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**MASTER TRUST DEED FOR THE ESTABLISHMENT OF THE  
I-SELECT PIE SUPERANNUATION SCHEME  
I-SELECT LIMITED  
PUBLIC TRUST**

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## TABLE OF CONTENTS

<b>PARTIES.....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>1</b>
<b>OPERATIVE PROVISIONS .....</b>	<b>1</b>
<b>1    DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
Definitions.....	1
Interpretation .....	7
Construction .....	8
<b>2    CONSTITUTION OF THE SCHEME .....</b>	<b>8</b>
The Scheme.....	8
Name .....	9
Fund Establishment Deeds.....	9
Fund Establishment Deed .....	9
Change of name of a Fund .....	9
Appointment of Supervisor .....	10
Appointment of Manager .....	10
Appointing a Custodian .....	10
Duty on Supervisor contracting out .....	10
<b>3    NATURE OF UNITS.....</b>	<b>11</b>
Beneficial interests in Funds .....	11
Equal but not specific Fund interests .....	11
Consolidation or division of Units .....	11
Funds may invest in another Fund .....	11
<b>4    ISSUE OF UNITS .....</b>	<b>11</b>
Application procedure.....	11
Manager's discretion .....	12
Refund of Application moneys .....	12
Issue Date.....	12
Number of Units.....	12
Payment to Supervisor, registration and issue of Units .....	12
Minimum Application amounts .....	13
Issue or purchase of Units .....	13
Determination of Issue Price of Units .....	13
Commission etc.....	13
<b>5    APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER .....</b>	<b>13</b>
Appointment.....	13
Removal .....	14
Retirement.....	14
Temporary Manager.....	14
New Manager appointment .....	14
New Manager to execute a deed .....	15
Retiring Manager released .....	15
Managers Powers and Duties .....	15

	Manager's functions.....	15
	Manager's duties .....	16
	Manager's powers .....	16
<b>6</b>	<b>POWER TO DELEGATE.....</b>	<b>18</b>
<b>7</b>	<b>MANAGER MAY DIRECT SUPERVISOR.....</b>	<b>19</b>
	Manager directs Supervisor.....	19
	Supervisor's discretion.....	19
<b>8</b>	<b>ADVICE OF EXPERTS.....</b>	<b>20</b>
<b>9</b>	<b>SUPERVISOR'S FUNCTIONS.....</b>	<b>20</b>
<b>10</b>	<b>SUPERVISOR'S POWERS AND DUTIES.....</b>	<b>21</b>
	Supervisor's powers .....	21
	Duties .....	21
<b>11</b>	<b>STANDARD OF CARE.....</b>	<b>22</b>
<b>12</b>	<b>SUPERVISOR MAY DELEGATE .....</b>	<b>22</b>
<b>13</b>	<b>SUPERVISOR TO ENGAGE AN EXPERT .....</b>	<b>22</b>
<b>14</b>	<b>SCHEME ASSETS .....</b>	<b>22</b>
	Scheme Assets.....	22
<b>15</b>	<b>APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR.....</b>	<b>23</b>
	Appointment.....	23
	Removal of Supervisor.....	23
	Resignation.....	24
	Restrictions.....	24
	New Supervisor execute a deed .....	24
	Retiring Supervisor released .....	24
	New appointment .....	24
<b>16</b>	<b>FEES, COSTS AND EXPENSES .....</b>	<b>25</b>
	Remuneration of the Supervisor.....	25
	Remuneration of the Manager.....	25
	Expenses.....	25
<b>17</b>	<b>RELATED PARTY TRANSACTIONS.....</b>	<b>27</b>
	Transactions with Related Party.....	27
	No liability to account.....	28
<b>18</b>	<b>INDEMNITY OF SUPERVISOR AND MANAGER.....</b>	<b>28</b>
	Power to indemnify investment managers and administration managers .....	29
	Power to indemnify Custodians .....	29
	Other Trusts.....	29
	Allocation of Expenses .....	29
<b>19</b>	<b>AUDITOR.....</b>	<b>29</b>
	Appointment of Auditor.....	29
	Auditor's report to Supervisor .....	30
	Removal from Office .....	30

	Office to be Kept Filled .....	30
<b>20</b>	<b>RECORDS AND TRUST ACCOUNTS AND REPORTS .....</b>	<b>30</b>
	Receipt and Payment of Money .....	30
	Records to be kept.....	30
	Accounting records .....	31
	Financial statements to be audited .....	31
	Annual Report .....	31
	Manager Reporting to Supervisor .....	32
	Regulatory compliance .....	32
<b>21</b>	<b>FUND UPDATE .....</b>	<b>32</b>
<b>22</b>	<b>MEETINGS .....</b>	<b>32</b>
	Directions to the Supervisor.....	32
	Compliance with directions or orders .....	33
<b>23</b>	<b>LIMIT BREAKS &amp; UNIT PRICING ERRORS.....</b>	<b>33</b>
	Limit breaks .....	33
	Unit pricing errors .....	33
<b>24</b>	<b>CUSTODIAN REPORTS.....</b>	<b>34</b>
<b>25</b>	<b>REGISTER OF MEMBERS.....</b>	<b>34</b>
<b>26</b>	<b>INVESTMENTS.....</b>	<b>35</b>
	Authorised Investments.....	35
	The constitution of the Investments .....	35
	Separate Funds .....	35
	No claim.....	35
	New Funds .....	36
	SIPO .....	36
	Investment of Scheme Assets.....	36
	Investment Election.....	37
<b>27</b>	<b>VALUATIONS.....</b>	<b>37</b>
<b>28</b>	<b>ACCOUNTS .....</b>	<b>38</b>
	Accounts to be kept.....	38
	Member's Account .....	38
	Allocation of Income or Loss.....	39
	Timing of individual Allocations .....	39
<b>29</b>	<b>MEMBERSHIP PROVISIONS .....</b>	<b>39</b>
	Eligibility for Membership.....	39
	Advice to Prospective Members .....	40
	Compliance with Legislation .....	40
	Entry to Membership .....	40
	Refusal of Application .....	41
	Member Bound by Deed .....	41
	Transfer to the Scheme .....	41
	Transfer of Member to another Registered Scheme or Overseas Scheme .....	41
	Termination of Membership .....	42

	Provision of information .....	42
<b>30</b>	<b>PROVISIONS RELATING TO CONTRIBUTIONS.....</b>	<b>42</b>
	Initial Contribution.....	42
	Other Contributions.....	42
	Rules for Contributions .....	42
	Minimum Contributions.....	43
	Acceptance of Contributions.....	43
<b>31</b>	<b>PROVISIONS RELATING TO BENEFITS .....</b>	<b>43</b>
	Payment of Benefits .....	43
	Withdrawal Requests .....	43
	Withdrawal Price.....	43
	Payment of the Withdrawal Price .....	44
	Different classes of Units .....	44
	Cancellation of redeemed Units .....	44
	Place of Payment of Benefits .....	44
	Payment of Benefits to Dependants .....	45
	Payment to Others on behalf of Beneficiaries.....	45
	Address for Payment of Benefits .....	45
	Payment of Benefit where Member Bankrupt.....	45
	Member Incapable of Managing Financial Affairs .....	45
	Assignment.....	45
	Deductions from Benefits .....	46
	Receipt of Benefits.....	46
	Manager may Arrange Annuity .....	46
	Payment in specie.....	46
	Suspension of Withdrawal Request .....	46
<b>32</b>	<b>NOTICES.....</b>	<b>48</b>
	Giving of Notices .....	48
	Deemed Receipt .....	48
<b>33</b>	<b>POWER TO ALTER TRUST DEED.....</b>	<b>48</b>
<b>34</b>	<b>OTHER AMENDMENTS .....</b>	<b>48</b>
<b>35</b>	<b>CERTIFICATE OF COMPLIANCE.....</b>	<b>49</b>
<b>36</b>	<b>COPY TO REGISTRAR.....</b>	<b>49</b>
<b>37</b>	<b>PIE TAX.....</b>	<b>49</b>
<b>38</b>	<b>TERMINATION OF THE SCHEME.....</b>	<b>49</b>
	Perpetuities Period .....	50
	Advice to Financial Markets Authority.....	50
	Realisation of the Scheme .....	50
	Priority of Benefits.....	51
	Defer or Spread Payments.....	51
	Application of Benefits .....	51
	Claim against the Scheme on Termination .....	52
	Wind up of a Fund .....	52

UK transfers .....	52
Completion of distribution .....	52
<b>39 COUNTERPARTS.....</b>	<b>52</b>
<b>40 NEW ZEALAND LAW .....</b>	<b>52</b>
<b>EXECUTION AND DATE .....</b>	<b>53</b>
 <b>SCHEDULE 1 .....</b>	 <b>54</b>
Rules applicable to Members .....	54
<b>SCHEDULE 2 .....</b>	<b>60</b>
Form of Fund Establishment Deed .....	60

## PARTIES

**i-Select Limited** of Level 1, 161 Burnett Street, Ashburton 7700, New Zealand (Company Number 3904681) (**Manager**)

**Public Trust** of Level 9, 34 Shortland Street, Auckland 1010, New Zealand (Entity Number 198583) (**Supervisor**)

## BACKGROUND

- A The Manager wishes to establish a superannuation scheme that complies with the rules for portfolio investment entities.
- B The Supervisor has agreed to be the supervisor and the Manager has agreed to be the manager of the scheme.
- C This deed is the governing document for the scheme in accordance with the Financial Markets Conduct Act 2013.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### Definitions

- 1.1 In this deed the following definitions apply:

**Administration Manager** means the Person or Persons (if any) to whom the Manager has contracted some or all of the administration of the Scheme, and in the absence of any such Person or Persons means the Manager.

**Application** means, in respect to a Fund, an application for Units in a Fund (including a Request to Switch) made in the form and manner described in clause 4.1.1.

**Auditor** means the chartered accountant or firm of chartered accountants appointed from time to time as auditor of the Scheme pursuant to this Deed.

**Authorised Investments** means in respect of a Fund, such investments or classes of investment as the Manager and the Investment Manager (if any) have authorised from time to time (with prior consultation with the Supervisor) under clause 26.3 in respect of that Fund, provided that, if the Scheme is a PIE, the Manager will ensure the Authorised Investments are of such a type that they shall not result in the Scheme breaching the eligibility requirements for PIE status under the Tax Act.

**Beneficiary** means a natural person who is eligible to receive a Benefit from the Scheme.

**Benefit** means any lump sum, annuity, pension, allowance, refund or other payment arising from membership of this Scheme.

**Commencement Date** means 11 April 2019.

**Contribution** means any money or other property paid or transferred by or in respect of a Member to the Supervisor and, where applicable, includes the amount of any tax credit or other form of refund or rebate received by the Supervisor in respect of a Member.

**Deed** means this trust deed and includes any amendments thereof from time to time.

**Dependant** means in relation to a Member, any child of the Member (including any step child, a legally adopted child and a person recognised by the Manager as an adopted child), or any other person whether or not related by blood or marriage or civil union to the Member whom the Manager in its discretion from time to time determines to be or to have been or in future might have become dependent either wholly or in part on the Member at the time of the happening of the relevant event.

**Disclosure Document** means the PDS or Registry Entry required by the FMCA and includes any amendments to such documents and any supplement required by any exemption granted by FMA from time to time.

**Eligible Person** means any natural person.

**Establishment Deed** means a deed executed by the Manager and the Supervisor by which each Fund is established in the relevant form as set out in Schedule 2 or such other form as the Supervisor may determine.

**Finance Act** means the Finance Act 2004 (UK) and any regulations made thereunder and any amending or successor legislation.

**Financial Markets Legislation** has the meaning set out in section 6(1) of the FMCA and includes any applicable exemption from such legislation granted by FMA from time to time.

**Financial Year** means the period commencing on the Commencement Date and ending on the day before the next following Review Date, or any subsequent period commencing on a Review Date and ending on the day before the next following Review Date, both dates being included.

**FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011.

**FMCA** means the Financial Markets Conduct Act 2013 and any Regulations issued thereunder.

**FMCR** means the Financial Markets Conduct Regulations 2014.



**Fractional Unit** means that part of a Unit in respect of which there is contributed by the applicant for the Unit an amount which is less than the amount of the full Issue Price, applicable at the time the Unit is issued

**Fund** means each new fund created by an Establishment Deed.

**Fund Update** has the meaning set out in Regulation 5 of the FMCR.

**HMRC** means HM Revenue & Customs, a department of the Government of the United Kingdom.

**Investments** means all investments made by or on behalf of the Supervisor in accordance with this Deed.

**Investment Election** means an election made by a Member in accordance with clause 26.17.

**Investment Income** means the net profit arising from Investments, including any income received or accrued, after the deduction of all expenses, liabilities, tax and provisions relating to Investments, including allowance for appreciation or depreciation in any investment and for unrealised losses or gains.

**Investment Loss** means the net loss arising from Investments after allowing for any income received or accrued, and after provision for all expenses, liabilities, tax and provisions relating to the Investments, including allowance for appreciation or depreciation in any Investment and for unrealised losses or gains.

**Investment Manager** means the Person or Persons (if any) to whom the Manager has contracted the investment of some or all of the Scheme Assets, and in the absence of any such Person or Persons means the Manager.

**Issue Price** means, in respect of each Fund, the price at which the Manager sells or issues Units in such Fund determined in accordance with clause 4.9.

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

**Liabilities** means debts and other obligations of the Supervisor or Manager payable from the Scheme and the liability of the Supervisor or Manager as drawer or acceptor of a bill of exchange including all taxes and duties payable from the Scheme but excluding the Supervisor's or the Manager's obligation to pay Benefits and excluding, where the Scheme is a PIE where the Manager in its absolute discretion considers it appropriate to do so, any liability for PIE Tax and excluding contingent liabilities except to the extent the Supervisor or Manager decides an allowance should properly be made for contingent liabilities.

**Licensed Manager** means a person under Part 6 of the FMCA who holds a license to act as a manager of a Managed Investment Scheme.

**Licensed Supervisor** means a person who holds a licence to act as supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011.

**Market Value** in relation to any Investments as at any Valuation Time means:

- (a) in respect of Investments which are listed on an exchange, by reference to the price quoted for the last sale of that Investment on the relevant exchange before that Valuation Time, or if there has been no such sale, or if the last sale is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager having regard to such information as the Manager considers appropriate, including without limitation the advice of an independent expert (if any);
- (b) in respect of Investments which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, provided that the Manager and the Supervisor may agree upon some other form of appropriate determination as to the value in respect of any specific Investments from time to time;
- (c) in respect of any other Investments, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or failing such agreement according to principles of valuation determined by an independent expert;
- (d) where in respect of Investments to which sub-paragraphs (a) and (b) applies and the relevant information as to value is not received within 24 hours of the time fixed at Valuation Time for determination of the Fund value, the value of the Investments which applied on the preceding Valuation Time (Adopted Value) shall apply, but an Adopted Value shall not be applied on more than two successive Valuation Times.

