

Deed of Amendment and Restatement

in relation to the Westpac Banking Funds

BT Funds Management (NZ) Limited
(Manager)

Trustees Executors Limited (Trustee)

Deed of Amendment and Restatement

Westpac Banking Funds

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Details

Date 8 April 2022

Parties

Name **BT Funds Management (NZ) Limited** a duly incorporated company having its registered office at Westpac on Takutai Square, 53 Galway Street, Auckland 1010, New Zealand

Short form name **Manager**

Name **Trustees Executors Limited** a duly incorporated company having its registered office at level 6, 10 Customhouse Quay, Wellington 6011, New Zealand

Short form name **Trustee**

Background

- A The Manager and the Trustee are parties to a trust deed dated 20 July 2009, as amended and restated from time to time (the **Trust Deed**), which sets out the terms and conditions on which Units in the unit trusts known as the Westpac Banking Funds, managed by the Manager, will be offered for subscription to members of the public.
- B The Trustee is the Trustee of the Trusts for the benefit of the Unitholders on the terms and conditions set out in this deed.
- C The Manager and the Trustee wish to amend and restate the Trust Deed by replacing the provisions of the Trust Deed with the provisions of this Deed in order to increase the period of notice the Manager must give to the Trustee to terminate the Funds except where a Westpac Termination Event has occurred.
- D Such amendments are made by the Trustee with the concurrence of the Manager, pursuant to its powers under clauses 25.1(c), (d) and (f) of the Trust Deed on the basis that the amendments are:
- (a) of a formal, technical or administrative nature;
 - (b) to ensure that Accounts are treated in the same manner as Westpac bank accounts or, in the case of Term Units, Westpac term deposits or, in the case of Notice Units, any Westpac notice products; and
 - (c) in the opinion of the Trustee not materially prejudicial to Unitholders in any Trust or all Classes affected by the proposed amendments generally.

By this Deed, effective on and from the date of this Deed, the Trust Deed is amended and restated in its entirety by deleting each of its existing clauses and by substituting them with the clauses of this Deed.

Agreed terms

Section 1: Interpretation

1. Defined terms & interpretation

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Account means, at any time in relation to a Unitholder and a Class of Unit, the number of Units and Fractional Units in that Class held by that Unitholder at that time as recorded in the Register and attributed to that particular account.

Account Balance means, in relation to an Account, the number of Units and Fractional Units held by the Unitholder in the Account at the relevant time multiplied by the Unit Price from those Units at the relevant time.

Assets means, in relation to a Trust, all the Property, rights and assets of the Trust.

Attribution Period has the same meaning as in section YA 1 of the Tax Act.

Attributed PIE Income has the same meaning as in section YA 1 of the Tax Act.

Attributed PIE Loss has the same meaning as in section YA 1 of the Tax Act.

Auditor means, in relation to a Trust, the person or persons for the time being appointed as auditor of the Trust pursuant to this deed.

Authorised Investments means, subject to any express limitation in this deed and any supplemental deed, any cash, property, securities, right (contractual or otherwise, including derivatives such as futures and swaps, and contracted rights under underwriting agreements) or interest (equitable or otherwise) including, without limitation, such class or classes of investments agreed in writing between the Trustee and the Manager and notified to Unitholders.

Business Day means a day other than a Saturday or Sunday on which banks are open for general banking business in Auckland and Wellington, New Zealand.

Calculation Period has the same meaning as in section YA 1 of the Tax Act.

Class means:

- (a) in relation to Term Units, Term Units with the same maturity date and agreed rate of return; and
- (b) in relation to Notice Units, Notice Units with the same Notice Period; and
- (c) in the case of all other Units, all Units with the same terms of issue in the relevant Trust.

For the avoidance of doubt, this definition does not affect the definition of Investor Class.

Distributable Amount means, in relation to a Class of Units, the amount per Unit determined by the Manager as being the amount to be distributed to the Unitholders holding Units in that Class (on an individual basis or otherwise) from the relevant Trust (whether from capital or income) in accordance with the terms of issue of the Units in that Class.

Extraordinary Resolution means, in relation to a Trust, a resolution passed at a meeting of Unitholders of that Trust, duly convened and carried by a majority of not less than three fourths of the persons validly voting thereat upon a vote by voice or a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three fourths of the votes validly cast on such poll.

Financial Statements means, in relation to a Trust, the financial statements referred to in Section 8 of this deed, which shall be prepared in accordance with that Section, the *Financial Reporting Act 2013* and any other relevant statutory requirements, as varied, augmented or limited as is considered necessary or desirable by the Manager in consultation with the Auditor.

Financial Year means, in relation to a Trust, a year ending on 31 March (or such other date as the Manager nominates and the Trustee agrees) where the Trust has been and is in existence, or that part of such a year occurring:

- (a) from the commencement of the Trust to the following 31 March; or
- (b) from the 1 April preceding the termination of the Trust to the termination of the Trust.

FMA means the Financial Markets Authority, or any successor entity.

FMCA means the *Financial Markets Conduct Act 2013*.

FMCR means the *Financial Markets Conduct Regulations 2014*.

Fractional Unit means that part of a Unit in respect of which there is contributed or credited by or on behalf of a Unitholder for the Unit, an amount which is less than the Unit Price applicable at the time of issue of the Unit (rounded to no less than two decimal places). A Fractional Unit confers a proportional interest in the relevant Trust but shall not confer any voting rights on the holder.

GST means goods and services tax chargeable in accordance with the *Goods and Services Tax Act 1985*.

Initial Trust means the Westpac Term PIE Fund.

Investment Policies means, in relation to a Trust, the policies in relation to investment and other matters affecting the financial position in respect of the Trust adopted from time to time in accordance with clause 11.

Investor Class has the same meaning as in section YA 1 of the Tax Act.

Investor's Percentage has the same meaning as in section HM 50(4) of the Tax Act.

Liabilities means, in relation to a Trust, all liabilities of the Trust (including liabilities accrued but not yet paid) and any provision which the Manager decides in consultation with the Auditor should be taken into account in determining the liabilities of the Trust, but excluding any amount which results from treating Units as liabilities and, in the case of a Trust which is a PIE, where the Manager, in its complete discretion, considers it appropriate to do so, any Portfolio Entity Tax Liability.

Manager means, in relation to a Trust, the manager of the Trust for the time being appointed under the provisions of this deed.

Minimum Account Balance means, in relation to a Trust or a Class of Units, such amount or amounts as the Manager may determine in respect of the Trust or Class.

Net Asset Value means such amount as is from time to time ascertained by the Manager using the following formula:

$$\text{NAV} = \text{A} - \text{L}$$

where:

- A = the Value of all Assets of the Trust and any other amounts which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the total value of the Trust having due regard to generally accepted accounting practice as defined in the *Financial Reporting Act 1993* or the *Financial Reporting Act 2013* (as applicable) (with any modifications which in the opinion of the Manager, and agreed with the Trustee, should be made in determining such matters) in respect of the financial statements of the Trust and, in the case of a Trust which is a PIE, where the Manager considers it appropriate to do so, excluding any rebates on account of Tax
- L = the Liabilities of the Trust and any other amounts which, in the opinion of the Manager should be included in such aggregate for the purpose of making a fair and reasonable determination of the total net value of the Trust having due regard to generally accepted accounting practice as defined in the *Financial Reporting Act 1993* or the *Financial Reporting Act 2013* (as applicable) (with any modifications which in the opinion of the Manager, and agreed with the Trustee, should be made in determining such matters) in respect of the financial statements of the Trust, but, in the case of a Trust which is a PIE, where the Manager considers it appropriate to do so, excluding any Portfolio Entity Tax Liability

New Trust means any trust established by a supplemental deed under clause 2.10.

Notice Period means the notice period required in accordance with the terms of the Offering Documents for the relevant Trust to be given by a Unitholder prior to the redemption of any Notice Units.

Notice Units means the Units in a New Trust established pursuant to a supplemental deed which states that all Units in such Trust shall be Notice Units.

Offering Document means, in relation to a Trust, the most recent offering document or documents (including any other documents, websites or information incorporated by reference in such documents) relating to Units made available to persons wishing to become Unitholders in that Trust.

Ordinary Resolution means a resolution passed at a meeting duly convened and held in accordance with this deed and carried by a majority of more than one half of the persons validly voting at the meeting upon a vote by voice or show of hands or, if a poll is duly demanded, by a majority consisting of more than one half of the votes validly given on such poll.

PIP Investor means a person who has provided funds to be invested in a Trust on the basis that a Portfolio Investor Proxy will be registered as the holder of the applicable Units on that person's behalf.

Portfolio Class Net Income means the Net Income of an Investor Class calculated under section HM 35 of the Tax Act.

Portfolio Class Net Loss means the Net Loss of an Investor Class calculated under section HM 35 of the Tax Act.

Portfolio Class Taxable Income means the Taxable Income of an Investor Class under section HM 35 of the Tax Act.

Portfolio Class Taxable Loss means the Tax Loss of an Investor Class under section HM 35 of the Tax Act.

Portfolio Entity Tax Liability means, in respect of a Trust, the tax liability for the Trust as calculated under section HM 47 of the Tax Act.

Portfolio Investment Entity or **PIE** means a portfolio investment entity as defined in section YA 1 of the Tax Act.

Portfolio Investor Proxy means a proxy under section HM 33 of the Tax Act.

Prescribed Investor Rate has the same meaning as in section YA 1 of the Tax Act. Property means real or personal property.

Record Date means, in relation to a Trust, a time and date determined by the Manager for the purpose of determining the persons presently entitled to a Distributable Amount in respect of the Trust.

Register means, in relation to a Trust, the register of Unitholders maintained pursuant to clause 5.1.

Registrar means, in relation to a Trust, any person appointed by the Manager pursuant to clause 5.2.

Related Person means, in relation to the Manager or the Trustee, as the case may be:

- (a) a related body corporate of the Manager or the Trustee, where a body corporate is regarded as being related to another body corporate if:
 - (i) the other body is its holding company or subsidiary, or
 - (ii) there is another body corporate to which both bodies are related by virtue of subparagraph (i);
- (b) any director or shareholder of the Manager or the Trustee;
- (c) a grandparent, parent, brother, sister, brother in law, sister in law, child, child's spouse, grandchild or grandchild's spouse of any director of the Manager or the Trustee;
- (d) any person in which a person referred to in paragraph (b) or (c) above has a material financial interest; or

- (e) any managed investment scheme, trust or similar schemes managed by the Manager, or by any related body corporate of the Manager.

Request Time means the time on the date on which the Manager (or any other person appointed by the Manager for such purpose) has received and accepted a Withdrawal Request, any period of notice duly given in the Withdrawal Request has expired and the Units referred to in the Withdrawal Request are eligible for redemption under clause 7, and shall mean a date determined by the Manager where the provisions of this deed provide that a Withdrawal Request is not required to be given.

Required Majority, except where this deed or the law require otherwise, means a simple majority and in all other circumstances means the majority required by this deed or the law as the case may be.

Resolution means, in relation to a Trust or Unitholders in a Class:

- (a) a resolution passed at a meeting of Unitholders of that Trust or in that Class:
- (i) on a show of hands or by voice, by the Required Majority of Unitholders present in person; or
 - (ii) if a poll is duly demanded, by Unitholders holding the Required Majority of Units present and voting on the poll, in person or by proxy; or
- (b) a resolution in writing signed by Unitholders holding the Required Majority of the Units in the Trust or in that Class.

Revenue Account means in relation to a Trust, an account for accounting purposes into which all income earned by the Trust is credited until it is distributed or credited as Units to Unitholders.

Suspension Notice means a notice given by the Manager under clause 7.16.

Tax means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties.

Tax Act means the *Income Tax Act 2007*.

Tax Bank Account means, in relation to a Trust, one or more bank accounts established for that Trust by the Trustee or its nominee and managed by the Manager in accordance with clause 15.7.

Tax Bank Account Balance means, at any time, the balance of the Tax Bank Account at that time after making allowance for any costs incurred in operating the Tax Bank Account.

Tax Credits means a credit against a person's tax liability provided for under Part HM or LS of the Tax Act, or any other similar credit.

Tax File Number has the same meaning as in section YA 1 of the Tax Act.

Term Units means Units in the Initial Trust and the Units in a New Trust established pursuant to a supplemental deed which states that all Units in such Trust shall be Term Units.

Trust means any trust established under this deed or by a supplemental deed under clause 2.10 and Trusts means all such Trusts.

Trustee means, in relation to a Trust, the trustee of the Trust for the time being appointed under the provisions of this deed and, in respect of the Trust Assets, includes any nominee company of the Trustee nominated pursuant to clause 19.6 in which the Assets are vested.

Trusts Act means the *Trusts Act 2019*.

Unit means, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units, an undivided share in the beneficial interest in a Trust as provided in this deed and means, in relation to a Trust, a Unit in that Trust (and, where the context permits, includes a Fractional Unit).

Unit Price means, in relation to a Unit, such amount determined by the Manager as follows:

$$UP = \frac{NAV - RA - TBAB}{N}$$

where:

UP	=	Unit Price
NAV	=	the Net Asset Value of the Trust calculated as at the Business Day on which the Unit Price is being determined;
RA	=	the balance of the Revenue Account of the Trust calculated as at the Business Day on which the Unit Price is being determined (including for the avoidance of doubt all net undistributed income (including all accrued and unrealised income) recorded in the Trust's Revenue Account);
TBAB	=	the Tax Bank Account Balance of the Trust calculated as at the Business Day on which the Unit Price is being determined;
N	=	the aggregate number of Units on issue at the date of calculation of the NAV referred to above.

The total Unit Price for all Units in a transaction shall be rounded to the nearest two decimal places of a Unit in such manner as the Manager shall decide.

Unitholder means, in relation to a Trust, the person registered as the holder of a Unit in that Trust (including persons jointly registered).

Unpaid Amount means any amount of the Unit Price which has not been paid or credited, or which has been reversed and remains unpaid or otherwise not satisfied under this deed, or any amount otherwise not satisfied under this deed, or any amount otherwise due and payable to the Manager or Westpac and which the Manager has decided should be satisfied by the cancellation of Units.

Valuation Date means, in relation to a Trust, a date at which the Manager calculates the Unit Price in respect of the Trust.

Valuation Register means, in relation to a Trust, the valuation register referred to in clause 12.1.

Value means, in relation to an Asset of or to be acquired by a Trust, the value determined in accordance with clause 12.

Valuer means an independent expert appointed by the Manager from a panel of experts approved by the Trustee generally or for the asset class in question.

Westpac means Westpac New Zealand Limited.

Westpac Group means Westpac Banking Corporation, Westpac and all of their related bodies corporate.

Westpac's General Terms and Conditions means at any time the then current General Terms and Conditions issued by Westpac.

Westpac Termination Event means any one or more of the following:

- (a) the Reserve Bank of New Zealand cancels Westpac's registration as a registered bank pursuant to section 77 of the Reserve Bank of New Zealand Act 1989 or any analogous or replacement legislation;
- (b) a statutory manager is appointed in respect of Westpac under section 117 of the Reserve Bank of New Zealand Act 1989, or any analogous or replacement legislation;
- (c) Westpac is unable to pay its debts as they fall due or ceases to carry on the whole or substantially the whole of its business (other than for the purposes of a reconstruction, amalgamation or reorganisation where the Bank is solvent);
- (d) an order is made by any competent Court or an effective resolution is passed or legislation is enacted for the liquidation, winding up or dissolution of Westpac;
- (e) any analogous proceedings are taken in respect of Westpac; or
- (f) any event or proceeding occurs or is taken in respect of Westpac Banking Corporation under Australian law which is analogous to any of the events or proceedings referred to in paragraphs (a) to (e) above.

Withdrawal Amount means the amount of the proceeds of a redemption of Units.

Withdrawal Price means, in relation to a Unit in a Class (other than a Unit issued under clause 2.9), the amount payable to a Unitholder (or any other person in accordance with the

Unitholder's instructions) upon a redemption of a Unit in that Trust, determined under clause 7.6 and, in relation to a Unit issued under clause 2.9, the balance of all assets of the Trust.

