

Dated 14th September 2016

**SUPERLIFE INVEST
TRUST DEED**

SMARTSHARES LIMITED

PUBLIC TRUST

CONTENTS

1. DEFINITIONS	1
2. INTERPRETATION	6
3. APPOINTMENT	8
4. CREATION AND CONSTITUTION OF FUNDS	8
5. FUND INTERESTS.....	9
6. INVESTORS' ACCOUNTS	12
7. INVESTMENT OF THE SCHEME PROPERTY.....	12
8. LOANS IN RESPECT OF INVESTMENTS.....	15
9. NET ASSET VALUE OF FUNDS.....	16
10. WITHDRAWALS FROM INVESTOR'S ACCOUNTS.....	18
11. SIDE-POCKETING	20
12. SWITCHING INVESTOR BALANCES BETWEEN FUNDS.....	22
13. TRANSFER OF FUND INTERESTS	22
14. TRANSMISSION OF FUND INTERESTS	23
15. REGISTER	24
16. THE MANAGER	25
17. THE SUPERVISOR	27
18. BORROWING POWERS.....	29
19. COVENANTS BY SUPERVISOR AND MANAGER.....	30
20. REMOVAL AND RETIREMENT OF MANAGER	31
21. REMOVAL AND RETIREMENT OF SUPERVISOR.....	33
22. REMUNERATION OF SUPERVISOR AND MANAGER.....	34
23. PAYMENT OF FEES AND COSTS BY INVESTORS.....	35
24. LIABILITIES AND INDEMNITIES	35
25. RELATED PARTY TRANSACTIONS	37
26. PARTICIPATING ENTITIES	38
27. OBLIGATIONS AND RIGHTS OF INVESTORS.....	38
28. INSTRUCTIONS.....	39
29. ACCOUNTS, AUDIT AND REPORTING	39
30. TAX.....	40
31. TERMINATION OF FUNDS AND WINDING UP SCHEME	42
32. MEETINGS.....	43
33. NOTICES.....	44

34. AMENDMENTS TO THE DEED45

35. GENERAL45

PARTIES

1. **SMARTSHARES LIMITED ("Smartshares")**
2. **PUBLIC TRUST ("Public Trust")**

BACKGROUND

- A. Smartshares is licensed to provide market services as a manager of registered schemes under the Financial Markets Conduct Act 2013 ("FMCA") and wishes to establish and register a managed investment scheme to be known as SuperLife Invest ("Scheme") under the FMCA. Smartshares has agreed to become the manager for the Scheme.
- B. Public Trust is licensed under the Financial Markets Supervisors Act 2011 as a supervisor for registered schemes as defined in section 6(1) of the FMCA and has agreed to become the supervisor for the Scheme.
- C. The Deed is entered into with the intent that the benefits and obligations under it shall apply not only to the Parties as Manager and Supervisor as appropriate, but also, to the extent provided, to each Investor in the Scheme.
- D. The Parties agree to establish SuperLife Invest on the terms set out in this trust deed.

1. DEFINITIONS

- 1.1 In the Deed, unless the context otherwise requires:

Account means, in respect of an Investor, the account established for the Investor in accordance with clause 6.

Applicant means a Person who has applied to the Manager to acquire a Fund Interest in a Fund (including through a request to Switch).

Application means, in respect of an Applicant, an application to acquire Fund Interests (including pursuant to a request to Switch) made in the form and manner, from time to time, as prescribed by the Manager.

Application Money means the amount of any contribution paid (or to be paid as the context requires) in relation to an Application.

Auditor means the auditor of the Scheme appointed pursuant to clause 29.3.

Authorised Investments means, in respect of a Fund, the investments in which the Fund may be invested as specified in the relevant Fund Establishment Deed and/or the SIPO from time to time.

Bank means a bank registered under the Reserve Bank of New Zealand Act 1989.

Balance means, in respect of an Investor at any date, the dollar value of the amount in the Investor's Account at that date.

Borrower means the Person who borrows an Investment from a Fund under the provisions of clause 8.

Business Day means any day other than a day that is a Saturday or Sunday, or a public holiday in Wellington or Auckland.

Commencement Date means, in relation to a Fund, the date specified in the relevant Fund Establishment Deed.

Custodian means a person appointed by the Supervisor to hold some or all of the Investments and includes to the extent permitted under the Deed any sub-custodian appointed by the Custodian.

Deed means this trust deed as amended from time to time and, where appropriate, each Fund Establishment Deed.

Designated Settlement System means a settlement system that is declared to be a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989. At the date of the Deed, this is the NZCDC Settlement System.

Disclosure Document has the meaning set out in section 6(1) of the FMCA

Entity means any of the following:

- (a) a company or other body corporate;
- (b) a corporation sole;
- (c) in the case of a trust that has -
 - (i) only one trustee, the trustee acting in his or her or its capacity as trustee; or
 - (ii) more than one trustee, the trustees acting jointly in the capacity as trustees;
- (d) an unincorporated body (including a partnership).

Entry Fee means a fee payable to the Manager on the issuing of Fund Interests as specified in the relevant Fund Establishment Deed.

Exchange means any recognised market of financial products, (including any stock, commodities, futures or options exchange market) in any country, which brings buyers and sellers of investments together.

Financial Markets Legislation has the meaning set out in section 6(1) of the FMCA.

Financial Statements means the financial statements for a Financial Year for the Scheme, including any financial statements of a Fund if established as a separate and distinct fund.

Financial Year means, in relation to the Scheme and if applicable to a Fund, the period commencing on 1 April of one year or on the commencement date of the Fund if later and ending on 31 March in the next year, or such period ending on such other date as may be determined by the Manager and notified to the Supervisor provided that the last Financial Year shall end on the date at which the Scheme or a Fund, as applicable, is wound up.

FMA means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011 or any successor entity.

FMCR means the Financial Markets Conduct Regulations 2014.

Fund means a pooled investment option made available under the Scheme and that is established and administered under clauses 4.1 to 4.9.

Fund Establishment Deed means a deed executed by the Manager and the Supervisor by which one or more Funds are established.

Fund Interest means an interest acquired by an Investor of the Fund, when that Investor's Account is credited pursuant to clause 6.1.

Investment means, in relation to a Fund, an investment forming part of the assets of the Fund.

Investment Costs means the amount determined by the Manager in its absolute discretion (and which may be nil if the Manager so decides) in relation to an Application to acquire Fund Interests on account of costs (including brokerage, commission, stamp duty and legal fees) which would be incurred, if the relevant Application Money was directly applied in securing Investments for that Fund. Where an Investor's Account is to be credited for Authorised Investments transferred to the Scheme, the Investment Costs shall be determined by the Manager in its absolute discretion on account of any costs of converting those Authorised Investments into the Authorised Investments in which the Manager wishes to invest.

Investment Loan Fee means the fee payable to the Manager by the Borrower in respect of a Fund, for a Loan.

Investor means a Person who is, for the time being, registered on the Register as having a Fund Interest and includes Joint Holders.

Issuer Obligations has the meaning set out in section 6(1) of the FMCA.

Joint Holders means two or more persons jointly registered as having a Fund Interest.

Liabilities means, in relation to a Fund, debts and other obligations of the Supervisor (acting in its capacity as supervisor of the Scheme) payable from the Fund and the liability of the Supervisor as drawer or acceptor of a bill of exchange, including all taxes and duties payable from the Fund, but excluding:

- (a) in the case of a Fund which is a PIE, where the Manager in its complete discretion considers it appropriate to do so, any liability for PIE Tax; and
- (b) contingent liabilities or any amount which results from treating the Investors' Balances of a Fund as a liability, except to the extent the Manager decides an allowance should properly be so made; and
- (c) such debts and other obligations of the Supervisor in respect of which, by the terms of the Deed, the Supervisor is not entitled to be indemnified out of the Scheme or Fund.

Licensed Manager means a person who is licensed under the FMCA to act as a manager of a Registered Scheme.

Licensed Supervisor means a person who is licensed under the Financial Markets Supervisors Act 2011 to act as a supervisor of a Registered Scheme.

Loan means a transaction under which the Investments of a Fund are lent to a third party pursuant to clause 8.

Manager means Smartshares Limited or such other Licensed Manager that is appointed as the manager of the Scheme.

Manager Reporting Agreement means the written agreement entered into by the Manager and the Supervisor, from time to time, in relation to the Manager's reporting requirements to the Supervisor in respect of the Funds.

Minimum Application Amount means, in relation to a Fund, the minimum dollar amount as determined by the Manager pursuant to clause 5.13.

Minimum Balance means, in relation to an Investor, the minimum dollar amount the Investor must have in their Account as determined by the Manager under clause 10.2.

Minimum Fund Balance means, in relation to a Fund, the minimum dollar amount the Investor must have in their Account that is an investment in the Fund, as determined by the Manager under clause 10.2.

Net Asset Determination Time means in relation to a Fund, the time that the Manager determines the Net Asset Value of the Fund and will:

- (a) generally, be the time specified in the Fund Establishment Deed or at such other time and at such intervals determined by the Manager and notified to the Supervisor; or
- (b) in relation to a special determination of the Net Asset Value of a Fund made pursuant to clause 9.4, such time on any Business Day on which such special determination is made.

Net Asset Value means, in relation to a Fund and at a particular time, the net asset value of the Investments of the Fund at that time, as determined in accordance with clause 9.

Non-Side-Pocketed Investments and Liabilities has the meaning set out in clause 11.1(b)(i).

NZX Market Participant at any date means a market participant as defined in the NZX Participant Rules issued at that date by NZX Limited.

Office means the registered office from time to time of the Manager.

Participating Entity means an Entity that has entered into a participation deed with the Manager to enable its members or employees, as applicable, to invest in the Scheme under the special rules established and set out in the participation deed entered into under clause 26.

PDS means in respect of the Scheme, a product disclosure statement prepared in accordance with the requirements of the FMCR.

Person means an individual and includes an Entity.

PIE means a Portfolio Investment Entity as defined in the Tax Act.

PIE Proxy means a Person who holds a Fund Interest for another person or entity and has notified the Manager that it holds that Fund Interest as proxy for the purposes of section HM 33 of the Tax Act.

PIE Rules means the provisions of the Tax Act dealing with a PIE.

PIE Tax means in respect of a Fund that is a PIE, the income tax liability of the Fund or an Investor in the Fund.

PIR means prescribed investor rate and has the meaning set out in the Tax Act.

Realisation Costs means an amount determined by the Manager in its absolute discretion (and which may be nil if the Manager so decides) in relation to a Withdrawal Request on account of the estimated costs (including an allowance for brokerage, commission, stamp duty and legal fees) that would be incurred, if Investments, of the Fund were realised to meet the Withdrawal Amount.

Register means the register of Investors of the Scheme and the Funds maintained in accordance with the provisions of clause 15.

Registered Scheme has the meaning set out in section 6(1) of the FMCA.

Registrar means the Manager or the person for the time being appointed to that office by the Manager to keep the Register.

Regulated Offer has the meaning set out in section 41 of the FMCA.

Related Body Corporate means, a body corporate (A) that is related to another body corporate (B), pursuant to section 12(2) of the FMCA.

Related Party has the meaning set out in section 172(2) of the FMCA.

Related Party Benefit has the meaning set out in section 172(1) of the FMCA.

Relevant Date means, in respect of a Fund, a date specified in the relevant Fund Establishment Deed in respect of issue of Fund Interests.

Relevant Instructions means instructions or directions given by an Investor to the Manager:

- (a) in relation to the acquisition or disposal of all or part of the Investor's Balance; or
- (b) in relation to the exercise of any voting or other rights attached to the Investor's Fund Interests; or
- (c) in connection with any other matter relating to the Investor's Fund Interests.

Relevant Law means, as appropriate, all laws applicable to the Manager, the Supervisor or a Fund at applicable points in time and which may include the Financial Markets Legislation and any methodologies or frameworks issued by the FMA under such legislation.

S Interests has the meaning set out in clause 11.1(b)(ii).

Scheme means the scheme established by the Deed and known as SuperLife Invest.

Scheme Property means the "scheme property" as set out in section 6(1) of the FMCA, in respect of the Scheme.

Side-Pocketed Investments and Liabilities has the meaning set out in clause 11.1(a).

Side-Pocketing Date has the meaning set out in clause 11.1.

SIPO means the statement of investment policy and objectives for the Scheme and, as applicable, for each of the Funds.

Special Arrangements has the meaning set out in clause 11.2.

Special Resolution has the meaning set out in section 6(1) of the FMCA.

Specified Account has the meaning set out in clause 30.10.

Supervisor means Public Trust or such other Licensed Supervisor who is appointed, for the time being, as the supervisor for the Scheme.

Switch means, in relation to an Investor, the withdrawal of Fund Interests held by such Investor in one Fund and the immediate application of the proceeds (subject to clause 30.8(e)) in or towards the purchase or subscription of Fund Interests in another Fund.

Switching Fee means any fee the Manager may charge for implementing a request to Switch and may be nil.

Tax Act means the Income Tax Act 2007, and where relevant, the Tax Administration Act 1994.

Tax includes all taxes, duties, levies and other charges including penalties and interest, whether imposed, levied or charged in New Zealand or elsewhere.

Taxation Amount means, in relation to an Investor:

- (a) any Tax payable by or on account of that Investor or in respect of that Investor's Fund Interests; or
- (b) any withholding tax or similar amount required to be held or deducted by the Supervisor or Manager in respect of any payment made to that Investor; or
- (b) any PIE Tax that is or may be assessed against or payable by or in respect of income attributable to that Investor or that Investor's Fund Interest.

Tax Authority means the Inland Revenue Department and any governmental authority or body that is responsible for administering, imposing and levying Tax, whether in New Zealand or elsewhere.

