



DEEDS AMENDING
THE MASTER TRUST DEED

Dated: 11 October 2024 & 10 December 2020

MASTER TRUST DEED

Dated: 11 November 2016

DEED OF AMENDMENT OF TRUST DEED AND ESTABLISHMENT DEED FOR THE ELEVATION CAPITAL MANAGED INVESTMENT SCHEMES

DATED 9 October 2024

PARTIES

Elevation Capital Management Limited (company number 1873282) (**Manager**)

Public Trust (Supervisor)

Elevation Capital Funds Management Limited (company number 9197261) (**New Manager**)

BACKGROUND

- A. By Establishment Deed dated 28 October 2008 (as amended from time to time) (**Establishment Deed**) and Trust Deed dated 11 November 2016 (**Trust Deed**) there was established the Elevation Capital Managed Investment Schemes (**Scheme**).
- B. The Manager is the present licensed manager of the Scheme. The Supervisor is the present licensed supervisor of the Scheme.
- C. Under clause 33 of the Trust Deed, the Supervisor and the Manager may, subject to the provisions of the Financial Markets Conduct Act 2013 and in situations specified under the Trust Deed, alter the provisions of the Trust Deed and Establishment Deed.
- D. The Manager and the Supervisor wish to amend the Trust Deed and the Establishment Deed in order to address the retirement of the Manager and the appointment of the New Manager.
- E. The Supervisor has obtained a solicitor's certificate that the Trust Deed as amended by this Deed will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013.
- F. Any terms used but not defined shall have the meaning given to them in the Trust Deed.

OPERATIVE PROVISIONS

1 APPOINTMENT AND RETIREMENT

- 1.1 For the purposes of clause 20.2, the Manager has given notice of its intention to retire as the manager (and the Supervisor has accepted such notice), effective from the date that the New Manager is appointed as manager of the Fund.
- 1.2 Pursuant to clause 20.5, the Manager appoints the New Manager as the manager of the Fund effective from the date the New Manager receives all necessary licences and approvals sufficient to enable it to carry out the role of the manager. It is noted the New Manager is a Related Body Corporate of the Manager.
- 1.3 The New Manager undertakes to the Supervisor and all Unitholders that, from the date of its appointment as manager of the Fund, it shall be bound by all covenants contained in the Trust Deed from the date of its appointment.
- 1.4 In accordance with clause 20.9 of the Trust Deed, from the date the New Manager is appointed as the manager of the Fund the Manager shall be absolved and released from all covenants under the Trust Deed.

2 AMENDMENTS

Pursuant to the power contained in clause 33 of the Trust Deed, the terms of the Trust Deed and the Establishment Deed shall be amended with effect from 12.00am on 11 October 2024 as follows:

2.1 In clause 1.1, a new definition is inserted as follows:

“Related Body Corporate has the meaning given to it in the FMCA.”

2.2 Clause 20.5 of the Trust Deed is deleted in its entirety and replaced as follows:

“Subject to all applicable laws, the power of appointing a new permanent manager of the Funds shall be vested in the retiring manager, but, except where the new permanent manager is a Related Body Corporate of the Manager, no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).”

2.3 **Trust Deed** - Elevation Capital Management Limited is deleted as the Manager and replaced with Elevation Capital Funds Management Limited, such that all references to the Manager shall be references to Elevation Capital Funds Management Limited; and

2.4 **Establishment Deed** – Elevation Capital Management Limited is deleted as the Manager and replaced with Elevation Capital Funds Management Limited, such that all references to the Manager shall be references to Elevation Capital Funds Management Limited.

INTERPRETATION

2.5 Except where specifically provided otherwise, the definitions used in this Deed shall have the same meaning as in the Trust Deed.

EXECUTED AS A DEED

Signed by
**Elevation Capital Funds
Management Limited**

) DocuSigned by:
) *Chris Swastbrook*
) FBCBCDA109EE4AD...
) Director

) DocuSigned by:
) *Thomas Reeves*
) CAB3E4D45CDE4DB...
) Director

Signed by
**Elevation Capital
Management Limited**

) DocuSigned by:
) *Chris Swastbrook*
) FBCBCDA109EE4AD...
) Director

) DocuSigned by:
) *Thomas Reeves*
) CAB3E4D45CDE4DB...
) Director

Signed by
Public Trust by its Attorney
in the presence of

) 
) _____
) Attorney

Witness signature



Witness name

Kiran Prasad
Client Services Manager
Public Trust
Wellington

Witness occupation

Witness town of residence

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

I, Marisa Tucker 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 10 November 2022, 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 under number PA 12606310.1; 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: 09/10/2024



Signature of attorney



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**DEED AMENDING THE MASTER TRUST DEED FOR THE
ELEVATION CAPITAL MANAGED INVESTMENT SCHEMES**

ELEVATION CAPITAL MANAGEMENT LIMITED

PUBLIC TRUST

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PARTIES

Elevation Capital Management Limited (Manager)

Public Trust (Supervisor)

BACKGROUND

- A By Trust Deed dated 11 November 2016 (**Trust Deed**) there was established the Elevation Capital Managed Investment Schemes (**Scheme**).
- B The Manager is the present Licensed Manager of the Scheme. The Supervisor is the present Licensed Supervisor of the Scheme.
- C Under clause 35 of the Trust Deed, the Supervisor and the Manager may, subject to the provisions of the Financial Markets Conduct Act 2013 and in situations specified under the Trust Deed, alter the provisions of the Trust Deed.
- D The Manager and the Supervisor wish to amend the Trust Deed in order to address the repeal of the Trustee Act 1956 and changes brought about under the Trusts Act 2019.
- E The Supervisor has obtained a solicitor's certificate that the Trust Deed as amended by this Deed will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 (**Act**).

OPERATIVE PROVISIONS

Pursuant to the power contained in clause 35 of the Trust Deed, the terms of the Trust Deed shall be amended with effect on and from 30 January 2021 as follows:

1 AMENDMENTS

1.1 A new clause 1.4 is included under the heading **Trusts Act** as follows:

- 1.4 The provisions of the Trusts Act 2019 are modified or excluded as follows:
- 1.4.1 Section 31 (duty not to exercise power for own benefit) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.
- 1.4.2 Section 34 (duty to avoid conflict of interest) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.
- 1.4.3 Section 36 (duty not to profit) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

- 1.4.4 Any provision of the Trusts Act 2019 or rule of law restricting the remuneration of the Manager or Supervisor including but not limited to section 37 of the Trusts Act 2019 is excluded and the provisions of this Trust Deed are modified accordingly.
- 1.2 Clause 13.2(a) is deleted and replaced as follows:
- (a) act honestly and in good faith in acting as a Manager; and
- 1.3 Clause 13.2(f) is deleted.
- 1.4 Clause 15.1 is deleted and replaced as follows:
- 15.1 Investment Policy
- The Manager in consultation with the Supervisor must ensure that there is a SIPO for each Fund that complies with the FMCA. Each Fund shall be invested only in the Authorised Investments for that Fund in accordance with the SIPO. This requirement shall modify a trustee's general power to invest under section 58 of the Trusts Act 2019.
- 1.5 Clause 18.2(a) is deleted and replaced as follows:
- (a) act honestly and in good faith in acting as the Supervisor of each Fund; and
- 1.6 Clause 19.2(a) is deleted and replaced as follows:
- (a) Except as otherwise expressly provided in this Deed and subject to the provisions of the Trusts Act 2019, all rights of voting conferred by the Investments or any of them are to be exercised in such manner as the Manager may determine. The Supervisor must from time to time execute and deliver or cause to be executed and delivered to the Manager or its nominees in a form or forms approved by the Supervisor such proxies or powers of attorney as the Manager may request.
- 1.7 Clause 24.8 is deleted and replaced as follows:
- 24.8 Reliance on Manager by Supervisor
- Subject to the provisions of this Deed, the Trusts Act 2019 and the FMCA, the Supervisor is not and will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager (including, for the avoidance of doubt and not by way of limitation, any decision of the Manager to invest any Fund or any part thereof in any futures contracts, foreign exchange contracts and options, interest rate and currency swap contracts or options entered into for the purpose of hedging) or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it) except to the extent that the loss is attributable to the Supervisor's own negligent or wilful act or default.

1.8 Clause 24.14 is deleted and replaced as follows:

24.14 Dealing in Units: The Supervisor

Subject to the provisions of this Deed, the FMCA and to the Trusts Act 2019, nothing in this Deed is deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of either (in this clause included in the expression the Supervisor) from being a Unitholder or from acting in any representative capacity for a Unitholder and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, Supervisor, receiver, attorney or agent or in any other fiduciary, vicarious or other professional capacity. Nor shall the acting in any such capacity as aforesaid be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Unitholders on the other by this Deed established or otherwise imposed or implied by law.

1.9 Clause 24.15 is deleted and replaced with the following:

24.15 Supervisor's Limited Liability to Unitholders

Notwithstanding anything contained in this Deed, save and except in the case of fraud or of dishonesty or unless the Supervisor has failed to show the degree of care and diligence required of a Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this Deed, the FMCA and by the Trusts Act 2019, in no event is the Supervisor bound to make any payment to Unitholders except out of the relevant Fund or be liable to the Unitholders to any greater extent than the Investments, vested in or received by the Supervisor in accordance with this Deed.

1.10 Clause 24.16 is deleted and replaced as follows:

24.16 No Respective Liabilities of Supervisor and Manager

Subject to the Trusts Act 2019 and all Relevant Law, the Manager is not liable for any act or omission of the Supervisor and the Supervisor is not liable for any act or omission of the Manager.

1.11 In all other respects the provisions of the Trust Deed are confirmed except to the extent that they contradict or conflict with the terms of this Deed.

2 INTERPRETATION

2.1 Except where specifically provided otherwise, the definitions used in this Deed shall have the same meaning as in the Trust Deed.



DEED AMENDING THE MASTER TRUST DEED FOR THE ELEVATION CAPITAL MIS

EXECUTION AND DATE

Executed as a deed.