Withdrawal Request means any form of instruction (including a written, oral, electronic, or phone instruction) acceptable to the Manager from a Unitholder (or any person appointed by the Unitholder for such purpose), to withdraw an amount from a Trust, which has been received by the Manager (or any other person appointed by the Manager for such purpose) pursuant to clause 7.3, or otherwise a redemption request deemed to have been received by the Manager under the provisions of this deed.

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

Business Days: anything required by this deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;

Clauses: a reference to a clause is to a clause of this deed;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meanings given to them in this deed;

Documents: a reference to any document, including this deed, includes a reference to that document as amended, supplemented (by supplemental deed or otherwise) or replaced from time to time;

Fees: where this deed provides that any fees, expenses, or other amounts shall be payable to the Trustee, the Manager, or any other person, the amounts payable shall be increased by the amounts of any GST or other Tax or duty payable in respect thereof;

Footnotes: the use of footnotes in this deed is intended as a guide and to clarify the background and principle behind the relevant clause or paragraph, and otherwise shall have no effect on the construction of the relevant clause or paragraph;

Generally Accepted Accounting Principles: notwithstanding any provision of this deed, where a matter is to be or may be interpreted pursuant to any provision of this deed by reference to generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards;

Headings: headings appear as a matter of convenience and do not affect the construction of this deed;

Manager's discretion in relation to PIE regime: whenever there is a reference in this deed to the Manager exercising any discretion in decision-making in relation to applying the requirements of the PIE provisions in the Tax Act to a Trust and its Unitholders, this discretion shall be interpreted to include the requirement that the Manager exercise such discretion with a view to ensuring that the Trust is in compliance to the fullest extent possible with the requirements of the PIE regime as they apply at the time of exercising the discretion;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule, does not apply to this deed;

Parties: a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Personal Property Securities Act: the words and expressions financing change statement, financing statement, security interest and verification statement have the same meanings as are given to them in the *Personal Property Securities Act 1999*;

Prescribed frameworks or methodologies: where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, which would be applicable to a Trust and

are inconsistent with this deed, this deed shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of that Trust;

Related Terms: where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to New Zealand time;

Units: notwithstanding any provision of this deed, Units are not to be treated as liabilities for any purpose under this deed;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 Parties bound

This deed binds the Trustee, the Manager, the Unitholders, former Unitholders and any person claiming through any of them as if each of them had been a party to this deed.

1.4 Exchange of currencies

Where, for the purposes of any provision of this deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency (or a non-New Zealand currency equivalent of a sum expressed in New Zealand currency) such sum shall, unless otherwise agreed in writing by the Trustee either generally or in any particular case, be converted to New Zealand currency (or the non-New Zealand currency, as the case may be) on such basis as is from time to time acceptable to the Manager provided always that in so determining a currency equivalent of any Asset or Liability, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency in respect of the Asset or Liability.

1.5 Relationship with the Trusts Act

- (a) Any provision in this deed that is contrary to the Trusts Act will, to the extent permitted by that Act, modify or exclude the relevant Trusts Act provision(s). Where modification or exclusion of the relevant provision of the Trusts Act is not permitted, any provision in this Deed that is contrary to that provision of the Trusts Act is void to the extent that it is contrary.
- (b) For the avoidance of doubt, the duties reflected in sections 33, 35 and 38 of the Trusts Act will not apply to the Trustee or the Manager.

Section 2: Constitution of Trust

2. Constitution of Trust

2.1 Continued appointment of Trustee

The Trustee agrees to continue to act in respect of each Trust as trustee for the Unitholders of that Trust, and to hold the Assets of each Trust as the exclusive property of the Trust in trust solely for the Unitholders of that Trust, upon and subject to the terms and conditions expressed or implied in this deed the FMCA and any other applicable legislation. The Trustee is the supervisor of the Trusts for the purposes of the FMCA.

2.2 Continued appointment of Manager

The Manager continues to act as the appointed manager of the Trusts and agrees to act as the manager upon and subject to the terms and conditions expressed or implied in this deed, the FMCA and any other applicable legislation, and to observe and perform its obligations under this deed, the FMCA and any other applicable legislation.

2.3 Name

The Trusts are known as the "Westpac Banking Funds" and the initial trust established under clause 2.9 is known as the "Westpac Term PIE Fund". Notwithstanding any name given to the Trusts or a Trust pursuant to this deed or any supplemental deed, the Manager may, subject to compliance with all legal and regulatory requirements, change the name of the Trusts or a Trust by written notice to the Trustee. The Manager shall notify Unitholders in a Trust of any change of name of that Trust when next convenient for the Manager.

2.4 Units

The beneficial interests in each Trust shall be divided into Units and Fractional Units. Each Unit shall be of equal value and shall confer an equal interest in the relevant balance of the Trust's assets, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units or Class of Units, and provided that a Fractional Unit shall not confer an interest equal to a Unit in the relevant Trust and shall not be of equal value to a Unit in the relevant Trust, but shall be equal in value to a fraction of the Unit Price that corresponds to its fraction of a Unit. No Unit shall confer any interest in any particular part of a Trust or in any Asset.

2.5 Rights of PIP Investors

A PIP Investor shall have the same rights, benefits and entitlements as if the PIP Investor were the registered holder of the Units held by the Portfolio Investor Proxy on behalf of the PIP Investor, except that:

- (a) the Portfolio Investor Proxy shall be deemed to hold such rights, benefits and entitlements on behalf of the PIP Investor; and
- (b) the Portfolio Investor Proxy is the only person able to exercise any such rights or entitlements or receive any such benefits.

2.6 Role of Portfolio Investor Proxy

Notwithstanding anything else in this deed:

- (a) the Portfolio Investor Proxy must comply, in respect of a Trust, with the obligations imposed on Portfolio Investor Proxies under section HM 33 of the Tax Act;
- (b) to the extent permitted by law none of the Trust, the Manager or the Trustee shall have any obligation or liability of any nature:
 - (i) for PIE or other tax in respect of income allocated to the Portfolio Investor Proxy; or
 - (ii) for any matter for which the Portfolio Investor Proxy is responsible under paragraph (a) above; and
- (c) neither the Manager nor the Trustee shall have any liability or obligation to PIP Investors or the Portfolio Investor Proxy in connection with the Portfolio Investor Proxy's failure to comply with, or any action or inaction of the Portfolio Investor Proxy in respect of, its obligations under paragraph (a) above.

2.7 Rights not attaching to Units

Subject to the Unitholders' rights created by this deed, the FMCA and any other applicable legislation, no Unitholder shall be entitled to:

- (a) Acquire particular Assets: require the transfer to him or her of any of the Assets; or
- (b) Question discretions: interfere with or question the exercise or non-exercise by the Trustee or the Manager of the rights, discretions and powers of the Trustee and the Manager in their dealings with a Trust or the Assets or any part thereof; or
- (c) Exercise rights concerning the Assets: by virtue of holding Units, attend meetings whether of shareholders, unitholders or otherwise or vote or take part in or consent to any action concerning any Property or corporation in which a Trust holds an interest.

2.8 Classes of Units

Different Classes of Units may be issued with such rights, terms of issue, obligations and restrictions attaching to the Units of such Classes, as the Manager determines and notifies to the

Trustee. Such issue is subject to, and must be in accordance with, the FMCA and any other applicable legislation.

2.9 Initial settlement

When the Manager (or its nominee) pays \$100 to the Trustee by way of subscription by the Manager (or its nominee) for 100 Units in the Initial Trust, that Trust shall be constituted on the terms contained in this deed and with the Manager (or its nominee) as its initial beneficiary. Such Units will be redeemable for cash after all other Units in the relevant Trust have been redeemed.

2.10 Establishment of New Trusts

The Manager may at any time give notice to the Trustee of its intention to constitute a New Trust. If the Trustee approves the constitution of a New Trust (such approval not to be unreasonably withheld or delayed) the Trustee shall join with the Manager in executing a supplemental deed to this deed which supplemental deed shall:

- (a) contain a provision for the constitution of the New Trust upon the lodgement of a specified sum by way of subscription by the Manager for a specified number of Units in the New Trust;
- (b) specify the name of the New Trust;
- (c) specify any limitation on the Authorised Investments of the New Trust;
- (d) specify the date of commencement of the New Trust;
- (e) make any amendment to this deed in respect of the New Trust approved by the Trustee.

2.11 Separation of Trusts

The Trustee will hold the Assets of a Trust on trust solely for those persons who are Unitholders in that Trust in accordance with the terms and conditions of this deed. The Trustee and the Manager will at all times treat a Trust as a separate and distinct trust fund with its separate property and liabilities governed by the terms and conditions of this deed. All investments made with the funds of a Trust shall be held by the Trustee as the exclusive property of that Trust and such investments shall be held exclusively for the benefit of that Trust and no Unitholder in one Trust shall have any claim on any other Trust. The constitution of a new Trust shall not in any way vary or affect a Trust then constituted nor give rise to any resettlement of a Trust then constituted.

Section 3: Issue of Units

3. Offer of Units

3.1 Offer of Units

The Manager may from time to time do either or both of the following:

- (a) invite applications from any person or persons to subscribe for or purchase Units; or
- (b) offer Units to any person or persons for subscription or purchase;

in either case in compliance with all applicable requirements of the FMCA and any other applicable legislation, for the Unit Price and on the terms and conditions contained in this deed and such other terms and conditions (not being inconsistent with this deed) as are determined by the Manager from time to time.

3.2 Manager may refuse application

The Manager may in its absolute discretion accept or refuse an application for Units in whole or in part without reason, and may limit the size of any Trust or Class in its discretion.

3.3 Minimum Account Balance

Without limiting clause 3.2, the Manager may refuse any application for Units in a Trust which would result in an Account Balance less than a Minimum Account Balance in respect of that Trust or Class of Units.

3.4 Portfolio Investment Entity

Without limiting clause 3.2, the Manager may refuse any application for Units in a Trust where to do otherwise would threaten or cause the Trust to become ineligible as a PIE.

4. Issue of Units

4.1 Manager's power to issue

- (a) Manager's discretion: the Manager may issue Units at any time, to any person, and in any number it thinks fit.
- (b) Issue of Units ranking equally with existing Units: the Manager may issue Units in a Trust ranking equally with all existing Units of the same Class. Any such issue will not be treated as an action affecting the rights attached to the existing Units and the Manager need not first offer those Units to existing Unitholders.

4.2 Fractional Units

The Manager may issue Fractional Units (rounded to no less than two decimal places in such manner as the Manager may decide) where the amount contributed by or on behalf of a Unitholder is less than the Unit Price applicable at the time of issue of a Unit.

4.3 Price of a Unit

- (a) Each Unit shall be issued for the Unit Price calculated by the Manager prevailing at the time the Units are issued. Such price shall be paid to the Manager on behalf of the Trust or may be credited where amounts are credited in the form of Units pursuant to this deed.
- (b) Payment for Units shall be in cash, electronic transfer or telephone transfer.

4.4 Brokerage/commission

The Manager may, in its absolute discretion, pay, as an expense of a Trust, brokerage and/or commission on the issue of Units at a rate set by the Manager, from time to time.

4.5 Issue date

Units are taken to be issued when:

- (a) the Manager accepts the application for those Units; or
- (b) the consideration against which Units are to be issued is transferred or credited to the Trustee,

whichever happens later. Units issued against consideration paid other than in cleared funds are void if the money is not subsequently cleared.

Section 4: Register, and unit holding and account adjustments

5. Register

5.1 Register to be maintained

The Manager shall keep and maintain or cause to be kept and maintained in respect of each Trust an up-to-date register of the Accounts of all Unitholders. The Register may comprise a printout of information kept by computer or other equipment, so long as a printout is available to the Trustee from time to time.

5.2 Appointment of Registrar

The Manager may appoint a registrar to maintain a Register at the expense of the relevant Trust.

5.3 Content of Register

There shall be entered in the Register for each Trust:

- (a) the names and addresses of the Unitholders of that Trust;
- (b) the number of Units of each Class (which may be expressed as the value of the Unitholder's Units at the Manager's discretion);

- (c) the date on which the name of every person was entered in the Register as a Unitholder; and
- (d) any other particulars that the Manager or the Trustee may consider desirable to include or are required by law.

5.4 Tax Information

The following information shall also be kept by the Registrar in respect of any period where the Trust is a PIE:

- (a) the Tax File Number and Prescribed Investor Rate of the Unitholders of that Trust; and
- (b) such details as the Manager considers are necessary or desirable for that Trust to comply with, and to enable the Manager to administer that Trust in accordance with, all relevant PIE requirements under the Tax Act or the *Tax Administration Act 1994*.

5.5 Audit of Register

The Manager shall cause each Register to be audited annually by the Auditor.

5.6 Register deemed to be accurate

The Trustee and the Manager (provided in the case of the Manager that the Manager has exercised reasonable care in appointing a Registrar):

- (a) shall be entitled to rely absolutely on a Register as being correct; and
- (b) shall not be required to enquire into the authenticity of a Register; and
- (c) shall not incur any liability or responsibility on account of any mistake in a Register.

5.7 Unitholders to notify changes

Any change of name or address, Tax File Number or Prescribed Investor Rate of any Unitholder shall be notified by the Unitholder in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

5.8 Closure of Register

The Manager may from time to time close a Register for such period or periods as the Manager may determine, provided that a Register shall not be closed for a period exceeding 30 days in aggregate in each year.

5.9 No equities to be entered upon a Register

Neither the Manager nor the Trustee shall be bound to see to the performance of any trust (express implied or constructive) or of any security interest, charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Unitholder, and accordingly no notice of any trust, security interest, charge, pledge or equity shall be entered upon a Register.

5.10 Inspection by Trustee and Manager

The Trustee and the Manager may inspect a Register at any time.

5.11 Joint Unitholders

Unless otherwise agreed in writing between the Manager or Westpac and the joint Unitholders, where two or more persons are registered as the Unitholders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- (a) Joint and several liability: the joint Unitholders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (b) Survivor of joint holders: on the death of any one of such joint Unitholders, the survivor or survivors of them shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;

- (c) Transacting the Account: any one of such joint Unitholders may give instructions in relation to the Unitholders' joint Account or their Units, which instruction shall bind all such Unitholders;
- (d) Receipts: any one of such joint Unitholders may give effectual receipts for any distribution payable to such joint Unitholders;
- (e) First holder on Register: only the person whose name stands first in the Register as one of the joint Unitholders shall be entitled to receive notices from the Manager or Trustee, and any notice given to such person shall be deemed notice to all the joint Unitholders;
- (f) Voting rights: at any meeting of Unitholders any one of such joint Unitholders may vote, either personally, or by duly appointed and authorised representative, or any attorney or proxy, in respect of such Unit as if he or she were solely entitled thereto, provided that if more than one of such joint Unitholders is present personally, or by duly authorised representative, or attorney or proxy, then (both on a poll and on a show of hands) such one of those joint Unitholders so present whose name stands first in the Register in respect of the Unit shall alone be entitled to vote as a Unitholder of the Unit; and
- (g) Prescribed Investor Rate: For the purposes of calculating the relevant Trust's Portfolio Entity Tax Liability and attributing such liability to Unitholders and for all other purposes relating to the application of the Tax Act to the Trust as a PIE, the Manager may in its complete discretion either treat the Unitholders as separate Unitholders (in equal shares), or treat the joint Unitholders as a single Unitholder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Unitholders or, subject to the Tax Act, such other rate as the Manager thinks fit in its complete discretion.

6. Adjustment to Unitholdings and Accounts

6.1 Sale by Manager of Units where less than a Minimum Account Balance

The Manager may close an Account and sell or direct the Trustee to compulsorily redeem the Units of any Unitholder whose Account Balance is less than the Minimum Account Balance prescribed in respect of a Trust from time to time. Any such disposition shall be conducted as follows:

- (a) Notice: the Unitholder shall be notified of the disposition of the Units, to the extent required by the terms of issue;
- (b) Transfer or redemption: the Manager may cause the Units to be transferred to applicants for Units or redeemed in accordance with clause 7.1;
- (c) Proceeds: promptly after the sale or redemption, the Manager shall transfer to the Unitholder the proceeds of the sale or redemption after deduction of any amount due under this deed, including any reasonable expenses of conducting the sale or effecting redemption.