Termination Fee means the fee that the Manager is entitled to recover from a Fund, upon its termination in accordance with the relevant Fund Establishment Deed.

Transfer Fee means a fee that is payable to the Manager in relation to any transfer of Fund Interests of an amount determined by the Manager and that may be nil.

Withdrawal Fee means a fee charged by the Manager and payable to the Manager for withdrawals from an Investor's Account of an amount determined by the Manager and that may be nil.

Withdrawal Amount means, in relation to an Investor, the:

- (a) Balance of that Investor's Account (or such lesser amount that an Investor has requested be withdrawn under a Withdrawal Request); less
- (b) Realisation Costs (if any).

Withdrawal Request means a request by an Investor to the Manager in respect of a Withdrawal Amount and dealt with in the manner specified in clauses 10.1 to 10.14.

Withdrawal Suspension Notice means a notice in writing to an Investor given under clause 10.9.

2. INTERPRETATION

2.1 Index and headings: The index to and headings in the Deed are used for convenience only, and do not affect in any way its interpretation.

2.2 Interpretation rules: In the interpretation of the Deed, the following provisions apply unless the context otherwise requires:

- (a) words defined in clause 1.1 are, for convenience of reference and are identified with a capital initial letter;
- (b) headings to clauses and to parts of the Deed are for convenience of reference and are not to be interpreted as part of the clause;

- (c) words importing any gender include the other genders and the plural includes the singular and vice versa;
- (d) unless otherwise defined in the Deed, a word which is given a special meaning by the Relevant Law shall have the same meaning in the Deed;
- (e) any reference in the Deed to clauses, sub-clauses, recitals, schedules and paragraphs are to clauses, sub-clauses, schedules and paragraphs of the Deed and shall include amendments to the Deed;
- (f) any reference to legislation or to a provision in legislation, shall include a reference to any subsequent amendments, re-enactments and replacements thereof, a legislative provision substituted for it and a regulation, rule, order or instrument made under or issued pursuant to it;
- (g) where any frameworks or methodologies that are specified in notices issued by the FMA under the FMCA, are applicable to the Scheme and relate to any matter which is required to be provided for adequately in the Deed by the FMCA, the provisions of the Deed which deal 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 Scheme;
- (h) references to currency are to the lawful currency of New Zealand; and
- (i) references to "includes" means "includes without limitation", and "include" and "including" shall be construed accordingly.

2.3 Currency conversions: If, under the Deed:

- (a) there is any liability that is payable in a foreign currency, it shall be treated as being a liability in New Zealand dollars of an amount equal to the New Zealand dollar equivalent of that foreign currency amount; and
- (b) it is necessary to determine the New Zealand dollar equivalent of a sum expressed in a foreign currency (including for the purposes of clause 2.3(a)), that foreign currency sum shall be converted into New Zealand dollars using an exchange rate set in accordance with the Manager's policy on the date of conversion.

2.4 Reading down provisions: If a provision of the 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 shall be read down accordingly.

2.5 Severance: Notwithstanding clause 2.4, if a provision of the Deed is void or voidable or unenforceable or illegal:

- (a) 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 are severed; and
- (b) in any other case, the whole provision is severed,

and the remainder of the Deed shall have full force and effect.

2.6 Fund Establishment Deed prevails: In the event of a conflict between the provisions of the Deed and a Fund Establishment Deed, the terms of the Fund Establishment Deed shall prevail.

3. APPOINTMENT

- 3.1 **Appointment of Supervisor:** Public Trust is appointed as the Supervisor and agrees to hold the Scheme Property, including that for each Fund, in trust for the relevant Investors on the terms set out in the Deed and the Fund Establishment Deeds.
- 3.2 **Appointment of Manager:** Smartshares is appointed as the Manager and agrees to act as the manager for the Scheme and each Fund on the terms set out in the Deed and the Fund Establishment Deeds.
- 3.3 **Non-exclusive appointment:** Nothing contained in the 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, supervisor or trustee for trusts whether of a nature similar to or different from the Scheme and the Funds.

4. CREATION AND CONSTITUTION OF FUNDS

- 4.1 **Creation of Funds:** Each Fund shall be established by a Fund Establishment Deed, and may include the following matters as shall be applicable to the relevant Fund:
- (a) a description of the Authorised Investments for the Fund as determined by the Manager from time to time;
 - (b) the Net Asset Determination Time for the Fund;
 - (c) any Minimum Fund Balance and any other restrictions relating to the amount of any Application Money;
 - (d) all fees and expenses payable to the Supervisor, the Manager and the Investors (if any) in respect of the Fund;
 - (e) any borrowing restrictions or requirements to the extent that they amend or supplement the borrowing restrictions or requirements set out in the Deed;
 - (f) any terms and procedures relating to Switches, to the extent that they amend or supplement the terms and procedures relating to Switches set out in the Deed;
 - (g) any terms and procedures relating to the withdrawals of Fund Interests to the extent that they amend or supplement the terms and procedures relating to the withdrawal of Fund Interests set out in the Deed;
 - (h) whether the Fund is constituted as a pool of investments held on a non-segregated basis or as a distinct segregated fund and the terms that apply to segregated assets and Liabilities (if any); and
 - (i) any other matters which the Manager, after consulting with the Supervisor, deems appropriate.
- 4.2 **When Funds are created:** A Fund shall come into existence on the Fund's Commencement Date and prior to that Commencement Date, no Application Money can be received by the Supervisor for that Fund.
- 4.3 **Investments:** All Investments made for a Fund shall be held by the Supervisor as the property of the Fund for the benefit of the Investors of the Fund. The Manager shall decide whether a Fund is constituted as a

pool of Investments held on a non-segregated basis or as a distinct segregated fund with its assets and Liabilities governed by the terms set out in the Deed and the relevant Fund Establishment Deed for each segregated Fund.

4.4 Operation of Funds: Without limiting the generality of clause 4.3, the Manager:

- (a) must, where it establishes a Fund with separate and distinct assets and Liabilities, ensure that:
 - (i) all profits and losses of that Fund belong to the Investors who invest in that Fund in proportion to each Investor's Fund Interest, subject to any loss of each Investor being limited at all times to the value of their interest in the Fund; and
 - (ii) all Liabilities incurred in relation to a Fund shall be met only from the Fund's assets held for that Fund;
- (b) must, in all other cases, ensure that:
 - (i) all Liabilities incurred in relation to a Fund shall be met in the first instance from the Investments for that Fund; and
 - (ii) the Liabilities incurred in relation to a Fund may be met from the Investments of other non-segregated funds (and in such equitable manner as the Manager decides in consultation with the Supervisor) only if, and to the extent that, the Fund's Investments are insufficient to meet such Liabilities.

4.5 Apportionment between Funds: The Manager shall determine whether any liability, cost, expense or charge properly incurred under the Deed should be apportioned between one or more Funds and shall apportion such liability, cost, expense or charge and every such determination or apportionment shall be final and binding on all Investors affected by such determination or apportionment.

4.6 Fund property: A Fund shall consist of all of the Investments for the time being held by the Supervisor for that Fund, including:

- (a) the proceeds of sale of any such Investments; and
- (b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained in respect of the Fund.

4.7 No claims on other Funds: No Investor in one Fund shall, by virtue of being an Investor in such Fund, have any claim on the Investments of any other Fund.

4.8 Fund name change: The Manager may change the name of a Fund at any time.

4.9 Perpetuity period: The perpetuity period for a Fund shall be 80 years from the Commencement Date for the Fund and the Manager may establish a new Fund on closely similar terms and transfer the assets and Liabilities to the new Fund, preserving all entitlements of the affected Investors.

5. FUND INTERESTS

5.1 Regulated Offer: The Manager must not make a Regulated Offer of Fund Interests unless:

- (a) the relevant Fund is registered under the FMCA;

- (b) a PDS has been prepared and lodged as a Register Entry in respect of the relevant Fund; and
 - (c) all of the information that the Register Entry is required to contain under the FMCA has been lodged with respect to the Scheme and each relevant Fund.
- 5.2 Disclosure Document requirements:** Each Disclosure Document must comply with the FMCA and FMCR and, subject to clause 5.4, otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 5.3 Manager's best endeavours:** The Manager must use its best endeavours to ensure that the Disclosure Documents for each Fund at all times comply with the FMCA and FMCR.
- 5.4 Supervisor's review of Disclosure Documents:** The Manager shall provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents in respect of each Fund so as to allow the Supervisor time to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).
- 5.5 Application for Fund Interests:** Every Person wishing to apply for a Fund Interest, shall:
 - (a) make an Application; and
 - (b) pay the Application Money, or transfer to the Fund the Investments that the Manager agrees to acquire.
- 5.6 Consideration for Fund Interests:** Subject to the provisions of the Relevant Law, the Manager may from time to time:
 - (a) request an Applicant to pay the Application Money into the relevant Fund, or in the manner determined by the Manager for the Fund Interests in that Fund; and
 - (b) arrange for persons (which may include the Manager or any related Registered Scheme of the Manager) to transfer the Investments to the relevant Fund in return for Fund Interests calculated to be equal to the value of the Investments transferred.
- 5.7 Deductions from value of Investments:** The Manager may deduct from the value of Investments to be transferred to a Fund under clause 5.6(b), any costs incurred in valuing and transferring the Investments if such amounts have not been taken account of in determining the value.
- 5.8 Manager may refuse or postpone Application acceptance:** The Manager may accept or refuse to accept in whole or in part any Application or postpone the processing of the Application pending receipt of cleared funds or refuse or postpone acceptance for any other reason.
- 5.9 Applications treated as subscription or purchase:** An Application accepted by the Manager may at the option of the Manager be treated as:
 - (a) a subscription for new Fund Interests in the relevant Fund; or
 - (b) a request for the purchase or sale from the Manager of Fund Interests held or to be acquired by the Manager in the relevant Fund.
- 5.10 Acceptance of Applications:** If the Manager accepts an Application, the amount credited to an Investor's Account shall be an amount equal to the Application Money received (less any applicable fees) or, in the

case of the acquisition of Investments, an amount equal to value of the Investments agreed by the Manager (after any Entry Fee, Switching Fee or other applicable fee, has been deducted by the Manager).

- 5.11 **Issue of Fund Interests:** If the Manager accepts an Application and the relevant payment or other consideration has been credited to the Investor's Account pursuant to clause 5.6, the Manager shall ensure that the relevant Fund issues the Fund Interests in respect of the Investor and procure that the Register reflects the issuance of the Fund Interests to that Investor.
- 5.12 **Fund Interests confer no direct interest in Fund assets:** An Investor has an undivided share in the assets of the Fund and does not, as a result of holding a Fund Interest:
- (a) have any interest in any particular part of the Fund to which that Fund Interest relates; or
 - (b) have any interest in any Investment of the Fund; or
 - (c) have any right to require any of the Investments of the Fund be transferred to the Investor; or
 - (d) have any right to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the powers, authorities or discretions conferred upon the Manager and/or Supervisor by the Deed, other than rights expressly granted to Investors under the Deed or by the Relevant Law.
- 5.13 **Additional contributions to a Fund:** Any additional Application Money or Investments acquired from an Investor after the Investor's initial Application, shall (after any Entry Fee, Switching Fee or other relevant fee has been deducted by the Manager) be deemed to constitute an investment in the relevant Fund immediately after the Investor's Account is credited.
- 5.14 **Deposit of Application Money:** All Application Money received by the Manager shall be held on trust by the Manager in accordance with the Relevant Law and shall immediately be credited or paid into an account established in the name of the Supervisor and managed by the Manager under clause 7.12. The Application Money less all such amounts the Manager is entitled to receive and retain in accordance to the Deed, shall be paid by the Manager to the Supervisor as soon as reasonably practicable.
- 5.15 **Prompt Application decisions:** The Manager shall make a decision on each Application as soon as practicable and must refund or direct the Supervisor to refund Application Money received in respect of rejected Application as soon as practicable after the Manager makes the decision to reject the Application and, in any event, no later than one month. Application Money received or held in respect of a rejected Application shall not constitute an investment in any Fund but shall form part of the total assets of the Scheme. No interest is payable in relation to Application Money refunded under this clause.
- 5.16 **Notification of Registrar:** The Manager shall notify the Registrar of the acceptance or rejection of each Application as soon as practicable after accepting or rejecting that Application. The Registrar shall enter an accepted Applicant on the Register of the relevant Fund (or, where the Applicant is already on the Register, alter the Register accordingly) and send confirmation information to the Applicant within one month of the crediting of the relevant Investor Account or such shorter period as required by the Relevant Law.
- 5.17 **Minimum Application Amount:** The Manager may set a Minimum Application Amount for a Fund at any time, but the Manager shall have discretion to accept amounts lower than the Minimum Application Amount.
- 5.18 **Other offer restrictions:** The Manager may impose such other conditions or restrictions on the offer of Fund Interests as the Manager may from time to time determine.

5.19 No issuance of Fund Interests by the Manager after termination: No Fund Interests in respect of a Fund, may be issued by the Manager after receipt by the Supervisor of a notice of termination for that Fund given by the Manager pursuant to clause 31.2, except with the prior consent in writing of the Supervisor.

5.20 Parties as Investors:

- (a) Subject to the Deed and the Relevant Law, the Supervisor and/or the Manager may purchase, acquire or dispose of any Fund Interests in any Fund.
- (b) Where the Supervisor and/or the Manager purchases, acquires or disposes of any Fund Interests in any Fund on its own account, it must be on the same terms and conditions as applicable to all other Investors.