**Member** means an Eligible Person who has been accepted for membership in the Scheme.

**Member's Account** means an account in the name of a Member established and maintained pursuant to clause 28.1.1 and, in respect of a Member, means the Member's Account of that Member.

**Member's Account Balance** has the meaning set out in clause 28.4.

**Month** means calendar month.

**Net Asset Value per Unit** means, in respect of each Fund, the Net Asset Value of the relevant Fund at any Valuation Time divided by the Number of Units on Issue in that Fund at that time.

**New Zealand Superannuation Qualification Age** has the meaning set out in the FMCR.

**Number of Units on Issue** means, in respect of each Fund, the total of all Units issued in such Fund which have not been redeemed or cancelled after all Fractional Units have been consolidated as far as possible into whole Units.

**Overseas Scheme** means a pension or superannuation scheme established outside of New Zealand which the Manager is satisfied has a principal purpose of providing retirement benefits to beneficiaries who are natural persons.

**PDS or Product Disclosure Statement** has the meaning set out in section 6(1) of the FMCA and includes any supplement required by any exemption granted by FMA from time to time.

**Person** includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality).

**Personal Representative** means, in respect of a deceased Member, the executor or administrator of the Member or, in circumstances where section 66 of the Administration Act 1969 applies, any Person to whom a Benefit from the Scheme is able to be paid under that provision on the death of the Member.

**PIE Tax** means the tax liability for the Scheme as determined in accordance with the Tax Act once the Scheme becomes a PIE.

**Portfolio Investment Entity or PIE** has the same meaning as defined in section YA1 of the Tax Act.

**Register** means the register of members kept by the Manager under clause 25.

**Registered Scheme Member** means the trustees of a Registered Scheme who have been accepted for membership in the Scheme.

**Register of Offers of Financial Products** has the meaning set out in Section 6(1) of the FMCA.

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

**Related Body Corporate** means a Body Corporate who is related to another Body Corporate pursuant to section 12(2) of the FMCA.

**Related Company** means a company that is deemed to be related to another company by virtue of sub-section 2(3) of the Companies Act 1993.

**Relevant Law** means the Financial Markets Legislation and any other laws, rules, codes of conduct or regulatory guidance applicable to the operation of the Scheme and the offer of membership in the Scheme.

**Relevant Time** means:

- (a) in respect of an issue or sale of Units for money the time immediately after the next Valuation Time after the receipt by the Manager of the payment for the Units to be sold or issued and the acceptance by the Manager of the relevant Application; and

- (b) in respect of an issue of Units for the acquisition of an Investment by the Fund the time immediately after the next Valuation Time after the settlement of the acquisition of the Investment and the acceptance by the Manager of the relevant Application; and
- (c) subject to clauses 31.21 to 31.23 of this Trust Deed, in respect of a redemption of Units means the time immediately after the next Valuation Time after the Manager's request for withdrawal is received by the Supervisor.

**Relevant UK Law and Regulations** means the legislation and regulations supervised or exercised by the powers conferred on the Commissioner for HMRC applicable to sums that have been transferred from a United Kingdom registered pension scheme or have otherwise received United Kingdom tax relief, including the Finance Act.

**Review Date** means the 1<sup>st</sup> day of April in each year or such other date as shall be determined from time to time by the Manager with the first such review date being the 1<sup>st</sup> day of April 2020.

**ROPS** means a superannuation scheme recognised as a Recognised Overseas Pension Scheme under the law of the United Kingdom.

**Scheme** means the i-Select PIE Superannuation Scheme constituted by this Deed.

**Scheme Assets** has the meaning set out in clause 14.

**SIPO** means the relevant Statement of Investment Policy and Objectives for the Scheme and each Fund.

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

**Superannuation Scheme Rules** has the meaning given that term in the FMCR.

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

**Supervisor** means Public Trust, unless a replacement supervisor has been appointed in accordance with this Deed, in which case Supervisor shall mean the Supervisor most recently appointed.

**Supervisor Reporting Agreement** means the written agreement entered into by the Manager and the Supervisor from time to time.

**Switch** means the sale or issue to a Scheme Participant of Units in one or more Funds immediately following the redemption of Units held by such Scheme Participant in another Fund.

**Tax** includes income tax, withholding tax, goods and services tax, registration and other duties and other taxes, levies, imposts, deductions and charges whatsoever including, for the avoidance of doubt, any such charges arising under Relevant UK Law and Regulations, together with interest thereon and penalties with respect thereto (if any) and charges, fees,

or other amounts made on or in respect of the Scheme but does not include income tax payable by the Supervisor, Manager or other Person on fees received by the Supervisor, Manager or that other Person for performing services pursuant to this Deed or, at the discretion of the Manager, any PIE Tax.

**Tax Act** means the Income Tax Act 2007 or the Tax Administration Act 1994 (as applicable).

**Taxation Amount** means in relation to a relevant person:

- (a) any Tax payable by or on account of that person or in respect of that person's Benefits;
- (b) any withholding tax or similar amount required to be held or deducted by the Manager or the Supervisor in respect of a Member; or
- (c) any PIE Tax that is or may be assessed against or payable by or in respect of that person or that person's interest in the Scheme.

**Termination Date** means the date of termination of the Scheme in accordance with clause 38.1.

**Trustee Act** means the Trustee Act 1956.

**Unit** means, in respect of a Fund, an undivided part or share in the beneficial interest in the relevant Fund, and where the context requires or permits, includes a Fractional Unit but only to the extent of its proportion of a Unit.

**United Kingdom** means the United Kingdom of Great Britain and Northern Ireland.

**UK Transfer Monies** means in respect of any relevant Member, a transfer value received by the Scheme in respect of the relevant Member's entitlements under a UK registered pension scheme but excludes any investment gains or losses on that amount.

**Valuation Time** means in respect of the Scheme or Fund as the case may be, such time or times, and at such intervals as the Manager may from time to time determine and disclosed in the Disclosure Documents, by reference to which the Value of the Scheme or Fund as the case may be, is calculated provided that such intervals shall be no longer than one month or such other period agreed between the Supervisor and Manager.

**Withdrawal Price** means, in respect of each Fund, the redemption price for Units in such Fund determined in accordance with clause 31.5.

**Withdrawal Request** means a request made in accordance with this Deed by or in respect of a Member for payment of a Benefit.

### **Interpretation**

- 1.2 In the interpretation of this deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this deed.
- 1.2.2 A reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Auckland, New Zealand.
- 1.2.3 If the day on which any act, matter or thing is to be done under this deed is not a business day, the FMCA, matter or thing must be done on the next business day.
- 1.2.4 A reference in this deed to 'dollars' or '\$' means New Zealand dollars and all amounts payable under this deed are payable in New Zealand dollars.
- 1.2.5 A reference in this deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this deed to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 1.2.11 A reference to the word 'include' or 'including' is to be interpreted without limitation.
- 1.2.12 Any schedules and attachments form part of this deed.

### **Construction**

- 1.3 This Deed shall be read and construed as a whole. The table of contents and the headings in this Deed are for convenience of reference only, and shall not affect its interpretation.

## **2 CONSTITUTION OF THE SCHEME**

### **The Scheme**

- 2.1 The Scheme commences on the Commencement Date.

- 2.2 The provisions of this Deed are deemed to include the provisions implied by Relevant Law for so long as those provisions are in force and any provision of this Deed that is contrary to such implied provisions is void to the extent it is contrary.

**Name**

- 2.3 The Scheme shall be known as the i-Select PIE Superannuation Scheme or by such other name as the Manager with the approval of the Supervisor may determine from time to time. The Manager is responsible for any regulatory notifications and similar actions that may be required as a result of a change of Scheme name.

**Fund Establishment Deeds**

- 2.4 Each Fund shall be established by an Establishment Deed, in the form set out in Schedule 2 or such other form as the Supervisor may determine, which shall include such of the following matters as shall be applicable to the relevant Fund:

- 2.4.1 provision for the constitution of the new Fund upon the lodgement of a specified sum by way of subscription by any person for a specified number of Units in the new Fund;
- 2.4.2 the name of the new Fund;
- 2.4.3 the date of commencement of the new Fund;
- 2.4.4 the functional currency of the new Fund;
- 2.4.5 any amendment to this Deed in respect of the new Fund approved by the Supervisor; and
- 2.4.6 any other matters which the Manager and the Supervisor consider appropriate or which the Supervisor considers necessary.

**Fund Establishment Deed**

- 2.5 A Fund Establishment Deed may specify provisions which are to apply to the Fund constituted under it in addition to, in place of, or by way of amendment to, the provisions of this Deed. Any such additions, replacements or amendments apply only to the Fund constituted under the Fund Establishment Deed. In the event of any inconsistency between the terms of the Deed and the terms of the Fund Establishment Deed for a Fund, the Fund Establishment Deed will prevail for the purposes of that Fund. In the event of any inconsistency between the terms of the relevant Scheme Establishment Deed and the terms of the Fund Establishment Deed for a Fund, the Fund Establishment Deed will prevail for the purposes of that Fund.

**Change of name of a Fund**

- 2.6 Notwithstanding any name given to a Fund 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 Fund in consultation with the Supervisor. The Manager shall notify Members of any change of name of a Fund as soon as practicable.

**Appointment of Supervisor**

- 2.7 The Supervisor is appointed as the supervisor of the Scheme established under this Deed and agrees to hold the trust fund for the Scheme in trust for the relevant Members on the terms and conditions contained in this Deed and Relevant Law.

**Appointment of Manager**

- 2.8 The Manager is appointed as the manager of the Scheme established under this Deed and agrees to act as manager on the terms and conditions contained in and to perform its obligations under this Deed and Relevant Law.

**Appointing a Custodian**

- 2.9 The Supervisor may, in consultation with the Manager, from time to time, contract the holding of the Investments of each Fund to a Custodian or Custodians (other than the Manager or Associated Person of the Manager).
- 2.10 The Custodian may, if authorised in writing by the Supervisor (in consultation with the Manager), in turn contract one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which may be vested all or any of the Investments of each Fund. Any sub-custodian appointed under this clause must meet the requirement for such a person under the FMCA. The Supervisor shall cause the Custodian and procure Custodian that appoints a sub-custodian to comply with the relevant covenants and obligations on the part of the Supervisor expressed or implied in the FMCA and this Deed.
- 2.11 The Supervisor, in consultation with the Manager, will agree the fees that may be charged by the Custodian and a sub-custodian to a Fund or the Manager, and the extent to which expenses of the Custodian and the sub-custodian will be reimbursed out of the relevant Fund provided that such fees and expenses are no more than usual commercial rates.

**Duty on Supervisor contracting out**

- 2.12 If the Supervisor contracts the holding of the Investments of each Fund to another Person under clause 2.9, the Supervisor:
- 2.12.1 must take all reasonable steps to:
- (a) ensure that the function is performed in the same manner and subject to the same duties and restrictions as if that Person had performed them directly; and
  - (b) monitor the performance of a function.
- 2.12.2 is jointly and severally liable with any other Person to whom the function has been contracted) for the performance of that function in accordance with clause 2.12.1(a).



### **3 NATURE OF UNITS**

#### **Beneficial interests in Funds**

- 3.1 The beneficial interest in each Fund is divided into Units.
- 3.2 Units in a Fund may be issued to any Person.

#### **Equal but not specific Fund interests**

- 3.3 Subject to the terms of this Deed, every Unit other than a Fractional Unit confers an equal interest in the Fund to which it relates and is of equal value provided that there may be different classes of Units in any Fund and the value and rights of each class will be set out in the relevant Establishment Deed. A Fractional Unit shall confer a proportional interest in the relevant Fund but shall not confer any voting rights on the holder. Fractional Units are to be expressed in such proportions as the Manager, in its absolute discretion, determines.
- 3.4 A Unit does not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Member is entitled to require the transfer to such Member of any of the Investments nor (subject to the rights of Members created by this Deed and by law) is any Member entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of that Fund.

#### **Consolidation or division of Units**

- 3.5 The Manager may, with the approval of the Supervisor, determine that, in respect of any Fund, all holdings of Units in such Fund as at the close of business on a Business Day are to be consolidated or divided proportionately so as to alter the Number of Units on Issue with effect from the close of business on that Business Day, subject to any deduction or adjustment in accordance with this Deed and the Tax Act in respect of a PIE as the Manager, at its discretion, considers appropriate.

#### **Funds may invest in another Fund**

- 3.6 Any Fund may invest in any other Fund, and may be issued Units in and may redeem Units from that other Fund where such investment is an Authorised Investment permitted under the relevant SIPO for the Fund making the investment.

### **4 ISSUE OF UNITS**

#### **Application procedure**

- 4.1 Subject to the provisions of this Deed, every Person wishing to apply for or acquire Units in any Fund must:
- 4.1.1 complete and lodge with the Manager or its appointed agent (at least in respect of the first application) an application for any Units in a Fund, signed by or on behalf of the applicant in such form as the Manager shall from time to time determine; and

- 4.1.2 pay or arrange payment to the Supervisor or its appointed agent the application monies or transfer to the Supervisor or its appointed agent on account of the Fund the Investments agreed to be acquired by the Fund.

**Manager's discretion**

- 4.2 The Manager may in its absolute discretion accept or refuse to accept in whole or in part any Application and the Manager is not required to give any reason or ground for such refusal including, without limitation, if the application would result in the relevant Fund becoming ineligible as a PIE, or would operate to threaten any such eligibility.

**Refund of Application moneys**

- 4.3 The Manager shall make a decision on all Applications as soon as practicable after the receipt of each Application and must following such decision, promptly refund or arrange for the Supervisor or its appointed agent to refund application moneys received in respect of a rejected Application, without interest.

**Issue Date**

- 4.4 If the Manager accepts an Application and the relevant payment or other consideration has been made to the Manager, the Supervisor or its appointed agent the Units shall be deemed to be sold or issued at the Relevant Time.
- 4.5 In any of the foregoing cases, where there is an issue of Units direct from the relevant Fund, the application monies or the Investment acquired shall be deemed to constitute an Investment of the Fund when the Units are deemed to be issued (and shall not be an asset of the Fund for the purposes of calculating the Net Asset Value at the Valuation Time immediately before the Units are deemed to be issued).

**Number of Units**

- 4.6 If the Manager accepts an Application, the number of Units sold or issued pursuant to an Application or acquisition of an Investment shall be that number of Units that have an aggregate Issue Price equal to the application moneys received and accepted or in the case of the acquisition of an Investment the purchase price or consideration for the Investment agreed by the Manager. If it shall be necessary to issue Fractional Units, then the Manager may require all Fractional Units to be consolidated into whole Units so far as possible and may round such Fractional Units to such number of decimal places as the Manager may decide.