The Manager and the Trustee shall have no liability for loss on any sale or redemption made pursuant to this clause 6.1.

6.2 Consolidation or subdivision of Units

The Manager may at any time, without prior notice, cause the Units of a Trust in existence at the date of that notice to be consolidated or subdivided. For such purpose, the Manager may specify:

- (a) the Units affected by such consolidation or subdivision;
- (b) the date on which such consolidation or subdivision is to take place (the **Operative Date**); and
- (c) the ratio which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision (the **Ratio**).

6.3 Effect of consolidation or subdivision

As from the Operative Date, each Unitholder shall be deemed to hold a number of Units equivalent to the number held by him or her before the Operative Date multiplied or divided (as

the case may be) by the Ratio. For this purpose, at the option of the Manager in each case, fractions may be dealt with by rounding upwards or downwards to the nearest two decimal places.

6.4 Account Adjustments and Terms

All provisions of Westpac's General Terms and Conditions shall apply to the Accounts (and Units in them) as if they were bank accounts denominated in New Zealand dollars operated by Westpac (with such modifications as are necessary to give effect to the intentions of Westpac's General Terms and Conditions in the different circumstances of the Accounts), including without limitation:

- (a) all rights of Westpac in respect of a Westpac bank account are available to Westpac, the Manager and the Trustee in respect of the Accounts (with such modifications as are necessary to give effect to the intentions of Westpac's General Terms and Conditions in the different circumstances of the Accounts, to the extent the PIE eligibility criteria permits);
- (b) all obligations or restrictions on operation of a Westpac bank account shall apply to Unitholders when operating an Account (with such modifications as are necessary to give effect to the intentions of Westpac's General Terms and Conditions in the different circumstances of the Accounts, to the extent the PIE eligibility criteria permits);
- (c) Unitholders shall be liable to Westpac, the Manager and the Trustee for any amounts for which they would have been liable had the Account been a bank account in New Zealand dollars held with Westpac (other than liabilities for withholding tax), except that all such liabilities shall be met by cancelling Units in accordance with this deed with a Withdrawal Price equal to the amount which would have been due. Where there are insufficient Units for such purpose, the balance of the liability after cancellation of all Units in the Account shall be an amount due from the Unitholder to the relevant party;
- (d) all limitations on Westpac's liability in Westpac's General Terms and Conditions shall apply to Westpac, the Manager and Trustee in relation to the Accounts (provided that the Trustee's liability shall be further limited to the value of the Assets of the relevant Trust held by the Trustee from time to time);
- (e) if a Unitholder's Account is closed in accordance with Westpac's Terms and Conditions, all Units in that Account shall be redeemed;
- (f) a suspension of a Unitholder's Account under Westpac's Terms and Conditions shall suspend all redemptions of Units in that Account by the Unitholder until the suspension is lifted under Westpac's Terms and Conditions, provided that invoking such right of suspension does not cause disclosure to be required under Part 3 of the FMCA;
- (g) without limiting any other provisions of this deed or Westpac's General Terms and Conditions, each Unitholder waives their right to receive a verification statement in respect of any financing statement or financing change statement relating to any security interest created under this deed or Westpac's General Terms and Conditions;
- (h) each Unitholder and the Manager shall, to the extent permitted by law and in respect of each security interest created under this deed and Westpac's General Terms and Conditions, contract out of:
 - (i) sections 114(1)(a), 133 and 134 of the *Personal Property Securities Act 1999*; and
 - (ii) the Unitholder's rights to (and the Unitholder waives its rights to) receive a statement of account under section 116 of the *Personal Property Securities Act 1999*;
 - (iii) where the Trustee, the Manager, or Westpac Group has any rights in addition to, or existing separately from, those in the *Personal Property Securities Act 1999*, those rights will continue to apply and are not limited or excluded (or otherwise adversely affected) by any right provided by this deed, Westpac's General Terms and Conditions, any other document or by law; and
- (i) "Westpac", "we", "us" or "our" in Westpac's General Terms and Conditions include the Manager and the Trustee.

Section 5: Redemption, transfer and transmission of Units

7. Redemption of Units

7.1 Procedure and applicable provisions

The Manager shall cause the redemption of Units in accordance with clauses 7.2 to 7.16.

7.2 Account Balance less than a Minimum Account Balance

Where the Manager receives a Withdrawal Request, the Manager may in its sole discretion:

- (a) Refuse to act: unless the Withdrawal Request relates to all the Units in a Class held by a requesting Unitholder, refuse to cause to be redeemed the Units to which the Withdrawal Request relates in any case where the redemption is of Units which would lead to an Account Balance less than a Minimum Account Balance for the relevant Class if it was processed; and
- (b) Redeem all Units: if the number of Units in a Class held by the requesting Unitholder (after excluding the number of Units to which the Withdrawal Request relates) would constitute an Account Balance less than a Minimum Account Balance for the relevant Class, cause to be redeemed the balance of Units in that Class held by that Unitholder as if the request relates to all the Units in that Class held by that Unitholder.

7.3 Permitted redemptions to be exercised by notice to Manager

Where a Unitholder wishes to withdraw an amount from a Trust, the Unitholder shall give the Manager, or any other person appointed by the Manager for such purpose, a Withdrawal Request (in such form and with such minimum notice period (if any) as may be required under the terms of issue of the Units or as acceptable to the Manager from time-to-time) specifying the relevant Account from which the withdrawal is to be made and the amount of the proceeds which the Unitholder wishes to receive from the redemption. A Withdrawal Request shall be irrevocable unless the Manager, or any other person appointed by the Manager for such purpose, agrees otherwise.

7.4 Obligation to redeem

Subject to clauses 7.17 and 7.18, the Manager shall, within a reasonable time on or following the Request Time, cause the value (or number) of Units held by the Unitholder referred to in the Withdrawal Request to be redeemed by the Trustee out of the Assets of the relevant Trust.

7.5 Amount payable

Subject to clause 7.6, upon the redemption of a Unit, the amount payable to the Unitholder shall be the Withdrawal Price of the Unit.

7.6 Withdrawal Price

The Withdrawal Price of a Unit of a Trust shall be the Unit Price calculated by the Manager prevailing at the Request Time. On demand for withdrawal of a Unit, the Manager may pay less than the Unit Price in full because of any default or impairment of debt securities of Westpac in which the relevant Trust invests.

7.7 Order

Unless the Manager decides otherwise, the first Units issued to a Unitholder in the Class of Units subject to the Withdrawal Request are the first redeemed.

7.8 Delay if consideration not otherwise received

Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not cause redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

7.9 Manager to effect redemptions

Subject to clause 7.16, the Manager shall, on behalf of the Trustee, take all steps necessary to effect the redemption of the Units specified in a Withdrawal Request on behalf of the Trustee.

7.10 Cancellation of Units

Where Units are redeemed, upon payment of the Withdrawal Price to the Unitholder, the number of Units so redeemed shall be cancelled as at the date of redemption and such Units shall not thereafter be reissued, but this shall not restrict the rights of the Manager to create additional and/or to issue further Units in the relevant Trust.

7.11 Manager shall redeem Units

The Manager shall redeem Units of a Unitholder and apply the proceeds to meet any liability of the Unitholder to Westpac, if so requested by Westpac.

7.12 Entry on Register

On redemption of Units, the Manager shall cause an appropriate entry to be made in the relevant Register in respect of the number of Units which have been redeemed and on redemption shall produce to the Trustee such evidence of payment as shall from time to time be required by the Trustee.

7.13 Transfer of Assets

The Manager may request the Trustee to transfer Assets of a Trust to a Unitholder in that Trust, or with the Trustee's consent to hold such Assets on trust solely for such a Unitholder on such terms as the Trustee requires, rather than pay cash on the redemption of Units. These Assets must be of equal value to the Withdrawal Price less any deductions permitted by this deed.

7.14 Payment in cash

For any proceeds of redemption paid in cash to the Unitholder or as directed by the Unitholder or any person authorised by the Unitholder for that purpose (subject to any deductions permitted under the provisions of this deed), any form of payment shall constitute valid payment and shall discharge the Manager and the Trustee from any further payment obligation.

7.15 Payment other than in cash

For proceeds of redemption paid by transferring Assets (subject to any deductions permitted under the provisions of this deed), payment by transferring such Assets into the name of or to the order of the Unitholder shall constitute valid payment and shall discharge the Manager and the Trustee from any further payment obligation.

7.16 Suspension of repayment

- (a) Notwithstanding the foregoing, if the Manager determines in good faith and in its sole discretion that it is in the interests of Unitholders generally for the Trustee to suspend the redemption of Units of Unitholders in that Trust, or such redemption would threaten that Trust's eligibility for PIE status, then the Manager may give notice to Unitholders in that Trust whose Withdrawal Requests have not been processed, suspending such Unitholders' redemptions. A Suspension Notice shall have the effect of suspending the processing of all Withdrawal Requests from all such Unitholders effective from the time the decision to suspend is made until the Manager gives to the affected Unitholders notice to the effect that the Suspension Notice is cancelled.
- (b) Where a Suspension Notice has been given to Unitholders in a relevant Trust pursuant to this clause 7.16(a) and not cancelled within 14 days of such Suspension Notice, the Manager shall notify all Unitholders in the relevant Trust of the giving of such Suspension Notice. Where a Suspension Notice has not been cancelled within six months after the last notice to Unitholders has been given pursuant to this clause 7.16(b), the Manager shall promptly notify all Unitholders in the relevant Trust of the continuance of such Suspension Notice's effect and convene a meeting of Unitholders to consider the termination of the relevant Trust.
- (c) Where the operation of Withdrawal Requests are suspended pursuant to this clause 7.16, the Withdrawal Price payable to the Unitholders, in respect of any Request Time within the period of suspension, shall be determined as if the Request Time were the last day of the period of suspension, provided any applicable Notice Period has been served for any Notice Units.

7.17 No withdrawal prior to term expiry for Term Units

Notwithstanding clauses 7.1 to 7.10 and 7.12 to 7.15, the Manager is not required to cause the redemption of Term Units before the date set for the redemption of such Term Units in accordance with their offer terms when such Term Units are applied for. The Manager may, in its absolute discretion, redeem Term Units before the date set for their redemption on such terms as the Manager thinks fit.

7.18 No withdrawal prior to Notice Period expiry for Notice Units

Notwithstanding clauses 7.1 to 7.10, 7.12 to 7.15, the Manager is not required to cause the redemption of Notice Units before the expiry of the relevant Notice Period.

The Manager may, in its absolute discretion, redeem Notice Units before the expiry of such Notice Period on such terms as the Manager thinks fit.

8. Transfer of Units

8.1 Instrument of transfer

Subject to any contrary provisions of this deed as may be applicable, any Unitholder may transfer all or any of the Units held by him or her by providing an instrument of transfer to the Manager. An instrument of transfer shall be in writing in such form and execution satisfactory to the Manager, and shall comply with any applicable legislation and any other reasonable requirements as the Trustee or the Manager may from time to time prescribe.

8.2 Registration of transfer

The instrument of transfer shall be delivered to the Manager or, if the Manager has appointed a registrar, the Registrar for registration. Subject to clause 8.3, the Manager will promptly cause the transfer to be registered in the relevant Register, provided that in the case of Notice Units that are subject to a Withdrawal Request, the Notice Period in respect of such Withdrawal Request shall continue notwithstanding the registration of the transfer.

8.3 Manager may decline to register transfers

The Manager may decline to register any transfer in the following circumstances:

- (a) Non-compliance: where the provisions of clauses 8.1 and 8.2 or any applicable statutory provisions have not been complied with; or
- (b) Minimum Account Balance: if registration of the transfer would result in an Account Balance less than a Minimum Account Balance standing in the name of the transferee or transferor; or
- (c) Portfolio Investment Entity: if registration of the transfer would result in the Trust becoming ineligible as a PIE, or would operate to threaten any such eligibility; or
- (d) Unpaid amounts: if there are unpaid amounts owing from the transferor of the Units to the Trustee, Westpac or the Manager; or
- (e) Liability to Westpac: where Westpac has requested the Manager to redeem Units and apply the proceeds to meet a liability of the Unitholder to Westpac pursuant to clause 7.11.

8.4 Manager to return unregistered transfers

All instruments of transfer which are registered may be retained by the Manager but any instrument of transfer which the Manager declines to register shall be returned promptly to the person lodging the same.

8.5 Suspension of registration

Subject to any relevant legal requirements, registration of transfers may be suspended at such times and for such period or periods (not exceeding in the whole 30 days in any year) as the Manager may from time to time determine.

8.6 Transfers where the Trust is a PIE

If the Manager receives an instrument of transfer for Units held by a Unitholder in a Trust which is a PIE, the Manager may adjust a Unitholder's Units in accordance with clause 16.9(r), and may

elect to effect the transfer either by registering a transfer of Units from the transferor to the transferee or by:

- (a) cancelling the number of Units sought to be transferred (less any Units cancelled pursuant to clause 16.9(r)) without any payment to the Unitholder; and
- (b) issuing to the person named as transferee in the instrument of transfer such number of Units as are cancelled pursuant to paragraph (a) above, treating the transferee as having satisfied payment of the Unit Price by the cancellation of the Units referred to in paragraph (a) above.

9. Transmission of units

9.1 Persons recognised by the Manager

The executors or administrators of a deceased Unitholder (not being one of several joint Unitholders) and in the case of the death of one or more of several joint Unitholders the survivor or survivors of such joint Unitholders shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unitholder or Unitholders.

9.2 Claimants to prove entitlement

Any person becoming entitled to any Units in consequence of the death or bankruptcy of any Unitholder may, upon producing such evidence as the Manager shall think sufficient to establish that person's entitlement to such Units, be registered as the Unitholder of such Units or, subject to the provisions as to transfer contained in clauses 8.1 to 8.6, may transfer such Units.

9.3 Entitlement on transfer or transmission of Units

Upon the registration of any transfer or transmission of Units from any person, the benefit of the Units (including the rights to any bonus units or income) shall be deemed to be transferred to the Unitholder into whose name the Units shall be registered.

Section 6: Forfeiture

10. Forfeiture

10.1 Forfeiture of Units

If a Unitholder fails to pay any Unpaid Amount, the Manager may, at any time during such time as the Unpaid Amount remains unpaid, cancel (forfeit) Units with a Withdrawal Price of up to the Unpaid Amount and credit such Unpaid Amount with the Withdrawal Price of the cancelled Units.

10.2 Effect of forfeiture

Any forfeitures shall include any entitlement to income accrued in respect of the forfeited Unit and not paid or credited before the forfeiture.

10.3 Remaining liability of Unitholder

A Unitholder all of whose Units have been forfeited shall cease to be a Unitholder from the date when all such Units are forfeited but, to the extent such Unpaid Amounts have not been satisfied by the process described in this clause 10, remains liable to pay the balance of the Unpaid Amount, the Manager's charges in respect of the forfeiture together with interest at a rate (determined by the Manager), such interest to be calculated and accrue on the daily balance, and shall be due and payable, from the date of forfeiture.

Section 7: Investments and valuations

11. Investment

11.1 Investment procedure

The Assets of a Trust shall from time to time be invested by the Manager in Authorised Investments, provided that:

- (a) the investments satisfy the Investment Policies of the relevant Trust; and

- (b) if the Trust is a PIE, the Assets of the Trust are invested as far as practically possible so the Trust continues to be eligible as a PIE.

This clause 11.1 expressly modifies sections 30 and 58 of the Trusts Act.

11.2 Investment Policy

The Investment Policies of a Trust shall be the investment policies described in the then current Offering Document for that Trust. The Manager shall provide written notice to the Unitholders of any changes to the investment policies, in the manner, within the timeframe, and to the extent considered necessary (having regard to the changes being made), in each case as agreed with the Trustee from time to time.