5.21 Unitisation: The Manager may operate a Fund on a unitised basis and all Investors' interests in the Fund will be divided into units. A unit shall not confer any interest in any particular part of the Fund to which it relates and Investors are not entitled to require the transfer of any Investments to them. Where the Manager determines to operate a Fund on a unitised basis it shall from time to time determine the appropriate rules, procedures and methodologies to facilitate the determination of unit prices and the allocation and redemption of units and shall advise Investors as appropriate.

6. INVESTORS' ACCOUNTS

6.1 Establishment of Investors' Accounts: The Manager shall establish an Account for each Investor and may at its discretion administer it as a series of sub-Accounts. Each Account shall from time to time be credited or debited as appropriate, with:

- (a) the Application Money;
- (b) any Investment returns;
- (c) any Withdrawal Amounts; and
- (d) any fees or expenses payable in respect of the Investor for the management and administration of the Scheme or a relevant Fund.

6.2 Investor's Accounts: If the Scheme consists of multiple Funds, the Manager must allocate the Balance in an Investor's Account between the Funds according to the Investor's Relevant Instructions.

6.3 Administration of Investor's Account: To avoid doubt, the records and record keeping for an Investor's Accounts may, for administrative efficiency be combined, so long as the balances for each Account, maintained in accordance with clause 6.1, and the records relating to debits and credits can be extracted for each separate Account be maintained.

6.4 Unitisation: The Manager may establish and maintain all or part of the Investor's Accounts as denominated in units.

7. INVESTMENT OF THE SCHEME PROPERTY

7.1 SIPO: The Manager shall, in consultation with the Supervisor, prepare and publish a SIPO for the Scheme and as appropriate, for each Fund.

- 7.2 **Investment in accordance with SIPO:** Each Fund shall be invested in Authorised Investments in accordance with the relevant SIPO.
- 7.3 **Amendment of SIPO:** Subject to the Relevant Law, the SIPO for the Scheme or a Fund may be amended or replaced from time to time by the Manager in consultation with the Supervisor. If the Manager proposes to amend or replace the SIPO in relation to the Scheme or a Fund, in a manner that materially adversely affects existing Investors in that Fund, the Manager shall, prior to effecting any such amendment or replacement, give written notice to the Fund's Investors. Unless the Manager in consultation with the Supervisor determines that it is in the Investors' interests to give effect to the change earlier, such written notice shall be at least 30 days' prior to the effective date of the amendment or replacement.
- 7.4 **No responsibility for investment performance:** Subject to the Relevant Law, neither the Supervisor nor the Manager is responsible to the Scheme, a Fund or to any Investor for the investment performance of a Fund as a result of investing in Authorised Investments in accordance with the SIPO.
- 7.5 **Related Party Benefit permitted:** Subject to the SIPO, the Relevant Law and in compliance with clauses 25.1 to 25.4, the Manager may invest in Authorised Investments where the transaction provides a Related Party Benefit.
- 7.6 **Supervisor's duty to refuse to act:** The Supervisor must refuse to act (and must direct any Custodian to refuse to act), on a direction of the Manager to:
- (a) invest, acquire or dispose of or transfer any Investment; or
 - (b) enter into any loan, give any security or other obligation; or
 - (c) exercise or not exercise voting rights conferred by the Investments,
- (collectively and individually referred to after this as the "Proposed Action") in respect of a Fund if in the opinion of the Supervisor, given in writing to the Manager before the Proposed Action, the Proposed Action:
- (d) is manifestly not in the interests of the Investors of the Fund; or
 - (e) would breach the Deed, or the Relevant Law,
- and neither the Supervisor nor any Custodian shall be liable to Investors in the Fund or to the Manager for so refusing to act on any such direction by the Manager.
- 7.7 **Supervisor's notification obligations:** If the Supervisor refuses pursuant to clause 7.6 to act on a direction from the Manager (or directs any Custodian to refuse to act), the Supervisor must before taking the Proposed Action notify the Manager in writing of that fact and the Supervisor's reasons for the refusal or direction to refuse.
- 7.8 **Manager's investment power:** The Manager shall have the full and absolute power to make all investment decisions in relation to the Funds and, subject to compliance with the SIPO for the Scheme and the Funds, as applicable, and the terms set out in the Deed and the relevant Fund Establishment Deed, may determine the terms of all sales, purchases, leases or other dealings with Investments, and all contracts, rights and other matters relating to such Investments or Liabilities, and acquire and sell property on behalf of a Fund for cash or upon terms as determined by the Manager.
- 7.9 **Manager's authority in respect of Investments:** The Manager shall be authorised from time to time to make or cause to be made any contracts or transactions in relation to any Investments by a Fund which the

Manager considers to be in the interests of the Investors of the Fund and will ensure that all acquisitions resulting from such contracts or transactions are made in the name of the Supervisor.

7.10 Manager's investment directions: Subject to clauses 7.1 to 7.8 and clause 7.14 and the SIPO of the Scheme and each of the Funds, as applicable, the Manager may direct the Supervisor in respect of:

- (a) the investment and management of the Investments;
- (b) the purchase, acquisition, sale, transfer, replacement and disposition of Investments;
- (c) the amendment or modification of any Investments; and
- (d) the entering into any commitments or Liabilities

At the Manager's written direction, the Supervisor will enter into such contracts and will to the extent of the Scheme Property of the relevant Fund in its hands or control, effect and pay for such contracts or transactions or investments or other commitments or Liabilities and will sign all documents and do all things necessary on its part to give effect to such direction.

7.11 Registration of Investments: The Manager shall ensure that Investments for which provision for registration exists are registered in the name of the Supervisor or the appropriate Custodian as soon as reasonably practicable after receipt of the necessary documents and shall deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

7.12 Bank account: The Manager, at the written request of the Supervisor, shall provide evidence satisfactory to the Supervisor that a Bank account is established in the name of the Supervisor for the Scheme and as appropriate, for each Fund, and into which all Application Money is paid, as appropriate, and is held on trust by the Supervisor in terms of the Deed and in accordance with the Relevant Law. All money belonging to the Scheme or a Fund and coming into the hands of the Supervisor shall be paid to the credit of the Bank account for the Scheme or the Fund. The Supervisor shall authorise the Manager to operate such Bank accounts and shall promptly complete all documents required from time to time by the Bank to authorise such operation.

7.13 Supervisor to maintain separate Bank accounts: Where the assets of the Funds are segregated in accordance with clause 4.3, the Supervisor shall open and maintain a separate Bank account in the name of each Fund. All moneys belonging to a Fund and coming into the hands of the Supervisor shall be paid to the credit of the Bank account for that Fund.

7.14 Shares or other assets received: Any shares or other assets or rights received by the Supervisor in lieu of or in satisfaction (in whole or in part) of a dividend in respect of any Investments or from amalgamation or reconstruction of any corporation in which part of any Fund is invested may either be retained as part of the relevant Fund, or sold or retained as to all or part and sold as to the balance as directed by the Manager.

7.15 Supervisor's right to limitation of liability: The Supervisor may, before entering into any transaction, security or liability, require that its liability is restricted or limited to the assets or Investments held by the Supervisor as supervisor of the relevant Fund. For the avoidance of doubt, this includes assets or Investments held by a Custodian in relation to the Fund.

7.16 Varying definition of Authorised Investments: Where the Manager considers that it is in the interests of the Investors to vary the definition of 'Authorised Investments' in respect of any Fund it may vary that definition by notice in writing to the Supervisor and the proposed variation must then be notified to all

Investors no later than one month prior to the variation taking effect. With effect from the date of such variation, the Deed and/or the relevant Establishment Deed shall be interpreted as if the definition of Authorised Investments is as notified to the Investors under this clause.

- 7.17 **Custodian to keep records:** If the Supervisor has appointed a Custodian, the Custodian, shall keep, complete and accurate records of all Investments relating to each Fund in accordance with the requirements of the Relevant Law.
- 7.18 **Availability for inspection:** The Supervisor must ensure the records required by clause 7.17 are kept in a manner that enables those records to be conveniently inspected by the Manager or its agent and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the Relevant Law.
- 7.19 **Manager may rely on records:** The Manager shall be entitled to assume that the Supervisor's and Custodian's records of Investments are complete and accurate, and to rely upon them accordingly.

8. LOANS IN RESPECT OF INVESTMENTS

- 8.1 **Lending Investments allowed:** The Manager may, in respect of a Fund, make a Loan to any Person ("Borrower") in accordance with clause 8.4 and clause 8.5, on such terms and conditions as the Manager may from time to time determine.
- 8.2 **Lending Limits:** At the time and immediately after the Loan is made, no more than 50% of the value of the Investments in the relevant Fund or 50% of the aggregate value of any class of Investments within the relevant Fund, may be lent. No Loan shall be made if the 50% limits at the time that the Loan is made would be breached.
- 8.3 **Dividends etc on Investments:** The Supervisor (or another person nominated by the Manager for the purposes of any Loan) shall receive on behalf of the Fund any amounts paid by the Borrower under the Loan by way of dividends, interest, premiums or distributions paid in respect of the Investments lent under the Loan.
- 8.4 **Lending through a Designated Settlement System:**
- (a) The Manager may, in respect of a Fund, make Loans of Investments in the Fund in accordance with the rules and procedures of the Designated Settlement System that apply from time to time.
 - (b) Any Borrower must be a Person who participates in the Designated Settlement System in accordance with the rules and procedures of that Designated Settlement System.
- 8.5 **Lending not undertaken through a Designated Settlement System:**
- (a) The Manager may, in respect of a Fund, make Loans of Investments in the Fund in accordance with the Manager's procedures that are established for this purpose.
 - (b) Any Person to whom the Manager makes Loans under clause 8.5(a), must be an NZX Market Participant.
 - (c) Settlement of any Loan made under clause 8.5(a) may occur only against the deposit of the relevant Investments by the Borrower to the Supervisor.

9. NET ASSET VALUE OF FUNDS

- 9.1 Net Asset Value determination:** As soon as reasonably practicable after each Net Asset Determination Time for a Fund, and subject to compliance with clause 9.7, the Manager will determine the amount, expressed in New Zealand dollars (or another currency if the Manager considers that other currency more appropriate), that fairly represents the Net Asset Value of the Fund at the Net Asset Determination Time.
- 9.2 Principles relating to valuation:** The Manager shall decide on the methodology or rules for valuing the Investments of a Fund and for attributing the Net Asset Value of the Fund subject to the following:
- (a) The method for calculating the value of each asset in the Fund shall be consistent with the range of ordinary commercial practices for valuing that type of asset and shall be reasonably current at the Net Asset Determination Time.
 - (b) The Manager may change the valuation method if in the Manager's opinion that change is needed to ensure equity amongst Investors in the Fund.
 - (c) The value of the Investments of the Fund may be adjusted where such an adjustment is considered necessary to reflect the fair value of the Fund's assets and taking account of currency exposures and fluctuations, marketability of the invested assets and/or such other considerations that the Manager decides are relevant.
- 9.3 Methodology for valuing and pricing Investments:** The Investments of a Fund shall be established at fair value as at the Net Asset Determination Time by the Manager. The fair values are determined as follows:
- (a) In the case of investments that are managed by an investment manager, the realisable value of the Investments as advised by the investment manager taking account of the underlying market value.
 - (b) In the case of shares listed on an Exchange and holdings of fixed interest securities, by reference to the relevant last traded market price at the Net Asset Determination Time, where the last trade price falls within the bid-ask spread. Where the last traded price is not within the bid-ask spread, the Manager will determine the point within the bid-ask spread that is the most representative of fair value.
 - (c) For Investments not listed on an Exchange or traded in an active market, the Manager shall determine the appropriate valuation techniques that may, as the Manager decides, include reference to recent comparable arms-length market transactions, reference to the current market value of another similar investment or discounted cash flow analysis or another appropriate valuation model.
 - (d) Valuation models shall use data taken from observable markets where possible, but may also use other considerations, assumptions or factors that the Manager decides are appropriate to the establishment of fair value.
 - (e) The Manager shall record dividends on Investments on the ex-dividend date based on dividend announcement and adjusted, if appropriate, to reflect the amount received. Any tax credits associated with a dividend shall also be recorded consistently.
 - (f) The Manager shall record interest on Investments on an accruals basis and adjusted, if appropriate, to reflect the amount received.
 - (g) The Manager shall deduct from the aggregate value of all Investments of a Fund the total of:

- (i) all the Liabilities of the Fund;
- (ii) all costs, charges and other amounts incurred or accrued or which will be incurred in holding or administering the Investments of the Fund (excluding, for the avoidance of doubt, any tax liability of an Investor calculated in accordance with the PIE Rules under the Tax Act) or a proper proportion of any of the foregoing having regard to the Business Day on which the Manager determines the costs, charges or other amounts in relation to the period to which they relate;
- (iii) the amount of any money held by the Manager or the Supervisor in respect of Applications that have not been accepted by the Manager or that have been rejected by the Manager to the extent that such money has been included in the assets of the Fund;
- (iv) provision for any expenses that the Manager anticipates are or will be payable or reimbursable from the relevant Fund and the Manager decides should be included for the purpose of making an equitable determination of the Net Asset Value of the Fund; and
- (v) any other amount which the Manager decides should be included for the purpose of making an equitable determination of the Net Asset Value of the Fund.

9.4 Special valuation: Without limiting the generality of clause 9.1 the Manager may make a special valuation where the Manager thinks there is the potential for material issues of equity as between one Investor and all other Investors in the Fund or amongst Investors in the Fund as a whole.

9.5 Effective at Net Asset Determination Time: Every determination by the Manager of the Net Asset Value of a Fund shall be deemed to take effect at the Net Asset Determination Time in respect of which it is made.

9.6 How long determinations remain in force: Determinations of the Net Asset Value of a Fund remain in force from the time specified in clause 9.1 until the time that the Manager makes the next succeeding determination of the Net Asset Value of the Fund.