**Payment to Supervisor, registration and issue of Units**

- 4.7 The Manager must:
- 4.7.1 pay all application moneys to the Supervisor or its appointed agent forthwith on receipt of such moneys in accordance Relevant Law provided that the Manager may retain any fees payable to the Manager in accordance with this Deed;

- 4.7.2 ensure on acceptance of an Application, that the name of the Member is entered on the appropriate Register (or, where the Member is already on such Register, cause such Register to be altered accordingly); and
- 4.7.3 if considered appropriate by the Manager and/or as required by Relevant Law, send a confirmation in accordance with the procedures determined by the Manager.

**Minimum Application amounts**

- 4.8 An Application for Units must be in respect of any minimum number of units or dollar value and multiples thereof as determined by the Manager from time to time and disclosed in the PDS for the Scheme. The Manager may vary such minimum amount from time to time in its discretion.

**Issue or purchase of Units**

- 4.9 Applications for Units accepted by the Manager will be treated as a subscription for Units to be issued from the relevant Fund, the subscription price payable by Members being the Issue Price.

**Determination of Issue Price of Units**

- 4.10 The Issue Price of each Unit issued by the Manager shall be the Net Asset Value per Unit in respect of the relevant Fund calculated at the Relevant Time plus the amount per Unit determined from time to time by the Manager to reflect the cost of acquiring Investments in that Fund and other administrative costs relating to the sale or issue of Units or such lesser amount, including zero, as the Manager determines. The Issue Price shall be rounded down to the nearest 100th of a cent (or such other decimal place as the Manager determines).

**Commission etc**

- 4.11 The Manager is free, at its own cost and not that of any of the Funds, to pay such commission or brokerage to any Person for subscribing for or underwriting the purchase or subscription for or obtaining purchases or subscriptions for any Units as the Manager may from time to time determine.

**5 APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER****Appointment**

- 5.1 The Scheme shall have a manager, who:
  - 5.1.1 must not be an Associated Person of the Supervisor;
  - 5.1.2 must be a Licensed Manager; and
  - 5.1.3 must otherwise be a person entitled by Relevant Law to act as the manager of the Scheme.

**Removal**

- 5.2 The Manager shall cease to hold office as manager of the Scheme if the Manager is:
- 5.2.1 removed by written direction of the Supervisor after the Supervisor certifies, in respect of the Scheme, pursuant to section 185(1)(a) of the FMCA, that it is in the best interests of Members that the Manager should cease to hold office. Without in any way limiting the generality of the foregoing it will be sufficient and valid grounds for such a certificate to be given if the Manager has a receiver or manager or statutory manager appointed or if an order is made or a resolution is passed for the liquidation or winding up of the Manager; or
  - 5.2.2 removed by a Special Resolution of the Members; or
  - 5.2.3 substituted from office by court order on the application of the Supervisor, the FMA or a Member under sections 207, 208 or 209 of the FMCA.
- 5.3 If the Manager ceases to hold office pursuant to clause 5.2, the Manager and any delegate of the Manager must immediately desist from all activities related to the Scheme unless the Supervisor agrees to the contrary.

**Retirement**

- 5.4 The Manager may retire as manager of the Scheme at any time without assigning any reason upon giving ninety (90) days' notice (or such lesser period of notice as the Supervisor may agree in writing with the Manager). No such retirement shall take effect until a new manager has been appointed and has executed the deed referred to in clause 5.7.

**Temporary Manager**

- 5.5 Subject to the powers of the FMA under the FMCA, the power of appointing a temporary Manager where a vacancy in the office of Manager arises is vested in the Supervisor. No Person can be appointed as a temporary Manager unless that Person meets the requirements of section 186(3) of the FMCA.

**New Manager appointment**

- 5.6 The following provisions will apply to any new manager appointed:
- 5.6.1 The power to appoint a temporary manager under the FMCA shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
  - 5.6.2 Subject to all applicable laws, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, but no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).
  - 5.6.3 Where the Manager does not exercise its power to appoint a new permanent manager within 10 Working Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

**New Manager to execute a deed**

- 5.7 Any new Manager must forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Members to be bound by all the covenants on the part of the Manager under this Deed from the date of such appointment.

**Retiring Manager released**

- 5.8 From the date of execution by the new Manager of a deed in accordance with clause 5.7, the retiring Manager shall be absolved and released from all such covenants under this Deed (save in respect of any prior breach in respect of which the retiring Manager is not indemnified under this Deed) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

**Managers Powers and Duties****Manager's functions**

- 5.9 The Manager shall be responsible for the following functions for the Scheme:
- 5.9.1 offering interests in the Scheme;
  - 5.9.2 issuing interests in the Scheme;
  - 5.9.3 managing Scheme Assets; and
  - 5.9.4 administering the Scheme.
- 5.10 Without limiting the generality of the above, the Manager shall perform each of the following duties in relation to the Scheme:
- 5.10.1 prepare on behalf of the Scheme any taxation returns and deal with all other taxation matters regarding the Scheme in accordance with this Deed;
  - 5.10.2 prepare application forms, any Disclosure Documents and other promotional material in respect of the Scheme as required in terms of this Deed and any Relevant Law and, in order for the Supervisor to be able to satisfy its statutory obligations, provide to the Supervisor if requested:
    - (a) such application forms and Disclosure Documents in draft form sufficiently far ahead of the proposed registration or distribution date to allow the Supervisor a reasonable period of time to review and provide comments; and
    - (b) a copy of the Disclosure Documents and any other promotional material as referred to above as soon as practicable after distribution;

- 5.10.3 provide to the Supervisor as soon as possible following receipt copies of all notices or communications received from any regulatory authority.

**Manager's duties**

- 5.11 The Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed and as otherwise required by Relevant Law for the benefit of the Members of the Scheme. In particular, without derogating from the foregoing, the Manager shall:
- 5.11.1 act honestly in acting as manager; and
- 5.11.2 in exercising any powers or performing any duties as Manager:
- (a) act in the best interests of the Members;
  - (b) treat the Members equitably; and
- 5.11.3 not make use of information acquired through being Manager in order to:
- (a) gain an improper advantage for itself or any other Person; or
  - (b) cause detriment to the Members; and
- 5.11.4 exercise the care, diligence and skill that a prudent person engaged in the profession of managing a Registered Scheme would exercise in the same circumstances; and
- 5.11.5 carry out its functions in accordance with this Deed, any SIPO and all other Issuer Obligations; and
- 5.11.6 make any such tax elections that the Manager thinks fit, such as an election for the Scheme to be a foreign investment zero rate or variable rate PIE.
- 5.12 Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee or Supervisor respectively for trusts whether of a nature similar to or different from the Scheme.
- 5.13 The Manager shall have the same duties and liabilities in the performance of its functions as manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA).

**Manager's powers**

- 5.14 Subject to Relevant Law and this Deed, in performing its duties and responsibilities the Manager shall have all powers over and in respect of the Scheme and Scheme Assets which it could exercise if it were the absolute and beneficial owner of such Investments. In particular, without derogating from the foregoing, the Manager shall perform the following specific functions:

- 5.14.1 purchase, sell and otherwise deal with Investments upon such terms as the Manager thinks fit;
- 5.14.2 lease and accept surrenders of leases and otherwise deal in any manner with lessees or other occupants of Investments;
- 5.14.3 execute and pay for repairs and improvements relating to Investments;
- 5.14.4 insure any Investment for such amounts and on such conditions and in such types of insurance as may be deemed necessary;
- 5.14.5 attend and vote at meetings;
- 5.14.6 lend money;
- 5.14.7 arrange for the Scheme to borrow or raise money unsecured or secured subject to the conditions contained in this Deed and any SIPO and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the assets of the Scheme;
- 5.14.8 instruct and pay from the Scheme, agents, consultants and other persons to act in relation to investments or proposed Investments;
- 5.14.9 make and carry out any takeover proposal, offer or invitation;
- 5.14.10 promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager deems fit;
- 5.14.11 create, grant, renew, alter or vary any Mortgage, charge or other encumbrance over the whole or any part of an Scheme for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- 5.14.12 agree to enter into and perform any contract option or other right relating to any Investment including any futures contract;
- 5.14.13 agree to the release, modification or variation of any rights, privileges or liabilities of any Investments or any securities given in relation thereto;
- 5.14.14 agree to the rearrangement or reconstruction of any person including any increase or reduction in the capital of the person;
- 5.14.15 agree to the amalgamation or merger of any person with any other person or the sale or other disposition of all or any part of the property or undertaking of any person;
- 5.14.16 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;

- 5.14.17 liaise with HMRC as required in respect of the Scheme's designation as a ROPS, attending to all notices and notifications requirements as may be required from time to time;
- 5.14.18 participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership, joint venture or other agreement relating to the Assets of the Scheme or to act as the operator or one of the operators under any such agreement which relate to Assets of the Scheme;
- 5.14.19 perform and enforce agreements;
- 5.14.20 institute, prosecute, compromise and defend legal proceedings including arbitration;
- 5.14.21 enter into or obtain any guarantee, indemnity or similar contract for the benefit of the Scheme or Member (and whether relating to the guaranteeing of the capital or income of the Scheme any amounts to be paid to the Members in respect of the Scheme or otherwise) and to pay any guarantee fee or other consideration from the Scheme for any such guarantee, indemnity or similar contract;
- 5.14.22 incur and pay charges and expenses which, in the opinion of the Manager, are necessary or desirable to carry out the purposes of the Scheme, including tax and other levies imposed on the Scheme or the Manager or the Supervisor in connection with the Scheme;
- 5.14.23 invest in pooled or mixed forms of Investments in common with other investors;
- 5.14.24 appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines.

## **6 POWER TO DELEGATE**

- 6.1 To the maximum extent permitted by law, the Manager may appoint any person or persons to act as its delegate, or contract any person or persons to perform any of its duties or powers or discretions under this Deed. The appointment must be written. In doing this:
  - 6.1.1 the Manager must take reasonable steps to:
    - (a) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and
    - (b) monitor the performance of those functions; and
  - 6.1.2 the delegation or contracting out does not affect the liability of the Manager for the performance of those functions.



- 6.2 The Manager shall advise the Supervisor of any delegation or contracting out under this clause, providing documentation evidencing this delegation or subcontracting, before any such arrangements are entered into.
- 6.3 The Manager may include provisions to protect and assist those dealing with the delegate in the authorisation as the Manager thinks fit. The delegate or contracted party may be a Related Party of the Manager or Supervisor provided that the duty or power being delegated or contracted out is not the holding of any assets or investments of the Scheme.
- 6.4 In the case of the appointment of an Investment Manager the terms of appointment of the Investment Manager may only indemnify the Investment Manager for liabilities or expenses incurred in relation to the performance of its contracted functions when the Investment Manager has, in exercising the powers or performing any duties, exercised the care, diligence and skill that a prudent person engaged in that profession would exercise in the same circumstances.

## **7 MANAGER MAY DIRECT SUPERVISOR**

### **Manager directs Supervisor**

- 7.1 The Manager will manage the Scheme for the benefit of the Members and as and when required may (subject to the provisions of this Deed) direct the Supervisor to:
- 7.1.1 invest in, purchase, acquire, realise, sell or dispose of the Assets of the Scheme;
  - 7.1.2 enter into any commitments or liabilities in respect of such Assets;
  - 7.1.3 execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing;
  - 7.1.4 take any other action which may be required in respect of the Assets of the Scheme; and
  - 7.1.5 complete and deliver any proxies or related notices; and
  - 7.1.6 (subject to the provisions of clause 7.2) the Supervisor will from time to time, to the extent of the respective Assets in its possession or control, act as directed in writing by the Manager.

### **Supervisor's discretion**

- 7.2 Notwithstanding clause 7.1, the Supervisor must refuse to act, and must direct any nominee or Custodian appointed under clauses 12 and clause 2.9 respectively to refuse to act, on the direction of the Manager to invest, acquire, dispose of or transfer the Assets into or out of the Scheme, enter into any loan security or other obligation, or exercise rights of voting conferred by the investments, if, in the opinion of the Supervisor conveyed in writing to the Manager, the proposed acquisition, disposition or transfer of Assets into or out of the Scheme, or the loan security or other obligation or exercise of rights of voting conferred by the investments, as the case may be:

- 7.2.1 is manifestly not in the interests of Members; or
  - 7.2.2 would breach the provisions of this Deed or any rule of law or enactment; or
  - 7.2.3 would result in a breach by the Supervisor of any obligations or duties imposed on the Supervisor by the Relevant Law; and
  - 7.2.4 the Supervisor shall not be liable to the Members or the Manager for so refusing to act on any direction or for acting on any direction.
- 7.3 If the Supervisor refuses to act on a direction of the Manager, or directs any custodian or nominee to refuse to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of the Supervisor's reasons for refusing to do so.

## **8 ADVICE OF EXPERTS**

- 8.1 The Manager and the Supervisor may act on the advice or opinion of any accountant, actuary, barrister, solicitor, stock broker, consultant, medical practitioner, investment advisor, auditor or other professional person or expert and shall not be responsible for any loss occasioned by so acting. The reasonable cost of obtaining such advice shall form part of the expenses incurred by the Manager and Supervisor in connection with the Scheme, in accordance with clause 16.6.

## **9 SUPERVISOR'S FUNCTIONS**

- 9.1 In accordance with clause 152 of the FMCA, the Supervisor has the following functions in respect of the Scheme:
- 9.1.1 acting on behalf of Members in relation to:
    - (a) the Manager;
    - (b) any matter connected to this Deed or the terms of any offer of membership of the Scheme;
    - (c) any contravention or alleged contravention of its Issuer Obligations; and
    - (d) any contravention or alleged contravention of any Relevant Law by any other person in connection with the Scheme;
  - 9.1.2 supervising:
    - (a) the performance by the Manager of its functions and its Issuer Obligations;
    - (b) the financial position of the Manager and the Scheme, to ascertain that they are adequate;

- 9.1.3 holding the assets of the Scheme or ensuring the assets of the Scheme are held, in accordance with clause 14 and sections 156 to 158 of the FMCA;
- 9.1.4 performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the FMCA, the Financial Markets Supervisors Act 2011 or this Deed.

## **10 SUPERVISOR'S POWERS AND DUTIES**

### **Supervisor's powers**

- 10.1 The Supervisor shall, subject to this Deed and the FMCA, have all the powers in respect of the Scheme and over the Fund, which the Supervisor could exercise if the Supervisor was the absolute owner of the Fund.