11.3 Trustee's role

Subject to its duties as trustee (including, without limitation, the duty in clause 11.4 or prescribed in any applicable legislation), the Trustee must give effect to the Manager's directions in relation to the investment of the Assets. The Trustee must not acquire or dispose of any Asset except as directed by the Manager until the Trust terminates.

11.4 Trustee's duty not to acquire or dispose of property

The Trustee shall not act on any direction of the Manager to acquire any property for a Trust or dispose of any property of a Trust if, in the Trustee's opinion conveyed in writing to the Manager, the proposed acquisition or disposal is manifestly not in the interests of the Unitholders; and the Trustee shall not be liable to the Unitholders or to the Manager for so refusing to act on any direction of the Manager.

11.5 Manager's power of investment

Subject to any applicable legislation, clause 11.4 and to this clause 11.5 (and in the case of a PIE, the requirements prescribed by the Tax Act), the Manager shall have absolute and uncontrolled discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets from time to time.

11.6 Interested party transactions

Notwithstanding any other provision of this deed:

- (a) **Sale to Related Party:** no sale or disposal of any material Assets shall be made by the Manager to the Manager or any Related Person of the Manager unless the Trustee is satisfied the sale or disposal is on normal commercial terms, or terms as favourable to the relevant Trust as normal commercial terms, and in accordance with the Investment Policies; and
- (b) **Purchase from Related Party:** no purchase or acquisition of any material Assets shall be made by the Manager from the Manager or any Related Person of the Manager unless the Trustee is satisfied the purchase or acquisition is on normal commercial terms, or terms as favourable to the relevant Trust as normal commercial terms, and in accordance with the Investment Policies; and
- (c) **Manager's certificate:** the Trustee shall not be required to consider any transaction described in clauses 11.6(a) and (b) until such time as the Manager has certified to the Trustee that in the Manager's opinion the transaction is on normal commercial terms, or terms as favourable to the relevant Trust as normal commercial terms, and in accordance with the Investment Policies. It shall be the responsibility of the Manager to advise the Trustee before such transaction that any such sale, disposal, purchase or acquisition involves the Manager or any Related Person of the Manager; and
- (d) For the avoidance of doubt, this clause shall not apply to any deposit made by the Manager with Westpac for a Trust nor any bank accounts held with Westpac. The Manager shall be authorised to hold money in non-interest bearing bank accounts with Westpac.

11.7 Costs

All costs, Taxes, legal fees and other fees, disbursements and expenses incurred by the Trustee or the Manager in connection with the investigation of, negotiation for and acquisition of any Asset

by a Trust, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Asset of a Trust shall be payable by the Trustee or Manager, as appropriate. The Trustee or Manager is entitled to be indemnified for those amounts to the extent permitted under clause 22.1 of this Deed by, or to pay those amounts out of the Assets of, the relevant Trust.

11.8 Investment record

The Manager shall keep a record of all investments of each Trust, and any other information that the Trustee and the Manager regard as desirable in respect of the investments comprising the Trust. The record shall be available for inspection by the Trustee without charge at any time on any Business Day, The Manager will provide a copy of the investment record to the Trustee on request.

11.9 Voting rights of investment

- (a) **Manager to decide:** subject to the provisions of this deed, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Trustee shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.
- (b) **No liability:** subject to the provisions of this deed, neither the Manager, the Trustee, nor any holder of any proxy or power of attorney referred to in clause 11.9(a) shall be liable or responsible for any vote cast or not cast.

12. Valuations

12.1 Valuation Register

The Manager may maintain a Valuation Register for each Trust in which the Manager shall record the Value determined in accordance with this clause 12 of all Assets which are for the time being included in that Trust.

12.2 Periodic valuations of Assets

- (a) **Manager may value:** the Manager may value all or any of the Assets at any time or times on any day, including at the end of any day.
- (b) **Trustee may require valuation:** if the Trustee so requires, the Manager will have any Asset valued in accordance with clause 12.3.
- (c) **Manager shall value on particular days:** the Manager shall value each Asset on any day on which the Withdrawal Price is calculated pursuant to clause 7.6, or on which the Unit Price is determined under clause 4.3, or at such times or within such other period as the Trustee and the Manager shall from time to time agree in respect of that Asset.

12.3 Basis for valuation

Subject to clause 12.5 and any applicable legislation, the Value of each Asset shall be:

- (a) **Unlisted debt securities:** in the case of debt securities, other than listed debt securities or cash, at any of (at the Manager's discretion) the principal amount (subject to any bad debt provision made against it by the Manager), or such other valuation methodology as the Manager and the Trustee shall agree;
- (b) **Cash:** in the case of cash, its face value;
- (c) **Listed securities:** in the case of securities listed on any stock exchange, the last sale price of the securities on that stock exchange at the time of valuation;
- (d) **Derivative contract:** in the case of a derivative contract, the fair value of such contract; or
- (e) **Other Authorised Investments:** in the case of any other Authorised Investment, the amount agreed upon between the Manager and the Trustee as the estimated value after taking account of the most recent sales, valuations, and other information that the Manager and the Trustee consider to be appropriate or, failing such agreement, the market value determined by a Valuer.

12.4 Value to be ascertained of Units

The Manager may ascertain the Unit Price of a Trust at any time on any day it chooses, and shall ascertain the Unit Price for each Trust at least once every 12 months.

12.5 Manager's decision is final

Subject to clause 12.6, the Unit Price for a Trust ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Trustee and any applicant or subscriber for, or purchaser of Units, and all Unitholders.

12.6 Valuation on a consistent basis

The Manager shall ascertain the Unit Price of a Trust and the Value of the Assets on a consistently applied basis accepted as being appropriate by the Trustee. The Manager shall however be entitled at any time or times to alter that basis and the application, provided the Manager first obtains the written consent of the Trustee to the alterations proposed by the Manager.

Section 8: Financial statements and the auditor

13. Records and financial statements

13.1 Records

The Manager shall keep such accounting records as correctly record and explain the transactions and the financial position of each Trust. The Trustee shall from time to time upon request furnish the Manager with any information necessary for this purpose. The Manager shall keep at its registered office or such other place approved by the Trustee, proper books of account that will enable the Financial Statements of each Trust to be prepared following the end of each Financial Year and conveniently and properly audited in accordance with this deed and the FMCA.

13.2 Annual Financial Statements to be available to Trustee and Unitholders

When the Financial Statements have been prepared and audited, the Manager shall forward a copy of such Financial Statements promptly to the Trustee and, where required by legislation, to every Unitholder of that Trust for the time being.

13.3 Manager's report

The Manager shall, in respect of each month during the currency of each Trust, furnish to the Trustee a report in respect of that Trust by the last Business Day of the following month, in a form to be agreed between the Manager and the Trustee, which sets out in detail the performance of that Trust for that month in meeting its objectives as set out in this deed and the Investment Policies.

13.4 Manager's certificate

Within two months of the last day of each financial quarter of each Trust, the Manager shall furnish to the Trustee a certificate in relation to that Trust which must:

- (a) be signed on behalf of the Manager by an authorised signatory on behalf of the directors of the Manager (or, if the Manager has only one director, by that director);
- (b) state, in relation to each Trust, to the best of the directors' knowledge and belief after having made all reasonable enquiry:
 - (i) whether or not any circumstances which affect the Trust have occurred which materially and adversely affect the interests of the Unitholders and if so particulars of those circumstances;
 - (ii) whether or not all amounts due and payable to the Unitholders (whether by way of redemption or otherwise) have been paid;
 - (iii) whether or not the relevant Register has been duly maintained in accordance with this deed;
 - (iv) whether or not the Manager has duly observed and performed its obligations under this deed;

- (v) whether or not there has been any deviation in the accounting method or method of valuation of Assets or Liabilities of the relevant Trust;
- (vi) whether or not any material contingent liabilities have been incurred by the relevant Trust and, if so, the amount thereof, and whether or not any contingent liability has matured or is likely to mature within the succeeding 12 months which will materially affect the relevant Trust;
- (vii) whether any circumstance has arisen which render adherence to the existing method of valuation of any part of the Assets or Liabilities of the relevant Trust misleading or inappropriate and, if so, particulars thereof;
- (viii) whether or not the directors of the Manager consider:
 - (A) that their Investment Policies are currently appropriate and have been adhered to at all times, and
 - (B) the Assets of the relevant Trust at all times have been invested in accordance with other representations contained in the Offering Documents;
- (ix) as at the quarterly or other date to which the certificate relates:
 - (A) the Unit Price; and
 - (B) the number of Units on issue, of the relevant Trust;
- (x) whether or not all moneys intended for the relevant Trust have been paid into the relevant bank account and no such moneys have been applied in any other way;
- (xi) whether or not:
 - (A) all moneys paid out of the relevant bank account have been paid for Authorised Investments or for fees or expenses authorised by this deed and in no other way;
 - (B) all moneys paid out of the relevant bank account for Authorised Investments are held in accordance with the provisions of this deed or, if not, their absence is accounted for; and
 - (C) all Assets are vested in the name of the Trustee or its nominee;
- (xii) whether or not all fees have been calculated in accordance with the provisions of this deed;
- (xiii) whether or not all calculations of the Distributable Amounts of the Unitholders and the valuation of the Units have been carried out in accordance with the provisions of this deed;
- (xiv) whether or not all Distributable Amounts due to Unitholders have been paid to or for their credit or credited as Units to their Accounts;
- (xv) whether or not proper accounting standards and internal control procedures have been maintained and whether or not there have been any significant departures from such standards and procedures and if so particulars of those circumstances;
- (xvi) whether or not appropriate control procedures are in place for the operation of any account held in the name of the Trustee (or its nominee). These accounts are reconciled and reviewed on a daily basis and, if there are any outstanding items, details will be provided;
- (xvii) whether or not procedures are in place to ensure compliance with the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*; and
- (xviii) if a Trust is a PIE:
 - (A) the Manager has taken all reasonable steps to comply fully with the Tax Act during the period and that the Trust's Portfolio Entity Tax Liability has been paid by the due date;

- (B) the Trust has met the PIE eligibility requirements (applicable to the Trust) for the period, and that reasonable measures were in place to monitor and manage any potential breaches of the PIE eligibility criteria; and
 - (C) the Manager has taken all reasonable steps to allocate income, expenses, losses, Tax Credits and tax refunds to Unitholders, calculate Tax, and adjust Unitholders' interests in accordance with the Tax Act; and
- (c) the Trustee and the Manager may, by agreement in writing, vary the content of the certificate required in this clause 13.4.

13.5 Audit

The Manager shall ensure that the Financial Statements prepared for the Trust are audited and reported on by the Auditor, and that a copy of the Auditor's report is forwarded with the relevant Financial Statements when they are forwarded to the Trustee and every Unitholder of the Trust for the time being pursuant to clause 13.2.

13.6 Auditor's Direct Report

The Manager will furnish (or cause to be furnished directly by the Auditor) to the Trustee a certificate prepared by the Auditor covering that Financial Year stating:

- (a) whether or not in the performance of its duties as Auditor it has become aware of any matter which in its opinion is relevant to the exercise or performance of the powers or duties conferred or imposed upon the Manager or the Trustee by the FMCA, any other applicable legislation, by this deed or in any Investment Policy or similar agreements entered into by the Manager and the Trustee in relation to this deed, or the Offering Documents (copies of which have been provided to the Auditor) or by law and if so, giving particulars thereof;
- (b) whether or not its audit has disclosed any breach of this deed or any matter whether related to the this deed or any other matter (and if so particulars thereof) calling in its opinion for further investigation by the Trustee in the interest of the Unitholders;
- (c) that it has perused the certificates given by the Manager pursuant to clause 13.4 of this deed for the Financial Year just ended and, so far as matters which it has observed in the performance of its duties as Auditor are concerned, whether or not the statements made in such certificates are in the Auditor's opinion, correct, fair and reasonable, as the context may require;
- (d) whether or not the Manager has duly maintained each Register in accordance with this deed;
- (e) whether or not the method of valuation of the Assets or Liabilities for each Trust has been in accordance with this deed;
- (f) whether or not from normal audit tests it has conducted, it is satisfied that all redemptions or requests under Withdrawal Requests have been correctly processed and paid to Unitholders;
- (g) whether or not in the Auditor's opinion:
 - (i) proper accounting records have been kept for each Trust as far as it appears from the Auditor's examination of those records; and
 - (ii) the Financial Statements for the Financial Year just ended:
 - (A) comply with generally accepted accounting practice in New Zealand; and
 - (B) give a true and fair view of the financial position of the Trust as at the date of those financial statements and the Trust's financial performance and cash flows for the period ended on that date.

14. The Auditor

14.1 Appointment

As soon as practicable after the date of execution of this deed, the Manager shall appoint an auditor or auditors for each Trust, who shall be a chartered accountant or firm of chartered

accountants. Upon the appointment of the auditor or auditors, the Manager shall notify the Trustee of their appointment, and shall provide to the Trustee their contact details. The Manager shall comply with all applicable legislation in relation to the appointment of the auditor, including any provisions implied into this deed by the FMCA or the FMCR.¹

14.2 Auditor may act for others

The Auditor may also be auditor of the Trustee, the Manager, or any other trust whether of a similar nature to all or any of the Trusts or otherwise but may not be an officer or employee (or the partner of an officer or employee) of the Manager or of the Trustee.

14.3 Auditor's remuneration

The remuneration of the Auditor shall be fixed by the Manager, and may be paid out of the relevant Trust.

14.4 Retirement or removal of auditor

The Auditor may at any time be removed from office by the Manager or by an Extraordinary Resolution of Unitholders. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.

14.5 Vacancy in office of Auditor

Any vacancy in the office of Auditor occurring under clause 14.4 shall be filled by the Manager appointing an auditor qualified for appointment in terms of clause 14.1. Upon the appointment of the auditor, the Manager shall notify the Trustee of their appointment, and shall provide to the Trustee their contact details.

14.6 Information to Auditor

The Trustee and the Manager shall give to the Auditor of a Trust such information as the Auditor reasonably requires for the performance of its duties with respect to the Trust.

Section 9: Interest allocations and tax

15. Interest allocations and tax

15.1 Operation of Revenue Account

The Manager shall allocate all interest and other income accruing to a Trust to the Trust's Revenue Account. The Unit Price for Units credited to Unitholders' Accounts on account of income received by the Trust pursuant to clause 15.2 or amounts otherwise paid to, or at the direction of, the relevant Unitholder or deposited into another of the Unitholder's Accounts in accordance with the Unitholder's instructions pursuant to clause 15.2, shall be deducted from the Revenue Account. No income shall be recognised or deduction made to or from the Revenue Account for changes in the value of Units which results from treating Units as Liabilities under Generally Accepted Accounting Principles.

15.2 Entitlements to Distributable Amounts

Unless otherwise agreed by the Manager and the Trustee, and subject to the terms of issue, restrictions and obligations attaching to any particular Units:

- (a) Calculation of the Distributable Amount: at such times as the Manager shall set for any Units, the Manager shall determine the Distributable Amount in respect of such Units. The Distributable Amount for each Unit shall be determined by allocating on a daily basis for each day in the relevant period the Trust's income accrued on that day to all Units in proportion to their rates of return, and then aggregating the accrued daily entitlements to distributions for such Units over the relevant period. For the purposes of the calculation of Distributable Amounts, all entitlements to distributions accrued (but not yet credited as Units) on previous days shall be ignored, even if such previously accrued distribution entitlements have not yet been paid or credited to the relevant Unitholder.

¹ As at 1 December 2014, regulation 84 of the FMCR (pursuant to section 135(2) of the FMCA) implies clauses 1 to 3 of Schedule 13 into the Trust Deed.