9.7 Manager may engage a valuer: The Manager may from time to time engage a valuer or other suitably qualified person, for the purposes of assisting the Manager to fix the current fair market value of any Investment and the Manager shall be entitled to rely upon the advice of such valuer or other person.

9.8 Consistently applied basis: The Manager will determine the Net Asset Value of each Fund on a basis that is consistent across all Funds.

9.9 Failed payment of Application Money: If any payment of Application Money fails for any reason, any Fund Interest issued in relation to that Application Money will be void and, accordingly, any amount by which an Investor Account has been credited in relation to that Application Money will be reversed by the Manager and the Supervisor and Fund Managers, if appropriate, will be advised accordingly.

9.10 Methodology for allocating Investment returns on Fund Interests

- (a) The Manager shall allocate a Fund's investment returns to the Fund's Investors on a fair and equitable basis and the Investment returns earned by one Fund are not to be allocated to the Investors of another Fund.
- (b) At the Net Asset Determination Time of each Fund, the Manager shall value the Investments of the Fund in accordance with clause 9.3 to determine the Net Asset Value of the Fund and the investment

returns earned since the last such determination. The Manager shall identify the taxable and a non-taxable components of the Fund's investment returns.

- (c) As at each Net Asset Determination Time the Manager shall allocate the investment returns of each Fund to each Investor with a Fund Interest in the Fund in proportion to that Investor's Fund Interest in the Fund at the previous Net Asset Determination Time, after deducting any withdrawals or transfers out of the Fund made subsequently to that previous Net Asset Determination Time.
- (d) At the Net Asset Determination Time, the Manager shall credit each Investor Account with the total returns earned on the Fund Interests of the Fund or Funds, whether positive or negative, net of fees and with appropriate provisions for taxes since the immediately preceding Net Asset Determination Time.
- (e) The Manager will calculate the tax attributable to an Investor at the Investor's PIR as last notified by the Investor to the Manager and shall deduct that from the investment returns before they are allocated to the Investor's Account. If the Investor has failed to notify the Manager of the Investor's PIR, the amount of tax deducted from the Investor's investment returns shall be at the appropriate rate as set out in the Relevant Law.
- (f) Subject to the Investor's Relevant Instructions, the Investor's investment returns for the Investor retained in the Investor's Account and re-invested in the Fund in respect of which the investment returns have been calculated.

9.11 **Compensation:** The Manager is not required to reimburse or compensate an Investor or a former Investor for a pricing error or for non-compliance with the provisions of this clause 9 if the loss to the Investor or former Investor is less than \$20 (or such other amount as the Manager and Supervisor may determine or agree from time to time and advise to Investors as appropriate).

9.12 **Determination binding:** If the Manager complies with this clause 9, the determination of the Net Asset Value of a Fund by the Manager shall be final and binding on all persons, including the Manager, the Supervisor, all Applicants, and all Investors.

10. WITHDRAWALS FROM INVESTOR'S ACCOUNTS

10.1 **Withdrawals from Investor's Accounts:** Subject to clauses 10.2, 10.3 and 10.8 to 10.14 and the Fund Establishment Deeds, the Manager may, upon receiving a Withdrawal Request from an Investor and upon compliance with the terms set out in the Deed, pay the Investor the Withdrawal Amount by making a withdrawal from the Investor's Account and reducing the Investor's Balance accordingly.

10.2 **Minimum Balance or Minimum Fund Balance:** The Manager may, from time to time:

- (a) fix a Minimum Balance that an Investor must hold in the Investor's Account; and
- (b) in respect of a Fund, and subject to the provisions of each Fund's Fund Establishment Deed, set a Minimum Fund Balance that an Investor must hold in each Fund.

10.3 **Refusal of request where minimums breached:** Where the Manager receives a Withdrawal Request, the Manager may, in its sole discretion:

- (a) reject that Withdrawal Request if payment of the Withdrawal Amount will result in the Investor's Balance being less than the Minimum Balance unless the Withdrawal Request relates to the full amount of the Balance of the Investor's Account; and
 - (b) treat that Withdrawal Request as if it relates to the full Balance in the Investor's in a Fund if, after the Withdrawal Request has been met, the Investor will hold less than the Minimum Fund Balance for that Fund and
 - (c) advise the relevant Investor as appropriate.
- 10.4 **Form of Withdrawal Request:** A Withdrawal Request shall be made in a form and manner that is specified by the Manager.
- 10.5 **Requirements in relation to Withdrawal Requests:** A Withdrawal Request shall be effective only on a Business Day or immediately following the day on which the Withdrawal Request is received by the Manager and:
 - (a) shall be accompanied by evidence as to the Investor's identity and title to the relevant Fund Interest as the Manager may require; and
 - (a) shall be irrevocable once given unless agreed with the Manager to the contrary (regardless of whether or not there is any suspension or deferral of the effective date at which the withdrawal takes effect pursuant to clause 10.9).
- 10.6 **Time of Withdrawal:** Subject to clause 10.9, the withdrawal from an Investor's Account shall take effect, and the Manager shall procure the payment by the Supervisor of the Withdrawal Amount to the Investor, within a reasonable time but not exceeding 30 Business Days after the receipt by the Manager of the Withdrawal Request.
- 10.7 **No withdrawal before payment:** Where the Manager has not received the money for establishing or contributing to an Investor's Account or the transfer of the money cleared or been completed or, having received the money, the transfer has been retrieved or reversed, the Manager will not credit the Investor's Account until such payment is received by or secured to the Manager.
- 10.8 **Withdrawal by transfer of Investments:** The Manager may request the Supervisor to transfer a portion of the Investments of a Fund to an Investor in that Fund or, to hold such Investments on trust solely for such an Investor on such terms as the Manager requires, rather than pay cash on the withdrawal from an Investor Account. These Investments must be of equal value to the Withdrawal Amount less any deductions permitted by the Deed and the relevant Fund Establishment Deed.
- 10.9 **Withdrawal suspension:** If the Manager in good faith and in its sole discretion determines that the Manager's obligation to allow the withdrawal of any part of an Investor's Balance in a particular Fund or Funds:
 - (a) is not practicable; or
 - (b) would or may be materially prejudicial to the general interests of all or all other Investors in the relevant Fund or Funds; or
 - (c) would threaten the relevant Fund's or Funds' eligibility for PIE status; or
 - (d) is not desirable for the protection of the relevant Fund or Funds,

the Manager may give a Withdrawal Suspension Notice to the affected Investor and the Supervisor.

10.10 Factors influencing suspension: Without limiting the generality of the foregoing, the Manager may, in deciding to give a Withdrawal Suspension Notice, have regard to the following:

- (a) the fact that any relevant Exchange is closed for trading or that trading on that Exchange is halted or suspended (whether generally or in respect of any specific securities);
- (b) the financial, political or economic conditions applying in respect of any financial markets;
- (c) the nature of any Investment of the Fund;
- (b) the inability to fairly calculate the Net Asset Value of the relevant Fund, including any uncertainty as to any factor considered by the Manager to be material; and
- (c) the liquidity of the relevant Fund and the number of Withdrawal Requests received by the Manager.

10.11 Effect of Withdrawal Suspension Notice: A Withdrawal Suspension Notice shall suspend the operation of all Withdrawal Requests relating to the relevant Fund or Funds until the date on which the Manager gives to the relevant Investors notice to the effect that the Withdrawal Suspension Notice is cancelled. Where Withdrawal Requests are suspended, the Manager shall defer the calculation of the Withdrawal Amount payable to an Investor affected until the day on which the Investor's Withdrawal Amount is deducted from the Account.

10.12 Notification of Supervisor: The Manager shall notify the Supervisor of its intention to issue a Withdrawal Suspension Notice or to cancel such notice before giving effect to the suspension or cancellation, provided that a failure to do so shall not invalidate such suspension or cancellation.

10.13 Priority of clauses: Clauses 10.9 to 10.11 shall take priority over all other provisions in the Deed relating to the crediting, purchase or the withdrawal of money from an Investor's Account.

10.14 Withdrawal of small holdings: Notwithstanding any other provision of the Deed, where:

- (a) an Investor's Balance in any Fund is less than the Minimum Fund Balance; and
- (b) the Manager gives to that Investor not less than 30 days' notice in writing that the Manager intends at the expiration of that period to require the withdrawal of all the Investor's Balance in that Fund; and
- (c) at the expiration of that period the Investor's Balance in the Fund is still less than the Minimum Fund Balance,

the Manager shall for the purposes of this clause 10 have the right to cause the withdrawal of that Investor's Balance with effect as at the date of expiry of the Manager's notice as if a Withdrawal Request had been received from the Investor.

11. SIDE-POCKETING

11.1 Side-pocketing arrangements: Where the Manager considers that it is in the best interests of all Investors in a Fund to do so (for example, but not by way of limitation, to address liquidity or valuation or pricing issues in relation to a particular Investment that might otherwise have led the Manager to give a Withdrawal Suspension Notice under clause 10.9 or that led the Manager to decline or suspend the registration of an instrument of transfer under clause 13.7), the Manager may, with effect from a date nominated by the Manager (**Side-Pocketing Date**), and with the prior written consent of the Supervisor:

- (a) determine that particular Investments and Liabilities of a Fund be quarantined in accordance with this clause (**Side-Pocketed Investments and Liabilities**); and
- (b) reclassify, divide, or otherwise reconstruct the Fund Interests of Investors as at the **Side-Pocketing Date** so that such Fund Interests consist of:
 - (i) Fund Interests that relate to the Investments and Liabilities of the relevant Fund that have not been quarantined (**Non-Side-Pocketed Investments and Liabilities**); and
 - (ii) Fund Interests that relate to the Side-Pocketed Investments and Liabilities of the relevant Fund (**S Interests**),

all on a pro rata basis.

11.2 Special Arrangements for side-pocketing: The provisions of the Deed will apply, with such modifications as are necessary, to the Side-Pocketed Investments and Liabilities and the S Interests as if the relevant Fund consisted solely of Side-Pocketed Investments Liabilities and S Interests, provided that the Manager, with the prior written consent of the Supervisor, may determine special arrangements relating to the S Interests (**Special Arrangements**). Without limiting the generality of this proviso, those Special Arrangements may include:

- (a) arrangements preventing Investors from giving Withdrawal Requests or an instrument of transfer in relation to the S Interests;
- (b) arrangements preventing the issuing of any further Fund Interests relating to the Side-Pocketed Investments and Liabilities;
- (c) arrangements for the realisation or discharge of the Side-Pocketed Investments and Liabilities;
- (d) arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Investments and Liabilities;
- (e) arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of the S Interests);
- (f) arrangements relating to the fees and expenses associated with the Side-Pocketed Investments and Liabilities and the related S Interests;
- (g) arrangements relating to the recovery of PIE Tax in respect of Investors holding S Interests including, if the Manager so decides, the recovery of PIE Tax from Investors holding S Interests by way of arrangements relating to Fund Interests (if any) held by those Investors that relate to the Non-Side Pocketed Investments and Liabilities) and the payment of the relevant Fund's tax Liabilities;
- (h) arrangements for the treatment of Withdrawal Requests and instruments of transfer that remain outstanding as at a Side-Pocketing Date including but without limitation, the cancellation of any such Withdrawal Requests or instruments of transfer;
- (i) approval for treating S Interests held by Investors as a different class of Fund Interest; and
- (j) such other arrangements that the Manager considers to be appropriate and in the interests of Investors generally in relation to the side-pocketing arrangements implemented under clauses 11.1 and 11.2.

- 11.3 **Priority of Special Arrangements:** Where the Manager determines that there is a conflict between the Special Arrangements and any other provisions of the Deed, the Special Arrangements will prevail but without affecting the Manager's duties to act in the interests of the Investors generally and corresponding liability provisions.
- 11.4 **No separate fund created:** For the avoidance of doubt, the side-pocketing arrangements contemplated by clauses 11.1 and 11.2, although they may involve the creation of a different class of Fund Interest, operate within the relevant Fund and do not create a new and separate trust. Unless required by the Relevant Law, the Manager shall not be required to prepare separate financial statements relating to the Non-Side-Pocketed Investments and Liabilities and the Side-Pocketed Investments and Liabilities but without affecting the Manager's responsibility to prepare the Fund's Financial Statements in such a form as necessary to comply with the provisions of clauses 29.1 and 29.2.
- 11.5 **Other potential limitations:** Notwithstanding any other provisions in the Deed, the Manager may determine from time to time and specify in the Disclosure Documents for the Scheme or Fund, any additional limitations on withdrawals or prohibitions on withdrawals or the transfer of Fund Interests, which will take effect in accordance with their terms.
- 11.6 **PIE clauses:** If a Fund is a PIE, then all the provisions of clauses 10 and 11 will take effect subject to clause 30.7. In addition, this clause 11 will not apply to any adjustment of Investor's Accounts under clause 30.4.
12. **SWITCHING INVESTOR BALANCES BETWEEN FUNDS**
- 12.1 **How requests to Switch treated:** Unless the relevant Fund Establishment Deed states otherwise, the Manager covenants with the Supervisor that the Manager upon receipt of a request to Switch from an Investor, shall give effect to the request as though it were both a Withdrawal Request and an Application for Fund Interests in the Fund or Funds specified in the request to Switch. If the Manager accepts the request to Switch, the Manager shall apply the Withdrawal Amount (less any Switching Fee or other applicable fees) in payment of the Application Money.
13. **TRANSFER OF FUND INTERESTS**
- 13.1 **Fund Interests transferable:** Subject to the provisions of the Deed, an Investor may request the Manager to transfer a Fund Interest to another Person.
- 13.2 **Instrument of transfer:** The instrument of transfer under clause 13.1 shall be in writing and in a form which the Manager may approve from time to time and may be provided electronically, and in the case of Joint Holders completed by each of the Joint Holders.
- 13.3 **Request for transfer:** Unless the Deed provides otherwise, the Manager may accept and give effect to a request from an Investor to transfer all or part of a Fund Interest to another Person.
- 13.4 **Effect of transfers:** The transferor of all or part of a Fund Interest under clause 13.1 shall be deemed to remain the holder of the Fund Interest until the transfer is entered in the Register.
- 13.5 **Deposit with Registrar:** Every instrument of transfer of a Fund Interest shall be sent to the Registrar for registration of that Fund Interest, unless otherwise required by the Manager, together with such evidence of

the Investor's identity and title to the relevant Fund Interest and of the transferee's identity as the Manager may require from time to time.