Date: 10 December 2020

Elevation Capital Management Limited by:

Signature of director

Craig Stobo.
Name of director (print)

Signature of director

Christopher Swasbrook.
Name of director (print)

Signed on behalf of **Public Trust** by its Attorney,
and in the presence of:

Signature of witness

Michael Knowles
Senior Manager Client Services
Corporate Trustee Services
Public Trust
Auckland

Occupation of witness

Address of witness

Signature of attorney

Elena Sasha Vinton
Senior Manager Client Services
Public Trust, Auckland

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

I, Elena Sasha Vinton, of Auckland, hold the office of Senior Manager Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 28 August 2019, 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 Senior Manager 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: 10 December 2020

Signature of attorney



**Elena Sasha Vinton
Senior Manager Client Services
Public Trust, Auckland**

Master Trust Deed

For the Elevation Capital Managed Investment Schemes

Elevation Capital Management Limited

Manager

and

Public Trust

Supervisor

Date

11 November 2016

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This Deed is made on 2016

between (1) Elevation Capital Management Limited (the Manager)

and (2) Public Trust (the Supervisor).

Introduction

- A. The Manager and The New Zealand Guardian Trust Company Limited (NZGT) entered into a Master Trust Deed dated 20 November 2006 as amended and restated on 6 November 2007 and further amended on 12 September 2013 (the Existing Deed) and one establishment deed (the Existing Establishment Deed) dated 28 October 2008, as amended and restated on 30 September 2011, 19 September 2014 and 19 March 2015 to establish the Elevation Capital Value Fund (Fund).
- B. NZGT retired as trustee of the Funds on 31 July 2016 and Public Trust agreed to act as Supervisor of the Fund for the benefit of the Unitholders on the terms and conditions set out in this Deed.
- C. The Manager and Public Trust as the Supervisor wish to amend the Existing Deed by substituting this Deed for the Existing Deed in order to comply with the requirements of the FMCA and all other relevant legislation, and to make a number of other minor amendments to the Existing Deed as a consequence of the introduction of the FMCA and the amendments to other legislation or for the more efficient operation of the Funds.
- D. The Manager and the Supervisor wish to record the terms and conditions under which the Funds are to continue and be administered.

OPERATIONAL PROVISIONS

Effective Date

- 1. With effect from the Effective Date, the Existing Deed is amended by substituting the provisions of the Existing Deed with the provisions of this deed so that, from the Effective Date, the Fund will be operated, administered, and governed in accordance with the provisions of this deed and the Existing Establishment Deed.

Continuation of trusts

- 2. The Fund established in accordance with the Existing Deed and the respective Existing Establishment Deed continues after the Effective Date on the terms contained in this deed and the Existing Establishment Deed.

It is agreed

1. INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

Accounts means, in respect of each Fund, general purpose financial statements of such Fund prepared for each financial year in accordance with NZ GAAP and any other requirements as prescribed by the FMCA (or subsequent relevant legislation).

Application means an application for Units in a Fund made in the form from time to time prescribed by the Manager.

Application Fee means, in respect of each Fund, the Manager's fee (if any) for issuing Units in such Fund determined in accordance with clause 23.1.

Associated person has the meaning give to it by the FMCA.

Auditor means the Person for the time being holding the office of auditor of each Fund.

Authorised Investments means, in respect of each Fund, the investments which may be included in the relevant Fund as specified in the relevant Establishment Deed (as may be amended pursuant to clause 15.21).

Break Fee means, in respect of each Fund, the Manager's fee (if any) for redeeming Units in such Fund determined in accordance with clause 23.4.

Business Day means any day (other than a Saturday or Sunday) on which banks in Auckland are open for business.

Custodian means a person appointed to hold the Investments of a Fund under clause 2.6, and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Investments under clause 2.6.

Date of Termination means, in respect of each Fund, the date of its termination determined in accordance with clause 34.

Distribution Period means such period or periods (if any) that the Manager from time to time determines for a Distribution in terms of clause 17.1.

Distribution means, in relation to a Unit, the amount of income (if any) to be distributed to a Unitholder in respect of such Unit as more particularly specified in the relevant Establishment Deed.

Effective Date means 30 November 2016.

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

Establishment Deed means a Deed executed by the Manager and the Supervisor by which each Fund is established in or to the effect of the form set out in Schedule 2 or such other form as the Manager and Supervisor may agree.

Exchange means any recognised market in New Zealand or anywhere else in the world, which brings together buyers and sellers of Investments including without limitation, any stock exchange, sovereign debt market, corporate debt market, options market, futures market or foreign exchange market.

Special Resolution has the meaning given to it in the FMCA.

Financial Year means, in respect of each Fund, a period of 12 months ending on 31 March (or such other date as the Manager determines) in each year (or the Date of Termination of the relevant Fund, if earlier)

FMA means the Financial Markets Authority.

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund means the Elevation Capital Value Fund and each new fund created by an Establishment Deed.

Gross Asset Value means, in respect of each Fund, and in respect of each Valuation Day, such sum as is ascertained and fixed by the Manager being the aggregate of:

- (a) the Market Value of the Investments of that Fund on that Valuation Day; and
- (b) any income accrued or payable in respect of that Fund on that Valuation Day but not included in such Market Value; and
- (c) if the Manager so determines, any deferred tax assets of that Fund, but limited to an amount equal to 5% of the Gross Asset Value.

Independent Expert means an appropriately qualified person nominated by the Manager and agreed to by the Supervisor.

Investment means, in respect of each Fund, each asset held on trust by the Supervisor (or any Custodian appointed under clause 2.6) in respect of such Fund and for the avoidance of doubt can include deferred tax assets.

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 5.10.

Issuer Obligations has the meaning given in the FMCA.

Liability means, in respect of each Fund, each liability which should be classified as such by NZ GAAP but does not include:

- (a) PIE Tax, except for PIE Tax in respect of which a deduction has been made from a Distribution or Redemption Price paid to a Unitholder or in respect of which any Units have been redeemed by the Manager; or
- (b) a contingent liability or, after the adoption of the International Financial Reporting Standards, any amount of unitholders' funds which was not classified as a liability prior to the adoption of the International Financial Reporting Standards.

Managed Investment Scheme has the meaning given in the FMCA.

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 of an Investment on any Valuation Day means:

- (a) in respect of Investments which are listed on an Exchange, the bid price quoted in the relevant currency for that Investment at the close of day trading on the relevant Exchange on that Valuation Day or if the Exchange is not open for day trading on that Valuation Day, on the immediately preceding day on which the Exchange was open for day trading, or if there is no bid price then the last sale price, or if such bid price or last sale price is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager, in consultation with the Supervisor, having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert;
- (b) in respect of Investments in a unit, sub-unit or other interest in a unit trust scheme (including an interest in another fund issued by the Manager), mutual fund, flexible capital company, group investment fund or similar undertaking or scheme, whether carrying on business within or outside New Zealand, 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 value in respect of any specific Investment from time to time;

- (c) in respect of real property Investments, the value of that property fixed by an independent registered valuer as at a date not more than twelve months preceding that Valuation Day subject to the Manager being required to obtain a new valuation where in the Manager's opinion there has been a material change in the value of real property Investments;
- (d) in respect of Investments, not being Investments covered by sub-paragraphs (a), (b) or (c) of this definition, traded on any other market in which bargains are made on a trading floor or by direct contact between buyer and seller (or their respective agents or brokers) the bid price quoted or recorded in the relevant currency on that Valuation Day or if the relevant market is not open for trading on that Valuation Day, on the immediately preceding day on which the relevant market was open for trading, or if there is no bid price the last sale price of that Investment or if the last sale price or bid price is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager, in consultation with the Supervisor, having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert;
- (e) in respect of any other Investment, 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,

and where in respect of an Investment to which sub-paragraph (a), (b) or (d) applies the relevant information as to value is not received within 2 Business Days of the Valuation Day, means the value of that Investment which applied on the preceding day closest to the Valuation Day (**Adopted Value**). An Adopted Value shall not be applied on more than one successive Valuation Days, without the approval of the Supervisor. Where any Adopted Value is not considered by the Manager to be an accurate measure, the value determined by the Manager (having consulted with the Supervisor) having regard to such information as the Manager considers appropriate, including without limitation, if the Supervisor considers it necessary, the advice of an Independent Expert.

Month means calendar month.

Net Asset Value means, in respect of each Fund, the net asset value of the relevant Fund as determined from time to time in accordance with clause 6.1.

Net Asset Value per Unit means, in respect of each Fund, the Net Asset Value of the relevant Fund on any day divided by the Number of Units on Issue in that Fund on that day.

Number of Units on Issue means, in respect of each Fund, the total of all Units issued in such Fund and remaining on issue.

NZ GAAP means generally accepted accounting practice as defined in Section 8 of the Financial Reporting Act 2013.

PIE means Portfolio Investment Entity as defined in the Income Tax Act 2007.

PIE Rebate means tax rebates paid or payable to a Fund which are determined by the Supervisor or Manager to be attributable to income/losses allocated to Unitholders and other amounts determined by the Supervisor or Manager to be equivalent to PIE Rebates.

PIE Tax means tax payable by a Fund, the Supervisor or the Manager (whether deferred or current) which is determined by reference to Prescribed Investor Rates of Unitholders or is otherwise determined by the Supervisor or the Manager to be attributable to income allocated to Unitholders.

Prescribed Investor Rate has the meaning given to the term by section OB 1 of the Income Tax Act 2007.

Product Disclosure Statement or PDS has the meaning given in the FMCA

Ordinary Resolution means a resolution passed at a meeting duly convened and held in accordance with the provisions contained in this Schedule and carried by a majority of not less than 50% of the Persons voting at such meeting upon a show of hands or if a poll is duly demanded by a majority consisting of not less than 50% of the votes given on such poll.

Person includes a natural person, a company, a corporation, a corporation sole, a firm, a unit trust, a government or a body of persons (whether corporate or unincorporate).

Redemption Price means, in respect of each Fund, the price at which Units in such Fund are redeemed, determined in accordance with clause 8.4.

Redemption Request means a request that the Manager redeem Units, delivered to the Manager in accordance with clause 8.

Register Entry has the meaning given in the FMCA.

Registrar has the meaning given in the FMCA.

Regulated Offer has the meaning give in the FMCA.

Related Company has the meaning given to that term in Section 2(3) of the Companies Act 1993.

Related Party has the meaning given in the FMCA.

Related Party Benefit has the meaning given in the FMCA.

Relevant Law means all laws applicable to the Manager, the Supervisor, a Fund and includes, without limitation, the FMCA, the FMC Regulations, the Financial Reporting Act 2013, and any methodologies or frameworks issued by FMA under such laws.

Section 18 Resolution has the meaning given to it in paragraph 11.3 of Schedule 1.

Special Resolution has the meaning given in section 6 of the FMCA.

