with in accordance with clause 33.5.

33.5 Procedure

The Supervisor shall as soon as is practicable after the occurrence of a Termination Event (but subject to compliance with clause 33.3):

- a sell, call in, and convert into Cash the whole of the Trust Fund of the Fund (with the exception of any Assets the Manager has agreed to transfer to a Unit Holder), including by:
 - i marketing (in the name of the Person in whose name the Properties are held) the sale of the Properties and using all reasonable endeavours to sell the Assets for the best price reasonably obtainable in the open market, provided that the Manager will otherwise have a complete discretion regarding the marketing and disposal of the Assets;
 - ii appointing a broker and/or real estate agent (as reasonably required) to assist in the sale of the Properties and Assets; and
 - iii doing all things reasonably necessary to effect the transfer of the Properties and Assets to the purchaser(s);
- b pay out, discharge, or otherwise make proper provision for all Tax, claims, and Liabilities (including any Borrowings and the fee payable pursuant to clause 15.6, and, for this purpose, contingent liabilities) of the Fund; and
- c distribute the Trust Fund which may include the distribution of both Cash and Assets as applicable (or so much of the same as may from time to time be available for distribution), less all fees (including the fee payable pursuant to clause 15.6), costs, and expenses incurred by the Fund, Supervisor, and Manager in respect of the winding up (including the preparation and audit of final Financial Statements), amongst Unit Holders

in proportion to the value of the respective Units held by them as at the date of the relevant Termination Event, based on the Unit Values determined in respect of the relevant date (subject to any adjustments agreed between the Manager and the Supervisor to reflect any applications or withdrawals processed pursuant to clause 33.2).

33.6 Interim distributions

If in the opinion of the Manager and the Supervisor it is expedient to do so the Supervisor may make interim payments or distributions (which may include distribution of Assets of the Fund) on account of the moneys to be distributed in accordance with clause 33.5.

33.7 Compliance with relevant requirements

The Supervisor must provide all the reports and comply with all of the requirements set out in the Act and any other applicable legislation when the Fund is wound up.¹⁰²

34 Payments to Unit Holders

- a Any moneys payable by the Supervisor or by the Manager to a Unit Holder under the provisions of this Deed may be credited to any bank account nominated by the Unit Holder.
- b The giving by the Manager of the encoded payment instructions in respect of a direct credit to the paying bank will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.
- c If any amount has been deducted on behalf of Tax from a payment to a Unit Holder, details of such deduction shall be provided to the Unit Holder when the relevant payment is made.

35 Miscellaneous

35.1 Dispute resolution

All disputes and questions which shall either during the continuance of the Fund or afterwards arise between the Supervisor, the Manager, the Custodian, and/or the Sub-Custodian touching this Deed or a constructural application of this Deed or as to any matter in any way relating to the Fund shall, if such Persons are unable to resolve the dispute or question by negotiation, be referred to:

- a a single arbitrator agreed to by the parties; and
- b failing agreement, to a single arbitrator nominated by the President for the time being of the New Zealand Law Society,

and any such arbitration shall be in accordance with the Arbitration Act 1996.

¹⁰² Sections 212 and 213 of the Act.

35.2 Severance

- a If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal if it were read down and it is capable of being read down, it will be read down accordingly.
- b Notwithstanding clause 35.2a, if a provision of this Deed is still void or voidable or unenforceable or illegal:
 - i if the provision would not be void or voidable or unenforceable or illegal if a word or words (as the case may be) were omitted, that word or those words will be deemed severed; and
 - ii in any other case, the whole provision will be deemed severed,and the remainder of this Deed will have full force and effect.

35.3 Governing Law

This Deed shall be governed by and construed in accordance with the laws of New Zealand.

35.4 Deed binding

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to be for the benefit of and bind Unit Holders) contained in this Deed, are for the benefit of and bind each Unit Holder and are legally enforceable as between the Manager, the Supervisor, and Unit Holders.¹⁰³

35.5 Counterparts

This Deed may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Deed by signing a counterpart copy and sending it to the other parties (including by facsimile or email).

35.6 Delivery of Deed

For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Deed will be delivered by each party on the earlier of:

- a physical delivery of an original of this Deed, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
- b transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant party, to the other party or the other party's solicitors.

¹⁰³ Section 137 of the Act.

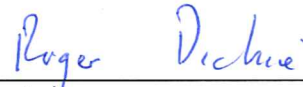
Execution

Executed and delivered as a deed

Signed for and on behalf of
Roger Dickie (N.Z.) Limited:



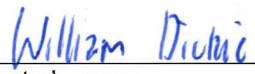
Director's signature



Director's name



Director's signature



Director's name

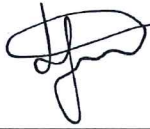
Signed for and on behalf of
Covenant Trustee Services Limited
by its authorised signatories in the presence
of:



Authorised signatory



Authorised signatory



Witness signature _____

Full name Eleanor Smith

Occupation Relationship Manager

Town/city Auckland



Schedule 1 Unit Holder Proposals (clause 30.3a)

- 1 No Person other than a Unit Holder entitled to vote at the meeting may raise a matter for discussion or resolution at a meeting of Unit Holders ('Unit Holder Proposal').
- 2 A Unit Holder may only make a Unit Holder Proposal if:
 - a the proposing Unit Holder gives the Manager written notice of the Unit Holder Proposal at least 20 Business Days prior to the date that the notice of the relevant meeting of Unit Holders is required to be given or otherwise will be given by the Manager (or any lesser period as the Manager may determine in its sole discretion);
 - b such notice contains:
 - i sufficient detail regarding the Unit Holder Proposal to enable another Unit Holder to form a reasoned judgement in relation to it (as determined by the Manager, acting reasonably);
 - ii the text of any proposed resolution; and
 - iii any other information specified by the Manager (acting reasonably) from time to time; and
 - c if the Manager requires, the Unit Holder deposits with the Manager or tenders to the Manager any sum advised by the Manager as sufficient to meet the costs of giving notice of the Unit Holder Proposal to the Unit Holders entitled to receive notice of the meeting.
- 3 If a Unit Holder complies with paragraph 2 above, the Manager:
 - a will at the expense of the proposing Unit Holder, give notice of the Unit Holder Proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting; and
 - b will, if the Manager intends that Unit Holders may vote on the Unit Holder Proposal by proxy or by a vote under clause 11 of Schedule 11 of the Regulations, give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement of not more than 1,000 words prepared by the proposing Unit Holder in support of the Unit Holder Proposal, together with the name and address of the proposing Unit Holder.
- 4 The Manager is not required to include in or with the notice given by the Manager pursuant to paragraph 3:
 - a any part of a statement prepared by a Unit Holder that the Manager considers to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - b any part of a Unit Holder Proposal or resolution prepared by a Unit Holder that the Manager considers to be defamatory (within the meaning of the Defamation Act 1992).