- (b) Distributions Credited as Units: Subject to clause 15.2(c), the Distributable Amounts shall be credited in the form of Units to the relevant Unitholder's Account. Where Distributable Amounts are to be credited in the form of Units:
 - (i) the Manager shall process an application to invest such Distributable Amount on the day the Distributable Amount is to be credited at the then applicable Unit Price; and
 - (ii) the Distributable Amount deducted from the Trust's Revenue Account shall be treated as an Asset of the relevant Trust and shall be treated as the Unit Price for the Units issued.
- (c) Cash Distributions Permitted: Notwithstanding clauses 15.2(a) and 15.2(b), the Manager may pay distributions in cash. Where the Manager elects to pay distributions in cash to Unitholders, or at their direction:
 - (i) the Manager shall pay the Distributable Amount to the relevant Unitholders (or according to their direction) out of the Assets of the Trust;
 - (ii) no Units shall be credited to such Unitholder's Accounts pursuant to clause 15.2(b) on account of such Distributable Amount; and
 - (iii) the Revenue Account shall be reduced by the amount of such distributions.
- (d) Different Rates of Return: the Manager may, in its absolute discretion:
 - (i) set different rates of return for different Classes of Term Units or Notice Units (which, for the avoidance of doubt, may be reduced in accordance with the terms of issue for Term Units or Notice Units (as applicable), where Term Units are redeemed prior to the date set for their redemption or Notice Units are redeemed prior to the expiry of the Notice Period); or
 - (ii) set different rates of return (including, for the avoidance of doubt, various possible rates of return that are conditional on factors set by the Manager in its absolute discretion being met) for Units of the same Class where permitted by the terms of issue of those Units.
- (e) Different Distribution Times on Term Units and Notice Units: the Manager may pay, or credit in the form of Units to an Account of the relevant Unitholder, the Unitholder's accrued entitlements to distributions on Term Units or Notice Units, at different times for different Term Units or different Notice Units, in its absolute discretion. The times for such payment or crediting shall in each case be set when such Term Units or Notice Units are issued, subject to the Manager's right to alter such time in consultation with the relevant Unitholders.
- (f) Bonus Returns: For the avoidance of doubt, where Units confer bonus returns which are derived by satisfying certain conditions set by the Manager in its absolute discretion, for the purposes of the calculations in clause 15.2(a) such bonus returns shall accrue at the end of the period on which the bonuses are earned.
- (g) Different Tax Deductions: the Distributable Amount may differ on a per Unit basis as between Unitholders as a result of the exercise of the Manager's discretion in clause 16.9 to adjust Unitholders' Distributable Amounts to reflect the effect of a Unitholder's Prescribed Investor Rate, Attributed PIE Income, Attributed PIE Loss and all allocated Tax Credits on the Trust's Portfolio Entity Tax Liability.

15.3 Transfers

Entitlements to Distributable Amounts when a transfer or transmission of Units is registered, are credited to the person who would have received the payments had the Units so transferred been deposits with Westpac of a type most similar to the relevant Units.

15.4 Classes

The rights of a Unitholder under this clause 15 are subject to the rights, terms of issue, obligations and restrictions attaching to the Units which they hold.

15.5 Deduction of Tax in respect of a Unitholder

The Trustee or the Manager may deduct from any amounts due or payable to a Unitholder (including, without limitation, from the proceeds of any redemption under clause 16.9 or prior to satisfaction in Units) any Tax paid or payable on behalf of or in respect of that Unitholder. All amounts deducted shall be applied to the Tax Bank Account in reimbursing (or for reimbursement of) the relevant Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Trustee or the Manager for the payment thereof or in the payment of the Tax to the person or authority entitled thereto (as the circumstances may require).

15.6 Indemnity for Tax

Every Unitholder shall indemnify the Trustee and the Manager, to the maximum extent permitted by law, in respect of any Tax paid or payable by the Trustee or the Manager on behalf of or in respect of the Unitholder.

15.7 Tax Bank Account

The Trustee or its nominee may, on or prior to a Trust becoming a PIE, establish one or more non-interest-bearing bank accounts with Westpac for the purpose of the Manager managing taxation obligations in relation to the Trust. While the Trust is a PIE, the Tax Bank Account will be operated as follows:

- (a) any amounts deducted from distributions or other sums on account of Portfolio Entity Tax Liability, any proceeds of Units redeemed under clause 16.9 or otherwise on account of the Portfolio Entity Tax Liability, and any Tax Credits received from Inland Revenue that are allocated to Unitholders, will be paid into or transferred to the Tax Bank Account pending payment to the Inland Revenue or application toward the issue of Units of the relevant Unitholder entitled to that Tax Credit, as applicable;
- (b) payments will be made by the Trustee from the Tax Bank Account, as and when directed by the Manager, for the following purposes only:
 - (i) to Inland Revenue, in respect of the Trust's Portfolio Entity Tax Liability;
 - (ii) to the extent that a particular Unitholder is entitled to a Tax Credit, to the Trustee on behalf of the Trust on account of Units to be credited (at the then current Unit Price) to the Account of that Unitholder or for payment to that Unitholder as the Manager shall decide; and
 - (iii) to the extent of any surplus Tax Bank Account Balance from time to time after making adequate provision for the purposes of paragraphs and (ii) above, to the holder of Units issued pursuant to clause 2.9;
- (c) the Manager will maintain records for the Tax Bank Account for the purpose of being able to determine if required, for each Unitholder, the Portfolio Entity Tax Liability of the Trust in respect of the income allocated to that Unitholder and any Tax Credit or refund of Tax attributable to that Unitholder;
- (d) the Tax Bank Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Unitholder shall have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent expressly provided for in clause 15.7(b).

15.8 Disposals of Units to avoid exceeding investor interest size requirements

If a Trust is a PIE and a Unitholder or a PIP Investor (where a Portfolio Investor Proxy holds Units on behalf of PIP Investors) exceeds the investor interest size requirement prescribed in section HM 15 of the Tax Act (the **Breach**) in respect of a Trust, the Breach shall be remedied within the period determined in accordance with section HM 25 of the Tax Act (the **Remedy Period**) and the Manager may take the following steps to ensure that the Breach is remedied:

- (a) as soon as practicable after the Manager becomes aware of the Breach, the Manager shall give written notice to the relevant Unitholder(s) of the Breach, including details of the number of Units (the **Excess Units**) giving rise to the breach;
- (b) the Unitholder shall have a period consisting of the relevant Remedy Period less 30 days to remedy the Breach, but if the Manager becomes aware of the Breach and determines

that there are 30 days or less to remedy the Breach then the Breach shall be deemed to have not been remedied under this clause 15.8(b);

- (c) if the Breach has not been remedied upon expiry of the period in clause 15.8(b), then the Manager shall (to the extent it is able) within the remaining days in the Remedy Period, in its discretion, sell or redeem (pursuant to clause 7), the amount of the Excess Units in order to remedy the Breach, and:
 - (i) the Manager shall account to the relevant Unitholder for the proceeds of any disposal of the Excess Units after deduction of all expenses arising from such disposal and the Unitholder's Portfolio Entity Tax Liability; and
 - (ii) neither the Manager nor the Trustee is required to maximise the Unit sale price for any disposal and in any event, shall not be liable to any Unitholders for any loss on disposal.

Section 10: The Manager

16. Manager's powers and duties

16.1 General management powers

Subject to the provisions of this deed, the FMCA and any other legislation, the Manager shall manage and administer or cause to be managed or administered each Trust for the benefit of Unitholders in the Trust generally with full and complete power of management. In particular, the Manager shall, subject to the provisions of this deed, take all steps which in its discretion it considers are necessary or desirable in relation to the Trusts, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Assets. Subject to the provisions of this deed and the power vested in the Trustee to settle all transactions of the Trusts set out in clause 19, the Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full and absolute power to do the following in relation to each Trust:

- (a) Decide investments: make all investment decisions in relation to the Trust (in the case of a PIE, in compliance with the requirements of the Tax Act);
- (b) Manage: manage the Assets on a day to day basis;
- (c) Fix terms: determine the terms of all sales, purchases or other dealings with Assets, and all contracts, rights and other matters relating to such Assets or Liabilities;
- (d) Buy and sell: subject to compliance with the Investment Policies, acquire and sell Assets for cash or upon terms;
- (e) Elect or opt out of the Portfolio Investment Entity regime: elect that the PIE regime apply to a Trust, or, where an election has previously been made for a Trust, opt out of the PIE regime;
- (f) Lease: subject to compliance with the Investment Policies, lease all or any part of any Assets on such terms as it thinks fit;
- (g) Vote: attend and vote at meetings of companies or managed investment schemes in which the Trust holds shares or units;
- (h) Lend: subject to compliance with Investment Policies, lend money;
- (i) Borrow: subject to compliance with the Investment Policies, borrow money unsecured or secured subject to the conditions contained in clause 19.4;
- (j) Instruct: subject to compliance with the Investment Policies, instruct persons to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- (k) Takeover: make and carry out any takeover proposal, offer or invitation;
- (l) Guarantee: subject to compliance with the Investment Policies, guarantee the performance of any person in relation to any agreement, contract, undertaking or promise, provided such guarantee is in the reasonable opinion of the Manager in the interests of the Trust;

- (m) Charge Assets: subject to compliance with the Investment Policies, create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any Assets for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (n) Vary rights: initiate or agree to the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
- (o) Reconstruction/amalgamation or merger/ disposal of undertakings: initiate or agree to any one or more of the following:
 - (i) Variation of rights: the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
 - (ii) Reconstruction: the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - (iii) Amalgamation or merger: the amalgamation or merger of any corporation with any other corporation;
 - (iv) Disposal of undertakings: the sale or other disposition of all or any part of the property or undertaking of any corporation;
- (p) Acquire rights from authorities: enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out, exercise and comply with any of the same;
- (q) Equity of redemption: acquire and accept for the Trust any equity of redemption;
- (r) Partnerships or joint ventures: participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- (s) Make agreements: subject to compliance with the Investment Policies, enter into, perform and enforce agreements;
- (t) Underwrite: underwrite offers of securities out of the Assets of the Trust.

16.2 Bank all cash

Cash received by the Manager or the Trustee for the account of a Trust shall be banked to the credit of, and held in, the appropriate bank account of the Trust, pending the investment or other application of the money standing to the credit of that bank account in accordance with and subject to the provisions of this deed. The bank account shall be at all times held in the name of the Trustee or its nominee and operated only by such authorised persons, and in accordance with such directions, as the Trustee and the Manager may agree from time to time.

16.3 Power to delegate

The Manager may delegate to its officers and employees or any of them or to any Related Person of the Manager or any of the officers and employees of such Related Person, or with the prior approval of the Trustee (such approval not to be unreasonably withheld or delayed), delegate to any other person or persons all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this deed and any duties and obligations on its part contained in this deed. Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing the duties and obligations on its part contained in this deed:

- (a) by power of attorney or other authorisation appoint any person to be attorney or agent or sub-delegate of the Manager for such purposes and with such powers, authorities and discretions as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Manager of documents bearing facsimile signatures of the Manager or of the attorney or agent either with or without proper manuscript signatures of its officers thereon provided that the Manager in any such power of attorney or other authorisation and the attorney or agent or sub-delegate by the terms of any such sub-delegation may insert such provisions

for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as they may think fit;

- (b) appoint or employ by writing or otherwise any person to be sub-agent for the Manager as the Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit,

provided that the Manager shall:

- (c) take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
- (d) take all reasonable steps to monitor the performance of those functions; and
- (e) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

16.4 Appoint third party providers

The Manager may appoint and engage:

- (a) any investment manager, administration manager or other third party to perform some or all of its functions as Manager:
- (b) a valuer, barrister, solicitor, accountant, stock and share broker, and any such other person or persons,

as may be necessary, usual or desirable for the purpose of exercising the Manager's powers and performing its obligations under this deed (which person or persons may be a Related Person of the Manager except where prohibited by any applicable legislation), provided that where the appointee is performing functions of the Manager, the Manager shall take all reasonable steps to:

- (c) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
- (d) monitor the performance of those functions.

16.5 Liability where appointing third party providers

Any contracting out under clause 16.4 will not affect the liability of the Manager for the performance of those functions.

16.6 Fees and charges where appointing third party providers

All reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings prop chargeable in respect thereto shall be paid by the Manager subject to its right of reimbursement pursuant to clause 17.2.

16.7 Indemnity where appointing third party providers

To the maximum extent permitted by law and in particular subject to the limitations set out in section 136(2) of the FMCA (as if the Trust was a registered scheme under the FMCA), the Manager may agree to indemnify any investment manager appointed under clause 16.4(a) from and against any and all losses, costs and expenses incurred by them in relation to the performance of their functions in respect of a Trust.

16.8 Duties

The Manager shall:

- (a) **Be proper and efficient:** use reasonable endeavours to ensure that the operation of the Trust is carried on and conducted in a proper and efficient manner;
- (b) **FMCA:** comply with the requirements of sections 143, 144 and 146 of the FMCA as if the Trusts were registered schemes under the FMCA;
- (c) **Use Unit Prices:** except with the written approval of the Trustee, not issue any Unit otherwise than at the Unit Price of that Unit;
- (d) **Give Trustee information:** as the Trustee may from time to time require:
 - (i) make available to the Trustee for inspection all the accounting and other records of the Manager relating to the Trust held by the Manager;

- (ii) provide the Trustee with copies of the Trust's Financial Statements in accordance with clause 13.2;
 - (iii) give to the Trustee such information as the Trustee may reasonably require with respect to the Trust and its Assets;
- (e) **Give Trustee reports:** provide the Trustee (or any other person required by law) with (or procure the provision of) such reports, records and certificates in such form, with such content and at such times as is prescribed by law and, in the case of the Trustee, as the Manager and the Trustee agree in writing from time to time (such agreement not to be unreasonably withheld);
 - (f) **Convene meetings:** convene meetings of Unitholders in accordance with the provisions of Section 13 of this deed;
 - (g) **Payments to Trust:** promptly (and in any case within seven days of receipt) pay all money belonging to the Trust, received by the Manager, into the Trust's bank account;
 - (h) **Meet PIE criteria:** use its reasonable endeavours to ensure that the Assets of the Trust are properly managed and supervised and, if a Trust is a PIE that the Assets of the Trust are such that the Trust is eligible to be a PIE;
 - (i) **Anti-Money Laundering:** take all reasonable steps to comply with the requirements of the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* in relation to each Trust.

16.9 Powers if a PIE

The Manager may elect that a Trust be a PIE, or cease to be a PIE, in its absolute discretion. The Manager shall have the following additional powers and discretions in respect of any Trust which is a PIE:

- (a) To determine, on such basis as the Manager thinks appropriate in its complete discretion, classes of Unitholders by applying the definition of Investor Class in section YA 1 of the Tax Act.
- (b) To determine the Attribution Period and the Calculation Period for the Trust in accordance with sections HM 34 and YA 1 of the Tax Act.
- (c) To determine, on such basis as the Manager thinks appropriate in its complete discretion, the assessable income (for tax purposes) of the Trust for an Attribution Period and to attribute (in such manner and on such basis as the Manager considers appropriate in its complete discretion) such income to each Investor Class for that Attribution Period, for the purposes of section HM 35(2) and (3) of the Tax Act.
- (d) To determine, on such basis as the Manager thinks appropriate in its complete discretion, the deductions incurred in deriving the assessable income allocated to an Investor Class of Unitholders for an Attribution Period, for the purposes of section HM 35(2) and (3) of the Tax Act.
- (e) To determine, on such basis as the Manager thinks appropriate in its complete discretion, the Portfolio Class Net Income or the Portfolio Class Net Loss, as the case may be, for each Investor Class for an Attribution Period for the purposes of section HM 35(2) and (3) of the Tax Act.
- (f) To determine, on such basis as the Manager thinks appropriate in its complete discretion, the Portfolio Class Taxable Income or the Portfolio Class Taxable Loss, as the case may be, for each Investor Class:
 - (i) for an Attribution Period, for the purposes of section HM 35(5) and (6) of the Tax Act; and
 - (ii) for a tax year, for the purposes of section HM 35 of the Tax Act.
- (g) To determine each Unitholder's Investor's Percentage for any period, based on what that Unitholder's proportionate interest in any distribution by the Trust to Unitholders would be in that period, if such a distribution were to be made.