Statement of Investment Policy and Objectives or SIPO has the same meaning as in the FMC Regulations.

Unit means, in respect of each Fund, an undivided part or share in the beneficial interest in the relevant Fund.

Unitholder means each Person for the time being registered in the Unit Register under the provisions of this Deed as the holder of a Unit and includes Persons jointly registered.

Unit Register means, in respect of each Fund, the register of Unitholders in such Fund maintained pursuant to clause 12.

Unit Registrar means the Manager or such other Person appointed under clause 12 who keeps the relevant Unit Register.

Valuation Day means, in respect of each Fund, each day on which the Net Asset Value is calculated being:

- (a) such days specified in the relevant Establishment Deed; and
- (b) each other day as the Manager decides (being additional to or in substitution for the days referred to in (a) above).

Withdrawal Suspension Notice means a notice given in accordance with clause 8.10.

1.2 Interpretation

In this Deed, unless the context otherwise requires, references to:

- (a) borrow includes the raising of money or the incurring of financial indebtedness by any means including **acceptances**, deposits, financial

leases, debt factoring with recourse, the deferral of the purchase price of assets or services, exposure under futures contracts, contracts for differences, call and put options or any financial product where a Fund has an actual or contingent liability to pay money at a future date;

- (b) this Deed includes a reference to each Establishment Deed;
- (c) clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;
- (d) any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (e) the singular includes the plural and vice versa; and
- (f) parties to this Deed includes their successors and permitted assigns and, in the case of the Supervisor, any nominee of the Supervisor appointed in accordance with clause 2.6;
- (g) The Index to and headings in this Deed are used for convenience only and do not affect its interpretation in any way.

1.3 Currency

Where for the purposes of any provision of this Deed it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on a basis fixed from time to time by the Manager and approved by the Auditor and any Liability which is payable in a non-New Zealand currency is for the purposes of this Deed to be treated as being a Liability of an amount equal to the New Zealand currency equivalent determined in the same way with the exception that in determining the New Zealand currency equivalent of a Liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the Liability.

2. CONTINUATION OF EXISTING FUNDS AND CONSTITUTION OF NEW FUNDS

2.1 Appointment of Supervisor

The Supervisor is appointed as the Supervisor of each of the Funds and agrees to act as Supervisor for the Unitholders to hold each Fund in trust for the relevant Unitholders upon the terms and conditions contained in this Deed and the relevant Establishment Deed in accordance with all Relevant Law.

2.2 Manager

The Manager continues to act as the manager of each of the Funds and agrees to act as manager upon the terms and conditions contained in and to perform its obligations in this Deed and the relevant Establishment Deed in accordance with all Relevant Law.

2.3 Establishment of new Funds

Subject to clause 2.4, each new Fund shall be established by an Establishment Deed which shall include, where otherwise not provided in this Deed, such of the following matters as shall be applicable to the relevant Fund:

- (a) a description of the Authorised Investments for the Fund;
- (b) the method of determining the Market Value of Investments;
- (c) the method of calculation of the Issue Price for each type of Unit;
- (d) the determination of the Valuation Days;
- (e) the date for delivery of Redemption Requests and the Valuation Day on which Redemption Requests are effective;
- (f) the rights attaching to different classes (if any) of Unit;
- (g) the provisions applicable to determination of the Distribution Period and the amount of Distributions;
- (h) the maximum amount of the Manager's fees (including the Application Fee and management fees);
- (i) the maximum amount of the Supervisor's fees;
- (j) the procedure for the distribution of Investments upon termination of the

Fund;

- (k) any applicable borrowing restrictions or requirements; and
- (l) any other matters which the Manager and the Supervisor deem appropriate or which the Supervisor deems necessary.

2.4 Information in PDS

The PDS for a Fund shall include such of the following matters as shall be applicable to the relevant Fund:

- (a) a Statement of the Investment Policy and Objectives of the Fund;
- (b) the minimum subscription amount for Units and any other restrictions relating to the amount of subscription moneys; and
- (c) the minimum number or value of Units which may be held and/or transferred by a Unitholder; and
- (d) any other matters as required by Relevant Law.

2.5 Conflict Provisions

An Establishment Deed may amend any provision of this Deed in relation to the Fund established by that Establishment Deed. To the extent that any provision of an Establishment Deed conflicts with any provision of this Deed, the provision of the Establishment Deed shall prevail.

2.6 Custodian

- 2.6.1 The Supervisor may appoint in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the Investments of the Funds are to be vested.
- 2.6.2 The Custodian must meet the requirements for such person under the FMCA.
- 2.6.3 The Supervisor shall be jointly and severally liable with the Custodian (and any sub-custodian appointed) for the performance by the Custodian (or the sub-custodian, where relevant) of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 2.6 and the FMCA with respect to the Funds.
- 2.6.4 If authorised in writing by the Supervisor, a Custodian appointed under clause 2.6.1 may itself appoint one or more sub-custodians (other than the

Manager or an Associated Person of the Manager) in which any of the Investments of the Funds are to be vested. Any sub-custodian appointed under this clause 2.6.4 must meet the requirements for such a person under the FMCA. The Supervisor and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the due and faithful performance and observance by the sub-custodian of all the duties and obligations imposed on it pursuant to this clause 2.6 and otherwise by law.

- 2.6.5 The Supervisor, in consultation with the Manager, will agree with the Custodian or sub-custodian appointed pursuant to clause 2.6.4, the fees that may be charged and the extent to which expenses will be reimbursed provided that such fees and expenses are no more than usual commercial rates.
- 2.6.6 Where the Supervisor appoints a Custodian in respect of a Fund in accordance with clause 2.6.1, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Funds are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Supervisor were performing the custodial functions itself and in a manner which complies with all of the obligations relating to holding the Investments as supervisor or custodian expressed or implied in this Deed and any Relevant Law.
- 2.6.7 The Supervisor may agree to indemnify the Custodian, from and against any and all losses, costs, and expenses incurred by them, to the fullest extent permitted by law, in relation to the Custodian's performance of its functions in respect of a Fund, except to the extent such losses, costs and expense arose from a failure to exercise the care, diligence and skill a prudent person engaged in the Custodian's profession would exercise in the same circumstances.

3. THE FUNDS

3.1 Authorised Investments

The Investments of each Fund must at all times be Authorised Investments for such Fund. .

3.2 The Constitution of the Funds

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:

- (a) the proceeds of sale of any Investments;

- (b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained by the Supervisor (or the Custodian); and
- (c) all income from the Fund held pending distribution or reinvestment.

4. NATURE OF UNITS

4.1 Beneficial interests in Funds

The beneficial interest in each Fund is divided into Units.

4.2 Equal but not specific Fund interests

- (a) Subject to the rights attaching to unpaid or partly paid Units and other Units with special rights, every Unit confers an equal interest in the Fund to which it relates and is of equal value.
- (b) A Unit does not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Unitholder is entitled to require the transfer to such Unitholder of any of the Investments nor (subject to the rights of Unitholders created by this Deed and by law) is any Unitholder entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the Funds, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of that Fund.

4.3 Consolidation or division of Units

The Manager may, by written notice to the Supervisor, determine that, in respect of any Fund, all holdings of Units in such Fund 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 the relevant day. Where such consolidation or division involves a fraction of a Unit in relation to any particular Unitholder, the number of Units which that Unitholder is entitled to shall be rounded up or down to two or more decimal places, at the discretion of the Manager.

4.4 No interest in other Funds

A Unit in one Fund shall not confer any right or interest in any other Fund.

5. ISSUE OF UNITS

5.1 Application Procedure

Every Person wishing to apply for or acquire Units in any Fund must:

- (a) complete and lodge with the Manager an Application in writing or by Electronic Communication in the form from time to time prescribed by the Manager specifying the application moneys to be applied by the Supervisor to the purchase of Units in the particular Fund. An initial Application shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the Manager may prescribe from time to time or may be required by law; and
- (b) forward to the Manager for payment to the Supervisor the aggregate of the Application Fee (if any) and the Issue Price and ensure that any cheque is made payable to the Supervisor or any Custodian appointed pursuant to clause 2.6.

5.2 Manager's Discretion

The Manager may in its absolute discretion:

- (a) 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; and
- (b) redeem Units or treat as void ab initio the issue of Units which would or could result in a Fund losing its status as a PIE if remedial action was not taken.

5.3 Refund of Application Moneys

- (a) Once the Manager has made a decision to reject an Application, the Manager must as soon as practicable refund or arrange for the Supervisor to refund the relevant Application moneys (without interest).
- (b) Where Units are redeemed under clause 5.2(b), the Manager must request the Supervisor to pay the Redemption Price for such Units to the relevant Unitholder.
- (c) Where Units are voided under clause 5.2(b) the Supervisor shall refund the Application moneys to the relevant Unitholder and pay such additional compensation to the relevant Unitholder as it determines appropriate after consultation with the Manager.

5.4 Number of Units

If the Manager accepts an Application, the number of Units issued shall be that number of Units that have an aggregate Issue Price equal to the application moneys received after deduction of any Application Fee, with fractions rounded up or down to two or more decimal places, at the discretion of the Manager.

5.5 Payment to Supervisor; Registration and Issue of Units

The Manager must:

- (a) pay all Application moneys to the "Elevation Capital Applications" bank account which is controlled by the Supervisor forthwith on receipt of such moneys;
- (b) on issue of a Unit, enter the name of the Unitholder on the appropriate Unit Register; and
- (c) comply with applicable laws relating to the notification, or certification to Unitholders, of their respective holdings of Units.

5.6 Minimum Application Amounts

An Application for Units must be in respect of a minimum number of Units or dollar value as set out in the relevant Establishment Deed. The Manager may vary such minimum amount from time to time in its discretion.

5.7 Restrictions on Sale or Issue of Units

- (a) The Manager may at any time or times by notice in writing to the Supervisor determine that no further Units shall be issued pursuant to this Deed or any Establishment Deed in respect of any Fund after a date specified in the notice to the Supervisor either for any specified period or until the Deed is terminated. In such event the Manager will not after the date specified in the notice issue any further Units under this Deed or any Establishment Deed in respect of any Fund for the specified period or until this Deed is terminated whichever situation applies.
- (b) No Unit may be sold or issued by the Manager after receipt by the Supervisor of a notice of termination given by the Manager pursuant to clause 34(d) except with the prior consent in writing of the Supervisor.