13.6 Fees and charges must be paid: No transaction or dealing in any Fund Interest on behalf of or for the benefit of or at the request of any Investor shall be registered unless the Investor has paid the Transfer Fee, all duties, taxes (including any goods and services tax), commissions and charges in respect of the transaction, dealing or instrument or the equivalent fees and charges in respect of any prior transaction, dealing or instrument.

13.7 Declining transfers: The Registrar may decline to register any transfer if:

- (a) the transfer is in respect of a transaction that is less than any minimum amount that the Manager may determine from time to time; or
- (b) the registration of the transfer would result in less than the Minimum Fund Balance in a Fund remaining in the name of the transferor or standing in the name of the transferee; or
- (c) the registration of the transfer would threaten the relevant Fund's eligibility for PIE status; or
- (d) the transferee is subject to any statutory, regulatory or other restrictions, ruling requirements or conditions that could detrimentally affect the Scheme or relevant Fund or its affairs, including any relevant restrictions under foreign securities law.

14. TRANSMISSION OF FUND INTERESTS

14.1 Transmission upon death: The executors or administrators of a deceased Investor (not being one of several Joint Holders) and, in the case of the death of one or more Joint Holders, the survivor or survivors, shall be the only persons recognised by the Manager as having any title to the Fund Interests registered in the name of that Investor. However, if that Investor has sold or otherwise disposed of some or all of its Fund Interests, and has delivered to the Manager a transfer of the Fund Interests so sold or otherwise disposed of and the transfer of the Fund Interests is not registered before the death of that Investor, the Registrar may register that transfer notwithstanding that the Registrar at the time of such registration has notice of that Investor's death.

14.2 Transmission by operation of law: The statutory representative or manager of an Investor of unsound mind, or of an Investor whose person or estate is liable to be dealt with in any way under the laws relating to mental health, and any person becoming entitled to a Fund Interest in consequence of the death, insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of the creditors or scheme of arrangement of any Investor or otherwise than by transfer under clauses 13.1 to 13.6, may, upon producing the evidence required by clause 14.3, be registered as the Investor in respect of the Fund Interest.

14.3 Evidence of statutory authority: Any statutory representative, manager or person seeking registration as an Investor in respect of a Fund Interest or the transfer of a Fund Interest of an Investor, under the provisions of clause 14.2, shall provide such evidence of identity, capacity or title as is considered by the Manager to be sufficient.

15. REGISTER

15.1 Investor Register: A Register in respect of the Scheme and as appropriate for each Fund shall be kept by the Registrar.

15.2 Form of Register: The Register shall be in the form and manner approved by the Manager.

15.3 Contents of Register: There shall be entered into the Register for the Scheme and each Fund as appropriate, the following information in respect of each Investor:

- (a) the name and address of the Investor and, in the case of Joint Holders, the address of one of the Investors;
- (b) the Balance and the Fund Interests held by the Investor that make up the Balance;
- (c) the address where any confirmation information required by the Relevant Law is to be or was delivered in accordance with the Investor's instructions;
- (d) the date on which each Fund Interest was issued or transferred to the Investor;
- (e) the date and amount of withdrawals debited from the Investor's Account;
- (f) the date and amounts debited from the Investor's Account for payment of tax and fees;
- (g) the date and value of each contribution made by an Investor into their Account; and
- (h) such other details as are necessary or desirable to comply with, and to enable the Manager to administer the Scheme and the Funds in accordance with the Deed, the Relevant Law and all PIE requirements under the Tax Act.

15.4 Reliance on Register: The Supervisor and the Manager, unless they have reasonable cause for doubt, shall be entitled:

- (a) to rely upon entries in the Register as being correct and to act on that reliance;
- (b) for all purposes to treat a holder of a Fund Interest recorded on the Register as the legal and beneficial owner of that interest and to treat Joint Holders of a Fund Interest as joint tenants; and
- (c) to effect transfers, withdrawals or other dealings of any nature with interests in the Scheme on the basis of the information recorded in the Register in respect of the relevant Investor's Fund Interests.

15.5 Audit of Register: The Manager shall cause the Register of the Scheme and the Funds as appropriate, to be audited by a qualified auditor in accordance with applicable auditing and assurance standards and the provisions of the FMCA. Such audit shall include an affirmation from the auditor that the auditor considers subpart 4 of Part 4 of the FMCA has been complied with. The Supervisor may at any time, for a specified and reasonable purpose, request the Manager to cause the Register to be audited.

15.6 Access to Register: Any Person that has or had a right to access or obtain a copy of or an extract from the Register under the FMCA may, upon payment of the prescribed fee, if any, obtain from the Registrar a copy of or an extract from the Register.

15.7 Joint Holders: Where Joint Holders are registered as Investors of any Fund Interest, they shall for the purposes of the administration of the Scheme and not otherwise be deemed to hold the Fund Interest as joint tenants or as joint tenants in trust for themselves subject to the following provisions:

- (a) the Registrar shall not be bound to register more than two Persons as the Joint Holders;
 - (b) the Joint Holders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Fund Interest;
 - (c) any one of the Joint Holders may lawfully act in all respects on behalf of all Joint Holders of the Fund Interest in the following circumstances:
 - (i) any one Joint Holder may give effective notices, requests (including Withdrawal Requests), discharges, receipts and other communications to the Supervisor and/or the Manager on behalf of each of those Joint Holders and such notices, requests, discharges, receipts and other communications shall be effective whether given in the sole name of the Joint Holder or given on behalf of each of those Joint Holders;
 - (ii) the Manager or the Supervisor may give or send to any one Joint Holder any confirmation information, notice, payment or other communication and the giving or sending of any of the foregoing shall be deemed to have been given to each of those Joint Holders; and
 - (iii) at any meeting of the Investors, either of them may vote either personally or by representative, attorney or proxy in respect of the Fund Interest as if that Joint Holder were solely entitled to vote, but if more than one Joint Holder is present personally or by representative, attorney or proxy, then the Joint Holder whose name is entered first in the Register in respect of Fund Interest shall alone be entitled to vote and act on behalf of those Joint Holders; and
 - (d) for the purposes of calculating the Scheme's or Fund's PIE Tax and attributing such liability to Joint Holders and for all other purposes relating to the application of the Tax Act to the Scheme as a PIE, the Manager may in its absolute discretion either treat the Joint Holders as separate holders (in equal shares) or treat the Joint Holders as a single Investor and calculate the PIE Tax on income attributable to that single Investor using a tax rate equal to the higher PIR of the Joint Holders or such other rate or basis as is permitted by law.
- 15.8 **Register definitive source:** Except as otherwise set out in the Deed and subject to the provisions of the Relevant Law, the Manager, the Registrar and the Supervisor shall be entitled to treat the registered holder of an Account as the absolute owner of that Account and accordingly shall not, except as ordered by a court of competent jurisdiction or as required by statute, be bound to recognise any equitable or other claim to or interest in the Account on the part of any other person (even when having notice of the claim or interest). Subject to the Relevant Law, no notice of any trust, whether express, implied or constructive, may be entered on the Register.
- 15.9 **Discretion to close Register:** The Register of the Scheme and as appropriate of a Fund, may be closed during such time or times as the Manager thinks fit, subject to the Relevant Law.
16. **THE MANAGER**
- 16.1 **Manager's assumption of responsibilities:** The Manager agrees to carry out and perform the duties and obligations on its part contained in the Deed, and as otherwise required by the Relevant Law for the benefit of the Investors in the Scheme and as appropriate in each Fund.

16.2 The Manager's functions: The Manager is responsible for performing the following functions in respect of the Scheme:

- (a) offering Fund Interests; and
- (b) issuing Fund Interests; and
- (c) managing the Scheme Property and the Investments; and
- (d) administering the Scheme.

16.3 The Manager's duties: The Manager must:

- (a) act honestly in acting as the Manager;
- (b) in exercising any powers or performing any duties as Manager:
 - (i) act in the best interests of Investors; and
 - (ii) treat Investors equitably; and
 - (iii) exercise the care, skill and diligence that a prudent person engaged as a professional manager would exercise in the same circumstances; and
 - (iv) carry out its functions in accordance with the Deed, the SIPO and all other Issuer Obligations;
- (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 Investors; and
- (d) in exercising a power of investment, exercise the care, skill, and diligence required of a trustee by section 13B or 13C of the Trustee Act 1956.

16.4 Powers of Manager: Subject to the provisions of the Relevant Law, and the powers reserved to or vested in the Supervisor by the Deed and the Fund Establishment Deeds, the Scheme and the Funds shall be managed and administered by the Manager. Without limiting the generality of the foregoing, the Manager is empowered to:

- (a) manage the Investments and determine the terms of sales, purchases and other dealings with Investments;
- (b) make all decisions relating to Investments, including sale and purchase decisions, the acceptance or rejection of takeover offers and cash issues and other matters, the investment of dividends and the exercise of voting rights in respect of Investments;
- (c) make all decisions relating to lending or borrowing by a Fund (including Loans in respect of Investments) and the terms of such lending or borrowing and any security relating to such lending or borrowing;
- (d) determine the terms of all contracts, rights and other matters relating to each Fund's Investments or Liabilities;
- (e) appoint and engage barristers and/or solicitors or other advisers on such terms as the Manager determines;

- (f) enter into any contract for the purpose of hedging against or providing for or spreading or reducing the risk of any loss in respect of any Investments or class of Investments or Liability which might result from any circumstance whatsoever, including fluctuations in any currency or currencies or interest rates or other financial risks;
 - (g) without limiting clause 16.4(f) grant or take up options to purchase or sell any Investments; and
 - (h) enter into any underwriting, agreement to underwrite, sub-underwriting or agreement to sub-underwrite any issue of financial products which when issued would constitute an Authorised Investment.
- 16.5 Delegation of powers by Manager:** The Manager may authorise in writing any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to perform some or all of its functions as the Manager.
- 16.6 Delegation requirements:** If the Manager delegates or contracts out (Delegation) any of its functions,
- (a) the Manager must take reasonable steps to:
 - (i) ensure that those functions are performed, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
 - (ii) monitor the performance of those functions; and
 - (b) the Delegation does not affect the liability of the Manager for the performance of those functions.
- 16.7 Notification of Supervisor:** The Manager shall advise the Supervisor of any Delegation under this clause 16 before any such Delegation is entered into.
- 17. THE SUPERVISOR**
- 17.1 Supervisor's functions:** The Supervisor has the following functions in respect of the Scheme:
- (a) acting on behalf of Investors in relation to:
 - (i) the Manager; and
 - (ii) any matter connected to the Deed or the terms of any Regulated Offer of Fund Interests; and
 - (iii) any contravention or alleged contravention of the Manager's Issuer Obligations; and
 - (iv) any contravention or alleged contravention of the FMCA by any other person in connection with the Scheme;
 - (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 Scheme in respect of the Fund Interests, to ascertain that they are adequate; and
 - (c) holding the Scheme Property, or ensuring that the Scheme Property is held, in accordance with the Relevant Law; and
 - (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the Deed, the Relevant Law.

- 17.2 **Restrictions on Supervisor's delegations:** The Supervisor must not delegate its functions under clause 17.1 except as expressly permitted under clauses 17.9 and 17.10 or as permitted by, and then subject to, any conditions imposed under the FMCA.
- 17.3 **Power to engage expert:** The Supervisor may engage an expert in accordance with the requirements of the FMCA to:
- (a) determine the financial position of the Manager or the Scheme or a Fund; or
 - (b) review the business, operation, management systems or governance of the Manager or the Scheme.
- 17.4 **Manager's responsibilities in relation to experts:** If the Supervisor engages an expert under clause 17.3:
- (a) the Manager must provide reasonable assistance to the expert, to allow the expert to make the determination or undertake the review; and
 - (b) the Manager must pay the expert's reasonable fees and expenses.
- 17.5 **Manager's indemnification in relation to experts:** The Manager shall be indemnified for an expert's fees and expenses out of the assets of the Scheme and to allocate that expense to the Scheme as a whole or to a particular Fund, subject to any limits under the Deed or the FMCA.
- 17.6 **Supervisor's general powers:** Subject to the provisions of the Deed, the FMCA and the Relevant Law, and the powers, rights, and discretions given to the Manager by the Deed and the Relevant Law, the Supervisor shall have the rights and powers in respect of the Scheme Property which it could exercise as if it were the absolute and beneficial owner of such Scheme Property and has the power, on instructions from the Manager, to settle and complete all transactions in respect of a Fund.
- 17.7 **Best interests of Investors:** The Supervisor has the power to take such action, including providing direction to the Manager, as it believes to be in the best interests of Investors.
- 17.8 **Supervisor's duties:** The Supervisor must:
- (a) act honestly in acting as Supervisor; and
 - (b) in exercising its powers and performing its duties as Supervisor:
 - (i) act in the best interests of Investors; and
 - (ii) 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; and
 - (c) do all things it has the power to do to remedy any contravention referred to in clause 17.1(a) (unless it is satisfied that the contravention will not have a material adverse effect on Investors); and
 - (d) subject to any order of the court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution of Investors that is not inconsistent with any enactment, rule of law or the Deed, in relation to:
 - (i) seeking a remedy to a contravention referred to in clause 17.1(a); and
 - (ii) any other matter connected with the Supervisor's functions under clause 17.1.
- 17.9 **Delegates of Supervisor:** The Supervisor may from time to time appoint after consultation with the Manager, a Custodian to hold all or any of the Investments of the Scheme or, as appropriate, a Fund.