- (h) To determine, on such basis as the Manager thinks appropriate in its complete discretion, the Trust's Portfolio Entity Tax Liability or Tax Credit, as the case may be, for the applicable Calculation Period, for the purposes of section HM 47 of the Tax Act.
- (i) To elect (taking into account such factors as the Manager considers relevant in its complete discretion) whether the Trust determines its Portfolio Entity Tax Liability pursuant to section HM 42 or section HM 43 or section HM 44 of the Tax Act, and to make any elections required to give effect to such determination.
- (j) To retain any amount to which a Unitholder otherwise would be entitled if that amount is required to be paid to the Inland Revenue pursuant to section HM 43(4) of the Tax Act.
- (k) To determine, on such basis as the Manager considers appropriate in its complete discretion, the amounts of any Tax Credits under section LS 1 of the Tax Act available to the Trust by virtue of section HM 47(5) or section HM 55 or section HM 51 of the Tax Act.
- (l) To determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any Tax Credit referred to in paragraph (k) that is attributable to a Unitholder and to make available to the Unitholder the benefit of that Tax Credit in such manner as the Manager considers appropriate in its complete discretion under section HM 48 of the Tax Act.
- (m) To determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any Tax Credits against income tax payable by a Trust that are available to the Trust by virtue of section§ HM 49 to HM 55 and section LS 1 of the Tax Act.
- (n) To determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any Tax Credit referred to in sections HM 49 to HM 55 or section LS 1 of the Tax Act that is available to be allocated to an Attribution Period and attributing (in such manner and on such basis as the Manager considers appropriate in its complete discretion), such Tax Credit to that Attribution Period for the purposes of section LS 2(2) of the Tax Act.
- (o) To determine, on such basis as the Manager considers appropriate in its complete discretion and having regard to the requirements of the Tax Act, the amount of Tax paid or payable by a Trust that is attributable to a Unitholder and to reduce the amount of any distribution otherwise payable to the Unitholder by the amount of such Tax.
- (p) To make any other elections or exercise any options as to the method of calculation, allocation, attribution or payment of Tax as it thinks fit having regard to the interests of Unitholders generally and the requirements of the Tax Act.
- (q) To carry out any other Tax calculations, allocations or attributions required by the Tax Act.
- (r) To adjust a Unitholder's Unit holdings by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the redemption or switch of the Unitholder's Units), having regard to the effect of:
 - (i) the Unitholder's Prescribed Investor Rate; and
 - (ii) the Unitholder's Attributed PIE Income, Attributed PIE Loss and allocated Tax Credits, on the Trust's Portfolio Entity Tax Liability and the amount of any Tax Credits under section LS 1 of the Tax Act.
- (s) To deduct or credit any amount on account of Portfolio Entity Tax Liability from or to any Distributable Amount or Withdrawal Price in respect of a Unitholder or to credit any amount to such Distributable Amount or Withdrawal Price on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption or switch of the Unitholder's Units) having regard to the effect of:
 - (i) the Unitholder's Prescribed Investor Rate; and
 - (ii) the Unitholder's Attributed PIE Income, Attributed PIE Loss and allocated Tax Credits as adjusted for any expenses and any other amount required by the Tax

Act from time to time which the Manager determines it is appropriate to charge on a Unitholder specific basis, on the Trust's Portfolio Entity Tax Liability and the amount of any Tax Credits under section LS 1 of the Tax Act.

- (t) To elect to offset tax liabilities and refunds in respect of more than one Unitholder and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act.
- (u) To allocate the costs associated with being a PIE between Unitholders and Trusts on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion.
- (v) To take all steps as the Manager considers necessary or desirable to ensure the Trust is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs, including (in the Manager's complete discretion):
 - (i) rejecting applications for Units;
 - (ii) treating Units issued to a Unitholder as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Unitholder acknowledges that any Units issued which exceed the investor interest size requirement prescribed in section HM 15 of the Tax Act, shall be deemed to be held by that Unitholder on trust for the Manager and the Manager shall, subject to clause 15.8, have full powers of direction in relation to those Units including when, how and to whom they shall be disposed of;
 - (iii) subject to clause 15.8, redeeming a Unitholder's Units or switching a Unitholder's Units from one Trust to another Trust as if the PIE had received a Withdrawal Request or request to switch to that effect from the relevant Unitholder.
- (w) To require that before accepting an application for Units the applicant provides their Tax File Number, Prescribed Investor Rate, and any other information required by the Tax Act, and that at any time a Unitholder must confirm such details on request from the Manager.
- (x) To disclose any information, including issuing any statements and providing any information to Unitholders as required by the Tax Act or the *Tax Administration Act 1994* and in respect of their Tax position in relation to the Trust, and providing any information (including personal information) to Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Trust's Tax obligations.
- (y) Subject to the paragraph headed "Generally Accepted Accounting Principles" in clause 1.2, to value Tax losses of the Trust for the purpose of determining the Unit Price as the Trustee thinks fit in its complete discretion having regard to sections HM 66 to HM 70 of the Tax Act and to the Trust's stated policies (if any) from time to time.
- (z) To make a distribution to Unitholders prior to the Trust becoming a PIE, of such amount as the Manager thinks desirable in its absolute discretion having regard to the interests of Unitholders generally, and if the Manager thinks desirable in its absolute discretion to reinvest such special distributions on behalf of Unitholders in Units.
- (aa) To take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Trust to and from being a PIE or to administer the Trust as a PIE.

16.10 Fair Dividend Rate Powers

Where the Manager considers it necessary or desirable in the Manager's complete discretion that a Trust should meet the requirements of the expression "fund" in section EX 53(1)(b) of the Tax Act, the Trust shall be treated as having assigned to each Unitholder an interest in a proportion of the net returns from investments of the Trust corresponding to the Unitholder's Unit holding in the Trust.

16.11 Portfolio Investor Proxies

The Manager shall have the power to enter into any contractual or administrative arrangements with a Portfolio Investor Proxy for the purposes of ensuring that:

- (a) the Portfolio Investor Proxy meets its responsibilities under section HM 33(3) of the Tax Act; and
- (b) the application of the PIE Tax regime to the PIP Investors is managed efficiently, on a timely basis and so as to generate accurate outcomes for the PIP Investors with respect to the allocation of income, losses, Tax Credits and rebates to PIP Investors and the payment of Tax on behalf of PIP Investors; and
- (c) the Manager can require the Portfolio Investor Proxy to take such steps as are necessary to ensure that a Trust continues to be eligible to be a PIE.

16.12 Provision of Information where a Trust is a PIE

The Manager may request any Unitholder to provide information to the Manager to enable the Manager to determine whether a Trust continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Unitholder to:

- (a) provide details of Units held by any associated person (as defined in subpart YB of the Tax Act) of the Unitholder (including any associated person for whom Units are held by a Portfolio Investor Proxy) where the associated person holds 5% or more of the Units in a Class; and/or
- (b) confirm that the Unitholder either is or is eligible to be a PIE.

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

17. Fees and expenses – Manager

17.1 Manager's fees

The Manager shall be entitled to receive the fees specified in the Offering Documents for any Trust, and sections 36 and 37 of the Trusts Act are expressly excluded.

Where a fee is incurred in respect of a Unitholder, the Manager shall levy such fee to that Unitholder. Such levied fee shall be met by the redemption of Units of the relevant Unitholder with a Withdrawal Price equal in value to the amount of the levied fee and the proceeds of such redemption shall be paid to the Manager or at its direction (in full satisfaction of such fee). Where there are insufficient Units in a Unitholder's Account to satisfy such fees, the unsatisfied balance of such fees shall be a debt owing to the Manager.

17.2 Expenses

The Manager may pay all reasonable expenses incurred in relation to the management or operation of a Trust from the Assets of that Trust. The Manager may cancel or redeem Units of a Unitholder to reflect the Unitholder's share of any expenses so paid, from time to time in its absolute discretion.

17.3 Waiver of fees

The Manager may at any time and from time to time, in its absolute discretion, waive payment of fees or expenses or reimbursement due to it generally or in relation to any particular Unitholder or potential Unitholder.

18. Removal and retirement of Manager

18.1 Criteria for removal

The Manager shall cease to hold office as Manager of a Trust if:

- (a) Removal: the Manager is removed from office by order of the Court pursuant to any applicable legislation on the application of any entitled persons; or
- (b) Trustee's certificate: the Trustee certifies pursuant to any applicable legislation that it is in the interests of Unitholders that the Manager should cease to hold office; or

- (c) Meeting of Unitholders: Unitholders so direct in accordance with clause 23.31(b); or
- (d) Receivership, voluntary administration or liquidation: the Manager shall have a receiver or voluntary administrator appointed or if an order is made or a resolution passed for the appointment of a liquidator or voluntary administrator of the Manager.

18.2 Manager to cease activities

If the Manager ceases to hold office as manager of a Trust pursuant to clause 18.1, the Manager shall immediately desist from all activities related to that Trust.

18.3 Manager may retire

The Manager may retire in relation to a Trust at any time, without assigning any reason, upon giving 90 days' notice in writing to the Trustee of its intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the relevant Trust pursuant to clause 18.4 and has executed the deed referred to in clause 18.5.

18.4 Trustee to appoint a new or temporary Manager

- (a) Where a Trust does not have a manager, where the law so requires the Trustee shall appoint a new or temporary manager which satisfies any legal requirements for such appointment. Where the Trustee appoints a temporary manager for a Trust, the Trustee must take all reasonable steps to appoint a permanent new manager for that Trust which satisfies any legal requirements for such an appointment.
- (b) A temporary manager has all of the powers and duties of the manager under this deed or applicable legislation.

18.5 Provisions in relation to new manager

A new or temporary manager appointed in relation to a Trust pursuant to clause 18.4 shall forthwith upon such appointment execute a deed in such form as the Trustee may require whereby the new or temporary manager undertakes to the Trustee and the Unitholders of the Trust to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new or temporary manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new or temporary manager had been originally named as a party hereto.

18.6 Manager's entitlements preserved

Nothing in this clause 18 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this deed prior to the date of or arising on the Manager's retirement or removal from office.

18.7 Settlement of amounts owing

The Trustee may settle with the Manager the amount of any sums payable by the Manager to the Trustee or by the Trustee to the Manager and may give to or accept from the Manager a discharge in respect thereof and any such settlement or discharge shall be conclusive and binding.

18.8 Transfer of management to members of Westpac Group

Notwithstanding any other provision of this deed, the Manager may, with consent of the Trustee (such consent not to be unreasonably withheld), transfer its office of manager under this deed to any other member of the Westpac Group. Where such transfer occurs, the Manager, Trustee and new manager shall execute a deed in such form as the Trustee may require whereby the new manager undertakes to the Trustee and the Unitholders of the Trust to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new manager had been originally named as a party hereto.

18.9 Retirement of BT Funds Management (NZ) Limited

Notwithstanding any other provision of, or amendment to, this deed, if BT Funds Management (NZ) Limited ceases for any reason, other than because of a transfer under clause 18.8, to be the Manager of any of the Trusts then (except to the extent that BT Funds Management (NZ) Limited agrees otherwise in writing) the Manager shall give twelve months' irrevocable written notice of the termination of that Trust in accordance with clause 24.1(a).

18.10 Benefit to Westpac Group

It is hereby declared, for the purposes of the *Contract and Commercial Law Act 2017*, that clause 18.9 shall be enforceable by any member of the Westpac Group. However, the benefit extended to members of the Westpac Group is intended to be limited by, and enforceable subject to, the rights of the parties to this deed to vary or discharge benefits or obligations as provided in this deed, without the consent of members of the Westpac Group other than BT Funds Management (NZ) Limited.

Section 11: The Trustee

19. Trustee's powers and duties

19.1 General Trustee's general powers

Subject to the provisions of this deed, the FMCA and any other applicable legislation and the powers, rights and discretions given to the Manager by this deed, the FMCA and any other applicable legislation, the Trustee shall have the rights and powers in respect of each Trust and over and in respect of the Assets which it could exercise if it were the absolute and beneficial owner of such Assets. Notwithstanding the preceding references to the provisions of this deed, the Trustee shall have the power to settle and complete all transactions in respect of the Trusts.

19.2 Limited Investment Policy

The Trustee acknowledges and relies upon the intention of this deed that, unless the Manager in its absolute discretion decides otherwise, the only transactions intended to be entered into on behalf of a Trust are those which are consistent with the Investment Policies, and the Trustee is directed to act in accordance with this intention.

19.3 Limitation on investment duty

Notwithstanding the provisions of the Trusts Act which impose obligations on the Trustee in respect of investments (which it is expressly recorded are not intended by the parties to have application to the Trusts), but to the extent that any provisions in this deed expressly or impliedly impose any obligation on the Trustee in respect of such investments, the Trustee is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets of a Trust irrespective of any belief or opinion or advice that the Manager or the Trustee may hold or receive as to the prospects for the relevant Assets and the possibility of appreciation or depreciation on the value of the Units, to the intent that the benefit to be derived or derivable by Unitholders and the investment risks they bear shall continue to reflect the limited investment policy set out in clause 19.2.

19.4 Power to borrow and give guarantees

- (a) Power to borrow and guarantee: subject to clauses 19.4(b) to 19.4(d), the Trustee shall have the power to, and at the direction of the Manager if the Investment Policies so allow shall, raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of a Trust, and may give any guarantee or undertaking or security in relation to the repayment of money and interest, costs and other charges and expenses upon such terms and conditions in all respects as the Trustee and the Manager may think fit and in particular but without limiting the generality of the terms of this clause by becoming a party to a bill of exchange or by charging or mortgaging all or any of the Assets from time to time constituting the Trust, provided the aggregate total borrowings made by the Trustee together with any amounts guaranteed shall not exceed 20% of the value of the Assets of that Trust.
- (b) Manager to determine if necessary or desirable: all borrowings, raising of money, charging of Assets, guarantees or other similar transactions entered into or undertaken pursuant to

this clause 19.4 in relation to a Trust ("Security Transactions") shall be entered into or made only where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Unitholders or for the purposes of conducting the investment or management or other operation of the Trust pursuant to this deed including the repayment or redemption of any Units in the Trust from time to time and the Trustee or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.

- (c) Notice to Trustee: the Manager shall determine and give notice to the Trustee of the amounts, name of the lender, and other terms and conditions of all borrowing, credit accommodation, or finance to be undertaken by a Trust and all securities to be entered into. The Trustee shall subject to clause 19.4(d) enter into and execute all loan documents, guarantees and securities and will take all other steps necessary to give effect to any such borrowing, credit accommodation, or finance or the giving of such guarantees and securities.
- (d) Trustee's liability limited: there shall be no obligation upon the Trustee to comply with any direction given pursuant to clause 19.4(a) or clause 19.4(c) or to complete any documents, guarantees or securities unless the Trustee is satisfied that the Trustee's liability is restricted to the Assets from time to time constituting the relevant Trust and is permissible under applicable legislation.

19.5 Appointment of advisors

Without in any way affecting the generality of the foregoing, the Trustee in carrying out and performing the duties on its part as owner of the Assets may appoint, engage, employ and contract any Valuer, barrister, solicitor, accountant, stockbroker, and such other person or persons as may be necessary usual or desirable for the purpose of assisting it in exercising its powers and performing its obligations under this deed and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Trustee from the relevant Trust. Any person appointed by the Trustee pursuant to this clause shall be appointed subject to prior consultation with the Manager.

19.6 Nominee

The Trustee shall be entitled in accordance with any applicable legislation to nominate in writing another person in respect of a Trust in which shall be vested the Assets of the Trust. The Trustee shall (without prejudice to its joint and several liability with any such nominated person for the due and faithful performance and observance by the nominated person of all the duties and obligations imposed on the nominated person in relation to the Trust by all applicable legislation) cause any such nominee to comply with all of the covenants and obligations on the part of the Trustee expressed or implied in this deed.