5.8 Issue or Purchase of Units

Applications for Units accepted by the Manager may at the option of the Manager be treated as:

- (a) a subscription for Units to be issued from the relevant Fund;
- (b) a request for the purchase from the Manager of Units in the relevant Fund owned by the Manager; or
- (c) a request for the purchase from an existing Unitholder of Units in the relevant Fund owned by that Unitholder.

Regardless of the alternative adopted by the Manager the purchase or subscription price payable by Unitholders must always be the Issue Price. If an Application is satisfied by the sale of Units owned by the Manager, the Manager is entitled to receive and retain for its own benefit the whole of the aggregate Issue Price of those Units.

5.9 **Issue Date**

The dates on which Units are issued in the relevant Fund are the dates specified in the relevant Establishment Deed.

5.10 **Issue Price of Units**

The Issue Price of each Unit sold or issued by the Manager from the relevant Fund shall be determined by the Manager as at the Valuation Day on which the Unit is issued in accordance with the relevant Establishment Deed.

5.11 **Commission etc**

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 subscription for or obtaining purchases or subscriptions for any Units as the Manager may from time to time determine.

5.12 **Compliance with Relevant Law**

The Manager must not make a Regulated Offer of Units in a Fund unless:

- (a) The Fund is registered under the FMCA;
- (b) A PDS has been prepared and lodged as a Register Entry in respect of the Fund; and
- (c) All of the information that the Register Entry is required to contain under the FMCA has been supplied to the Registrar.

5.13 Each PDS and Register Entry must comply with the Relevant Law at the time, and be provided to the Supervisor in advance of lodgement or supply (as the case may

be) providing the Supervisor with reasonable time to review the PDS or Register Entry and to provide comments to the Manager.

5.14 Compensation

If reimbursement or compensation is payable to a Unitholder or former Unitholder under Regulation 99 of the FMC Regulations, the Manager must comply with all its obligations under those requirements except that the Manager may, in consultation with the Supervisor, choose not to pay any reimbursement or compensation to any Unitholder or former Unitholder that amounts to less than \$20 (or such other amount as the Manager and the Supervisor may agree from time to time).

5.15 Issue of Units for PIE Rebates

Where a PIE Rebate is due to a Unitholder, the Manager may issue Units to the Unitholder on account of that PIE Rebate on such date as the Manager determines and in all cases at the Issue Price applicable on the date of issue of such Units.

6. VALUATIONS

6.1 Net Asset Valuation

On each Valuation Day in respect of each Fund and at the time of day (if any) set out in the relevant Establishment Deed, the Manager shall calculate the Net Asset Value of the relevant Fund as at that time and day by taking the Gross Asset Value of the Fund on the relevant Valuation Day and deducting the aggregate of:

- (a) all Liabilities of the relevant Fund determined on an accruals basis up to the time of the day (if any) set out in the relevant Establishment Deed on the relevant Valuation Day; and
- (b) such other provisions as the Manager or the Supervisor thinks necessary or desirable for accrued or contingent liabilities or losses including a provision for the costs of realisation of any Investments and redemption of Units.

6.2 Period of Effectiveness of Valuations

Each determination of the Net Asset Value shall remain in force until the next determination on a Valuation Day.

6.3 Determination of Market Value

- (a) The Manager will determine the Market Value of each Investment and the Net Asset Value of each Fund in accordance with the provisions of this Deed and the provisions (if any) in the relevant Establishment Deed.

- (b) The Manager may with the approval of the Supervisor alter the basis of determination of the Market Value of an Investment and/or the Net Asset Value of a Fund.

7. TRANSFER, TRANSMISSION AND REGISTRATION OF UNITS

7.1 Units may be Transferred

Subject to the consent of the Manager under clause 7.6 and to the other provisions of this Deed, a Unit in a Fund may be transferred.

7.2 Form of Instrument of Transfer

The instrument of transfer of any Unit must be:

- (a) in writing in any form which the Manager approves from time to time; and
- (b) for the minimum number of Units or dollar value (if any) specified in the relevant Establishment Deed or PDS; and
- (c) be accompanied by the transfer fee (if any) payable under clause 7.4.

7.3 Registration of Instrument of Transfer

- (a) Every instrument of transfer of Units must be delivered for registration to the Manager at its registered office or to the Unit Registrar. If the Manager is not also the Unit Registrar, the Manager will forward the transfer to the Unit Registrar.
- (b) The transferor is deemed to remain the Unitholder until the transfer of such Unit is entered in the Unit Register.
- (c) Subject to clause 7.6, the Manager shall forthwith register or arrange the registration of each transfer delivered to it in accordance with this clause and to enter the relevant details in the appropriate Unit Register.

7.4 Transfer Fee

The Unit Registrar may charge a fee determined by it and approved by the Manager in respect of any transfer or class of transfers. Such fee shall be paid by the transferee Unitholder at the time of delivery of the relevant transfer in accordance with clause 7.3(a).

7.5 Payment of Sums Owed as a Condition to Transfer

No transfer of any Units can be registered unless the Unitholder has paid all duties, taxes (including goods and services tax) and other commissions, fees and charges (in cleared funds) in respect of the transfer of the relevant Units.

7.6 Power to Decline Transfer

The Manager may decline to register any transfer

- (a) for non-compliance with any law; or
- (b) if the transferee fails to pay the transfer fee; or
- (c) if the transfer would result in the transferee or transferor holding less than a minimum number of Units or Units having less than a minimum value, in either case specified by the Manager from time to time in relation to any Fund; or
- (d) if the transfer would or could result in a Fund losing its status as a PIE.

7.7 Retention of Instrument of Transfer

Every instrument of transfer of a Unit which is registered must be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Deed to the contrary) the Manager may destroy it.

7.8 Closing of the Unit Register for Transfer

- (a) Each Unit Register shall be closed for transfers during public holidays and on Saturdays and Sundays.
- (b) Each Unit Register may also be closed for transfers for as many days and at such time or times (not exceeding in the aggregate 28 days in each year) as the Manager thinks fit.
- (c) Notwithstanding clause 7.8(b), a Unit Register may be closed for transfers for longer periods with the consent of the Supervisor.
- (d) The Manager may decline to register any transfer during any period when the relevant Unit Register is closed.

7.9 Transmission Upon Death

- (a) The executor or administrator of a deceased Unitholder (not being one of several joint Unitholders) and (in the case of the death of one or more joint Unitholders) the survivor or survivors of those Unitholders are the only Persons recognised by the Manager as having any title to the Units

registered in the name of that Unitholder.

- (b) If a Unitholder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of the Units so sold or otherwise disposed of and the transfer of the Units is not registered before the death of that Unitholder, the Manager may register that transfer notwithstanding that at the time of such registration the Manager has notice of that Unitholder's death.

7.10 Transmission by Operation of law

- (a) Upon producing the evidence required by clause 7.10(b) the following persons may be registered as the Unitholder in respect of Units or may validly transfer Units (subject to the provisions of this Deed as to transfers):
 - (i) the committee, statutory representative or manager or attorney of a Unitholder of unsound mind or of a Unitholder whose person or estate is liable to be dealt with in any way under the laws relating to mental health; and
 - (ii) any Person becoming entitled to Units in consequence of insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of creditors or scheme of arrangement of any Unitholder or otherwise than by transfer.
- (b) Any committee, statutory representative, manager or attorney or Person seeking registration pursuant to clause 7.10(a) as a Unitholder in respect of Units or the transfer of Units (as the case may be) must produce such evidence of capacity or of title as is considered by the Manager to be sufficient.

7.11 Refusal of Registration of Transmissions of Units

Registration of a transmission of Units to any Person may be refused by the Manager in the same circumstances that would apply if that Person was a transferee named in a transfer presented for registration under this Deed.

8. REDEMPTION OF UNITS

8.1 Redemption Request

- (a) Any Unitholder wishing to redeem his or her Units, must deliver an Redemption Request (which will be irrevocable unless the Manager otherwise agrees in writing) to the Manager at its registered office, at the time specified in the relevant Establishment Deed or PDS. Each Redemption Request shall be in writing or by Electronic Communication

and be in such form as the Manager may for the time being require.

- (b) The Manager may from time to time, in respect of any Fund, fix a minimum number or value of Units that may be redeemed and the minimum number or value of Units which a Unitholder may hold after part redemption. If a Unitholder requests redemption of part of the Unitholder's Units and the remaining Units would be less than the minimum number or value fixed by the Manager, the Manager may decline to redeem any of that Unitholder's Units unless the Unitholder redeems all of the Unitholder's Units.

8.2 Undertaking to Redeem

- (a) The Manager undertakes to the Supervisor (for the benefit of the Unitholders as well as the Supervisor) that the Manager will, at its option, upon receiving a Redemption Request from a Unitholder and subject to, and upon compliance with, the terms of this clause 8 either:

- (i) repurchase each Unit to which such Redemption Request relates;
or
- (ii) request the Supervisor to redeem each Unit to which such Redemption Request relates,

in each case for an amount equal to the Redemption Price as at the Valuation Day applicable on the date on which such Unit is redeemed.

- (b) The Manager is not obliged to offer to repurchase Units at any time.

8.3 Exit Date

Subject to clauses 8.10, 8.11 and 8.13, when a Redemption Request is received at the registered office of the Manager, the Manager must repurchase or request the Supervisor to redeem the Units with effect from the applicable Valuation Day determined in accordance with the relevant Establishment Deed.

8.4 Redemption Price

The Redemption Price of each Unit redeemed from the relevant Fund is to be determined by the Manager as at the Valuation Day applicable on the date on which the Unit is redeemed in accordance with the relevant Establishment Deed.

8.5 Payment of the Redemption Price

- (a) The Redemption Price must be paid within 7 Business Days of the Valuation Day on which a Unit is redeemed except where the relevant Units have been paid for by cheque, in which case the Redemption Price

must be paid within 7 Business Days of the date on which the cheque has been cleared.

- (b) Where the Units referred to in a Redemption Request by a Unitholder are purchased by the Manager, the Manager must pay to the Unitholder the Redemption Price out of the Manager's own funds.
- (c) Where the Units referred to in a Redemption Request by a Unitholder are to be redeemed, the Manager must direct the Supervisor to apply any cash held by the Trust, dispose of Investments or borrow, to release the aggregate Redemption Price from the relevant Fund. The Manager may pay the Unitholder the aggregate Redemption Price out of the Manager's own funds and, if it does so, is entitled to retain for its own benefit the moneys released by the Supervisor from the Fund in accordance with clause 8.8(b).