### **Duties**

- 10.2 The Supervisor must:
  - 10.2.1 act honestly in acting as the Supervisor of the Scheme;
  - 10.2.2 in exercising any powers or performing duties as Supervisor:
    - (a) act in the best interests of the Members;
    - (b) exercise reasonable diligence in carrying out its functions as the Supervisor;
  - 10.2.3 do all things it has the power to do to cause any contravention referred to in clause 9.1.1(c) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members);
  - 10.2.4 subject to any order of the High Court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with an enactment and rule of law, or this Deed in relation to:
    - (a) seeking a remedy to a contravention referred to in clause 9.1.1(c); and
    - (b) any other matter connected with the Supervisor's functions.
- 10.3 The Supervisor has the same duties and liability in the performance of its functions as Licensed Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA).
- 10.4 The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members.

**11 STANDARD OF CARE**

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

**12 SUPERVISOR MAY DELEGATE**

- 12.1 The Supervisor may, subject to clause 12.2 authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to perform any act, or exercise any discretion within the Supervisor's power. The authorisation must be written. The Supervisor remains liable for the acts or omissions of a delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the authorisation as the Supervisor thinks fit. The delegate may be the Manager, a Related Party of the Manager or a Related Party of the Supervisor.
- 12.2 The Supervisor must not delegate its functions under clause 12.1 (except its function of holding the Investments of the Scheme under clause 9.1.3) unless otherwise permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.

**13 SUPERVISOR TO ENGAGE AN EXPERT**

- 13.1 The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
- 13.1.1 determine the financial position of the Manager or the Scheme; or
  - 13.1.2 review the business, operation, management systems or governance of the Manager or the Fund.
- 13.2 If the Supervisors engages an expert under clause 13.1;
- 13.2.1 the Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 13.1; and
  - 13.2.2 the Manager must pay the experts reasonable fees and expenses.
- 13.3 The Manager shall be indemnified for those fees and expenses out of the Scheme, subject to any limits under this Deed or the FMCA.

**14 SCHEME ASSETS****Scheme Assets**

- 14.1 The Scheme Assets shall consist of all the money, Investments and other property for the time being held by or on account of the Supervisor upon the trusts of this Deed including:

- 14.1.1 contributions;
- 14.1.2 interest, dividends and other income arising from Investments and the accumulation thereof;
- 14.1.3 proceeds of realisation of Investments and the accumulation thereof; and
- 14.1.4 any other money, assets or Investments which become subject to the trusts created by this Deed.

## **15 APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR**

### **Appointment**

- 15.1 The Scheme shall have a single supervisor who:
  - 15.1.1 must not be the Manager or an Associated Person of the Manager; and
  - 15.1.2 must be a Licensed Supervisor whose licence covers supervision of the Scheme and otherwise be entitled by law to act as the Supervisor of the Scheme.

### **Removal of Supervisor**

- 15.2 The Supervisor will cease to hold office as Supervisor of the Scheme if any of the following occur:
  - 15.2.1 if, subject to clause 15.4:
    - (a) the Manager, with the approval of the FMA, removes the Supervisor, provided that the Manager must give the Supervisor at least 90 days' notice in writing (or such lesser period of notice as the Supervisor may agree) before removal under this clause (although the Manager is not required to give the Supervisor any reason for that removal); or
    - (b) members by Special Resolution remove the Supervisor from office; or
    - (c) the Manager, with the approval of the FMA, removes the Supervisor with immediate effect by notice in writing to the Supervisor due to the fact that an order has been made or an effective resolution passed for the winding up of the Supervisor or it is placed in liquidation, receivership or statutory management, or
  - 15.2.2 the Supervisor is removed by the FMA if the FMA is satisfied that the Manager and the Supervisor no longer meet the requirements of section 127(1)(e) of the FMCA; or
  - 15.2.3 the Supervisor is removed by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011.

**Resignation**

- 15.3 Subject to clause 15.4, the office of the Supervisor shall become vacant and if the Supervisor resigns from office by giving 90 days' notice (or such lesser period of notice as the Supervisor may agree in writing with the Manager), but the Supervisor is not required to give any reason.

**Restrictions**

- 15.4 The Supervisor may not be removed under clause 15.2.1 or resign under clause 15.3 unless:

- 15.4.1 all functions and duties of the position have been performed; or
- 15.4.2 another Licensed Supervisor has been appointed to the position and accepted the appointment in its place; or
- 15.4.3 the High Court consents.

- 15.5 No removal or retirement will take effect until:

- 15.5.1 a Licensed Supervisor has been appointed as Supervisor under clause 15.8;
- 15.5.2 the new Supervisor has executed the deed of appointment under clause 15.6; and
- 15.5.3 all of the assets of the Scheme have been transferred to the new Supervisor; and
- 15.5.4 the requirements of section 193(2) of the FMCA have been met.

**New Supervisor execute a deed**

- 15.6 Any new Supervisor must forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and the Members to be bound by all the covenants on the part of the former Supervisor under this Deed upon the date of such appointment.

**Retiring Supervisor released**

- 15.7 From the date of execution by the new Supervisor of a deed of appointment, the retiring Supervisor is absolved and released from all such covenants under this Deed (except in respect of any prior breach in respect of which the retiring supervisor is not indemnified for under this Deed) and the new supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under this Deed in all respects as if the new Supervisor had been originally named as a party to this Deed.

**New appointment**

- 15.8 The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has resigned or been removed from office) is vested in the Manager. If the Manager fails or refuses to appoint a new Supervisor, the new Supervisor may be appointed by a Special Resolution of the Members.

**16 FEES, COSTS AND EXPENSES****Remuneration of the Supervisor**

- 16.1 The Supervisor shall be entitled to be paid an annual fee for the services it performs in respect of the Scheme as agreed between the Supervisor and Manager from time to time.
- 16.2 The Supervisor shall also be entitled to be paid supplementary fees on a time and attendance basis at prevailing scale rates for services it performs in respect of the Scheme which are of a non-routine nature. The fee referred to in this clause 16 may be paid by the Manager or out of the Scheme Assets.

**Remuneration of the Manager**

- 16.3 Subject to the FMCA the Manager shall be paid out of the Scheme in respect of its services it performs in respect of the Scheme as specified in the Disclosure Documents. This fee may include any fee payable to the Supervisor.
- 16.4 Any fees, costs, charges and expenses payable to the Supervisor or Manager must be disclosed in writing to all Members before they join the Scheme provided that such disclosure may take the form of a general description of the ability of the Supervisor or the Manager to charge or incur fees, costs, charges and expenses.
- 16.5 Goods and Services and other taxes (if any) applicable to any fee contemplated under this clause 16 shall be added to that fee.

**Expenses**

- 16.6 The Supervisor and the Manager shall be entitled to deduct from the Scheme Assets:
- 16.6.1 Any disbursements and expenses including all legal costs, expenses and registration fees incurred by the Supervisor in connection with the preparation, approval and the execution of this Deed and any amendments, modifications or additions to the provisions of this Deed or obtaining any approvals which may be required by law or otherwise in respect of any such amendment, modification or addition.
- 16.6.2 The costs of calling, arranging and holding any meeting of Members as may be required from time to time.
- 16.6.3 Such amounts as are required to meet the costs, charges and expenses of management and administration of the Scheme including the remuneration and any out of pocket expenses and operational costs of the Supervisor in respect of the Scheme and including all legal costs, expenses and registration fees incurred in connection with the preparation, printing and registration of any statements, prospectuses and investment statements in respect of the Scheme.
- 16.6.4 The fees and expenses of the Auditor.
- 16.6.5 Disbursements in connection with the annual accounts and the annual reports for the Scheme.

- 16.6.6 The fees, costs, and expenses of the Supervisor and the Manager, an Administration Manager, an Investment Manager, an Investment Advisor and any other agent or Person engaged, contracted or employed by the Supervisor in respect of the Scheme permitted under this Deed and agreed from time to time by the Supervisor,
- 16.6.7 The fees and expenses of any solicitor, barrister, valuer, accountant, actuary or other Person from time to time employed by the Supervisor in the discharge of its duties under this Deed.
- 16.6.8 Disbursements in connection with the keeping of the Register.
- 16.6.9 Any reasonable disbursements incurred by the Supervisor in respect of the management of any Investment, including without limitation any costs incurred in relation to the acquisition or disposal of any Investment.
- 16.6.10 All disbursements in or in connection with the retirement or removal of the Supervisor under this Deed and the appointment of any Person in substitution.
- 16.6.11 All expenses, duties and disbursements incurred by the Supervisor in connection with the termination of the Scheme.
- 16.6.12 All costs and disbursements in connection with the initiation, conduct and settlement of any court proceedings (including any negotiations and demands relating to them) including, without limitation, proceedings against the Supervisor arising from any neglect, breach or default under this Deed, other than a wilful default or wilful breach of trust,
- 16.6.13 All management fees, commissions and other fees and expenses paid to any real estate agents, property managers or other Persons appointed to manage any Investments.
- 16.6.14 All Taxes charged to, or payable by, the Supervisor in connection with or attributable to the Scheme.
- 16.6.15 Interest relating to borrowing.
- 16.6.16 Any other disbursements properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out its duties under this Deed;

Provided that any costs relating to the management, acquisition or disposal of any Investment in respect of a Member Account shall, unless the Supervisor determines otherwise, be treated as an expense of the Member Account to which the Investment relates.



**17 RELATED PARTY TRANSACTIONS****Transactions with Related Party**

- 17.1 The Manager (and any Investment Manager, Administration Manager, or other Person to whom the Manager has contracted out or delegated some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 17.2 However, clause 17.1 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:
- 17.2.1 the Manager obtains the Supervisor's consent for the transaction or transactions under clause 17.3; or
  - 17.2.2 section 174 of the FMCA applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.
- 17.3 The Supervisor must not consent to a transaction or transactions under clause 17.2.1 unless one of the following applies and the Supervisor certifies to that effect:
- 17.3.1 the Supervisor considers that the transaction or transactions are in the best interests of the Members; or
  - 17.3.2 the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Members of the relevant Scheme that are affected or potentially affected by the transaction or transactions.
- 17.4 Subject to clauses 5.9 to 5.14 and clauses 17.1 to 17.3, the Manager may not enter into a transaction, where the transaction:
- 17.4.1 will cause any part of any Scheme Asset to be invested with the Manager or any Related Party of the Manager; or
  - 17.4.2 is to sell, purchase or otherwise dispose of or acquire any asset or Investment to or from the Manager or any Related Party of the Manager or managed investment scheme or other trust or scheme managed by the Manager or by such Related Party of the Manager; or
  - 17.4.3 is to enter into any contract, agreement or other arrangement with any Related Party of the Manager to provide management or consultancy services or any other services that the Manager considers desirable,
- except as permitted by the FMCA.
- 17.5 Before entering into a transaction or series of transactions under clause 17.4, the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that

complies with section 175 of the FMCA signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager.

**No liability to account**

- 17.6 Subject to the requirements of the FMCA, none of the Manager, Supervisor or any Related Party shall be liable to account to any Scheme, the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with clauses 17.4 and 17.5 unless the Manager or Supervisor has failed to meet the standard of care required of it by clauses 5.11.4 and 11.
- 17.7 The Manager shall provide notification of completion of the transaction to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clause 17.4.

**18 INDEMNITY OF SUPERVISOR AND MANAGER**

- 18.1 Except as otherwise expressly provided in this Deed, the Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action for or in connection with the affairs of any Fund, are, and are deemed to be, each acting for and on behalf of the Fund and not in their own respective capacities. Subject to the FMCA, neither the Supervisor nor the Manager is under any personal Liability, nor may resort be had to their private property, for the satisfaction of any obligation of the Funds, but the relevant Fund only is liable or subject to levy or execution
- 18.2 The Supervisor and the Manager shall, subject to the FMCA, be indemnified and reimbursed out of the Scheme for any claims, costs, damages, liabilities and expenses which the Supervisor may reasonably pay or incur in the administration of the trusts, powers and discretions vested in it under this Deed (including, for the avoidance of doubt, PIE Tax). The Supervisor and the Manager shall have a first claim on the Scheme for this indemnity.
- 18.3 Subject to the FMCA this indemnity shall extend to any payments made to any Person whom the Supervisor or the Manager in good faith believes to be entitled to receive the payment although it may be subsequently found the Person was not entitled.
- 18.4 The Supervisor and the Manager shall have a lien or charge over all Assets in the Scheme for the indemnity and may retain and pay out of the Assets in the Fund all sums and amounts necessary to give effect to the indemnity.
- 18.5 Except as expressly provided in this Deed, and subject to the FMCA, any agent of the Supervisor or the Manager, acting for or on behalf of the Supervisor or the Manager as the case may be, shall have the benefit of any exclusions or indemnities given to the Supervisor or the Manager in this Deed.
- 18.6 Except to the extent to which the Supervisor or the Manager is liable for any breach of trust where the Supervisor or the Manager has failed to show the degree of care and diligence required under this Deed or the FMCA or the wilful act or default or the dishonesty of their

directors or officers, the liability of the Supervisor and the Manager under this Deed or at law, shall at all times be limited to the value of the Assets of the Scheme.

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

18.7 The Manager may agree:

18.7.1 to limit the liability (in connection with its services in respect of the Scheme or any Funds) of; and/or

18.7.2 to indemnify and reimburse out of the Scheme's or the Funds' property,

any Investment Manager or Administration Manager appointed in respect of the Scheme or any Funds in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or the relevant Funds or any action taken or omitted to be taken in connection with the Scheme or those Fund (including, without limitation, legal fees and disbursements).

**Power to indemnify Custodians**

18.8 The Supervisor may agree:

18.8.1 to limit the liability (in connection with its services in respect of the Scheme or any Funds), of; and/or

18.8.2 to indemnify and reimburse out of the Scheme's or the Funds' property,

any Custodian or a sub-custodian appointed in respect of the Scheme or any Funds in respect of any debt, liability or obligation incurred by or on behalf of the Custodian or a sub-custodian in respect of the relevant Scheme or any action taken or omitted to be taken in connection with the Scheme or those Funds (including without limitation, legal fees and disbursements).

**Other Trusts**

18.9 Nothing in this Deed shall be construed to prevent the Supervisor or the Manager from establishing or acting as the supervisor, trustee or manager of or advisor to other trusts, whether of a nature similar to or different from the trusts of this Deed.

**Allocation of Expenses**

18.10 Any expenses deducted from the Scheme Assets under clause 16.6 shall be allocated equitably among the Members and applied to the Member's Accounts in a manner which the Manager determines is fair and reasonable.

**19 AUDITOR**

**Appointment of Auditor**

19.1 The Manager, after consultation with the Supervisor, in accordance with the FMCA shall appoint an Auditor at remuneration to be fixed on an arm's length basis and payable by the

Manager. The Auditor shall be a person qualified for appointment in terms of the FMCA. The terms of appointment of the Auditor must meet the requirements of the Financial Markets Legislation.