19.7 Trustee duties

The Trustee shall:

- (a) Act continuously: act continuously as Trustee until the Trust is terminated as herein provided or it has retired or been removed as Trustee in the manner herein provided;
- (b) Keep Assets safely: subject to the terms of this deed, use all reasonable endeavours to ensure the Assets are kept safely and shall hold them as trustee for the Unitholders upon the terms of this deed;
- (c) Not dispose of Assets except as directed: except as directed by the Manager, not sell, mortgage, charge or part with possession of (or permit any nominee of the Trustee so to do) any of the Assets;
- (d) Forward notices to Manager: forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets;
- (e) Take legal proceedings as directed: institute, prosecute, defend and compromise all such legal and arbitral proceedings related to its duties and obligations as Trustee, and refer all such matters to arbitration and submit to arbitration, as the Manager may request in writing and in such places and jurisdictions as the Manager may so request;

- (f) Enable Manager to manage: subject to the terms of this deed, execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Trustee under this deed, to enable the Manager or any person nominated by the Manager to exercise the powers of management or other rights of the Manager in relation to this deed;

provided that the Trustee shall be entitled to require, prior to acting in any circumstances where in the Trustee's view it is reasonable to do so, evidence satisfactory to it that it will be indemnified (subject at least to the limits imposed by law) for any costs or expenses incurred as a consequence of so acting and shall not be liable or responsible for any losses arising from so acting (subject at least to the limits imposed by law).

19.8 Trustee's indemnity

Should the Trustee purchase or otherwise acquire or sell or otherwise dispose of any Asset in relation to which there is a liability, the Trustee will have a right of indemnity out of the relevant Trust in respect of any liability associated with such transaction, to the maximum extent permitted by law and in particular subject to the limitations set out in section 136(1)(b) of the FMCA (as if the Trust was a registered scheme under the FMCA).

20. Fees and expenses – Trustee

20.1 Trustee's fees

The Trustee shall be paid by the Manager such fees and reimbursed such expenses on such basis as is agreed in writing between the Trustee and the Manager from time to time. Sections 36 and 37 of the Trusts Act are expressly excluded.

21. Removal and retirement of Trustee

21.1 Removal of Trustee

The Trustee shall cease to hold office as trustee of a Trust if:

- (a) Removal by Manager: the Trustee is removed from office as trustee of the Trust by the Manager in accordance with any applicable legislation: or
- (b) Extraordinary Resolution of Unitholders: Unitholders resolve by Extraordinary Resolution that the Trustee be removed from office as trustee of the Trust: or
- (c) FMA or Court removal: the Financial Markets Authority or any Court removes the Trustee from office as trustee of the Trust in accordance with any applicable legislation: or
- (d) Receivership, voluntary administration or liquidation: the Trustee shall have a receiver or voluntary administrator appointed or if an order is made or a resolution passed for the appointment of a liquidator or voluntary administrator of the Trustee.

21.2 Prohibition on Retirement or Removal

The Trustee shall not be removed or resign as trustee of a Trust pursuant to clause 21.1(a), (b) or (d) or clause 21.4, unless:

- (a) all functions and duties of the position have been performed; or
- (b) another trustee has been validly appointed and accepted the appointment, in the Trustee's place; or
- (c) the Court consents.

21.3 Retirement of Trustee

The Trustee may retire as trustee of a Trust 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 trustee and the transfer to such new trustee of all of the Assets of the relevant Trust.

21.4 Appointment of a new trustee

The power of appointing a new trustee of a Trust (in place of a Trustee which has retired pursuant to clause 21.3 or been removed from office pursuant to clause 21.1) shall be vested in the

Manager. No person shall be appointed as a new trustee unless that person holds a licence under the *Financial Markets Supervisors Act 2011* that covers the Trust.

Section 12: General provisions relating to Trustee and Manager

22. Indemnity and responsibilities

22.1 Indemnity

The Trustee and the Manager shall each be indemnified out of each Trust, to the maximum extent permitted by law (and in particular subject to the limitations set out in section 136(1)(b) of the FMCA as if the Trust was a registered scheme under the FMCA), from and against any and all losses, costs, and expenses incurred by the Trustee or Manager in performing any of their respective duties or exercising any of their respective powers in relation to the Trust pursuant to this deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing relating to the relevant Trust, including all actions in relation to the offer and issue of Units.

22.2 Lien

The Trustee and the Manager shall have a lien on and may use any, or any part of, any Asset of a Trust for the time being in the hands or coming into the hands of the Trustee or the Manager for the indemnity from that Trust referred to in clause 22.1 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets of the Trust under this deed.

22.3 Reliance of Manager and Trustee

Neither the Trustee nor the Manager shall incur any liability in respect of any action taken or thing suffered by the Trustee or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Trustee or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

22.4 Prohibited performance

Neither the Trustee nor the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law or ordinance rule regulation or bylaw made pursuant thereto or of any decree, order or judgment of any competent court, the Trustee or the Manager shall be hindered, prevented or forbidden from so doing or performing.

22.5 Tax payments in good faith

Neither the Trustee nor the Manager shall be liable to account to any Unitholder or otherwise for any payments made by the Trustee or the Manager in good faith to any fiscal authority for Taxes upon the Trust or in respect of Unitholders or with respect to any transaction under this deed notwithstanding that any such payment need not have been made.

22.6 Trustee relying on advice

The Trustee, in relation to this deed, may rely on:

- (a) the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Trustee) (whether obtained by the Manager or the Trustee) and the Trustee shall not be responsible for any loss occasioned by so acting so long as the Trustee has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Trustee shall not be liable for acting thereon although the same may contain some error or may not be authentic;

- (b) a certificate signed by not less than two directors of the Manager on behalf of the Manager,
 - (i) as to any fact or matter prima facie within their knowledge and which the Trustee may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or
 - (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Unitholders or any of them,

as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;
- (c) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed, as conclusive evidence of the facts stated therein, and any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Trustee shall not be liable for acting thereon although the same may contain some error or may not be authentic.

22.7 Manager relying on advice

The Manager may act on the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Trustee) (whether obtained by the Manager or the Trustee) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Manager shall not be liable for acting thereon although the same may contain some error or may not be authentic.

22.8 Communication between Manager and Trustee

Whenever pursuant to any provision of this deed any certificate, notice, instruction or other communication is to be given by the Manager to the Trustee, or the Trustee to the Manager, the Trustee or the Manager, as the case may be, may accept as sufficient evidence thereof a document signed on behalf of the Manager or Trustee by any one of their directors or by any other person or persons duly authorised by the Manager or Trustee or any other form of communication as agreed.

22.9 Discretion of Trustee

The Trustee shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or with gross negligence, by act or omission, the Trustee shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

22.10 Discretion of Manager

The Manager shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or negligently by act or omission, the Manager shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof. The Manager shall have no liability for any loss suffered by a Unitholder on any action taken or adjustment made pursuant to clause 15.8 or clause 16.9.

22.11 No conflicts of interest for Trustee or Manager

Subject to clause 11.6 and any applicable legislation, nothing in this deed or any rule of law shall prevent the Trustee, or any Related Person of the Trustee or any shareholder, director, officer, or employee of the Trustee or its Related Person, or the Manager, or any Related Person of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Person, from:

- (a) subscribing for, purchasing, holding, dealing in, or disposing of Units; or

- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Trustee or Manager (whether in respect of the Trusts or otherwise) or with any Unitholder or any person whatsoever; or
- (c) being interested in any such contract, transaction or otherwise; or
- (d) acting as trustee or manager of any other managed investment scheme; or
- (e) holding any Asset jointly with a Trust;

and none of them shall be in any way liable to account either to any other of them, a Trust, or to the Unitholders or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees) made or derived thereby or in connection therewith.

22.12 Limitation on payments to Unitholders

Except in respect of any fraud, wilful default or gross negligence on the part of the Trustee or the Manager, in no event shall the Trustee or the Manager, as the case may be, be bound to make any payment to Unitholders except out of funds held by it for that purpose under the provisions of this deed.

22.13 Failure to carry out agreement

Subject to the provisions of this deed neither the Trustee nor the Manager will be liable for the failure of any person to carry out any agreement in relation to a Trust.

22.14 Validity of signatures

The Trustee shall be entitled to rely on the Manager as to the validity of any signature (including electronic signatures) on any transfer, form of application or other instrument so long as the Trustee has no reason to believe that such signature is not genuine.

22.15 No dealings with instruments where unpaid charges

The Manager and the Trustee shall not be required to effect any transaction or dealing with any certificate, transfer or other instrument on behalf of or for the benefit or at the request of any Unitholder unless such Unitholder shall first have paid in cash or otherwise provided to the Manager's and the Trustee's satisfaction for all duties, Taxes, governmental charges, brokerage, transfer fees registration fees and other charges (whether similar to the foregoing or not) whether in respect of the certificate, transfer or other instrument or otherwise (in this clause called collectively "duties and charges") which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Trustee shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unitholder and to retain the amount so paid out of any money or Property to which such Unitholder may be or become entitled hereunder. This clause shall not affect the obligations of the Trustee or the Manager elsewhere contained in this deed relating to duties and other expenses in respect of the Assets.

22.16 Legal proceedings by Trustee

After consulting with the Manager, the Trustee may bring legal proceedings:

- (a) To recover money: to obtain or recover any money that is payable to the Trustee or any Assets that are to be vested in the Trustee in accordance with the provisions of this deed;
- (b) For damages: for damages against any person arising out of any loss suffered by any Unitholder or Unitholders which the Trustee or the Manager considers is recoverable; or
- (c) To secure compliance: to secure compliance with the provisions of this deed and the terms of any Offering Document relating to a Trust.

22.17 Resolutions of Unitholders

Neither the Trustee nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Unitholders in respect whereof minutes have been made and signed even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Unitholders.

22.18 Reliance by Manager and Trustee

- (a) No liability for other's fault: the Manager shall not be responsible for any loss arising as a result of any act or omission of the Trustee except to the extent that such loss is caused by the negligence or default of the Manager and the Trustee shall not be responsible for any loss arising as a result of any act or omission of the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Trustee.
- (b) No liability for failure to check: the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Trustee except to the extent that such loss is caused by the negligence or default of the Manager and the Trustee shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Trustee.

22.19 Disclosure of Information

Subject to the terms of this deed, neither the Manager nor the Trustee shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Unitholder confidential, financial or other information made available to it by the other in connection with this deed. Notwithstanding any provision of this deed or the provisions of the *Privacy Act 2020*, the Unitholders authorise the Manager and the Trustee to provide information relevant to a Unitholder to any fiscal authority in connection with Tax as may be deemed necessary by the Manager or the Trustee.

22.20 Limit on Trustee's responsibility

To the maximum extent permitted by law (and in particular subject to the limitations set out in section 136(1)(b) of the FMCA as if the Trust was a registered scheme under the FMCA). The Trustee shall not be personally responsible for any loss or damage resulting from any act, omission, neglect, mistake or default in relation to a Trust.

Section 13: Meetings

23. Meetings of Unitholders

23.1 Manager may convene meetings

The Manager may at any time convene a meeting of Unitholders of a Trust or a Class of a Trust. The meeting shall be convened and conducted in accordance with the applicable requirements of the FMCA, FMCR and any other law, subject (where permitted) to any additions or changes expressly prescribed in this deed.

23.2 Unitholders or Trustee may request convening meetings

On request in writing of the Trustee, or of either one-tenth in number of the Unitholders, or of a Unitholder or Unitholders holding (at the date of the receipt by the Manager of the request) not less than one-tenth of the value of the Units of a Trust then on issue, the Manager shall convene a meeting of Unitholders of that Trust. Any such request shall state the nature of the business to be conducted, and the terms of any resolution to be proposed, at the meeting.

23.3 Content and period of notice

At least fifteen (15) working days' written notice (for any meeting to approve an Extraordinary Resolution) or in other cases at least fourteen (14) days' written notice. In each case specifying the time, date and place of the meeting and the general nature of the business to be transacted and containing such information as the person convening the meeting may think fit shall be given to all Unitholders in the relevant Trust at their last known address and to the Trustee, the Manager, every director and the Auditor of the Manager as appropriate. The notice must meet the requirements of applicable legislation.²

² As at 1 December 2014, see clauses 2 and 3 of Schedule 11 of the FMCR.

23.4 Omission to give notice

The accidental omission to give such notice to or the non-receipt of a notice of meeting by a Unitholder shall not invalidate the meeting.

23.5 Notice of right to appoint proxies

In each notice of meeting there shall appear with reasonable prominence a statement that a Unitholder is entitled to appoint a proxy and that a proxy need not also be a Unitholder.

23.6 Attendance at meetings

The Trustee, the Manager and the Auditor and their duly appointed representatives may attend and address any meeting of Unitholders (including any adjourned meeting).

23.7 Quorum required

No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business.

23.8 Quorum for Ordinary Resolution

The quorum necessary for a meeting at which an Ordinary Resolution only is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least 10% of the number of Units in the relevant Trust or Class on issue at the date of the meeting carrying the right to vote on the business to be transacted by that meeting.

23.9 Quorum for Extraordinary Resolution

The quorum necessary for a meeting at which an Extraordinary Resolution is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least 25% of the number of Units in the relevant Trust or Class on issue at the date of the meeting carrying the right to vote on the business to be transacted by that meeting.

23.10 No quorum

If within thirty minutes from the time appointed for any meeting a quorum is not present the meeting shall:

- (a) Adjournment for Ordinary Resolution: if called for the purpose of passing an Ordinary Resolution, otherwise than pursuant to a request of Unitholders, stand adjourned to the same day in the next week at the same time and the same place;
- (b) Adjournment for Extraordinary Resolution: if called for the purpose of passing an Extraordinary Resolution, otherwise than pursuant to a request of Unitholders, stand adjourned to the day that is 10 working days' after the date appointed for the meeting at the same time and place, or to such other date, time and place as the Trustee may appoint;
- (c) Lapse if called by Unitholders: if called pursuant to a request of Unitholders, be dissolved.

At such an adjourned meeting the Unitholders present in person or by proxy or by attorney (whatever their number and whatever the number of Units held by them) shall form a quorum.

23.11 Chairman's discretion

The chairman of a meeting at which a quorum is present may, with the consent of the Unitholders present and entitled to be at that meeting, adjourn the meeting from time to time and from place to place.

23.12 Chairman

At every meeting of Unitholders a person nominated by the Trustee (who may or may not be a Unitholder) shall preside as chairman.

23.13 By voice or show of hands

Every question submitted to a meeting shall be decided by voice or, if the Chairman thinks necessary or desirable, by a show of hands unless a poll is properly demanded pursuant to clause 23.22.

23.14 No Chairman's casting vote

In the case of an equality of votes the chairman of the meeting shall both on a show of hands and on a poll not have a casting vote in addition to the vote or votes (if any) to which he may be entitled as a Unitholder or as a proxy.

23.15 Voting entitlements

On a vote by voice or show of hands every Unitholder who is present in person or any person who is present and representing a Unitholder as his or her proxy, attorney or representative shall have one vote and on a poll every such Unitholder, proxy, attorney or representative shall have one vote for each Unit carrying the right to vote at that meeting of which he or she is the registered Unitholder or in respect of which he or she has the authority to vote for the registered Unitholder.

23.16 Votes of joint Unitholders

In the case of joint Unitholders of a Unit, the vote of the senior Unitholder who tenders a vote whether in person or by proxy or by attorney shall be accepted to the exclusion of the vote of other joint Unitholders and for this purpose seniority shall be determined by the order in which their names stand in the register.

23.17 Votes of corporations

A corporation being a Unitholder may vote by any officer or representative duly authorised in writing who shall be entitled to speak, demand a poll, vote, act as proxy or attorney and in all other respects exercise the rights of a Unitholder and shall be reckoned as a Unitholder for all purposes.

23.18 Votes of Unitholder by Court Appointed Managers

A Unitholder in respect of whom an order has been made by any court under section 31 of the *Protection of Personal and Property Rights Act 1988* may vote whether on a show of hands or on a poll by his Court appointed manager, and such manager may, on a poll vote by proxy or as attorney, if so authorised by such Court order.

23.19 All votes valid if not challenged at the meeting

No objection shall be raised to the qualification of any voter or vote except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his or her decision shall be final and conclusive.