8.6 Disposition of Repurchased Units by the Manager

If Units are repurchased by the Manager for its own benefit, the Manager is entitled then or at any time thereafter to sell any or all of those Units in accordance with clauses 5 and 7 or to have them redeemed in accordance with clause 8.8.

8.7 Cancellation of Redeemed Units

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 Unit Register.

8.8 Redemption of Manager's Units

- (a) The Manager is entitled to request the Supervisor to redeem Units held by the Manager in the procedure set out in the Establishment Deed for a Fund provided that the same procedures and valuation provisions apply to both the Manager and Unitholders.
- (b) If the Supervisor is satisfied that such a request by the Manager relates solely to the redemption of Units held by the Manager then the Supervisor must release from the relevant Fund and pay to the Manager the aggregate Redemption Price of the Units to be redeemed within 7 Business Days of the relevant Valuation Day.

8.9 Surpluses and Deficiencies on Redemption of Manager's Units

The Manager is entitled to the benefit of any surplus and is liable for any deficiency of the Redemption Price of a Unit owned by the Manager and redeemed under clause 8.8 over or below the price at which that Unit was acquired by the Manager

(the **Manager's Acquisition Price**) and the Manager is not obliged to account to the Supervisor, the relevant Fund or any Unitholder for any excess over the Manager's Acquisition Price nor is the Supervisor, the relevant Fund or any Unitholder obliged to recompense the Manager, for any deficiency below the Manager's Acquisition Price.

8.10 Deferral of Redemption

If by reason of:

- (a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- (b) financial, political or economic conditions applying in respect of any financial market; or
- (c) the nature of any Investment; or
- (d) a Redemption Request is received or a series of Redemption Requests have been received within a period of 3 months that in aggregate relate to more than 5% (or such other percentage as the Manager specifies from time to time by not less than 30 days prior notice to Unitholders) of the Number of Units on Issue in the relevant Fund at the time of the Redemption Request or last Redemption Request in such series; or
- (e) the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally;

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of any Unitholders, for the Manager to give effect to Redemption Requests then the Manager shall notify the Supervisor and shall give notice (**Withdrawal Suspension Notice**) to that effect to any Unitholder who gives or has given a Redemption Request or to all Unitholders. A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Redemption Requests given in respect of that Fund until such time as the Manager gives to the Unitholders who gave those Redemption Requests or to all Unitholders notice to the effect that the Withdrawal Suspension Notice is cancelled. The Manager may determine that such Units may be progressively redeemed by instalments with effect from one or more Valuation Days falling in a period determined by the Manager or in total at the expiration of a period determined by the Manager and in any such case the Redemption Price is to be calculated at the Valuation Day or Days applicable on the date on which Units are redeemed.

8.11 Suspension of Redemption

Notwithstanding anything contained in this Deed, if a Redemption Request is

received or a series of Redemption Requests have been received within a period of 3 months that in aggregate relate to more than 20% of the Number of Units on Issue at the date of receipt by the Manager of the Redemption Request or last Redemption Request in such series, then the Manager may suspend the right of the Unitholders in such Fund to make Redemption Requests on the following conditions:

- (a) the Manager must notify the Supervisor of its intention to suspend the right of Unitholders to make Redemption Requests; and
- (b) the Manager must immediately call a meeting of Unitholders in the manner set out in this Deed to consider the winding up of the relevant Fund or such other action as the Unitholders deem appropriate.

8.12 Suspension in relation to Manager's Units

While there is any deferral or suspension in operation pursuant to clauses 8.10 or 8.11, the Manager shall not be entitled to redeem any Units held by it.

8.13 Redemption not applicable

If the relevant Establishment Deed so provides, Units or particular Units in the relevant Fund will not be redeemable and the provisions of this clause 8 will not apply to that Fund or the particular Units.

8.14 Redemption on account of PIE Tax or PIE status

The Manager may compulsorily redeem a Unitholder's Units including a fraction of a Unit:

- (a) on account of any PIE Tax attributable to income allocated to that Unitholder on such date as the Manager determines and in all cases at the Redemption Price applicable on the date of redemption of such Units; and
- (b) if the number of Units held by that Unitholder and its associated persons (as defined in the Income Tax Act 2004) would cause the Fund to lose its status as a PIE.

9. JOINT HOLDERS OF UNITS

Where 2 or more Persons are registered as the Unitholders of any Unit (**joint Unitholders**), they are for the purposes of the administration of the relevant Fund and not otherwise deemed to hold the Unit as joint tenants subject to the following provisions:

- (a) The Manager is not bound to register more than 2 Persons as the Unitholders of any Unit;

- (b) The joint Unitholders of any Unit are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (c) On the death of any joint Unitholder, the survivor or survivors of them is or are the only Person or Persons recognised by the Manager as having any title to the Unit, but the Manager may require such evidence of death as it may deem fit;
- (d) Any one of the joint Unitholders may give effectual receipts for any Distribution payable to such joint Unitholders; and
- (e) Only the Person whose name stands first in the Unit Register as one of the joint Unitholders of any Unit is entitled to be allocated PIE income, receive notices, cheques or other communications from the Manager or the Supervisor, and any notice, cheque or other communication given to such Person is deemed to have been given to all the joint Unitholders. With the consent of all registered joint holders of a relevant Unit, the Manager may amend the name of the Person standing first in the Unit Register. Where one joint Unitholder has a higher Prescribed Investor Rate than the other the one with the higher rate will be required to stand first in the Unit Register.
- (f) At any meeting of the Joint Holders, any one of them may vote either personally or by representative, attorney or proxy in respect of the Unit as if it were solely entitled thereto, but if more than one Joint Holder is present personally or by representative, attorney or proxy, then any vote or other action taken by the Joint Holder whose name stands first in the Register in respect of Units shall alone be entitled to vote and act on behalf of the relevant Joint Holders.

10. REGISTERED HOLDER ABSOLUTE OWNER

Except as otherwise provided in this Deed, the Manager and the Supervisor are entitled to treat the registered Unitholder of a Unit as its absolute owner and accordingly, except as ordered by a court of competent jurisdiction or as required by statute, are not bound to recognise (even upon notice) any equitable or other claim to or interest in the Unit on the part of any other Person.

11. HOLDING STATEMENTS

The Manager must:

- (a) On issue of any Units, provide to the Unitholder a written statement detailing the number of Units issued within 28 days of the issue of the Units; and

- (b) provide to each Unitholder periodically, as required by applicable law, a statement of the number of Units held by that Unitholder and details of any redemptions or purchases of Units by that Unitholder within the period covered by the statement.

12. UNIT REGISTERS

12.1 The Register

The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of each Fund an up-to-date register of participants in each Fund. Such registers shall:

- (a) be kept in the manner;
- (b) contain the content;
- (c) be audited; and
- (d) be available for inspection,

as required by the FMCA.

12.2 Reliance upon the Register

The Manager and the Supervisor are entitled to rely upon entries in the Unit Register as being correct.

12.3 Audit of the Register

The Manager must ensure that each Unit Register is audited by the Auditor at intervals of not more than 12 months.

12.4 Inspection

Each Unit Register must be open for inspection by any Unitholder, free of charge, during the business hours of the Unit Registrar.

12.5 Copies of Registers

The Manager will deliver to the Supervisor as requested by the Supervisor a copy of each Unit Register in such form as the Supervisor may require.

12.6 No recognition of trusts

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

13. MANAGEMENT

13.1 Manager's Functions

The Manager is responsible for performing the following functions in respect of each Fund;

- (a) offering Units in each Fund created by an Establishment Deed;
- (b) issuing the Units;
- (c) managing and investing each Fund's Investments;
- (d) administering each Fund.

13.2 Manager's Duties

The Manager must -

- (a) act honestly in acting as a Manager; and
- (b) in exercising any powers or performing any duties as a Manager -
 - (i) act in the best interests of the Unitholders; and
 - (ii) treat the Unitholders equitably; and
- (c) not make use of information acquired through being the Manager in order to -
 - (i) gain an improper advantage for itself or any other person; or
 - (ii) cause detriment to the scheme participants.
- (d) exercise the care, diligence and skill that a prudent person engaged in the profession of managing a registered scheme under the FMCA would exercise in the same circumstances.

- (e) carry out its functions in accordance with this Deed and any Establishment Deed, each SIPO, and all other Issuers Obligations.
- (f) in exercising a power of investment, exercise the skill, care and diligence require of a trustee by section 13B or 13C of the Trustee Act 1956.

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

13.4 Manager's General Management Powers

Subject to Relevant Law and the powers reserved to the Supervisor and the provisions of this Deed, the Funds are to be managed and administered by the Manager and without limiting the generality of the foregoing the Manager must:

- (a) manage and make all decisions relating to Investments including the investment, reinvestment or realisation of any Investment and the exercise of any voting rights associated with any Investment;
- (b) make all decisions relating to borrowing, the terms of such borrowing and any securities relating thereto;
- (c) determine the terms of all contracts, rights and other matters relating to Investments or Liabilities;
- (d) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;
- (e) use its best endeavours and skill to ensure that the affairs of each Fund are conducted in a proper and efficient manner;
- (f) use due diligence and vigilance in the exercise and performance of its functions, powers, and duties as manager;
- (g) account to the Unitholders for all money that the Manager receives on behalf of each Fund;
- (h) not pay out, invest, or apply any money belonging to a Fund for any purpose that is not directed by, or authorised in, this Deed or the relevant Establishment Deed; and
- (i) supply to the Unitholders, in general meeting, any reasonable oral or written information relating to the affairs of the relevant Fund that any Unitholders has given the manager reasonable notice to supply.

- (j) prepare and provide to the Supervisor any reports required under the FMCA.
- (k) if the Manager believes on reasonable grounds that it has, or may have, or is likely to have contravened any of its Issuer Obligations in a material respect then the Manager must promptly report such contravention or likely contravention to the Supervisor and advise the Supervisor of the steps (if any) that it has or intends to take in light of the contravention or likely contravention and the date by which those steps are to be taken.
- (l) if the Manager becomes aware of information on the basis of which it could reasonably form the opinion that the Manager, or a Fund, is or is likely to become insolvent, then the Manager must promptly disclose all relevant information relating to the matter to the Supervisor and advise the Supervisor of the steps (if any) that it has or intends to take and the date by which those steps are to be taken.