17.10 Contracting out of custody: If the Supervisor contracts the holding of the Investments of the Scheme or a Fund to a Custodian under clause 17.9, then the Supervisor:

- (a) must ensure that the contracting out of that function is pursuant to a written agreement between the Supervisor and the Custodian;
- (b) must ensure that the written agreement with the Custodian requires the Custodian to comply with all of the obligations under sections 157 to 159 of the FMCA, and any other duties and requirements in relation to the Scheme Property prescribed by the FMCA and the FMCR from time to time;
- (c) must take all reasonable steps to:
 - (i) ensure that the function is performed by the Custodian, and subject to the same duties and restrictions, as if the Supervisor had performed it directly;
 - (ii) monitor the performance of that function;
 - (iii) ensure that the Custodian does not sub-delegate the function without the prior written consent of the Supervisor; and
 - (iv) ensure that the Custodian remains liable for the performance of that function by any of its sub-delegates; and
- (d) is jointly and severally liable with the Custodian (and any other person who has contracted out the function) for the performance of that function in accordance with clause 17.10(c).

18. BORROWING POWERS

18.1 Borrowing by Supervisor: Subject to clauses 18.2 to 18.4 and the provisions of the Relevant Law, the Supervisor has the power to and, if so directed by the Manager, shall:

- (a) borrow or raise money from any Person (including an Investor); or
- (b) enter into any form of credit facility or other accommodation or sell discount and deal with bills of exchange, promissory notes and other negotiable instruments; or
- (c) charge the Investments or any of them as security for any money borrowed or raised.

18.2 Limits on borrowing: The aggregate of the money borrowed or raised and outstanding in respect of a Fund, or secured against the Investments of a Fund, together with the money proposed to be raised or borrowed or secured in respect of that Fund, shall not exceed any amount specified in the Fund's Fund Establishment Deed or SIPO, as the limit on borrowings for such Fund. For the purposes of this clause, borrowings shall include any bill of exchange, promissory note or other negotiable instrument in respect of which the Supervisor is a drawer or acceptor.

18.3 Notice to Supervisor of required borrowing: The Manager shall (subject to the limitations in clause 18.2) determine and give notice to the Supervisor of the amounts and name of the lender and other terms and conditions of all borrowing to be undertaken by the Supervisor and all securities to be entered into. The Supervisor shall, subject to clauses 18.4 and 7.6, enter into and execute all loan and security documents and will take all other steps necessary to give effect to any such borrowing or the giving of such security.

18.4 Supervisor may refuse to borrow under some circumstances: There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clauses 18.1 or 18.3 or to complete any loan or security documents unless the Supervisor is satisfied that:

- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Fund;
- (b) any loan or security or other obligation binding on the Fund does not impose any unreasonable obligation upon the Supervisor in any capacity other than in its capacity as Supervisor; and
- (c) the repayment of all borrowing and the payment of all interest can be met on the relevant due dates.

18.5 Manager to ensure compliance with limits: The Manager will ensure that the entry into of any borrowing arrangement does not breach the limitations in clause 18.2.

19. COVENANTS BY SUPERVISOR AND MANAGER

19.1 Supervisor covenants: The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall be not only for the Manager, but for the Investors jointly and for each of them severally) that:

- (a) the Supervisor has power to act continuously as supervisor and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Supervisor, or which might prevent it from so acting and will continuously act as Supervisor until it is determined otherwise in accordance with the Deed or until it has retired or been removed from office;
- (b) the Supervisor will comply with the Deed and the Relevant Law;
- (c) the Supervisor will ensure that the Scheme Property is held in safe custody;
- (d) the Supervisor will keep the Investments of each Fund that is managed on a segregated basis separate from the Investments of other Funds, and from all other assets, investments and other property vested in or held by the Supervisor;
- (e) except as set out in the Deed, the relevant Fund Establishment Deed, the SIPO or as authorised by the Relevant Law, the Supervisor will not sell, mortgage, charge or otherwise part with the possession of any of the Investments of a Fund;
- (f) the Supervisor will without delay forward to the Manager all notices and other information relevant to the Manager and received by the Supervisor or on the Supervisor's behalf in connection with the Scheme;
- (g) subject to the Deed, the Supervisor shall execute all such proxies, powers of attorney and other instruments, deal with the Investments, and exercise any discretion conferred on the Supervisor under the Deed, to let the Manager or any person nominated by the Manager exercise the powers of management or other rights of the Manager in relation to the Deed;
- (h) subject to clauses 18.1 to 18.5 and the provisions of the Relevant Law, whenever the Manager determines to pay a Withdrawal Amount to an Investor, the Supervisor will if necessary borrow money as directed by the Manager or realise Investments comprised in the relevant Fund as directed by the Manager; and

- (i) the Supervisor will continue to be a Licensed Supervisor.

19.2 **Manager covenants:** The Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall be not only for the Supervisor, but for the Investors jointly and for each of them severally) that the Manager:

- (a) has power to act continuously as Manager and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Manager under the Deed, or which might prevent it from so acting and will act continuously as Manager until wound up in accordance with the Deed or until the Manager has retired or been removed from office;
- (b) will use its best endeavours to ensure that the Scheme is managed in a proper and efficient manner and in accordance with the provisions of the Deed, the Fund Establishment Deeds, the SIPO and the Relevant Law;
- (c) will pay to the Supervisor or the Custodian as soon as practicable, after their receipt by the Manager, any moneys that are received by the Manager in respect of a Fund;
- (d) will without delay forward to the Supervisor all notices and other information relevant to the Supervisor and received by the Manager, or on the Manager's behalf in connection with the Scheme;
- (e) will make available to the Supervisor or to any Custodian or the Auditor, the whole of the records of the Manager kept pursuant or in relation to the Deed whether kept at the Office or elsewhere;
- (f) will, without limiting sections 147 to 151 of the FMCA, give the Supervisor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by the Relevant Law or requested by the Supervisor under the Relevant Law with respect to all matters relating to the Scheme, the Manager and the Investments and the management of each Fund;
- (g) will provide access to such employees and board members of, and service providers to, the Manager as the Supervisor reasonably requires;
- (h) will notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Investors or on the reputation of the Manager or its licence under the FMCA; and
- (i) will at all times be a Licensed Manager.

20. REMOVAL AND RETIREMENT OF MANAGER

20.1 **Removal of Manager:** The Manager shall cease to hold office as Manager if:

- (a) the Manager is removed by a Special Resolution of Investors of the Scheme; or
- (b) the Manager is removed from office by written direction of the Supervisor, after the Supervisor certifies that it is in the best interests of Investors that the Manager be removed; or
- (c) the Manager is substituted by the court under sections 207, 208 or 209 of the FMCA; or
- (d) the Manager has a receiver appointed in relation to itself or a material portion of its assets, or if an order is made or a resolution passed for the liquidation or winding up of the Manager.

- 20.2 **Manager to desist from activities:** If the Manager ceases to hold office, the Manager and any delegate of the Manager, shall immediately desist from all activities related to the Scheme, unless the Supervisor advises the Manager to the contrary.
- 20.3 **Retirement of Manager:** The Manager may retire at any time without assigning 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 20.8.
- 20.4 **Replacement with Related Body Corporate:** The Manager may retire at any time and appoint a Related Body Corporate in its place, subject to such Related Body Corporate entering into the deed referred to in clause 20.8 and subject to such Related Body Corporate being a Licensed Manager whose licence covers the management of the Scheme. Any change in the Manager, or in the terms of the appointment of the Manager, shall be subject to the prior written consent of the Supervisor which shall not be unreasonably withheld.
- 20.5 **Temporary Manager:** Subject to the powers of the FMA under the FMCA, the power of appointing a temporary Manager of a Fund where a vacancy in the office of Manager arises, shall be vested in the Supervisor. Where the Supervisor appoints a temporary Manager, the Supervisor must take all reasonable steps to appoint a permanent Manager that is a Licensed Manager and qualified pursuant to section 127 of the FMCA.
- 20.6 **Investor meeting:** Upon any vacancy occurring in the office of Manager (other than under clause 20.4), the Supervisor shall summon a meeting of the Investors in the Fund and shall take such steps as that meeting, or any subsequent meeting of Investors, as may be required to secure the appointment of any temporary Manager appointed by the Supervisor or some other qualified Licensed Manager. Any meeting of Investors may ratify the appointment of any Manager appointed by the Supervisor or may appoint a new Manager. Any directions given to the Supervisor by any such meeting of Investors shall be given by way of a Special Resolution.
- 20.7 **Investor appointment:** If the Supervisor fails or refuses to appoint a temporary Manager, or if the Investors require a new Manager to be appointed, then the power of appointing a new Manager shall vest in the Investors who shall exercise such power by a Special Resolution. Any change in the Manager, or in the terms of the appointment of the new Manager shall be subject to the prior written consent of the Supervisor that shall not be unreasonably withheld.
- 20.8 **Execution of deed by new Manager:** If a new Manager is appointed, that new Manager must, at the time of appointment, execute a deed that:
- (a) is in a form reasonably required by the Supervisor; and
 - (b) under which the new Manager undertakes to the Supervisor and the Investors to be bound by all the covenants on the part of the Manager under the Deed from the date of the new Manager's appointment.
- 20.9 **Release of retiring Manager:** A retiring Manager shall, from the date on which a new Manager has executed a deed under clause 20.8, be absolved and released from all covenants under the Deed (except in relation to any breach of the Deed by it before that date for which the new Manager is liable under the Deed) and the new Manager shall, from that date:
- (a) exercise all the powers;

- (b) enjoy and exercise all the rights; and
- (c) be subject to all the duties and obligations,

of the Manager under the Deed and the Relevant Law in all respects, as if the new Manager had been originally named as the Manager under the Deed.

20.10 Accrued benefits retained: Nothing in clause 20 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms set out in the Deed prior to the date of or arising on the Manager's retirement or removal from office.

20.11 Use of SuperLife name: No person (other than Smartshares Limited) whether the Supervisor, any Custodian, the Auditor, an Investor, a new or temporary Manager, or any other person shall be deemed to have acquired by reason of an interest in any Fund or Scheme or otherwise, any right to the use of or any goodwill in the word "SuperLife".

20.12 Termination Fee: If and to the extent that the Fund Establishment Deed for a Fund so provides, the Manager shall be entitled to recover from the Fund a Termination Fee upon the termination of its appointment under clause 20. For the avoidance of doubt, this provision shall not apply where the Manager ceases to be Manager under clauses 20.1(d), 20.3 or 20.4.

21. REMOVAL AND RETIREMENT OF SUPERVISOR

21.1 Removal of Supervisor: The Supervisor shall cease to hold office as Supervisor if the Supervisor is removed pursuant to the FMCA.

21.2 Retirement of Supervisor: The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do, subject to the due appointment of a new Supervisor and the transfer to such new Supervisor of all of the Scheme Property.

21.3 Appointment of new Supervisor: The power of appointing a new Supervisor (in place of the Supervisor which has retired or been removed from office) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless that person is a Licensed Supervisor. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution of the Investors.

21.4 Execution of deed by new Supervisor: If a new Supervisor is appointed, that new Supervisor must, at the time of appointment, execute a deed that:

- (a) is in a form reasonably required by the Manager; and
- (b) under which the new Supervisor undertakes to the Manager and the Investors to be bound by all the covenants on the part of the Supervisor under the Deed from the date of the new Supervisor's appointment.

21.5 Release of retiring Supervisor: A Person retiring from the role of Supervisor shall, from the date on which a new Supervisor has executed a deed under clause 21.4, be absolved and released from all covenants under the Deed (except in relation to any breach of the Deed by it before that date for which the new Supervisor is liable under the Deed) and the new Supervisor shall, from that date:

- (a) exercise all the powers;

- (b) enjoy and exercise all the rights; and
- (c) be subject to all the duties and obligations,

of the Supervisor under the Deed and the Relevant Law in all respects, as if the new Supervisor had been originally named as the Supervisor under the Deed.

22. REMUNERATION OF SUPERVISOR AND MANAGER

22.1 Fees: Fees may be payable by Applicants, Investors or from a Fund or Funds to the Manager, the Supervisor or to any other person connected with the Scheme or a Fund in accordance with the Deed and the Fund Establishment Deeds.

22.2 Reimbursement of expenses: All expenses incurred by the Supervisor or the Manager in connection with the Scheme, or in performing their respective obligations under the Deed and the Fund Establishment Deeds, are payable or reimbursable from the Scheme. This includes expenses connected with:

- (a) the formation of a fund, the acquisition, registration, custody, ownership, disposal of or other dealing with Investments of the Fund, including reasonable legal costs, bank charges and stamp duty, valuation fees, search and enquiry fees, brokerage, commission, registration fees, the expenses of any agents or Custodian both within and outside New Zealand, and other outgoings of or in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Investment;
- (b) the fees and expenses of the Auditor;
- (c) all taxes, duties and imposts charged to or payable by the Supervisor or the Manager (whether by any Tax Authority or any other person) in connection with the Scheme, Investors or the Investments or any account whatsoever;
- (d) interest and other expenses relating to borrowings and discounts and acceptance and other fees in respect of bill facilities and security transactions;
- (e) convening and holding any meeting of Investors;
- (f) any solicitor, barrister, valuer, accountant or other person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under the Deed; and
- (g) all other costs or expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under the Deed.