**Auditor's report to Supervisor**

- 19.2 The Manager shall furnish to the Supervisor at the same time as the Manager furnishes to the Supervisor a copy of the audited financial statements pursuant to clause 20.5.3, a separate report by the Auditor in the form set out in the Supervisor Reporting Agreement

**Removal from Office**

- 19.3 The Manager may at any time, with the consent of the Supervisor, remove from office any Auditor appointed pursuant to clause 19.1. The Manager must also remove the Auditor if the Supervisor, believing it to be in the best interests of the Scheme and/or Members, instructs the Manager to do so. On removal of the Auditor by the Manager, the Manager shall in accordance with clause 19.1 appoint another Auditor in the place of the Auditor that has been so removed.
- 19.4 An Auditor may retire upon the expiration of not less than ninety (90) days' notice in writing to the Manager or such other period as agreed between the Manager and the Auditor, in consultation with the Supervisor.

**Office to be Kept Filled**

- 19.5 Where the office of Auditor falls vacant and is required to be filled in accordance with clause 19.1, the Manager (after consultation with the Supervisor in accordance with the FMCA) shall effect a new appointment as soon as practicable.

**20 RECORDS AND TRUST ACCOUNTS AND REPORTS**

**Receipt and Payment of Money**

- 20.1 All money of the Scheme shall be lodged as soon as practicable to the credit of an account in the name of the Scheme held by the Supervisor or Custodian, kept with a bank determined from time to time by the Supervisor and all payments made out of the Scheme shall be made by cheque or order or other form of money transfer drawn upon that account. A receipt given by the Supervisor or by any other person authorised by the Supervisor in writing to receive any money of the Scheme, shall be a sufficient discharge to the person by whom the moneys are paid.

**Records to be kept**

- 20.2 The Manager shall keep a complete record of all matters, information and data necessary or expedient for the proper and efficient working of the Scheme and the carrying out of its functions under this Deed, or as may be required from time to time by law.

**Accounting records**

- 20.3 The Manager must keep, or cause to be kept, in accordance with the accounting policies that are developed by the Manager for the Scheme and which comply with Relevant Law and generally accepted accounting policies:
- 20.3.1 proper accounting records of, or relating to the Scheme; and
  - 20.3.2 true account of all sums of money received and expended by or on behalf of the Scheme and the matters in respect of which each receipt and expenditure takes place and of all sales, purchases and other transactions relating to the Investments and the Liabilities of the Scheme.
- 20.4 In keeping, or causing to be kept, the Manager's proper accounting records under clause 20.3:
- 20.4.1 the Manager must have appropriate systems of control and oversight;
  - 20.4.2 the Manager must keep such accounting records at a suitable secured location accessible by the Supervisor and the Auditor; and
  - 20.4.3 the provisions of Part 7 of the FMCA must be complied with and those annual accounts audited by the Auditor.

**Financial statements to be audited**

- 20.5 At the end of each Financial Year, the Manager must:
- 20.5.1 prepare financial statements for the Scheme and arrange for them to be audited by the Auditor;
  - 20.5.2 if required by the Supervisor, provide a final draft of audited financial statements to the Supervisor for its review a reasonable time prior to their proposed execution; and
  - 20.5.3 arrange for the audited financial statements to be sent or made available to the Supervisor together with any documents and reports required by any Relevant Law to be annexed to or to accompany the financial statements.

**Annual Report**

- 20.6 The Manager shall, within 4 months after the end of each Financial Year (or such other time as may be prescribed by law) prepare an Annual Report on the Scheme for that Financial Year as required by the FMCA or as may otherwise be required by Relevant Law. The Manager must provide the Supervisor with a draft Annual Report and allow the Supervisor a reasonable period of time to review and provide comments on the form of the Annual Report.
- 20.7 The Manager shall, on completing any such Annual Report, send a copy to the Supervisor and to any Person to whom a copy of the report is required to be sent under the FMCA, in the manner and within any timeframe prescribed by the FMCA.

**Manager Reporting to Supervisor**

- 20.8 The Manager will provide to the Supervisor:
- 20.8.1 such reports as may be specified under the FMCA or FMCR including, but not restricted to, any reports required in the event of a limit break (within the meaning of section 167 of the FMCA) or material pricing error or non-compliance (in terms of section 168 of the FMCA) occurring; and
  - 20.8.2 any information, certification or reports as set out in a written agreement between the Manager and the Supervisor or as reasonably requested by the Supervisor to enable the Supervisor to comply with Relevant Law and the requirements of this Deed.

**Regulatory compliance**

- 20.9 The Manager shall, at all relevant times, make publicly available, file or lodge, or cause to be made publicly available, filed or lodged, all fund updates (within the meaning of, and in the manner specified in, the FMCA), reports, returns, statements, information or other material required by Relevant Law to be made publicly available, filed or lodged with any public registry or regulatory authority by the Manager (and Supervisor upon request) in respect of the Scheme or any Scheme.

**21 FUND UPDATE**

- 21.1 The Manager shall:
- 21.1.1 if required, prepare quarterly Fund Updates as required by the FMCA;
  - 21.1.2 provide a final draft of all Fund Updates to the Supervisor for its review a reasonable time period prior to finalisation, unless the Supervisor waives this requirement by notice in writing; and
  - 21.1.3 arrange for the Fund Updates to be lodged with the Register and sent to Members and the Supervisor in the time and manner required by the FMCA.

**22 MEETINGS**

- 22.1 When required by Financial Markets Legislation, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and Regulations. The meeting of Members shall be conducted in accordance with the requirements of the FMCA. A meeting may be called with respect to the Scheme or a Fund. If it is called with respect to a Fund the only Members entitled to attend and vote at the meeting shall be Members of that particular Fund.

**Directions to the Supervisor**

- 22.2 By means of a Special Resolution passed at a meeting of Members, the Members have the power to give such directions to the Manager and the Supervisor as they think proper

concerning the Scheme, being directions that are consistent with the provisions of this Deed and, where applicable, Relevant Law. The Supervisor may seek sufficient and appropriate indemnification in respect of such directions.

#### **Compliance with directions or orders**

- 22.3 Where any direction is given to the Manager or Supervisor pursuant to clause 22.2 in respect of any matter, the Supervisor or Manager may comply with the direction and shall not be liable for anything done or omitted by it by reason of its following the direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the FMCA apply to the High Court for directions in respect of any matter.

### **23 LIMIT BREAKS & UNIT PRICING ERRORS**

#### **Limit breaks**

- 23.1 The Manager must take any action required by the FMCA if a limit break (within the meaning of section 167 of the FMCA) or material pricing error or non-compliance (in terms of section 168 of the FMCA) occurs.
- 23.2 The Manager will provide to the Supervisor:
- 23.2.1 such reports as may be specified under the FMCA or Regulations including, but not restricted to, any reports required in the event of a limit break (within the meaning of section 167 of the FMCA) or material pricing error or non-compliance (in terms of section 168 of the FMCA) occurring; and
  - 23.2.2 any information, certification or reports as set out in a written agreement between the Manager and the Supervisor or as reasonably requested by the Supervisor to enable the Supervisor to comply with Relevant Law and the requirements of this Deed.

#### **Unit pricing errors**

- 23.3 Where there is a Unit pricing error, the Manager has the power to alter a Member's Unit holding to the extent reasonably practicable in the circumstances to address partly or entirely the impact of the Unit pricing error, provided such alteration does not adversely affect the Member's Unit holding or the position of other Members compared to the position they would have been in had the Unit pricing error not occurred.
- 23.4 The Manager shall correct any material Unit pricing errors or material non-compliances with a pricing methodology for Units in a Fund in the Scheme, to the extent required by the FMCA.
- 23.5 For the purpose of section 168 of the FMCA and Regulation 99 of the FMCR, the minimum reimbursement or compensation level for Unit pricing errors or non-compliance is an amount determined on a case by case basis by the Manager after consultation with the Supervisor based on relevant industry guidelines which take into account its size, type,

and/or frequency of the issue and the cost of reimbursement or compensation and this clause shall apply to affected former Members.

- 23.6 The Manager shall report to the Supervisor any error in the calculation of a Unit Price or non-compliance with any FMA notices relating to the pricing methodology for Units in a Fund as set out in the Supervisor Reporting Agreement.

## **24 CUSTODIAN REPORTS**

- 24.1 Unless already provided by the Custodian, the Supervisor shall provide the Manager with copies of all reports received from the Custodian confirming all property held by the Custodian as soon as reasonably practicable following receipt.

## **25 REGISTER OF MEMBERS**

- 25.1 A register of Members shall be kept by the Manager or its appointed agent in the form and manner required by Relevant Law in consultation with the Supervisor.
- 25.2 Without limiting clause 25.1, there shall be entered in the Register:
- 25.2.1 the names, and addresses of the Members;
  - 25.2.2 a record of the Member Account for every Member;
  - 25.2.3 the date on which every person became a Member of the Scheme and the date on which any person ceased to be a Member of the Scheme;
  - 25.2.4 the date on which any benefits were paid in respect of a Member; and
  - 25.2.5 such other information as the Supervisor or Manager determines or as is required by Relevant Law.
- 25.3 The Supervisor shall be entitled to rely absolutely upon entries in the register being correct and neither the Supervisor nor any of the Supervisor's agents, except the Manager, shall incur any liability or responsibility on account of any mistake in respect of the register.
- 25.4 The Register shall be open for inspection by the Supervisor, Auditor and any Member for the purpose of verifying their own entry on the Register during the business hours of the Manager or its appointed agent.
- 25.5 The Manager shall cause the Register to be audited by the Auditor at annual intervals or as required by the FMCA. Such audit shall be completed in accordance with the FMCA and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of Part 4 of the FMCA has not been complied with. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause the Register to be audited.



## 26 INVESTMENTS

- 26.1 The Manager must, in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by section 13B or 13C of the Trustee Act 1956.

### **Authorised Investments**

- 26.2 The Investments of each Fund must at all times be Authorised Investments for such Fund.
- 26.3 Except to the extent the other provisions of this Deed and any SIPO provide to the contrary, the Manager and any Investment Manager have an unfettered discretion to authorise investments or classes of investment from time to time in respect of each Fund, and to revoke the authorisation of any investment or class of investments in respect of a Fund, and may authorise different investments or classes of investment in respect of any or all Funds.
- 26.4 Provided they have complied with their respective obligations under this Deed in relation to the authorisation of investments for Fund in question, none of the Manager, Supervisor or the Investment Manager shall have any liability to any Member or any other person in respect of any decision to authorise or not authorise or revoke the authorisation of any investment or class of investments as an Authorised Investment in respect of any Fund.

### **The constitution of the Investments**

- 26.5 The Investments for a Fund shall consist of all of the cash, property, assets and rights for the time being held by the Supervisor or the Custodian in respect of that Fund including:
- 26.5.1 the proceeds of realisation or sale of any Investments;
  - 26.5.2 all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium, rebates in respect of any tax or distribution, or which are otherwise received and are for the time being retained by the Supervisor; and
  - 26.5.3 all income from the Fund held pending distribution or reinvestment.

### **Separate Funds**

- 26.6 Each Fund shall, subject to clause 37.2, be a separate and distinct trust fund with its separate assets and Liabilities governed by the terms and conditions of this Deed, and the relevant Fund Establishment Deed. All Investments made for a Fund shall be held by the Supervisor as the exclusive property of the relevant Fund and such Investments shall be held exclusively for the benefit of Investors of the relevant Fund. Likewise, all Liabilities incurred by the Fund in relation to a Fund shall be the exclusive Liability of the relevant Fund.

### **No claim**

- 26.7 No Investor in one Fund shall by virtue of being an Investor in such Fund have any claim on any other Fund.

**New Funds**

- 26.8 The establishment of a new Fund shall not in any way vary or affect the Funds previously constituted nor give rise to any resettlement of any such Fund.

**SIPO**

- 26.9 Subject to any relevant exemption granted by FMA to the Manager from time to time, the Manager in consultation with the Supervisor must ensure there is a SIPO that provides adequately for the investment policy and objectives of the Scheme and for each Fund in accordance with section 164 of the FMCA.
- 26.10 Subject to clause 26.9, the Manager may amend any SIPO only after giving prior written notice to the Supervisor. Where the change to the SIPO is material, prior written notice shall be given by the Manager to Investors.
- 26.11 Subject to Members' rights created by this Deed, no Member shall be entitled to:
- 26.11.1 require the transfer to the Member of any of the Investments; or
  - 26.11.2 attend meetings whether of shareholders or otherwise or vote or take part in or consent to any action concerning any Investment in which the Scheme holds an interest. This shall not in any way prevent or restrict the ability of a Member to bring any action against the Supervisor for any breach of the Supervisor's duty under the FMCA or at law.
- 26.12 Subject to compliance with the Supervisor's obligations under this Deed, the Supervisor shall have unrestricted rights and powers in dealing with the Scheme, or the Investments or any part thereof.

**Investment of Scheme Assets**

- 26.13 All Scheme Assets available for investment shall be invested in accordance with the relevant SIPO.
- 26.14 The only power of Investment of the Manager in respect of Scheme Assets is in relation to Scheme Assets attributable to a Fund, in Authorised Investments of the Fund in accordance with the most recent Investment Election of the relevant Member.
- 26.15 The wide power of investment in section 13A of the Trustee Act shall not apply to the Scheme and:
- 26.15.1 the investment obligations of the Supervisor under this Deed are a contrary intention for the purpose of sections 2(5) and 2(5A) of the Trustee Act; and
  - 26.15.2 an Investment Election is a direction by the Member concerned in terms of section 13G of the Trustee Act with respect to the investment by the Supervisor of Scheme Assets.
- 26.16 Notwithstanding anything to the contrary contained in or implied pursuant to this Deed or section 13D (1) of the Trustee Act, the Supervisor and the Investment Manager shall, in

exercising the power of investment, exercise the care, diligence, and skill required by section 13B or section 13C of that Act, as is applicable.

### **Investment Election**

- 26.17 Each Member shall give to the Manager or Supervisor directions for the investment of Scheme Assets attributable to that Member in Authorised Investments of the relevant Fund, subject to the requirements of this Deed.
- 26.18 The Manager and the Supervisor shall ensure that before an Eligible Person becomes a Member, the Eligible Person gives to the Manager an Investment Election in respect of Scheme Assets attributable to that Member to be given effect to in respect of the Eligible Person upon becoming a Member.
- 26.19 Subject to the other provisions of this Deed, a Member may amend the Member's Investment Election from time to time. Any amendment shall take effect as soon as practicable after notice of the amendment is received by the Investment Manager.
- 26.20 Every Investment Election or amendment to an Investment Election shall be made in the form prescribed from time to time by the Manager.