13.5 Delegation by Manager

The Manager may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly or severally) or contract any person or persons to perform any act, or exercise any discretion within the Manager's power. The authorisation must be written. In doing this:

- (a) the Manager must take reasonable steps to:
 - (i) 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
 - (ii) monitor the performance of those functions; and
- (b) the delegation or contracting out does not affect the liability of the Manager for the performance of those functions.

13.6 The Manager shall advise the Supervisor of any delegation or contracting out under clause 13.5 before any such delegation or contracting out is entered into.

13.7 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 Person of the Manager or Supervisor.

14. BORROWING POWERS OF THE SUPERVISOR

14.1 Borrowing powers

Subject to clauses 14.2, 14.3 and 15.4 in respect of any Fund and unless prohibited by the relevant Establishment Deed, the Supervisor has power to, and must, if so directed by the Manager:

- (a) borrow money from any Person (including a Unitholder);
- (b) for the purpose of such borrowing, enter into loan documents or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such borrowing; and
- (c) mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of the relevant Fund as security for any moneys borrowed.

14.2 Limitation on borrowings

The aggregate of the principal moneys borrowed and outstanding in respect of any Fund or secured against the Investments of that Fund together with the principal moneys proposed to be borrowed may not exceed the limitation on borrowings (if any) set out in the relevant Establishment Deed.

14.3 Conditions of borrowing

There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 14.1 or to complete any loan or security documents unless the Supervisor is satisfied that:

- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Fund;
- (b) any loan security or other obligation binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- (c) there has been compliance with any specific borrowing requirements set out in the relevant Establishment Deed.

14.4 Third Parties Need not Inquire

No Person from whom the Supervisor has or intends to borrow in respect of any Fund needs to enquire as to whether or not the limitation set out in clauses 14.2 and 14.3 have been observed or complied with.

15. MANAGER'S AND SUPERVISOR'S POWERS TO INVEST

15.1 Investment Policy

The Manager in consultation with the Supervisor must ensure that there is a SIPO for each Fund that complies with the FMCA. Each Fund shall be invested only in the Authorised Investments for that Fund in accordance with the SIPO. This requirement shall constitute a 'contrary intention' for the purposes of section 2(5) and 2(5A) of the Trustee Act 1956.

15.2 The Manager may amend or replace a SIPO only after giving prior written notice to the Supervisor.

15.3 Unless permitted by any applicable law, the Manager must lodge the SIPO with the Registrar in the manner required by the FMCA and on the Disclose Register.

15.4 Supervisor's Discretion as to Investments

The Supervisor must refuse to act, and must direct any Custodian appointed pursuant to clause 2.6 to refuse to act, on any direction of the Manager to invest, acquire or dispose of any Investment if in the opinion of the Supervisor, given in writing to the Manager, the proposed Investment, acquisition or disposition or transfer of assets into that Fund:

- (a) is manifestly not in the interests of the Unitholders;
- (b) is contrary to the provisions of this Deed, the relevant Establishment Deed or the SIPO; or
- (c) would result in a breach by the Supervisor of any obligations or duties imposed on the Supervisor by any rule of law or enactment.

15.5 The Supervisor shall not be liable to the Unitholders or the Manager for acting or refusing to act on any such direction by the Manager or directing any Custodian contracted under clause 2.6 to act or refuse to act on any such direction in respect of the acquisition or disposal of any Assets of a Fund in accordance with the provisions of this Deed.

15.6 If the Supervisor refuses to act on a direction of the Manager or directs any 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.

15.7 Investment Directions by the Manager

The Manager will manage each Fund for the benefit of the Unitholders, and as and when required the Manager may (subject to the provisions of this Deed) direct the Supervisor to:

- (a) purchase, acquire, sell, transfer or dispose of Investments of any Fund;
- (b) enter into any commitments or Liabilities in respect of such Investments;
- (c) execute and deliver such contracts, documents, bills, notes, Deeds or other instruments as may be necessary in respect of the foregoing; and
- (d) take any other action which may be required in respect of the Authorised Investments,
- (e) complete and deliver any votes, voting directions, proxies or related notices;

and (subject to the provisions of clause 15.6), the Supervisor will from time to time, to the extent of the Investments of each Fund in its hands or control, act as directed in writing by the Manager.

15.8 Advisers

In relation to the purchase, sale and other dealings with any Authorised Investments by the Supervisor, the Manager may determine the time and mode and the consultants, agents, brokers and professional advisors (if any) for the purchase, sale and other dealing.

15.9 Dealing with Related Parties

The Manager (any investment manager, administration manager, or other person to whom the Manager has contracted out or delegated to 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.

15.10 The prohibition under clause 15.9 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor about the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:

- (a) the Manager obtains the Supervisor's consent for the transaction or transactions under clause 15.11; or
- (b) section 174 of the FMCA applies to the transaction or transactions or

Related Party Benefits to be given and the Manager certifies to that effect.

- 15.11 The Supervisor must not consent to a transaction or transactions under clause 15.10 unless one of the following applies and the Supervisor certifies to that effect:
- (a) the Supervisor considers that the transaction or transactions are in the best interests of the Unitholders; or
 - (b) the transaction or transactions are approved by, or contingent on approval by a Special Resolution of the Unitholders of the relevant Fund that are affected or potentially affected by the transaction or transactions.
- 15.12 Subject to clauses 13.2, 13.4 and 15.9 to 15.11, the Manager may only enter into the following transactions if the transactions are on reasonable commercial terms and all of the provisions contained in the clause 15.13 are satisfied:
- (a) cause any part of any of the Funds to be invested or lodged with the Manager or any Related Party of the Manager;
 - (b) 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; and
 - (c) enter into any contract, agreement or other arrangement with any a Related Person or Related Party of the Manager to provide management or consultancy or other services.
- 15.13 Before entering into a transaction or series of transaction under clause 15.12, the Manager must provide the Supervisor with reasonable detail of the transaction and certificate that complies with section 175 of the FMA signed on behalf of the Manager by two directors, or one director and one authorised signatory of the Manager.
- 15.14 Neither the Supervisor, the Manager nor any Related Party is liable to account to the relevant Fund or any Unitholder for any profit or loss arising from any transaction entered into in accordance with clauses 15.12 and 15.13.
- 15.15 The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clauses 15.12 and 15.13. The acquisition of Units in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 15.10 or this clause 15.12.
- 15.16 The Manager will report to the Supervisor on a quarterly basis in respect of Related Party dealings in accordance with the FMCA. This report will be in a form to be

agreed by the Manager the Supervisor and will be provided to the Supervisor 10 Business Days after the expiry of each quarter of each year.

15.17 Investments in Supervisor's Name

The Manager shall cause Investments to be vested in the Supervisor or the Custodian appointed in accordance with clause 2.6 and to be registered in the name of the Supervisor or such Custodian as soon as reasonably practicable after receipt of the necessary documents and must deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

15.18 Bank Accounts

A bank account or accounts in the name of the Supervisor or the Custodian appointed in accordance with clause 2.6 must be opened and maintained for each Fund. All moneys belonging to the relevant Fund and coming into the hands of the Manager or the Supervisor must be paid to the credit of such bank account. The Supervisor shall determine the Persons authorised to operate such bank accounts.

15.19 Notice of Investments to Supervisor

The Manager must give notice to the Supervisor of any transaction required to be entered into by the Supervisor in relation to borrowing, the giving of securities or the purchase, acquisition, sale or disposition of, or dealing with, the Investments. The Supervisor may request any additional information which it may reasonably require regarding any transaction including the obtaining of such valuations or other expert advice as the Supervisor deems necessary or desirable.

15.20 Supervisor's Right to Limit Liability

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

15.21 Amendment to Authorised Investments

- (a) Where the Manager determines that it is in the interests of the Unitholders in a particular Fund to vary any part of the definition of Authorised Investments relating to that Fund so as to exclude or include any type of Investment the Manager shall give notice to the Unitholders of the relevant Fund in such form as the Supervisor approves setting out details of the proposed variation and stating that if Unitholders of the relevant Fund holding 10% or more of the Number of Units on Issue at the date of the notice give notice to the Manager within 21 days of the date of the notice that they disapprove of the proposed variation then the Manager will call a meeting of Unitholders to consider the variation.

- (b) Unless Unitholders of the relevant Fund holding 10% or more of the Number of Units on Issue give notice disapproving the variation, the variation shall be deemed to be approved and the Supervisor and the Manager shall execute a deed amending the definition of Authorised Investments for that Fund to give effect to the variation proposed.
- (c) If Unitholders holding 10% or more of the Number of Units on Issue give notice disapproving the variation, the proposed variation shall not be implemented and the Manager shall forthwith convene a meeting of Unitholders to consider the variation. If at a meeting duly convened and held, the Unitholders by Special Resolution approve the proposed variation the Supervisor and the Manager shall execute a deed amending the definition of Authorised Investments for that Fund to give the effect to the variation proposed.
- (d) If the definition of Authorised Investments is amended pursuant to this clause 15.21, the Manager will notify the Unitholders and register the amending deed as provided in clause 33.2.

16. INVESTMENT RECORDS

16.1 Manager to Keep Records

The Manager must keep complete, accurate and separate records of all Investments constituting each of the Funds.

16.2 Inspection by Supervisor

The records of Investments must be available for inspection by the Supervisor or its agents without charge at any time on any Business Day.

16.3 Reliance on Records

The Supervisor is entitled to assume that the Manager's records of Investments are complete and accurate and may rely upon them accordingly.

17. DISTRIBUTIONS

17.1 Determination of Distribution Period and Distributions

The length of a Distribution Period and the method of calculation of Distributions shall be those specified in the relevant Establishment Deed or as subsequently varied by the Manager.

17.2 Allocation and Distribution

- (a) Subject to the terms of this Deed and the applicable Establishment Deed, the Manager will determine the amount of each Distribution (if any).
- (b) Unless otherwise specified in the relevant Establishment Deed, a Unit on issue on the last day of the relevant Distribution Period entitles its Holder to participate in the distribution for the period in full irrespective of the number of days it has been on issue.
- (c) Distributions may be made in cash or by the issue of Units as provided in, or determined in accordance with, the applicable Establishment Deed.
- (d) Payment of cash Distributions must be made within 30 days after the last day of the Distribution Period to which they relate. Issues of new Units must be made on a Valuation Day.
- (e) The provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- (f) The Manager may make a deduction from any Distribution to a Unitholder on account of PIE Tax attributable to income allocated to that Unitholder.