23.20 Votes by proxy, representative or attorney

On a vote by voice or a show of hands and on a poll, votes may be given either personally or by proxy or by attorney and a proxy, representative or an attorney shall have the same right of audience and to demand a poll as a Unitholder appointing them.

23.21 Chairman's declaration final

At any meeting of Unitholders, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

23.22 Polls

- (a) Who may demand poll: A poll may be demanded by the chairman of the meeting or by at least five Unitholders entitled to vote on the proposed resolution or the holders of five per cent of the Units on issue present in person or by proxy or by attorney entitled to vote on the proposed resolution;
- (b) Timing of demand: A poll may be demanded either before or after any question is put to a show of hands;
- (c) Manner of poll: If at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the chairman of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded;
- (d) Withdrawal of demand: The demand for a poll may be withdrawn; and

- (e) Adjournment: Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

23.23 Instrument of proxy

The instrument appointing a proxy or an attorney shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a corporation under the hand of an officer or attorney so authorised.

23.24 Proxy need not be a Unitholder

Any person may act as a proxy or as an attorney whether or not he or she is a Unitholder.

23.25 Time for Manager to receive instrument

The instrument appointing a proxy or an attorney and the power of attorney or other authority (if any) under which it is signed or a certified copy of such power or authority shall be deposited with the Manager not less than two (2) clear days before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy or attorney (as the case may be) shall not be treated as valid without the approval of the Manager.

23.26 Content of instrument

An instrument appointing a proxy may be in the following form or in any other form which the Manager shall approve:

"I [] of [] being a Unitholder in the [], hereby appoint [] of [] as my proxy to vote for me and on my behalf at the Meeting of Unitholders of the Trust to be held on the [] day of [] and at any adjournment thereof.

I direct this form is to be used *in favour of/against the resolution

Signed at [] by me this [] day of []

*Strike out whichever is not desired."

23.27 Validity of proxy's vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

23.28 Unitholders bound by resolutions

A resolution (whether Ordinary or Extraordinary) passed by the Required Majority at a meeting of Unitholders of a Trust or a Class duly convened and held in accordance with this deed shall be binding upon all the relevant Unitholders in that Trust or a Class, as the case may be, whether present or not present at such meeting and each of the Unitholders and the Trustee and the Manager shall be bound to give effect thereto accordingly.

23.29 Powers exercisable by Extraordinary Resolution of Unitholders

A meeting of Unitholders of a Trust shall have the following powers exercisable by Extraordinary Resolution:

- (a) To sanction alterations of rights: power to sanction a Manager's proposal to alter, release, modify, waive, vary or compromise or approve any arrangement in respect of the rights of Unitholders;
- (b) To amend deed: subject to the proviso to clause 25.1, power to assent to any amendment to the provisions contained in this deed or any deed supplemental thereto in relation to the

- Trust or the conditions attaching to the Units and to authorise the Manager and the Trustee to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
- (c) To sanction default: subject to any applicable legislation, power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Trustee under any of the provisions of this deed;
 - (d) To exonerate Manager or Trustee: subject to any applicable legislation, power to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this deed in relation to the Trust;
 - (e) To appoint Trustee: power to appoint a new trustee in relation to the Trust if a vacancy arises in the office of Trustee and the Manager fails to appoint a new trustee pursuant to clause 21.4;
 - (f) To appoint Manager: power to appoint a new Manager in relation to the Trust if a vacancy arises in the office of Manager and the Trustee fails to appoint a new Manager pursuant to clause 18.4;
 - (g) To sanction exchange or conversion of Units: power to sanction the exchange of Units for, or the conversion of Units in the Trust into, units or notes or interests in any other unit trust managed investment scheme or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Extraordinary Resolution;
 - (h) To remove Auditor: power to remove the Auditor in respect of the Trust pursuant to clause 14.4; and
 - (i) To terminate the Trust: power to terminate the Trust with effect from a date identified in the Extraordinary Resolution.

23.30 Resolutions where more than one Class of Units

Where there is more than one Class of Units in a Trust, a Resolution of Unitholders in relation to any matter affecting the Trust as a whole shall require the approval of all Classes of Units in that Trust by the Required Majority.

23.31 Directions to Trustee

Subject to clause 23.32, a meeting of Unitholders shall have the power to give directions to the Trustee in relation to the interests of those Unitholders so long as:

- (a) Consistent with deed and applicable legislation: such directions are consistent with the provisions of this deed, any applicable legislation and any directions given by the Financial Markets Authority under the *Financial Markets Supervisors Act 2011*; and
- (b) Sufficient majority: the directions are given by a resolution passed by Unitholders present in person or by proxy or by attorney representing 75% of the value of the Units in the Trust represented at that meeting and representing 25% of the value of the Units in the Trust then on issue.

23.32 Actions in respect of directions

- (a) This clause 23.32 shall apply in respect of any direction given in accordance with clause 23.31
- (b) The Trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following that direction; and
- (c) In any case where the Trustee is of the opinion that any direction given conflicts with the Trusts, a direction of the Financial Markets Authority, any applicable legislation or rule of law, or is otherwise objectionable, the Trustee may apply to the High Court for directions on the matter, and the decision and order of the court shall be final, provided that nothing in this clause shall make it necessary to apply to the court for directions.

23.33 Minutes of meetings

Minutes for all resolutions passed and proceedings held at every meeting of Unitholders shall be made by the Manager and duly entered in a book for the relevant Trust to be provided for that purpose by the Manager and any such minute as aforesaid if purporting to be signed by the

chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting (if any) of Unitholders shall be conclusive evidence of the matters therein stated and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings to have been duly passed and held.

23.34 Class meetings

The provisions of this clause 23 shall apply to meetings of Unitholders in a Class, as if each Class of Units were a separate Trust.

23.35 Resolution in lieu of meeting

A written resolution is valid as if it had been passed at a meeting of a Class of Unitholders, in accordance with applicable legislation.³

Section 14: Miscellaneous

24. Termination

24.1 Term

Each Trust terminates on the earlier of:

- (a) the date appointed by the Manager by giving not less than twelve months' written notice to the Unitholders and the Trustee; or
- (b) if a Westpac Termination Event has occurred, the date appointed by the Manager (or the Trustee) by giving not less than three months' written notice to the Unitholders and the Trustee (or the Manager as the case may be); or
- (c) the date set by a resolution of Unitholders pursuant to clause 23.29; or
- (d) the date on which the Trust is otherwise terminated under this deed or by operation of law.

24.2 Procedure

On termination of a Trust, the Trustee must realise the Assets. This must be completed as soon as practicable after termination. The Trustee may, however, postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unitholders to do so, and will not be responsible for any consequent Unitholder's loss.

24.3 Final distribution

Subject to the rights, terms of issue, any obligations and restrictions attaching to any particular Units or Classes of Units, any net proceeds of realisation, after discharging or providing for any unpaid fees due to the Manager for which Units have been redeemed pursuant to clause 17.1 and for all amounts due to the Inland Revenue on account of the Trust's Portfolio Entity Tax Liability, shall be distributed to Unitholders (other than the holder of Units issued pursuant to clause 2.9):

- (a) pro rata according to the number of Units held by them up to \$1.00 per Unit;
- (b) then pro rata to Unitholders according to the amount of unpaid distributions to which they are entitled.

The balance after distributions to Unitholders in accordance with clauses 24.3(a) and (b) shall be distributed to the holder of the Units issued pursuant to clause 2.9. In the case of a PIE, all such distributions shall be subject to adjustment in accordance with the provisions of this deed. Any Unit which is partly paid at the date of distribution shall be treated as that proportion of a whole Unit as the amount paid up bears to the Withdrawal Price for that Unit.

24.4 Period of Trusts

Each Trust shall have a duration of 125 years less 2 days from the day the Trust commenced. Upon the expiry of the Trust, the procedure set out in this clause 24 shall be carried out.

³ See clause 90 of the FMCR.

25. Amendments

25.1 Amendments by supplemental deed

Subject to any applicable legislation, the Trustee may, with the concurrence of the Manager, by deed supplemental to this deed amend, add to or revoke (in whole or in part) any provision of this deed or any such supplemental deed if the amendment, addition or revocation:

- (a) To comply with or reflect changes to law: is in the opinion of the Trustee and the Manager necessary, desirable or expedient to comply with the provisions of, or to reflect any changes to, any statute, ordinance, regulation or by-law or any law made under the authority of any statute, regulation, by-law or ordinance or is the requirement of any competent statutory authority; or
- (b) PIE eligibility: is in the opinion of the Trustee and the Manager necessary or expedient in order for a Trust to qualify as, or continue to be eligible to be, a Portfolio Investment Entity; or
- (c) To correct error or technical amendment: is in the opinion of the Trustee made to correct a manifest error or is of a formal, technical or administrative nature only; or
- (d) Not prejudicial: is in the opinion of the Trustee not materially prejudicial to Unitholders in any Trust or all Classes affected by the proposed amendments, addition or revocation generally; or
- (e) To better administration: will in the opinion of the Trustee enable the provisions of this deed to be more conveniently or advantageously administered, provided such amendment, addition or revocation is not materially prejudicial to Unitholders generally; or
- (f) To align with banking terms and conditions: is necessary to ensure that Accounts are treated in the same manner as Westpac bank accounts or, in the case of Term Units, Westpac term deposits or, in the case of Notice Units, any Westpac notice products;
- (g) Approved by Unitholders: is approved by separate Extraordinary Resolutions of each Class of Unitholders which, in the opinion of the Trustee, is likely to be affected by the proposed amendment; or
- (h) Authorised by deed: is otherwise expressly authorised by this deed; provided that no amendment to any clause (including this proviso to clause 25.1) conferring the rights, powers and privileges of the Manager, including clause 17.1 shall be made without the agreement of the Manager.

26. Notices to Unitholders

26.1 Notice may be given to registered address

A notice may be given by the Manager or the Trustee to any Unitholder personally, by leaving it at his or her address recorded in the relevant Register, by sending it addressed to such Unitholder at his or her recorded address by ordinary prepaid post or if such address is outside New Zealand by airmail prepaid post, or by sending it by email to such Unitholder at the last email address provided by such Unitholder.

26.2 Deemed service

Any notice sent by post shall be deemed to have been served at the expiration of twenty-four (24) hours after the envelope or wrapper containing the same is posted and in proving such service, it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Any notice sent by email shall be deemed to have been served provided no non delivery answer back is received by the sender within 1 hour of sending.

26.3 Signature on notices

The signature to any notice to be given by the Manager or the Trustee may be written or printed.

26.4 Period of notice

Subject to any applicable legislation, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

26.5 Transferees bound by notices sent to the transferor

Every person who, by operation of law, transfer, or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which, prior to his or her name and address being entered in the register in respect of such Units, shall have been duly given to the person from whom he or she derives his or her title to such Units.

26.6 Notice to deceased persons

Any notice or document delivered or sent by post or left at the address recorded in the register or address for service of any Unitholder in pursuance of the provisions of this deed (notwithstanding that such Unitholder be then deceased and whether or not the Manager has notice of his or her death) shall be deemed to have been duly served in respect of any Units, whether held solely or jointly with any other person by such Unitholder, until some other person shall be registered in his or her stead as the Unitholder or joint Unitholder thereof, and such service shall for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators and all persons (if any) jointly interested with him or her in such Units.

27. Notice to Manager and Trustee

Any notice, communication or information required by this deed to be given by the Manager to the Trustee or by the Trustee to the Manager shall be given in writing or such other manner as agreed to from time to time and addressed to the secretary or a director or other officer of the party to whom it is intended to be given at its current address or such other address as may from time to time be notified by such party to the other as the address for service of notices pursuant to this deed and shall be signed by a duly authorised officer or signatory on behalf of the party giving the same.

28. Unitholders bound

This deed shall be binding on and be for the benefit of the Unitholders as if each such Unitholder were a party hereto.

29. Limitation of liability of Unitholders

Notwithstanding any provision of this deed (other than clause 15.6) or any provision deemed to be included in this deed no Unitholder shall by reason alone of being a Unitholder or by reason alone of the relationship hereby created with the Trustee or with the Manager be under any obligation personally to indemnify the Trustee or the Manager or any creditor of them or of either of them in the event of there being any deficiency of Assets of a Trust as compared with the liabilities of the Trustee and the Manager in relation thereto, and the rights (if any) of the Trustee and the Manager or of such creditor in respect of the Trust to seek indemnity shall be limited to having recourse to the Trust and shall not extend personally to the Unitholders or any of them by reason of their capacity as such under this deed.

30. Inspection of deed

A copy of this deed together with copies of all deeds supplemental hereto (if any) shall at all times during usual business hours be made available by the Manager at the office of the Manager for inspection by Unitholders.

31. Money payable to Unitholders

Any money payable by the Trustee or by the Manager to a Unitholder under the provisions of this deed is made payable as the Unitholder or joint Unitholders with the approval of the Manager may from time to time specify, including a specification in writing to the Manager to pay money to an account (of a bank or financial institution) nominated by the Unitholder or joint Unitholders. Any payment made in accordance with a Unitholder's instructions shall be a full satisfaction of the money payable and will be a good discharge to the Trustee and to the Manager.

32. Unclaimed payments

If any payment made to any Unitholder at his or her address recorded in the Register or in accordance with his or her payment instructions is returned or otherwise unclaimed, the amount

thereof shall be retained by the Trustee for such Unitholder without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of this deed be part of the relevant Trust, but such amount may be invested in the relevant Trust and any proceeds from such amount shall become property of the relevant Trust. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager. After forfeiture of any amount pursuant to this clause the person who would have been entitled to payment of such amount had it not been forfeited, shall be entitled to payment from the Manager of any amount equal to such forfeited amount upon adducing sufficient evidence to satisfy the Manager that he or she would have been entitled to such amount had it not been forfeited.

33. Minimum economic amount

Neither the Trustee nor the Manager shall be obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

34. Severance

34.1 Ability to read down clauses

If a provision of this deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

34.2 Severance of invalid clause

Notwithstanding clause 34.1 if a provision of this deed is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
- (b) in any other case, the whole provision is hereby severed, and the remainder of this deed has full force and effect.

35. Legal enforceability and Contract and Commercial Law Act 2017

This deed is legally enforceable between the Trustee, the Manager and the Unitholders. This deed shall take effect as a contract (as well as a deed) to the extent provided in this deed and shall be enforceable for the benefit of every Unitholder from time to time except that, for the purposes of the proviso to section 13 of the *Contract and Commercial Law Act 2017*, the benefit so extended to Unitholders is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this deed without the consent of any Unitholder, other than as so provided.

36. Governing law

This deed shall be governed by and construed in accordance with New Zealand law.

37. Counterparts

This deed may be executed in two counterpart copies both of which, when taken together, shall constitute one and the same instrument. The parties may execute this deed by signing either such counterpart copy.

38. Delivery

Without limiting any other mode of delivery, this deed may be delivered by each of the parties to this deed by:

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this deed, executed by that party, into the custody of the other party or its solicitors; or
- (b) transmission, in electronic form by any means of electronic communication (including facsimile or email of a scanned copy) to the other party or its solicitors, by that party, its

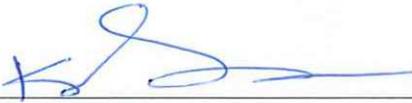
solicitors or any other person authorised in writing by that party, of an original of this deed, executed by that party, and the parties hereby consent to such form of delivery.

Signing page

EXECUTED and delivered as a deed

Manager

BT FUNDS MANAGEMENT (NZ) LIMITED by:



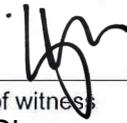
Signature of director

K Simz

Name of director

Trustee

TRUSTEES EXECUTORS LIMITED by:



Signature of witness
Cindy Chan

Name of witness
Senior Operations Analyst

Occupation of witness
Auckland

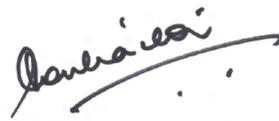
City/town of residence



Signature of director

Catherine McGoath

Name of director



Signature of director/authorised person
Shahazad Contractor

Name of director/authorised person



Signature of director/authorised person

Michael P. A. Coote

Name of director/authorised person