22.3 Apportionment of expenses: If any costs, charges, fees or expenses payable from the Scheme, relate to more than one of the Funds, then such costs, charges, fees or expenses shall be apportioned between each of those Funds on such fair and equitable basis as is determined by the Manager.

22.4 Expenses may be taken account of in Net Asset Value valuation: The Manager may provide for and anticipate the expenses of a Fund when determining the Net Asset Value of that Fund, including, at the Manager's sole discretion, by providing for the expenses at a fixed percentage amount during the Financial Year.

23. PAYMENT OF FEES AND COSTS BY INVESTORS

23.1 Fees and costs: The expenses of the management and administration of the Scheme, (including the administration fees, costs of investing, investment fees and other fees) shall be met:

- (a) by the Investors on such basis of determined by the Manager from time to time and announced to the Investors; and
- (b) where the Investor is part of a group arrangement established by an Entity, by the Entity in whole or in part, as decided by the Entity, and to the extent that they are not met by the Entity shall be met by the Investor on the basis of such rules made from time to time by the Manager and announced to the Investors.

23.2 Changing the basis: The fees and costs and the basis for allocating them or charging them may change, and if there is a change, the Manager shall, as appropriate, notify the Investors of such change.

24. LIABILITIES AND INDEMNITIES

24.1 Supervisor and Manager in representative capacity: The Supervisor and the Manager, in incurring any debts, liabilities or obligations, or in taking or omitting any other action pursuant to the Deed for or in connection with the affairs of the Scheme, are each, and shall each be deemed to be, acting for and on behalf of the Investors and not in their own respective personal capacities.

24.2 No personal liability: Neither the Supervisor nor the Manager 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 the Scheme, and only the Scheme Property shall be available for that purpose.

24.3 Indemnity: If, contrary to the provisions of clauses 24.1 and 24.2, either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Scheme, or any action taken or omitted in connection with the Scheme, then the Supervisor or the Manager (as the case may be), shall be entitled to the fullest extent permitted by the FMCA to indemnify and reimbursement out of the Scheme Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, except to the extent that such expense or liability is caused by the failure of the Supervisor or the Manager (as the case may be) to meet the standard of care required by the Relevant Law.

24.4 Liability for default: The Supervisor and the Manager shall each be liable for any loss arising out of their respective wilful default, fraud or wilful breach of trust, but subject thereto, neither the Supervisor nor the Manager shall be liable to the Scheme or to any Investor as a result of acting as Supervisor or Manager (as the case may be) under the 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 Scheme.

24.5 Limitation on liability: Subject to the FMCA, without prejudice to the generality of clauses 24.1 to 24.4:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager, nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager other than as contemplated in its role as the Supervisor;

- (b) the Manager shall not be responsible for any loss incurred as a result of any act, omission, 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;
- (c) the Supervisor and the Manager 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, reasonably believed by the Supervisor or the Manager (as applicable), to be expert in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision of the Deed any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence of it a document signed on behalf of the Manager by any director or officer of the Manager, or by any other person or persons, authorised by the Manager;
- (e) unless the Deed states otherwise, the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by the Deed have absolute and uncontrolled discretion as to the exercise of them whether in relation to the manner or as to the mode of or time for the exercise;
- (f) nothing in the Deed shall be deemed to prohibit the Supervisor or any Related Body Corporate of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Related Body Corporate of the Manager or any shareholder or officer of the Manager to 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 an Investor 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 the Deed or imposed or implied by law;
- (g) the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by the Scheme or any Fund as a result of any such documents being held by any such person; and
- (h) the Supervisor is entitled to rely on the Manager's assessment of the validity of any signature on any transfer, application or other instrument if such reliance is based on a reasonable belief that the signature is genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement of any other person, be borne by the Scheme unless such loss is attributable to the Supervisor's own negligence or wilful default.

24.6 Apportionment: If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of several Funds, then that expense, cost or liability shall be apportioned amongst those Funds in such manner as the Manager may determine. The Supervisor or the Manager may at any time choose not to seek reimbursement from any Fund for any expense, cost or liability without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

- 24.7 **Indemnity by Manager:** To the maximum extent permitted by the FMCA, the Manager shall indemnify and keep indemnified the Supervisor against all losses suffered and liabilities incurred by the Supervisor:
- (a) through the unauthorised acts, wilful breach of the provisions of the Deed, gross negligence, fraud or dishonesty of the Manager, or its officers or employees (including of the Scheme);
 - (b) as a result of an act or omission by the Supervisor where such act or omission occurs because the Supervisor has followed directions given to it in writing by the Manager pursuant to the provisions of the Deed; or as a result of the Manager exercising its powers under the Deed not to approve any action that the Supervisor notifies the Manager in writing it wishes to take.
- 24.8 **Statutory limitation on exemptions and indemnities:** No provision of this Deed has the effect of exempting the Supervisor or Manager or any director, officer or employee of the Supervisor or the Manager from, or indemnifying the Supervisor or Manager or any such director, officer or employee against, any liability to the extent that doing so would be void under the FMCA or the Relevant Law.
25. **RELATED PARTY TRANSACTIONS**
- 25.1 **Dealings with Related Parties:** Subject to clause 25.2, the Manager (and any investment manager, administration manager, or other person to whom the Manager has contracted out some or all of its functions as a Manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 25.2 **Permitted transactions:** Clause 25.1 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions and the key terms of the transaction or transactions, and either:
- (a) the Manager obtains the Supervisor's consent for the transaction or transactions under clause 25.3; or
 - (b) section 174 of the FMCA applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.
- 25.3 **Restrictions on consent:** The Supervisor must not consent to a transaction or transactions under clause 25.2(a) unless one of the following applies and the Supervisor certifies to that effect:
- (a) the Supervisor considers that the transaction or transactions are in the best interests of the Investors; or
 - (b) the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Investors of the relevant Fund that are affected or potentially affected by the transaction or transactions.
- 25.4 **Certification:** Before entering into a transaction or series of transactions under clause 25.2(b), the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that complies with section 175 of the FMCA signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager.
- 25.5 **No liability to account:** Neither the Supervisor, the Manager nor any Related Party shall be liable to account to the Scheme or any Investor for any profit or loss arising from any transaction entered into in

accordance with clause 25.2 unless the Manager or Supervisor has failed to meet the standard of care required of it by clauses 16.3(b)(iii) or 17.8(b)(ii) as the case may be.

- 25.6 **Supervisor notification:** The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clause 25.2.
- 25.7 **Exceptions:** The acquisition of interests in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 25.4 or clause 25.6.
- 25.8 **Limitation of powers:** The powers contained in clause 25 are subject to clause 7.

26. PARTICIPATING ENTITIES

- 26.1 **Participation deed:** The Manager and an Entity may enter into a participation deed (**Participation Deed**) which shall form part of the Deed that makes the Entity a Participating Entity and that prescribes the conditions on which all or any of the Participating Entity's employees or members may become Investors, including conditions relating to:
- (a) contributions payable by the Participating Entity and the Investors;
 - (b) the vesting of the contributions payable by the Participating Entity or of the Balances of the Accounts of the Investors;
 - (c) the Fund or Funds that will be available to the Investors to invest their Balance;
 - (d) the establishment of sub-Accounts of the Account of the Investors;
 - (e) the establishment of an account referred to as a "Reserve Account", to received unvested Balances and to provide additional benefits to the relevant Investors; and
 - (f) such other matters as the Manager and the Participating Entity consider appropriate, including the manner (and consequences) of terminating the Participating Entity's obligations under the Participation Deed.

27. OBLIGATIONS AND RIGHTS OF INVESTORS

- 27.1 **Deeds binding:** Subject to Relevant Law, the terms set out in the Deed, the relevant Participation Deeds and the relevant Fund Establishment Deeds are binding on the Supervisor, the Manager and each Investor and all Persons claiming through them respectively and as if each Investor had been a party to and had executed those deeds.
- 27.2 **Inspection of Deeds:** A copy of the Deed, the Fund Establishment Deeds and the Participation Deed relevant to the Investor, shall at all times during usual business hours be made available by the Manager at the Office for inspection by the Investor who shall be entitled to receive from the Manager a copy of the Deed, the relevant Fund Establishment Deeds and the relevant Participation Deed, on payment to the Manager of such sum as the Manager may from time to time prescribe, subject to any reasonable restrictions the Manager may impose, provided not less than two hours in each Business Day is allowed for inspection.

28. INSTRUCTIONS

- 28.1 Communication of Relevant Instructions:** Any Investor may give Relevant Instructions by telephone or by any other means including on-line instructions approved by the Manager unless the provisions of the Deed or the relevant Fund Establishment Deed require otherwise.
- 28.2 Identity verification:** Where Relevant Instructions are permitted to be made by telephone or by any other approved means, the Manager may put in place additional procedures designed to ensure verification of identity.
- 28.3 Telephone instructions:** At no time shall the Manager be obliged to act on any instructions given by telephone or any other approved means unless the procedure designed to ensure verification of identity under clause 28.2 has been complied with to the Manager's satisfaction.

29. ACCOUNTS, AUDIT AND REPORTING

Accounts

- 29.1 Accounting records:** The Manager shall keep or cause to be kept such accounting records in relation to the Scheme and each Fund as are required by the FMCA.
- 29.2 Financial Statements:** The Manager shall cause Financial Statements to be prepared, and audited in respect of the Scheme and where appropriate for a Fund in accordance with the Relevant Law.

Auditor

- 29.3 Appointment of Auditor:** The Manager must appoint a licensed auditor or registered audit firm chosen by it, after consultation with the Supervisor, as Auditor of the Scheme and for each Fund managed on a segregated basis. The Manager, in consultation with the Supervisor, must agree upon the services to be performed and reports to be provided by the Auditor, and their scope having regard to requirements under the Relevant Law. The remuneration of the Auditor shall be determined by the Manager.
- 29.4 Removal of Auditor:**
- (a) The Manager may at any time and from time to time, with prior notice to the Supervisor, remove the Auditor.
 - (b) If the Supervisor believes it to be in the best interests of the Scheme or a Fund and/or Investors, and instructs the Manager to remove the Auditor, the Manager must remove the Auditor.
 - (c) The Auditor may retire upon giving the Manager 90 days' notice in writing.
- 29.5 Replacement of Auditor:** Any vacancy in the office of Auditor must be filled by the Manager as soon as reasonably practicable under clause 29.3.
- 29.6 No restriction on other appointments:** The Auditor may also be the auditor of the Manager or the Supervisor, or of a Related Body Corporate of either the Manager or the Supervisor, or of any other managed investment scheme whether of a similar nature to any Fund or otherwise.

Reports

29.7 **Statutory Reports:** The Manager will prepare reports and updates as required by the FMCA and Relevant Law and file or submit these as appropriate and consult with the Supervisor on the content of those reports as required.

29.8 **Manager Reporting to the Supervisor:** The Manager shall provide reports as set out in the Manager Reporting Agreement in such format as are agreed between the Manager and the Supervisor.

30. TAX

30.1 **Payment of Taxation Amounts:** If the Supervisor or Manager, is obliged by law to make payment of any Taxation Amount:

- (a) from any payment to be made to an Investor (including amounts which would be so paid if they were not being applied for a Switch); or
- (b) in respect of an Investor Balance or withdrawal from the Investor's Account (including a withdrawal from an Account arising as a result of a Withdrawal Request or a Request to Switch),

the Supervisor or Manager (as the case may be) shall make payment of such Taxation Amount to the relevant Tax Authority.

30.2 **Application of amounts paid or deducted:** Amounts paid or deducted under clause 30.1 shall be applied in:

- (a) the payment of the Taxation Amount to the Tax Authority; or
- (b) the reimbursement of the Supervisor or Manager for any corresponding amount paid from their own funds;

and any amount remaining following the application of the amounts in this clause shall be paid to the relevant Investor.

30.3 **Tax indemnity:** Without limiting clause 30.1, each Investor shall indemnify the Supervisor or the Manager, as the case may be, in respect of:

- (a) any Taxation Amount paid or payable by the Supervisor or Manager in respect of that Investor, including any shortfall; or
- (b) any liability or loss suffered by the Supervisor or Manager as a consequence of a failure by the Investor and/or another person that has an interest in the Investor's Account to comply with clauses 30.8(f) and/or 30.10,

where the Balance of the Investor's Account is insufficient to meet any such liability of the Supervisor or Manager (whether current or deferred).

30.4 **Adjustment of Fund Interests:** The Supervisor or Manager is authorised to adjust the Fund Interests of Investors, or withdraw, deduct or withhold any amount payable to an Investor, to the extent necessary to account for payments or rebates in respect of any Taxation Amount or other amounts payable or received from time to time, or any other amount that the Investor is required to pay to indemnify the Supervisor or Manager under clause 30.3, as the Supervisor or Manager considers appropriate. Investors shall be deemed to have made a Withdrawal Request in respect of some or all of the Balance concerned.