17.3 Reinvestment of Distributions

- (a) If the relevant Establishment Deed or PDS so provides, Unitholders may elect to reinvest their Distributions (less any deductions on account of PIE Tax which the Manager is obliged or permitted to deduct) by subscribing for further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial Application or in such other form as may from time to time be determined by the Manager. Any request in such other form must be submitted to the Manager prior to the expiration of the Distribution Period. Any request (whether in an initial Application or at a later date) may be varied or terminated by notice in writing to the Manager at any time.
- (b) The Manager will treat such a request as though it were an application to subscribe for further Units in the relevant Fund with the relevant Distribution (less any tax) and accordingly the provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- (c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Distribution without giving any reason.

17.4 Disclosure of Information to Tax Authorities

The Manager and the Supervisor are authorised to make such disclosure as may be required by the Inland Revenue Department of the details of Unitholders, any

Distributions of Unitholders or any other details or information arising out of any of the Funds.

18. SUPERVISOR'S FUNCTIONS, POWERS AND COVENANTS

18.1 Supervisor's functions

The Supervisor has the following functions in respect of each Fund:

- (a) acting on behalf of the Unitholders in relation to -
 - (i) the Manager;
 - (ii) any matter connected to this Deed or the terms of any Regulated Offer;
 - (iii) any contravention or alleged contravention of the Issuer Obligations; and
 - (iv) any contravention or alleged contravention of the FMCA by any other person in connection with the each Fund;
- (b) supervising -
 - (i) the performance by the Manager of its functions and its Issuer Obligations;
 - (ii) the financial position of the Manager and each Fund to ascertain that they are adequate;
- (c) holding the Investments of each Fund, or ensuring that the Investment of each Fund is held in accordance with the FMCA;
- (d) performing or exercising of any other functions, powers, and duties conferred or imposed on the Supervisor by or under the FMCA, the Financial Markets Supervisors Act 2011, and this Deed.

18.2 Supervisor's duties

The Supervisor must -

- (a) act honestly in acting the Supervisor of each Fund; and
- (b) in exercising its powers and performing its duties as a Supervisor:
 - (i) act in the best interests of the Unitholders; and

- (ii) exercise reasonable diligence in carrying out its functions as a Licensed Supervisor;
- (c) do all things it has the power to do to cause any contravention under the FMCA to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Unitholders; and
- (d) act in accordance with any direction given by a Special Resolution of the Unitholders that is not inconsistent with any enactment, rule of law, or this Deed in relation to -
 - (i) seeking a remedy to a contravention under the FMCA; and
 - (ii) any other matter connected with the Supervisor's functions.

18.3 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 the Unitholders;

18.4 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);

18.5 The duty in clause 18.3 is subject to any order of the court made under section 210 of the Act.

18.6 Standard of care

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.

18.7 Supervisor's Powers

The Supervisor shall have the power to settle and complete all transactions in respect of each Fund. Subject to the provisions in this Deed and the powers, rights and discretions given to the Manager in this Deed, the Supervisor shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of each Fund and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of each Fund or otherwise to perform and comply with the obligations and duties under this Deed.

18.8 Waivers

The Supervisor may, whenever it thinks expedient in the interests of the

Unitholders, waive at any time and on any terms or conditions any breach of the covenants or obligations binding on the Manager under this Deed where such waiver will not, in the opinion of the Supervisor, be materially prejudicial to the interests of the Unitholders.

18.9 The Supervisor may delegate the performance of its functions in respect of each Fund, only to the extent such delegation is not prohibited by Relevant Law.

18.10 Supervisor's covenants

The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall enure not only to the Manager but to the Unitholders jointly and to each of them severally) that it:

- (a) is a Licensed Supervisor under the FMCA and has power to act continuously as Supervisor of the Funds and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Supervisor under this Deed or which might prevent it from so acting and will act continuously as Supervisor under each Fund until such Fund has been wound up in accordance with this Deed or until the Supervisor has retired or been removed from office;
- (b) will, to the extent appropriate and practicable in the case of each Investment ensure that any documents of title are held in safe custody;
- (c) will keep each of the Funds separate from each other and from all other assets, Investments and other property vested in or held by the Supervisor; and
- (d) will without delay forward to the Manager all notices and other information relevant to the Manager and received by it or on its behalf in connection with each Fund.

19. MANAGER'S POWERS, DUTIES AND COVENANTS

19.1 Manager's powers of management

Subject to clause 13, each Fund shall be managed by the Manager (with full power to delegate to its officers, and employees all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion) which hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed during the period of each Fund. The Manager shall have all powers, authorities, and discretions necessary to enable it to carry out the purposes of each Fund or otherwise to perform and comply with the obligations and duties under this Deed. 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 Supervisor for trusts whether of a nature similar to or different from the Funds.

19.2 Voting Rights on Investments

- (a) Except as otherwise expressly provided in this Deed and subject to the provisions of the Trustee Act 1956, all rights of voting conferred by the Investments or any of them are to be exercised in such manner as the Manager may determine. The Supervisor must from time to time execute and deliver or cause to be executed and delivered to the Manager or its nominees in a form or forms approved by the Supervisor such proxies or powers of attorney as the Manager may request.
- (b) Neither the Manager nor the Supervisor is under any liability or responsibility in respect of the management of the corporations or bodies in which the Fund or any part thereof is for the time being invested nor in respect of any vote cast or not cast or action taken or not taken or consent given by the Manager in person by proxy or attorney.
- (c) Neither the Supervisor nor the Manager nor the holder of any such proxy or power of attorney will incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Supervisor or Manager or by the holder of such proxy or power of attorney under this Deed and neither the Supervisor nor the Manager are under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney except to the extent that such obligation may be attributable to the Supervisor's or the Manager's (as the case may be) own negligent or wilful act or default.

19.3 Manager's covenants

Without limiting any duty or obligation of the Manager elsewhere in this Deed, the Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall enure not only to the Supervisor but to the Unitholders jointly and to each of them severally) that:

- (a) the Manager is a Licensed Manager under the FMCA and has power to act continuously as Manager of the Funds and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Manager under this Deed or which might cause it to prevent it from so acting and will act continuously as Manager under each Fund until such Fund has been wound up in accordance with this Deed or until the Manager has retired or been removed from office.
- (b) the Manager will use its best endeavours to ensure that the business of the Manager and each of the Funds is carried on in a proper and efficient

manner and in accordance with this Deed, each Establishment Deed and each SIPO;

- (c) the Manager will not issue a Unit otherwise than at a price calculated in accordance with the provisions of this Deed;
- (d) the Manager will prepare or cause to be prepared all distributions, cheques and notices which are to be issued pursuant to this Deed and produce them to the Supervisor or a person authorised by the Supervisor for this purpose so as to afford the Supervisor or such authorised person reasonable time to examine and check the same and to sign those cheques for despatch on the day on which they ought to be despatched, and the Supervisor may rely on the report of the Auditor or the Manager given in respect of the accuracy of the particulars of such cheques if such reliance is based upon a reasonable belief that the report is genuine;
- (e) the Manager will pay to the Supervisor all moneys belonging to each Fund coming to the hands of the Manager;
- (f) will without delay forward to the Supervisor all notices and other information relevant to the Supervisor received by it or on its behalf in connection with any of the Funds or the Investments;
- (g) will consult with the Supervisor and provide the Supervisor with a draft of all PDS' and SIPOs in advance so as to provide the Supervisor with a reasonable opportunity to comment on those draft documents.
- (h) the Manager will retain in safe keeping all Applications and instruments of transfer and transmission, or copies or reproductions thereof, and will make those documents available for inspection by or on behalf of the Supervisor at any time during normal business hours, but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any law to the contrary and first obtaining the Supervisor's approval) destroy such documents; and
- (i) the Manager will ensure that at all times the liability of the Supervisor in relation to any contract or agreement or any borrowing entered into by the Supervisor at the direction of the Manager, is limited to the Investments.

20. REMOVAL AND RETIREMENT OF MANAGER

20.1 Removal

- (a) The Manager will cease to hold office as Manager of the relevant Fund if:

- (i) the Manager is removed by written direction of the Supervisor after the Supervisor certifies, in respect of the relevant Fund, pursuant to section 185(1)(a) of the FMCA, that it is in the best interests of the Unitholders 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
 - (ii) the Manager is removed by a Special Resolution of the Unitholders of the relevant Fund; or
 - (iii) the Manager is substituted by the court under section 209 of the FMCA.
- (b) If the Manager ceases to hold office pursuant to clause 20.1, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Funds, unless the Supervisor agrees to the contrary, and must hand over all records necessary and give reasonable assistance to the new Manager, subject to the requirements of the FMCA.

20.2 Retirement

The Manager may retire as manager of a Fund at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement will take effect until a new Manager has been appointed pursuant to clauses 20.3, 20.4 or 20.5 and has executed the Deed referred to in clause 20.6.

20.3 Temporary Manager

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

20.4 New Manager Appointment

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.

20.5 Subject to all applicable laws, the power of appointing a new permanent manager of the Funds shall be vested in the retiring manager, but, except where the new permanent manager is a Related Party of the Manager, no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).

20.6 Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Funds occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Funds.

20.7 Upon any vacancy occurring in the office of Manager in respect of any Fund, the Trustee may summon a meeting of the relevant Unitholders and must take such steps as that meeting or any subsequent meeting of Unitholders may require to secure the appointment of any temporary Manager appointed by the Trustee or some other qualified Manager of the relevant Fund. Any meeting of Unitholders may ratify the appointment of any Manager appointed by the Trustee or may appoint a new Manager. Any directions given to the Trustee by any such meeting of Unitholders must be given by way of a Section 18 Resolution.

20.8 New Manager to Execute a Deed

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 the relevant Unitholders to be bound by all the covenants on the part of the Manager under this Deed from the date of such appointment.

20.9 Retiring Manager Released

From the date of execution by the new Manager of a deed in accordance with clause 20.6, the retiring Manager is absolved and released from all such covenants under this Deed in relation to the relevant Fund (except in respect of any prior breach in respect of which the retiring Manager is not indemnified under this Deed) and the new Manager must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Manager under this Deed in all respects as if such Manager had been originally named as a party to this Deed as manager of the relevant Fund.

21. REMOVAL AND RETIREMENT OF SUPERVISOR

21.1 Removal

The Supervisor will cease to hold office as supervisor of the Funds if:

- (a) the Supervisor is removed by the FMA if the FMA is satisfied that the Supervisor no longer meets the relevant requirements of the FMCA; or
- (c) the Unitholders of the relevant Fund by Special Resolution remove the Supervisor from office.