## **27 VALUATIONS**

- 27.1 The Manager shall determine the amount expressed in the relevant currency in which the Scheme or Fund (as the case may be) is denominated that represents the Net Asset Value of the Scheme or Fund at the applicable Valuation Time by taking the aggregate of:
- 27.1.1 assets of the Scheme or Fund valued by the Manager at the current fair Market Value on such basis that the Manager considers appropriate and discloses in the Disclosure Document;
  - 27.1.2 income accruing from the assets of the Scheme or Fund relative to the Valuation Time on which income is being determined to the extent such income is not already included in the determination; and
  - 27.1.3 any other amounts which in the opinion of the Manager should be included in such aggregate for the purpose of making an equitable and reasonable determination of the Net Asset Value of the Scheme or Fund, having regard to generally accepted accounting practice as defined in the FMCA,
- and by deducting from such aggregate the total of:
- 27.1.4 subject to clause 27.2 all Liabilities of the Scheme or Fund determined on such basis as the Manager considers appropriate and discloses in the Disclosure Document;
  - 27.1.5 subject to clause 27.2 any costs, charges, or other amounts incurred or accrued or which will or may be incurred in holding the assets in the Scheme or Fund or a part of or provision against payment of any of the foregoing determined by the

Manager in a manner which the Manager considers to be suitable and equitable;  
and

27.1.6 any amounts which in the opinion of the Manager should be included in such aggregate for the purpose of making an equitable and reasonable determination of the total value of the Scheme or Fund, having regard to generally accepted accounting practice as defined in the FMCA.

27.2 Notwithstanding clauses 27.1.4, 27.1.5 and 27.1.6, the Manager may exclude certain liabilities from the Liabilities taken into account in determining the Net Asset Value of the Scheme or Fund at the Valuation Time such as amounts representing costs, expenses, fees and other charges charged to Member Accounts (whether or not those amounts are required to be treated as Liabilities for accounting purposes).

27.3 Every such determination of the Net Asset Value of the Scheme or a Fund shall be deemed to take effect at the Valuation Time in respect of which it is made and shall remain in force until the next Valuation Time is determined for the establishment of the Net Asset Value of the Scheme or relevant Fund.

27.4 The Net Asset Value of the Scheme or a Fund determined in good faith in accordance with this Deed is in the absence of manifest error final and binding on all Persons including (without limitation) the Manager, the Supervisor or any Member.

## **28 ACCOUNTS**

### **Accounts to be kept**

28.1 The Manager shall ensure that a Member's Account in respect of each Member is established and maintained within the Scheme.

28.2 The Manager may open such other special purpose accounts as it considers necessary for the management or administration of the Scheme.

### **Member's Account**

28.3 The Member's Account of a Member shall be credited with:

28.3.1 the amount of the Contributions by or in respect of the Member, including any amount transferred from any other superannuation or pension scheme in respect of the Member in accordance with clauses 29.12 and 29.13;

28.3.2 the amount of any Investment Income allocated to the Member as determined by the Manager in accordance with clause 28.7.

28.4 The Member's Account of a Member shall be debited with:

28.4.1 such share of the Scheme expenses as is allocated to the Member in accordance with this Deed;

- 28.4.2 the amount of any Investment Loss allocated to the Member as determined by the Manager in accordance with clause 28.7;
  - 28.4.3 the cost of providing any Benefit from the Member's Account; and
  - 28.4.4 the amount of any Benefit paid or transferred in respect of the Member.
- 28.5 The Member's Account Balance in respect of a Member shall mean the balance of the Member's Account from time to time after completion of all transactions mentioned in clauses 28.3 and 28.4.
- 28.6 Where a Benefit is determined by reference to the Member's Account Balance, the amount of the Benefit shall be the Member's Account Balance on the date or dates on which the Benefit (or part thereof, if applicable) is paid or transferred and the Member's Account Balance shall continue to be determined according to clause 28.5 until the Benefit has been paid in full.

#### **Allocation of Income or Loss**

- 28.7 The Manager shall, at such times as the Manager determines, in consultation with the Supervisor, allocate to each Member's Account, the proportion of any Investment Income or Investment Loss from the Investments of the Scheme which the Manager considers appropriate and equitable having regard to:
- 28.7.1 the Investment performance of the Scheme Assets attributable to the Member concerned; or
  - 28.7.2 the respective interests in the Scheme of the Member's Accounts;
  - 28.7.3 the incidence of Tax, whether payable or receivable in respect of the Scheme as a whole or in respect of a particular Member; and
  - 28.7.4 such other factors as the Manager, in consultation with the Supervisor, considers appropriate in the circumstances.

#### **Timing of individual Allocations**

- 28.8 Allocations of Investment Income or Investment Loss under clause 28.7 may be made in respect of any one or more Members at any time without the Supervisor being bound to make any allocation to any other Member at the same time. On a Benefit being paid to or in respect of a Member that comprises the entire Member's Account Balance at the time, the Manager shall ensure that a final allocation of any Investment Income or Investment Loss remaining in the Scheme attributable to that Member is made in respect of the Member.

## **29 MEMBERSHIP PROVISIONS**

### **Eligibility for Membership**

- 29.1 Any Eligible Person may apply to join the Scheme in accordance with the Rules.

- 29.2 Subject to clause 29.3, a Member will become entitled to Benefits from the Scheme in accordance with the relevant Rules.
- 29.3 When a UK transfer has been transferred to the Scheme pursuant to Rule 8 of Schedule 1, any withdrawal benefits, to the extent that they relate to the UK transfer, shall be paid to the relevant Member in accordance with the terms set out in this Deed.

**Advice to Prospective Members**

- 29.4 The Manager shall ensure that each Eligible Person shall before becoming a Member of the Scheme receive a PDS as is required by the FMCA.

**Compliance with Legislation**

- 29.5 The Manager shall in making any invitation in terms of clause 29.4, and accepting Contributions comply with Relevant Laws.
- 29.6 The Manager must, if required by Relevant Law, not make an offer of membership in the Scheme unless:
- 29.6.1 the Scheme is registered under the FMCA;
  - 29.6.2 a PDS has been prepared and lodged as a Register Entry in respect of the Scheme; and
  - 29.6.3 all of the information that the Register Entry is required to contain under the FMCA has been lodged as required with respect to the Scheme.
- 29.7 The PDS and Register Entry for the Scheme must comply with the Financial Markets Legislation in force at the time, and otherwise be in a form provided to the Supervisor in advance of lodgement or supply (as the case may be).
- 29.8 The Manager must use its best endeavours to ensure that the PDS and Register Entry for the Scheme at all times comply with Financial Markets Legislation.

**Entry to Membership**

- 29.9 Every Eligible Person who is eligible for membership in accordance with clause 29.1 who wishes to join the Scheme shall:
- 29.9.1 complete and deliver to the Manager an application to join the Scheme in the form specified by the Manager;
  - 29.9.2 submit such evidence of identity and age (if appropriate) as may be required by the Manager;
  - 29.9.3 furnish to the Manager all information and relevant authorisations (if any) required by the Manager; and
  - 29.9.4 agree in writing to be bound by the terms and conditions of this Deed if the Eligible Person's application is accepted.

**Refusal of Application**

- 29.10 The Manager may in its absolute discretion accept or refuse any application for membership of the Scheme and is not required to give any reason or ground for such refusal including, without limitation, if the application would result in the Scheme becoming ineligible as a PIE, or would operate to threaten any such eligibility. A decision to refuse an application shall be made promptly and the Manager shall promptly refund any Contribution received in respect of such application.

**Member Bound by Deed**

- 29.11 An Eligible Person shall, by virtue of becoming a Member, be deemed to have agreed to be bound by this Deed.

**Transfer to the Scheme**

- 29.12 The Manager may, upon such terms and conditions as the Manager in its discretion prescribes or agrees with the transferor scheme accept from any other superannuation or pension scheme or the controlling body thereof money or assets in respect of a Member's interest in that superannuation or pension scheme.
- 29.13 The Manager shall credit the value of the payment or transfer of assets made pursuant to clause 29.12 to the Member's Account as Contributions by the Member.

**Transfer of Member to another Registered Scheme or Overseas Scheme**

- 29.14 If a Member becomes a member of another Registered Scheme or Overseas Scheme, the Manager may:
- 29.14.1 with the written consent of the Member; or
- 29.14.2 otherwise as permitted by Relevant Law,
- transfer a Benefit equal to all or part of the Member's Account Balance (less any applicable fees) to the other Registered Scheme or Overseas Scheme, subject to any terms and conditions agreed pursuant to clause 29.12, and any other terms and conditions agreed with the controlling body of the transferee scheme.
- 29.15 Notwithstanding anything contained or implied in this Deed, the Manager or Supervisor as applicable, in order to preserve the status of the Scheme as a ROPS, may refuse to make a payment to, or in respect of a Member in respect of a Member's Account where any part of the Member's Account is subject to the Relevant UK Law and Regulations which, in the opinion of the Manager or Supervisor as applicable, would not have been authorised from a UK Pension Scheme or, in order to preserve the status of the Scheme as a ROPS, permit a payment to be made to, or in respect of, a Member from a Member's Account subject to, and conditional upon, such terms and conditions as the Manager or Supervisor (as applicable) in its sole and absolute discretion thinks fit.
- 29.16 No transfer of any Benefit can be registered unless, at the discretion of the Manager, any PIE Tax payable in respect of the Member's Benefit has been paid and/or any adjustment made under clause 37.2, and unless the Member has paid all duties, taxes (including goods

and services tax but excluding any PIE Tax at the discretion of the Supervisor or Manager) and other commissions, fees and charges in respect of the transfer of the Benefit.

29.17 The Manager may decline to register any transfer for non-compliance with any law or the provisions of this Deed including without limitation, if the transfer would result in the transferee or transferor holding less than any minimum holding as determined by the Manager from time to time, or would result in the Scheme becoming ineligible as a PIE, or would operate to threaten any such eligibility.

29.18 Upon transfer of the Benefit the Supervisor and the Manager shall be released and discharged from any claim by that Member in respect of the amount so transferred. The Supervisor and the Manager shall be under no obligation to see to the application of the amount of the Benefit so transferred.

#### **Termination of Membership**

29.19 A Member's participation in the Scheme shall terminate on the occurrence of any of the following events:

29.19.1 when the Member's total Benefit has been paid; or

29.19.2 when the Member's Account Balance becomes less than or equal to zero.

#### **Provision of information**

29.20 Every Member agrees to:

29.20.1 provide the Manager with such information, in such form and within such timeframes as is required by the Relevant UK Law and Regulations; and

29.20.2 provide the Manager with such other information as the Manager may reasonably request to assist the Manager to comply with its obligations under Relevant UK Law and Regulations.

### **30 PROVISIONS RELATING TO CONTRIBUTIONS**

#### **Initial Contribution**

30.1 An initial Contribution shall be made by or in respect of a Member upon the Member becoming a Member.

#### **Other Contributions**

30.2 Subject to the other provisions of this Deed, lump sum or regular Contributions may be made at any time by or in respect of any Member.

#### **Rules for Contributions**

30.3 Contributions shall be made in the manner prescribed by the Manager from time to time and, at the Supervisor's discretion and subject to such terms and conditions as the Supervisor determines, may be made:



30.3.1 in any currency approved by the Manager; or

30.3.2 by the delivery of assets that are Authorised Investments of the relevant Fund.

#### **Minimum Contributions**

30.4 The Manager may from time to time determine minimum amounts for Initial, lump sum and regular Contributions for any Member or Members. Each Contribution must be of an amount equal to or greater than the applicable minimum.

#### **Acceptance of Contributions**

30.5 The Manager may, with the agreement of the Supervisor and without being required to give any reason or ground for its actions;

30.5.1 refuse to accept in whole or in part any Contribution;

30.5.2 waive or vary any requirement or condition that would otherwise apply in respect of the making or receipt of any Contribution; or

30.5.3 close the Scheme to further Contributions, either in respect of any particular Member or Members or in respect of Members generally, and for such period or periods or indefinitely as the Manager with the agreement of the Supervisor determines.

### **31 PROVISIONS RELATING TO BENEFITS**

#### **Payment of Benefits**

31.1 The benefit payable to a Member shall be paid in accordance with Schedule 1.

31.2 Benefits provided by the Scheme must be fully funded as they accrue.

#### **Minimum Account Balance**

31.3 Notwithstanding anything to the contrary contained in this Deed, no Member may make a Withdrawal Request for part of the Member's Account Balance if, immediately after payment or transfer of the Benefit requested, the Member's Account Balance is less than any minimum balance determined from time to time by the Manager

#### **Withdrawal Requests**

31.4 Any Withdrawal Request pursuant to this Deed shall be made to the Supervisor or the Manager and will be in such form as the Supervisor or Manager may prescribe or agree to accept from time to time in relation to the type of Benefit in question, or otherwise as directed by the Supervisor or Manager.

#### **Withdrawal Price**

31.5 The Withdrawal Price of each Unit redeemed shall be the Net Asset Value per Unit in respect of the relevant Fund calculated at the Relevant Time less any amount per Unit

determined by the Manager from time to time, to reflect the cost of realising Investments in that Fund, any other administrative costs relating to the redemption of Units, and any other amounts that the Manager or Supervisor considers appropriate. The Withdrawal Price shall be rounded down to the nearest 100th of a cent (or such other decimal place as the Manager determines).

#### **Payment of the Withdrawal Price**

- 31.6 The Withdrawal Price, subject to clauses 31.21 to 31.23 and clause 18.1, and subject to any deduction or adjustment the Supervisor or Manager may make in accordance with this Trust Deed as it considers appropriate, must be paid as soon as practicable after the implementation of the Withdrawal Request and within 60 Business Days after the implementation of the Withdrawal Request.
- 31.7 Where the consideration for Units has not been received or cleared or a 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 payment is received by, transferred to, or such retrieved or reversed amount is repaid to the Manager, the Supervisor or its appointed agent.
- 31.8 For any proceeds of redemption paid in cash, payment in accordance with the Member's instructions or, in the absence of any instructions, in accordance with clause 20.1 shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation.
- 31.9 Where the Units referred to in a Withdrawal Request by a Member are to be redeemed, the Manager shall request the Supervisor or the Custodian to apply any cash held in respect of the relevant Fund, dispose of Investments or (subject to clause 18.1) borrow to realise the aggregate Withdrawal Price from the relevant Fund.

#### **Different classes of Units**

- 31.10 Where there are different classes of Units in any Fund, the Withdrawal Price may be calculated on a different basis to the provisions of clause 31.5 in respect of one or more of such different classes and such different method of calculation shall be set out in the relevant Establishment Deed.

#### **Cancellation of redeemed Units**

- 31.11 All Units redeemed are to be cancelled by the Manager and cannot thereafter be re-issued but this does not restrict the creation and issue of new Units. Details of all cancelled Units are to be entered in the appropriate Register.

#### **Place of Payment of Benefits**

- 31.12 All benefits are payable by the Supervisor. The Manager may forward any Benefit to the postal address or bank account last notified pursuant to clause 31.15 or to such other place as the Manager, at the written request of the Beneficiary or Person to whom the benefit is payable, directs.