- 30.5 **Payments deemed made:** On payment or application of the net amount to an Investor (after any withdrawal, deduction or withholding made pursuant to clause 30.4), the full amount payable or available to the relevant Investor shall be deemed to have been duly paid and satisfied. For the avoidance of doubt, notwithstanding any other provisions of the Deed, only the net amount will be available for the benefit of the Investor in the case of a Switch.
- 30.6 **Investment of surplus funds for taxation:** Where a Fund has surplus money awaiting payment of any Taxation Amount, those funds may be deposited with a Bank or invested as determined by the Manager.
- 30.7 **PIE election:** The Manager may elect that the Scheme and/or a Fund be a PIE, or that a Fund cease to be a PIE at its discretion, and may allocate the costs of being a PIE as it considers appropriate. The Manager shall ensure that any Tax that is to be attributed to Investors is attributed on an equitable basis and in accordance with any relevant requirements of the Tax Act, taking into account such matters as the Manager considers appropriate.
- 30.8 **PIE related powers:** Subject to the requirements of the Tax Act, the Manager has the power and discretion for as long as a Fund is a PIE to:
- (a) make any elections as to the method of calculation for allocation or attribution of income or PIE Tax amongst the Fund's Investors as it thinks fit;
 - (b) take all steps necessary to ensure that the relevant Fund is eligible or continues to be eligible as a PIE or otherwise, to comply with the requirements of the Tax Act relevant to PIEs;
 - (c) choose to offset Tax liabilities and Tax credits or losses in respect of a Fund or Funds and/or Investor and make such adjustments as the Manager considers appropriate;
 - (d) allocate any Tax rebate received for Tax credits or Tax losses in respect of Investors or former Investors among the Investors or former Investors in such manner as the Manager at its complete discretion considers appropriate.
 - (e) adjust an Investor's Balance, or withdraw or withhold any amount payable to an Investor to the extent necessary to account for payments or rebates in respect of any Taxation Amount or other amounts payable or receivable from time to time, as the Manager reasonably considers appropriate;
 - (f) request any Investor to provide information to the Manager to let it to determine whether a Fund continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Investor to:
 - (i) provide details of any Account held by any associated person (as defined in subpart YB of the Tax Act) of the Investor (including any associated person for whom Account is held by a PIE Proxy) where the associated person holds 5% or more of the total value of a Fund; and/or
 - (ii) confirm that the Investor either is or is eligible to be in a PIE,and the Investor shall supply such information within 30 days of the request; and
 - (g) exercise or decline to exercise any power or discretion relevant to PIEs granted under any enactment, as the Manager considers appropriate.
- 30.9 **Non Investor information:** Where the Manager becomes aware that any person other than an Investor has a direct or indirect interest in any Fund Interest, the Manager may by notice in writing given to that Person or

Investor require that Person or Investor, within 14 days after receiving the notice, to provide to the Manager a statement in writing setting out in relation to that Person or Investor, the information set out in clause 30.8(f).

30.10 Non-compliance with information request: Where the Manager is satisfied that an Investor or Person has failed to comply with any request made by the Manager pursuant to clauses 30.8(f) or 30.9, the Manager may by notice in writing to the Investor registered as holding the Investor's Account in respect of which the failure relates (**Specified Account**) require the withdrawal of the Balance of the Specified Account or any part thereof within such time as is specified in the notice. Any Investor registered as the holder of the Specified Account shall not be entitled to make any claim upon the Manager or the Supervisor in respect of the withdrawal of the Balance of the Specified Account or in respect of any other matter.

30.11 Transfer powers: For the purposes of giving effect to clause 30.10, the Manager may:

- (a) appoint a person to execute as transferor a transfer or other instrument in respect of any Specified Account from which there is a withdrawal in accordance with the provisions of clause 30.10 and to receive and give a binding discharge in respect of the Withdrawal Amount for the relevant Specified Account; and
- (b) register the transfer or effect the withdrawal.

30.12 Payment to Investor: The Withdrawal Amount less the expenses of any withdrawal made in accordance with the provisions of clause 30.10 (and less any adjustment pursuant to clause 30.4) shall be paid to the Investor whose Balance was withdrawn. The Investor concerned hereby acknowledges and shall not deny or dispute the Manager's rights where amounts are withdrawn in accordance with clause 30.10.

31. TERMINATION OF FUNDS AND WINDING UP SCHEME

31.1 Period of a Fund: Each Fund created under the Deed is to be deemed to have commenced on its Commencement Date and will continue until the date:

- (i) on which the Manager is removed, if the new Manager does not approve the Fund continuing; or
- (ii) the Manager decides the Fund shall terminate.

31.2 Termination of Funds: At any time after the commencement of a Fund, the Manager may notify the Supervisor in writing that such Fund is to be terminated and:

- (a) the Fund will terminate one month after receipt of the notice of termination by the Supervisor (**Terminated Fund**), unless the Manager and the Supervisor reach an agreement that the Fund will not terminate on that date; and
- (b) the Manager must, as soon as is practicable after notifying the Supervisor, give notice to each Investor in that Fund that it has given a notice under clause 31.2(a).

31.3 Distribution of Fund in specie on termination: The Supervisor must:

- (a) If it is directed to do so by the Manager; and
- (b) subject to the right of retention set out in clause 31.7,

distribute the whole or from time to time, part of the Investments of the Terminated Fund to the Investors in that Fund in cash or in specie.

- 31.4 **Value of assets for in specie distribution:** For the purposes of determining how much to distribute to each Investor of the Terminated Fund, the Supervisor will give each asset distributed a value determined in accordance with clause 9.3.
- 31.5 **Distribution of balance of Fund:** The Supervisor must, as directed by the Manager, sell and realise any Investments of the Terminated Fund that are not to be distributed in specie under clause 31.3 as soon as reasonably practicable.
- 31.6 **Withdrawal rights terminate:** From the date that the Manager gives the Supervisor notice that a Fund will terminate, the rights of Investors to withdraw their Fund Interests from the Fund shall cease.
- 31.7 **Retention of amount to cover costs:** The Supervisor shall retain out of any money in its hands relating to the Terminated Fund such amount as the Manager considers necessary or appropriate to meet all costs, charges, expenses, claims and Liabilities (including contingent Liabilities) and Tax, including at the Supervisor's discretion PIE Tax, incurred in connection with the Terminated Fund or arising out of the liquidation of the Terminated Fund, including the Supervisor's fees, the Manager's fees and the fees of any agents, solicitors, bankers, accountants, Auditor or other Persons (including the Manager) whom the Manager or the Supervisor may employ in connection with the winding-up of the Terminated Fund. The Manager and the Supervisor shall be entitled to be indemnified in respect of the foregoing from the Terminated Fund's money or assets retained by the Supervisor.
- 31.8 **Waterfall of distributions:** All money and assets of the Terminated Fund shall be held and applied by the Supervisor as follows:
- (a) first, in payment or retention of all amounts referred to in clause 31.7 above and all payments made by or on behalf of the Supervisor or the Manager and payable from the Terminated Fund and of all remuneration in respect of the Terminated Fund that is payable to the Supervisor and the Manager as set out in the Deed; and
 - (b) secondly, in payment or distribution to the Investors of the Terminated Fund, in proportion to their respective Fund Interest in the Terminated Fund at the time of distribution (subject to clause 31.3).
- 31.9 **Interim distributions:** If in the opinion of the Supervisor it shall be expedient to do so, the Supervisor may make interim payments or distributions on account of the money to be distributed in accordance with clause 31.8.
- 31.10 **Receipts:** Each distribution under clauses 31.3, 31.8 and 31.9 shall only be made if the Manager has received from an Investor in the Terminated Fund such form of receipt and discharge as may be required by the Supervisor.
32. **MEETINGS**
- 32.1 **Calling of meetings by Supervisor or Investors:** The Manager shall summon a meeting of Investors of the Scheme or a Fund, upon the request in writing, of the Supervisor or of Investors holding Balances that have a combined value of no less than 5% of the value of the total Investors' Balances for the Scheme or Fund, as applicable, and who are entitled to vote on the business to be transacted by the meeting.
- 32.2 **Calling of meeting by Manager:** The Manager may at any time convene a meeting of Investors of the Scheme or a Fund, to be held at such place as it may determine and to be run in accordance with such

procedures as the Manager may in its sole discretion determine, subject to the requirements of the Relevant Law.

- 32.3 **Rules of meetings:** All meetings of Investors of the Scheme or a Fund, other than those called by the Manager under clause 32.2, shall be convened and held in accordance with the FMC R.

33. **NOTICES**

- 33.1 **Notices to Investors:** A notice may be given under the Deed to any Investor by leaving it at the Investor's address last entered in the Register, or by sending it addressed to the Investor at the Investor's address last entered in the Register by ordinary prepaid post, or, if that address is outside New Zealand, by airmail prepaid post, or (unless and until notified to the contrary by the Investor) by email.

- 33.2 **Notice by email:** For the avoidance of doubt, notices may with the Investor's consent be given to any Investor by email but the Investor may at any time in writing or by email withdraw that consent.

- 33.3 **Deemed delivery:** Any notice given under the Deed will be deemed to have been given:

- (a) **Delivery:** in the case of personal delivery, when delivered;
- (b) **By post:** if posted or delivered to a document exchange five Business Days after posting or five days after posting if by airmail, if to another country, or by delivery to the document exchange; and
- (c) **By email:** when successfully transmitted to the recipient,

provided that any communication received or deemed to have been received after 5 pm or on a day which is not a Business Day in the place to which it is delivered posted or sent shall be deemed to have been received on the next working day in that place.

- 33.4 **Form of signature:** The signature to any notice to be given by the Manager or the Supervisor may be written or printed or electronically affixed.
- 33.5 **Calculation of notice period:** Subject to the Relevant Law, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be included in the number of days or other period.
- 33.6 **Binding notices:** Every Person, who by operation of law, transfer or other means whatsoever, becomes entitled to any Fund Interest (**Transferee**), shall be bound by every notice which, prior to the Transferee's name and address being entered in the Register in respect of the Fund Interests, has been given to the Person from whom the Transferee derives title to the Fund Interests.
- 33.7 **Notice to registered address:** Any notice or document to an Investor, delivered or sent by post or left at the address last entered in the Register, or emailed pursuant to the provisions of the Deed, will (notwithstanding that the Investor is then deceased and whether or not the Manager has notice of his or her death), be deemed to have been duly given in respect of the Investor's Account, whether held by the Investor solely or jointly with another person or persons, until some other person shall be registered in the Investor's place as the holder or joint holder thereof.
- 33.8 **Notices between Manager and Supervisor:** Any certificate, notice, communication or information required by the Deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager, shall be given in writing or (unless and until notified to the contrary) emailed in pdf format or such other format

agreed between the Manager and the Supervisor from time to time and addressed to the secretary, director or principal officer of the party to whom it is intended to be given at its place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to the Deed) and shall be signed by a duly authorised officer on behalf of the party giving the notice.

34. AMENDMENTS TO THE DEED

- 34.1 Amendments:** Subject to the requirements of the FMCA, the Manager may by deed, and with the consent of the Supervisor given in accordance with the FMCA, vary all or any of the provisions of the Deed including this clause and such changes may have retrospective effect.

35. GENERAL

- 35.1 Electronic payments:** Any money payable by the Supervisor or by the Manager to an Investor under the provisions of the Deed, may be credited to any Bank account nominated by the Investor. The giving by the Manager of encoded payment instructions to the paying Bank will be a good discharge to the Supervisor and to the Manager in respect of any such payment.
- 35.2 Governing law and jurisdiction:** The Deed shall be governed by the law of New Zealand. The courts and tribunals of New Zealand shall have exclusive jurisdiction to hear and determine any claim or matter arising out of or in connection with the Deed.
- 35.3 Unclaimed money:** Subject to any applicable provisions of the Relevant Law (including the Trustee Act 1956), if any payment made to any Investor at its address recorded in the Register or in accordance with the Investor's Relevant Instructions, is returned or otherwise unclaimed, that amount must be held by the Manager on trust for that Investor, and:
- (a) the Manager will not have any obligation to invest that amount or pay interest on it; and
 - (b) that amount will not, unless determined by the Manager otherwise, and for any purposes under the Deed, form part of the relevant Fund.
- 35.4 Counterparts:** The Deed may be executed in two counterpart copies both of which, when taken together, shall constitute one instrument. The parties may execute the Deed by signing either such counterpart copy.
- 35.5 Delivery:** Without limiting any other mode of delivery, the Deed will be delivered by each of the parties to the Deed on the earlier of:
- (a) unconditional physical delivery of an original of the Deed, executed by that party, into the custody of the other party or its solicitors; and
 - (b) unconditional transmission by that party, its solicitors or any other person authorised in writing by that party of a photocopied or scanned copy of an original of the Deed, executed by that party, to the other party or its solicitors.

EXECUTION

Executed as a deed.

**SIGNED by Smartshares Limited as
Manager:**



(i) Director

(ii) Director

**SIGNED on behalf of Public Trust
as Supervisor, by its attorney in the
presence of:**



(iii) Attorney

(iv) Print Name



(v) Witness signature

(vi) Print Name
Elena Sasha Vinton

Manager Client Services

(vii) Occupation
Public Trust, Auckland

(viii) Address

Gerard Joseph Field
Senior Manager Client Services
Auckland

1. 1000
2. 1000
3. 1000
4. 1000
5. 1000
6. 1000
7. 1000
8. 1000
9. 1000
10. 1000

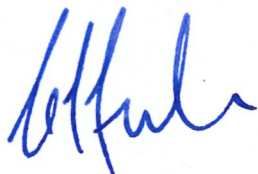
**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Gerard Joseph Field, of Auckland holding the office of Senior Manager, Client Services with Public Trust:

HEREBY CERTIFY:

1. THAT by Deed dated 1 July 2015, a copy of which is deposited in the Land Registry Office at Hamilton, Public Trust appointed me as its attorney on the terms and subject to the conditions set out in the said Deed and the attached document is executed by me under the powers thereby conferred.
2. THAT at the date hereof I hold the position of Senior Manager, Client Services with Public Trust.
3. THAT at the date hereof the transaction or obligation evidenced by the attached document is of a kind I am authorised to enter into by virtue of a delegation from the Board or Chief Executive of Public Trust.
4. THAT at the date hereof I have not received any notice of the revocation of that appointment.

SIGNED at Auckland this 14 day of September 2016



By Gerard Joseph Field