**Payment of Benefits to Dependants**

- 31.13 Where this Deed provides for payment of Benefits to Dependants, the Manager shall direct payment or apply those Benefits in the manner, at the time, by the instalment and subject to such terms and conditions and in such proportions between Dependants (if more than one) with the power to vary any of the aforesaid, as the Manager in its discretion thinks fit.

**Payment to Others on behalf of Beneficiaries**

- 31.14 When any Beneficiary is under 16 years of age and when in the opinion of the Supervisor it would be in the best interest of the Beneficiary, the Supervisor may pay all or a part of the Benefit to any other Person for application on behalf of the Beneficiary. The receipt of the Benefit by the Person to whom the Benefit is paid shall be a complete discharge to the Supervisor for the payment in respect of the Beneficiary, and the Manager shall not be bound or concerned to see the application of the Benefit so paid.

**Address for Payment of Benefits**

- 31.15 Every Beneficiary or Person to whom a Benefit is payable shall notify the Manager in writing at the time when the Benefit becomes payable of:
- 31.15.1 their place of residence and full postal address; and
- 31.15.2 unless the Manager otherwise determines, the bank account to which they request that the Benefit be paid.

**Payment of Benefit where Member Bankrupt**

- 31.16 Subject to Relevant Law, any Member who becomes bankrupt shall forfeit entitlement to all his or her Benefits to the maximum extent permitted by law, provided that the Supervisor shall hold upon trust the Benefits which would have been payable had they not been forfeited as aforesaid until they would otherwise have become payable, and may pay or apply those Benefits for the benefit of the Member and his or her Dependants or any one or more of them in such proportions between them and on such terms as the Supervisor may from time to time in its absolute discretion determine.

**Member Incapable of Managing Financial Affairs**

- 31.17 When any Member is, in the opinion of the Supervisor, incapable of managing his or her personal financial affairs, the Supervisor may pay all or part of that Member's Benefits to any other Person for application on behalf of the Member and his or her Dependants and the receipt by the Person to whom the Benefit is paid shall be a complete discharge of the Supervisor for the payment in respect of the Member. The Supervisor shall not be bound or concerned to see the application of the Benefit so paid.

**Assignment**

- 31.18 No Member shall assign, charge, alienate or borrow against the security of Benefits to which the Member is or may become entitled under this Deed except to such extent and in such manner as the Manager in its absolute and sole discretion may from time to time permit. For the purposes of any assignment, charge or alienation of a Member's Benefit or interest in the Scheme which is permitted in accordance with this clause (an **Assignment**):

- 31.18.1 the interest which is assigned shall consist of the amount not exceeding that held by or in respect of the Member at the date when the Assignment is made;
- 31.18.2 the Manager shall maintain a record of all Assignments notified to the Manager. No Assignment shall be valid unless the Manager has a record of it;
- 31.18.3 the Assignment will take effect to convey the interest to the assignee;
- 31.18.4 the Assignment shall be a complete discharge of any liabilities of the Supervisor, to the Member or to any other person except the assignee, in respect of the interest which is assigned. The receipt of the interest by the assignee shall be a complete discharge and indemnity for the Supervisor in respect of any claims arising from the Assignment or any payment of money to the assignee.
- 31.18.5 no assignment, charge, alienation or borrowing shall be permitted for a Member's Account that includes any amount that is subject to the Relevant UK Laws and Regulations.

**Deductions from Benefits**

- 31.19 The Manager may deduct from any Benefit or payment under this Deed any amount in respect of:
  - 31.19.1 duty or Tax payable from or in respect of that payment by a Member and shall thereupon pay such duty or any applicable tax to the relevant authority; and
  - 31.19.2 management fees and any other amounts, fees and charges payable by the Member to the Supervisor, the Manager, or any other Person or agent properly employed or engaged by the Supervisor or the Manager pursuant to this Deed.

**Receipt of Benefits**

- 31.20 Any Person to whom a Benefit is payable shall, if requested, furnish the Manager with a receipt and release in the form from time to time required by the Manager.

**Manager may Arrange Annuity**

- 31.21 During any period in which the Manager in its discretion has determined to arrange Annuities for the payment of Benefits to Members the Manager shall, on the written direction of a Member or Beneficiary entitled to payment of a Benefit under this Deed, make available an Annuity for that Member or Beneficiary.

**Payment in specie**

- 31.22 Notwithstanding any other provisions of this Deed, the Manager (with the consent of the Supervisor) may satisfy the payment or transfer of any Benefit by delivery of Scheme Assets attributable to the relevant Fund to the value of the relevant Benefit.

**Suspension of Withdrawal Request**

- 31.23 Subject to the requirements of the FMCA, if by reason of:

- 31.23.1 a decision to terminate the Scheme;
- 31.23.2 financial, political or economic conditions applying in respect of any financial market in which investments may be sold;
- 31.23.3 the nature of any Investments of the Scheme;
- 31.23.4 the occurrence or existence of any other circumstances or events;
- 31.23.5 the Scheme is a PIE and taking the following action would prevent the relevant Scheme from breaching the requirements of the PIE definition in the Tax Act;  
or
- 31.23.6 a suspension in respect of an investment fund in which the Scheme has invested in,

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of Members of the Scheme or Members who have invested in the relevant Investment or Authorised Investment as the case may be, for the Manager to realise investments or borrow in accordance with this Deed in order to permit payment of benefits or action any amendment to an Investment Direction or any transfer out of the Scheme then the Manager may, to the extent permitted by the FMCA, give notice (a **Suspension Notice**) to that effect to the Members of the Scheme or the Members who have invested in the relevant Investment or Authorised Investment as the case requires.

- 31.24 A Suspension Notice shall have the effect of suspending the operation of all existing and future benefit requests, payments, and amendments to Investment Directions in respect of Members who have invested in the Scheme or the relevant Investment or Authorised Investment as the case may be until the earlier of the following events:
  - 31.24.1 the Manager giving notice to the effect that the relevant Suspension Notice is cancelled either in whole or in part;
  - 31.24.2 90 days from the date of the Suspension Notice, or such later date as agreed between the Supervisor and the Manager; or
  - 31.24.3 the date a suspension is lifted in respect of an investment fund in which a material amount of the relevant Investment or Authorised Investment is invested in.
- 31.25 Prior to the Manager giving a Suspension Notice, the Manager shall give notice to the Supervisor of its intention to give a Suspension Notice, certifying as to the relevant circumstances.

**32 NOTICES****Giving of Notices**

- 32.1 Any notice or document shall be deemed to have been duly given to a Member or a Beneficiary if given personally or in writing sent to the Member or Beneficiary by prepaid post at the address of the Member or Beneficiary last known to the Manager. Any notice or document delivered by post shall be deemed to have been delivered in the ordinary course of post and in proving such service, it shall be sufficient to prove that the envelope or wrapper containing it were properly addressed and posted. A statement signed by the Supervisor or Manager, as relevant, that it was so posted and when, shall be conclusive of those facts.

**Deemed Receipt**

- 32.2 Any notice or document sent by post or left at the last known address of a Member or Beneficiary in accordance with this clause shall be deemed to have been duly served even if the Member or Beneficiary is dead. Such service shall be deemed a sufficient service on any Person claiming to be interested.

**33 POWER TO ALTER TRUST DEED**

- 33.1 Subject to this clause and the FMCA, the Manager may by deed at any time, with the consent of the Supervisor, such consent not to be unreasonably withheld, vary any part of this Deed provided that:
- 33.1.1 the Manager and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on Members; or
  - 33.1.2 the amendment or replacement has been approved by (or is contingent on approval by):
    - (a) in the case of an amendment or a replacement that reduces, postpones, or otherwise adversely affects the benefits, with a vested, contingent or discretionary, that may in due course flow from, or are attributable to, membership of the Scheme up to the date the amendment or replacement is made, the written consent of all Members who will be adversely affected by the amendment or replacement; or
    - (b) in any other case, a Special Resolution of Members (or, if applicable, each class of Members) that is or may be adversely affected by the amendment or replacement.

**34 OTHER AMENDMENTS**

- 34.1 This Deed may also be rescinded, altered, modified or added to in any other manner permitted by the FMCA, the Financial Markets Supervisor Act 2011, or any other enactment.

**35 CERTIFICATE OF COMPLIANCE**

- 35.1 Before any variation is made to this Deed the Supervisor shall give a certificate or obtain a certificate from the Supervisor's lawyer as required by the FMCA.

**36 COPY TO REGISTRAR**

- 36.1 The Manager shall ensure that a copy of the certificate under clause 35 and a copy of any variation is lodged as required by the FMCA. The Supervisor will provide a copy of the certificate under clause 35 so as to enable the Manager to discharge its obligations under this clause 36.

**37 PIE TAX**

- 37.1 The Manager may elect that the Scheme be a PIE or that the Scheme ceases to be a PIE at its discretion and may allocate the costs of being a PIE, as it considers appropriate. The Manager shall ensure that any Tax is attributed to Members taking into account such matters as the Manager considers appropriate.
- 37.2 Subject to the requirements of the Tax Act, the Manager has the power and discretion for as long as the Scheme is a PIE to:
- 37.2.1 make any elections as to the method of calculation for allocation or attribution of any income, PIE Tax or other amounts as it thinks fit;
  - 37.2.2 take all steps necessary to ensure that the relevant Fund is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of the Tax Act relevant to PIEs, including but not limited to, redeeming all or some of an Investor's Units;
  - 37.2.3 elect to offset tax liabilities and credits or losses in respect of a Fund or Funds and/or Investor and make such adjustments as the Supervisor or Manager considers appropriate;
  - 37.2.4 allocate any tax rebate received for tax credits or tax losses in respect of Investors or former Investors among the Investors or former Investors in such manner as the Supervisor or Manager in its complete discretion considers appropriate;
  - 37.2.5 make any such tax elections that the Manager thinks fit, such as an election for Scheme to be a foreign investment zero rate or variable rate PIE; and
  - 37.2.6 withhold tax from payments or distributions that the Manager thinks fit so as to comply with the requirements of the Tax Act.

**38 TERMINATION OF THE SCHEME**

- 38.1 The Scheme shall be wound up if:

- 38.1.1 the Manager notifies the Supervisor in writing that the Scheme is to be wound up; or
  - 38.1.2 the Supervisor is of the opinion that the Scheme is or will be unable to fulfil its purpose and resolves that the Scheme should be wound up; or
  - 38.1.3 the Scheme ceases to have any Beneficiaries and the Supervisor resolves that the Scheme should be wound up; or
  - 38.1.4 the FMA orders that the Scheme be wound up in any of the circumstances specified under the FMCA; or
  - 38.1.5 the winding-up of the Scheme is otherwise required by any law and the Supervisor accordingly resolves that the Scheme should be wound up.
- 38.2 The Supervisor must on wind up of the Scheme comply with the requirements of the FMCA including:
- 38.2.1 arranging for the preparation and filing of audited financial statements; and
  - 38.2.2 ensure a copy of those financial statements are sent to the FMA and to every Member and Beneficiary who was a Member or Beneficiary immediately before the Winding Up Date; and
  - 38.2.3 ensure the FMA and the relevant Members and Beneficiaries in writing as to the manner in which the assets of the Scheme have been distributed.

**Perpetuities Period**

- 38.3 The Supervisor shall resolve in writing to terminate the Scheme in accordance with clause 38.1 upon the expiry of eighty years less one day from the date of this Deed, or upon such later date as may be permitted from time to time under any applicable rule of law relating to Perpetuities. The requirement to terminate the Scheme under this clause 38.3 shall not apply at any time the Scheme is not subject to any maximum Perpetuity Period under any rule of law relating to Perpetuities.

**Advice to Financial Markets Authority**

- 38.4 The Manager shall immediately notify the Supervisor of a winding up resolution or court order and the Supervisor shall give a copy of the winding up resolution or court order to the FMA in accordance within the timeframe required by the FMCA and/or any other Relevant Law.

**Realisation of the Scheme**

- 38.5 On and after the Termination Date:
- 38.5.1 no further Eligible Persons shall be admitted as Members;
  - 38.5.2 no further Contributions shall be made by or on behalf of any Member except Contributions that accrued before the Termination Date;



38.5.3 the Supervisor shall cause the Investments of the Scheme to be realised or valued as seems appropriate and to be allocated in accordance with clause 38.6; and

38.5.4 any Investment Income or Investment Loss accrued at the time shall be allocated to Members' Accounts under clause 28.7.

#### **Priority of Benefits**

38.6 Subject to clause 31.22, the Supervisor shall apply the net proceeds of the realisation of Investments pursuant to clause 38.5 in accordance with the following priority:

38.6.1 first, in providing for the payment of the costs of termination and any other Liabilities of the Scheme, including PIE Tax, whether currently payable or anticipated to become payable; and

38.6.2 second, in providing for Benefits payable in terms of this Deed which have become payable prior to the Termination Date and remain unpaid at that date; and

38.6.3 third, in providing for Benefits for all remaining Members equal to the respective Member's Account Balances PROVIDED THAT if the amount available is insufficient for the appropriate provision in respect of all Members then the Member's Account Balances shall be reduced pro rata for all Members; and

38.6.4 fourth, (if there is any money remaining) in augmenting the Benefits under clauses 38.6.2 and 38.6.3. on a pro rata basis.

#### **Defer or Spread Payments**

38.7 Where the proceeds of realisation of an Investment are not immediately available to the Supervisor but will become available at a deferred date or over a period of time the Supervisor may, in the exercise of its duties under clause 38.5 and 38.6, defer or spread the application of the proceeds on realisation so as to conform with the availability of such proceeds.

#### **Application of Benefits**

38.8 The Supervisor shall make provision for every Beneficiary and other Person in respect of whom amounts are appropriated in accordance with clause 38.6 by paying to that Beneficiary or other Person the whole or any remaining part of the amount held for the Member in either of the following ways:

38.8.1 where the Person is a Member of any other Registered Scheme, and so requests, by transfer of the whole or any part of the amount held for the Member's Benefit to the Supervisor of that other Registered Scheme; or

38.8.2 by paying to that person the whole or any remaining part of the amount held for the Member as a lump sum.

**Claim against the Scheme on Termination**

- 38.9 A person in respect of whom a Benefit has been applied under the provisions of clause 38.8 shall have no right to resort to or claim against the Scheme otherwise than in respect of that Benefit.

**Wind up of a Fund**

- 38.10 A Fund may be wound up on any of the grounds set out in clause 38.1, with references in that clause to Scheme being read as references to the relevant Fund. Clause 38.8 will apply to any such wind up, with all necessary modifications.

**UK transfers**

- 38.11 Where any proceeds are payable to a Member in accordance with clause 38.8, that part of the proceeds which relate to a UK transfer shall be applied by the Manager by way of:

38.11.1 a transfer of such amount to another retirement scheme or other superannuation scheme elected by that Member, provided such scheme is recognised by HMRC as a ROPS; or

38.11.2 in such manner that satisfies any requirements imposed by the HMRC on such UK transfers from time to time and any terms and conditions on which the UK transfer is accepted under clause 8 of Schedule 1.

- 38.12 Any residual proceeds shall be paid to the Member in accordance with clause 38.8.

**Completion of distribution**

- 38.13 The Supervisor shall, to the extent required by any Relevant Law, inform the FMA of the date on which the distribution following a wind-up is completed.

**39 COUNTERPARTS**

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

**40 NEW ZEALAND LAW**


- 40.1 This Deed shall be interpreted and administrated in accordance with New Zealand law.

**EXECUTION AND DATE**

Executed as a deed.

Date: 3 May 2019

**i-Select Limited** by, and in the presence of:

  
.....  
Signature of witness

KAREN ANNE JOHNSTON  
.....  
Name of witness (print)

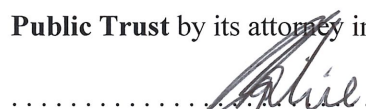
CHARTERED ACCOUNTANT  
.....  
Occupation of witness

1161 BURNETT ST, ASHBURTON  
.....  
Address of witness

  
.....  
Signature of director


CHRISTOPHER CHARLES HEPPERINON  
.....  
Name of director (print)

**Public Trust** by its attorney in the presence of:

  
.....  
Signature of witness

.....  
Name of witness (print)  
.....  
Occupation of witness  
.....  
Address of witness

Martyn Ogilvie  
Manager Client Services  
Corporate Trustee Services  
Public Trust  
Wellington

  
.....  
Signature of attorney

.....  
Name of attorney


Ireen Muir  
Head of Client Services  
Corporate Trustee Services  
Public Trust  
Wellington

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

I, Ireen Muir of Wellington, hold the office of Head of Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 17 April 2018, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand; and
- 2 at the date hereof I hold the position of Head of Client Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 3 May 2019

  
\_\_\_\_\_  
Ireen Muir

**SCHEDULE 1****Rules applicable to Members****1 SUPERANNUATION SCHEME**

- 1.1 This Scheme shall be treated as a superannuation scheme (as defined in the FMCA).

**2 INCORPORATION OF SUPERANNUATION SCHEME RULES**

- 2.1 The Superannuation Scheme Rules (as amended from time to time) are incorporated into this Schedule 1 of the Deed. In the event of any inconsistency with the Superannuation Scheme Rules and this Deed, the Superannuation Scheme Rules prevail.

**3 JOINING THE SCHEME**

- 3.1 Any natural person may apply to join the Scheme as a Member by completing an application in such form as may be prescribed from time to time by the Manager.
- 3.2 Every natural person who applies to join the Scheme shall:
- 3.2.1 make written application to the Manager in the manner required;
  - 3.2.2 provide personal details and any other information that is relevant and that may be reasonably required by the Manager at the time of joining and from time to time; and
  - 3.2.3 be bound by the terms of this Deed and such other terms and conditions relating to membership as agreed by the Manager and the person.

**Acceptance of application to join**

- 3.3 An eligible person becomes a Member of the Scheme when the Manager accepts the person's application. The Manager may accept or decline an application in its absolute discretion.

**4 MEMBERS' CONTRIBUTIONS**

- 4.1 Each Member will make contributions in the manner specified in the Member's application.
- 4.2 A Member may make additional contributions on the basis prescribed from time to time by the Manager.
- 4.3 The Manager may set minimum contribution amounts.

- 4.4 Contributions will be allocated to Members on an individual basis.

## **5 SUSPENSION OF CONTRIBUTIONS**

- 5.1 A Member may stop and recommence making contributions to the Scheme at any time and for any period.
- 5.2 A Member who stops or recommences making contributions under rule 5.1, must advise the Manager, or the Manager's agent in writing.

## **6 TERMINATION OF CONTRIBUTIONS**

- 6.1 When a Member stops being a Member all contributions shall cease.

## **7 MEMBERS' BENEFITS**

### **Permitted withdrawals**

- 7.1 A Member may only make a withdrawal from the Scheme in accordance with the Superannuation Scheme Rules and this rule 7.

### **Lock-in of funds to end payment date**

- 7.2 Subject to any other withdrawals permitted under the Superannuation Scheme Rules and Relevant UK Laws and Regulations (as may be applicable) a Member may only make a withdrawal from the Scheme on or after the earlier of the following dates:
- 7.2.1 the date on which the Member reaches the New Zealand Superannuation Qualification Age; or
- 7.2.2 the date that is five years before the date referred to in rule 7.2.1 above provided that the Supervisor is reasonably satisfied that the Member has:
- (a) permanently retired from business or employment; and
  - (b) reached an age that is five years before the New Zealand Superannuation Qualification Age.

### **Withdrawal for transition to retirement**

- 7.3 Subject to Relevant UK Laws and Regulations and clause 29.3 of this Deed, a Member may make a withdrawal for transition to retirement in accordance with clause 4(4) of the Superannuation Scheme Rules for an amount agreed with the Supervisor, subject to the maximum amount set out in clause 4(4) of the Superannuation Scheme Rules.

**Withdrawals in cases of significant financial hardship**

- 7.4 Subject to Relevant UK Laws and Regulations and clause 29.3 of this Deed, a Member may make a withdrawal in cases of significant financial hardship in accordance with clause 8 of the Superannuation Scheme Rules up to the total value of the Member's account.

**Withdrawals in cases of serious illness**

- 7.5 Subject to clause Relevant UK Laws and Regulations and clause 29.3 of this Deed, a Member may make a withdrawal in cases of serious illness in accordance with clause 10 of the Superannuation Scheme Rules up to the total value of the Member's account.

**Payment on death**

- 7.6 If a Member dies before obtaining his or her full entitlement under this Deed the benefit payable is the full value of the Member Account of the deceased Member at the time of payment.
- 7.7 The Manager shall:
- 7.7.1 on application by the Member's Personal Representative, pay any death benefit under rule 7.6 at the date on which the application is accepted as part of the Member's estate; or
  - 7.7.2 if the requirements of section 65 of the Administration Act 1969 are met, pay to the relevant person any sum authorised by that section, subject to that Act.
- 7.8 The Manager is entitled to insist on receiving death certificates, probate, letters of administration or any other information they may require before making payment of benefits on death.
- 7.9 If a Member dies and no executor or administrator is appointed in relation to the estate of the deceased Member, then the death benefit payable may be forfeited to the Scheme or the Supervisor may forfeit the benefit and apply it under section 77 of the Trustee Act 1956.

**Other permitted withdrawals**

- 7.10 A Member may make other permitted withdrawals (as provided in the Superannuation Scheme Rules and subject to Relevant UK Laws and Regulations).

**Further restrictions on withdrawal if Scheme is or was a ROPS**

- 7.11 Rule 7.12 applies if:
- 7.11.1 the Scheme is or was a ROPS; and
  - 7.11.2 the Member's Member Account includes money that was transferred from a UK Pension Fund or otherwise has previously been invested in a UK Pension Fund.
- 7.12 A withdrawal may not be made from the Member's Member Account under rule 7.3 above (Withdrawal for transition to retirement), rule 7.4 (Withdrawals in cases of significant financial hardship), or rule 7.5 (Withdrawals in cases of serious illness), or under Rule 7.2.2

in reliance on meeting the requirements in rule 7.2.2 (Permanent early retirement). For the purposes of clause 11A(2)(a) of the Superannuation Scheme Rules, this is a limit or restriction that has the intended purpose of ensuring that the Scheme complies with the requirements for a ROPS.

**Permitted withdrawal of former UK Pension Fund money if Scheme is or was a ROPS**

- 7.13 Rules 7.14 to 7.16 below apply if:
- 7.13.1 the Scheme is or was a ROPS; and
  - 7.13.2 the Member's Member Account includes money that was transferred from a UK Pension Fund or otherwise has previously been invested in a UK Pension Fund.
- 7.14 If the Manager is reasonably satisfied that a withdrawal is in accordance with the manner and circumstances set out in rule 7.15, the Member may, on application to the Manager, make a withdrawal from his or her Member Account in accordance with this clause.
- 7.15 The manner and circumstances referred to in rule 7.14 above are that:
- 7.15.1 the withdrawal payable to the Member, to the extent it consists of the Member's relevant transfer fund (as defined in the Finance Act) or otherwise relates to the Member's UK Transfer, is paid no earlier than it would be if pension rule 1 in section 165 of the Finance Act applied or otherwise in circumstances in which they would be 'authorised member payments' (as defined in the Finance Act) if they were made by a UK Pension Fund; and
  - 7.15.2 the withdrawal is paid in accordance with any terms and conditions as are agreed between the scheme manager of the UK Pension Fund from which the Transfer Value is to be transferred and the Manager and/or the Member and the Manager; and
  - 7.15.3 subject to any other terms and conditions as the Manager may determine as being necessary or desirable or in the interests of the Member or the Scheme.
- 7.16 Subject to clause 7.17, the maximum amount of a withdrawal under rule 7.14 above is the amount that, in the Manager's opinion, is equivalent to the money that was transferred from a UK Pension Fund or otherwise has previously been invested in a UK Pension Fund plus any return on that money.
- 7.17 If a Member's UK Transfer was requested on or after 9 March 2017, the Manager reserves the right to retain up to 30% of the Member's UK Transfer for a period of up to 6 years from the date of transfer from the UK Pension Fund to the Scheme, including where the Member's UK Transfer has been transferred from another scheme under rule 8.1, to cover any overseas transfer charge that may be payable to HMRC under Relevant UK Law and Regulations during that period, provided that any amount withheld must be repaid to the Member at the expiry of the withholding period.



## **8 TRANSFER PAYMENTS**

- 8.1 Subject to the FMCA, a Member may at any time apply to the Manager to have a benefit payable under any other superannuation or pension plan transferred from that plan (the transferor plan) to the Scheme. If any benefit is transferred into the Scheme, the transfer value (which may include a transfer of assets) shall be credited to the Member's Account of the Member and shall be transferred subject to such terms and conditions as are agreed between the transferor plan trustees and the Manager and/or such other terms and conditions as the Manager may determine as being necessary or desirable or in the interests of the Member or the Scheme.
- 8.2 A Member may, at any time during his or her membership of the Scheme, apply to have the Manager transfer his or her Member Account to any of the following schemes:
- 8.2.1 another superannuation scheme;
  - 8.2.2 a KiwiSaver Scheme; or
  - 8.2.3 an Equivalent Overseas Retirement Scheme.
- 8.3 On application by a Member, the Manager must, if the other scheme referred to in rule 8.2 above indicates it will accept the Member as a member, transfer the Member's Member Account to the other scheme.
- 8.4 A transfer may not be made under rules 8.2 to 8.3 above if:
- 8.4.1 the Scheme is or was a ROPS; and
  - 8.4.2 the Member's Member Account includes money that was transferred from a UK Pension Fund or otherwise has previously been invested in a UK Pension Fund; and
  - 8.4.3 the receiving scheme is not a ROPS (being a limit or restriction that has the purpose of ensuring that the Scheme complies with the requirements for a ROPS).
- 8.5 Notwithstanding rule 8.1, a Member may, subject to the FMCA, at any time apply to the Manager to transfer to the Scheme UK Tax-Relieved Scheme Funds which means, in relation to a Member, the sum of the Member's UK tax-relieved fund and his or her relevant transfer fund as defined respectively by regulations 2 and 3 of The Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006(b) (UK). The value of the UK Tax-Relieved Scheme Funds being transferred (Transfer Value) shall be credited to the Member's Account of the relevant Member and shall be transferred subject to the provisions of rules 7.15 to 7.17 (inclusive) of this Schedule.

**9 GENERAL PROVISIONS RELATING TO BENEFITS**

- 9.1 Notwithstanding anything to the contrary in the Deed or these rules, in respect of Members, no withdrawal or payment shall be made from the Scheme under rules 6, 7 or 8 of this Schedule, where the Manager considers that that such withdrawal or payment may be prejudicial to the status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member under the Scheme under any law (including, without limitation, tax status or treatment). The Manager, on acting under this clause, shall stipulate a minimum period (not longer than 6 months) that such a refusal shall apply, upon the expiry of which the Member may reapply for a withdrawal or payment under the terms of this Deed.

## SCHEDULE 2

### Form of Fund Establishment Deed

(Clause 2.4)

### PARTIES

**i-Select Limited (Manager)**

**Public Trust (Supervisor)**

### Background

- A The Manager and the Supervisor are parties to a trust deed dated [ ] (**Trust Deed**) establishing the [i-Select PIE Superannuation Scheme] (**Scheme**) which sets out the terms and conditions applicable the Scheme.
- B The Trust Deed provides that funds are to be established by the Manager and the Supervisor entering into a Fund Establishment Deed setting out the specific terms and conditions relating to that Fund.
- C The Manager has resolved to establish a fund to be known as the [*name of fund*] or such other name as the Manager shall decide and gives notice to the Supervisor (**Fund**) and the Supervisor and the Manager have entered into this deed for the purpose of establishing the Fund and the terms and conditions applicable to it.

### It is agreed

#### 1 CREATION OF FUND

##### Deposit of Moneys

- 1.1 Upon execution of this deed and the Trust Deed, the Manager will deposit, by way of subscription, the sum of \$10 with the Supervisor to be held upon the trusts created by this deed and the Trust Deed.

##### Name of the Fund

- 1.2 The name of the Fund is [ ].

##### Date of commencement

- 1.3 The Fund is deemed to have been established [[on the date of this deed][*other agreed date*]] (and the Manager's obligation to pay the sums specified in clause 1.1 above shall constitute an asset of the Fund).

**[Functional currency]**

- 1.4 For the purposes of clause 2.4.4 of the Trust Deed, the functional currency of the Fund is [ ].

**Portfolio Investment Entity**

- 1.5 It is intended that the Fund will be a PIE, provided that the Fund meets the eligibility requirements to be a PIE under the PIE rules in the Tax Act.

**2 TRUST DEED**

- 2.1 Except as modified by the terms of this deed, all the terms and conditions set out in the Trust Deed and the Establishment Deed shall apply to the Fund.

**3 INTERPRETATION**

- 3.1 In this deed all terms defined in the Trust Deed which are not separately defined in this deed shall have the same meanings where used in this deed and, unless the context otherwise requires.



**Execution and date**

Executed as a deed.

Date: 2019

**i-Select Limited** by, and in the  
presence of:

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Signature of witness

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Signature of director

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Name of witness (print)

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Name of director (print)

---

Occupation of witness

---

Address of witness

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

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Signature of witness

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Signature of attorney

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Name of witness (print)

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Name of attorney (print)

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Occupation of witness

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Address of witness