21.2 Retirement

- (a) The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do.
- (b) However, no such retirement shall take effect until:
 - (i) all functions and duties of the position of Supervisor have been performed and requirements of the FMCA met, or
 - (ii) the High Court consents, or
 - (iii) another Licensed Supervisor has been appointed pursuant to clause 21.3 and has executed the Deed referred to in clause 21.4 and all of the Investments of the relevant Fund have been transferred to the new Supervisor.
- (c) The Supervisor may only retire in respect of all the Funds.

21.3 New Appointment

The power of appointing a new Supervisor of the Funds (in place of a Supervisor which has retired or been removed from office) is vested in the Manager. No Person can be appointed as a new Supervisor unless qualified to act as such pursuant to the Act. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by Special Resolution of the Unitholders.

21.4 New Supervisor to Execute a Deed

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 Unitholders to be bound by all the covenants on the part of the former Supervisor under this Deed from the date of such appointment.

21.5 Retiring Supervisor Released

From the date of execution by the new Supervisor of a Deed in accordance with clause 21.4, 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 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 such Supervisor had been originally named as a party to this Deed.

22. REMUNERATION OF SUPERVISOR

22.1 Fees Applicable to Specific Funds

- (a) The Supervisor is entitled to charge in respect of each Fund the annual or other fees calculated and payable as set out in the relevant Establishment Deed.
- (b) The Supervisor may, in respect of any Fund, after agreement with the Manager and by giving at least 3 months' notice to that effect to all Unitholders in the relevant Fund increase (subject to the maximum amounts set out in the relevant Establishment Deed) or decrease the fees payable in respect of any Fund.
- (c) If the Supervisor wishes to increase its fees and the Manager and the Supervisor are unable to agree on the amount of the Supervisor's fees, the matter shall be referred to the arbitration of a single arbitrator if one can be agreed on, otherwise to two arbitrators and their umpire, such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.

22.2 Special Fees

In addition to any fees payable to the Supervisor under clause 22.1, the Supervisor is entitled to charge, in respect of each Fund, such special fees for services of an unusual or onerous nature outside the Supervisor's regular services (including by way of example, convening meetings of Unitholders, considering breaches of trust and exercising discretions), calculated and payable as set out in the relevant Establishment Deed.

22.3 Goods and Services Tax etc:

The Supervisor is entitled to receive, in addition to the fees referred to in clause 22.1 and clause 22.2 any Goods and Services Tax or duty or similar tax or duty payable in respect of such fee.

23. REMUNERATION OF MANAGER

23.1 Manager's Application Fee

On the issue of any Units, the Manager may charge the Unitholder an Application Fee (however described) as set out in the relevant Establishment Deed.

23.2 Management Fee

In addition to the remuneration payable under clause 23.1, the Manager may charge for its services as manager of the relevant Fund such management fees as are specified in the relevant Establishment Deed. The fee shall be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund.

23.3 Performance Fee

In addition to the management fee payable under clause 23.2, the Manager may charge a performance fee as specified in the relevant Establishment Deed. The fee may be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund or by Unitholders directly to the Manager.

23.4 Manager's Break Fee

On the redemption of any Units, the Manager may charge the Unitholder a Break Fee as set out in the relevant Establishment Deed.

23.5 Other Fees

The Manager may charge the Unitholders or the relevant Fund such other fees as are set out in the relevant Establishment Deed provided that those fees are limited to a fair and reasonable reward for the services performed by the Manager or expenses properly incurred by the Manager in connection with the Fund.

23.6 Alteration or Waiver of Fees

The Manager may, in respect of any Fund and either generally or in respect of any particular Unitholder or Unitholders, waive part or all of any Application Fee or management fee and may, by giving at least 2 months' notice to that effect to all Unitholders in the relevant Fund:

- (a) increase (subject to the maximum amounts set out in the relevant Establishment Deed) or decrease the fees payable in respect of any Fund or by the relevant Unitholders; or
- (b) provided that any such fee is permitted under the relevant Establishment Deed, commence charging any such fee which is not currently being charged.

23.7 Goods and Services Tax etc

The Manager is entitled to receive, in addition to the fees referred to in clauses 23.1 to 23.5 (as altered from time to time in accordance with clause 23.6) any Goods and Services Tax or duty or similar tax or duty payable in respect of such fees.

23.8 Expenses of Each Fund

In respect of each Fund, the Manager and the Supervisor are entitled to be reimbursed out of the relevant Fund (whether from income or capital or both) for and in respect of:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of the Fund, the preparation and registration of any PDS, the acquisition, registration, custody, disposal of or other dealing with Investments of the Fund, including bank charges and stamp duty, and the expenses of any agents or nominated company of the Supervisor or the Manager both within and outside New Zealand but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager or the Supervisor;
- (b) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the investigation and negotiation for the acquisition for the Fund of any asset which comes within the definition of Authorised Investments, whether or not it is in fact acquired;
- (c) the fees and expenses of the Auditor relating to the audit of the Fund;
- (d) all taxes, duties and imposts charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other Person) in connection with the Fund or the relevant Investments on any account whatsoever;
- (e) interest and other expenses relating to borrowing and discounts and acceptance and other fees in respect of bill facilities;
- (f) the costs of convening and holding any meeting of Unitholders;
- (g) the costs of postage in respect of all cheques, accounts, distribution statements, notices, quarterly and other reports and other documents posted to all or any Unitholders in accordance with the provisions of this Deed;
- (h) the fees and expenses of any solicitor, barrister, valuer, accountant or other Person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under this Deed;
- (i) all costs of preparing, printing and distributing certificates, accounts, distribution statements, cheques, any PDS, research publications and any other Unitholder communications;
- (j) expenses in connection with the keeping of the Unit Register;

- (k) travel expenses relating to Company specific research or attendance at Company meetings for and on behalf of Unitholders irrespective of domicile; and
- (l) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Deed.

23.9 Collective Costs

Where any costs, charges, fees or expenses referred to in clause 24.1 relate to the Funds collectively rather than any one individual Fund then such costs, charges, fees or expenses are to be apportioned between each of the Funds on such fair and equitable basis as may be determined by the Manager.

24. SUPERVISOR'S AND MANAGER'S RESPONSIBILITIES AND INDEMNITIES

24.1 No Personal Liability

The Supervisor and (except as otherwise expressly provided in this Deed) 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, either the Supervisor nor (except as otherwise expressly provided in this Deed) 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.

24.2 Indemnity

Subject to the limits on permitted indemnities under the FMCA if contrary to the provisions of clause 24.1 either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of any Fund or any action taken or omitted in connection with any Fund, (other than in respect of the Supervisor or Manager's negligence) then the Supervisor or the Manager (as the case may be) is entitled to indemnity and reimbursement out of the relevant Fund to the full extent of such liability (including, for the avoidance of doubt, PIE tax) and the costs of any litigation or other proceedings in which such liability has been determined including without limitation legal fees and disbursements.

24.3 Power to indemnify investment managers and administration managers

The Manager may agree (in consultation with the Supervisor and subject to the limits on permitted indemnities under the Act):

- (a) to limit the liability (in connection with its services in respect of one or more Funds) of; and/or
- (b) to indemnify and reimburse out of the assets of a Fund,

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

24.4 Power to indemnify Custodians

The Supervisor may agree (subject to the limits on permitted indemnities under the Act):

- (a) to limit the liability (in connection with its services in respect of one or more Funds), of; and/or
- (b) to indemnify and reimburse out of the assets of a Fund,

any Custodian appointed in respect of one or more Funds in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of a Fund or any action taken or omitted to be taken in connection with a Fund (including without limitation, legal fees and disbursements).

24.5 Wilful Breach

The Supervisor and the Manager are each liable to each Fund for any loss arising out of wilful default or wilful breach of trust but, subject to the limits on permitted indemnities under the FMCA, neither the Supervisor nor the Manager are liable to any Fund or to any Unitholder for any act or omission or are subject to any liability whatsoever at law or in equity in connection with the affairs of any Fund or as a result of acting as Supervisor or Manager (as the case may be) under this Deed.

24.6 Reimbursement of expenses

The Supervisor and (except as otherwise expressly provided in this Deed) the Manager are each entitled to be reimbursed out of each Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Deed for the relevant Fund, and without prejudice to the generality of the foregoing, and subject to the limits on permitted indemnities under the FMCA, are entitled to be indemnified against any expense or

liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Deed.

24.7 Limitation of indemnities

Nothing in this Deed has the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, or indemnifying the Supervisor or Manager or any such director or officer against, any liability to the extent that doing so would be void under the FMCA .

24.8 Reliance on Manager by Supervisor

Subject to the provisions of the Trustee Act 1956 and the FMCA, the Supervisor is not and will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager (including, for the avoidance of doubt and not by way of limitation, any decision of the Manager to invest any Fund or any part thereof in any futures contracts, foreign exchange contracts and options, interest rate and currency swap contracts or options entered into for the purpose of hedging) or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it) except to the extent that the loss is attributable to the Supervisor's own negligent or wilful act or default.

24.9 Reliance Upon Advice

The Supervisor and the Manager may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Supervisor and the Manager or instructed by the Supervisor or the Manager and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Supervisor nor the Manager is liable, to the maximum extent permitted by the FMCA, for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information.

24.10 Reliance Upon Documents

Whenever pursuant to any provision of this Deed any certificate, notice, instruction, direction or other communication shall be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any one of its directors or by any other person or persons duly authorised by the Manager.

24.11 Manager's Discretion and Authority

Except insofar as is otherwise expressly provided in this Deed the Manager as regards all the powers, authorities and discretions vested in it by this Deed has absolute and uncontrolled discretion as to their exercise, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to the Supervisor and the approval of or supervision by the Supervisor wherever required.

24.12 Supervisor's Discretion and Authority

Except insofar as is otherwise expressly provided in this Deed the Supervisor as regards all the Funds, powers, authorities and discretions vested in it by this Deed has absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of and time for their exercise.

24.13 Dealing in Units: The Manager

Subject to the provisions of this Deed, the FMCA and all other Relevant Law, nothing in this Deed prevents any directors, employees or members of the Manager, or any Related Party of the Manager or in their own right, any officers of the Manager:

- (a) from subscribing for, purchasing, holding, dealing in or disposing of Units; or
- (b) from otherwise at any time contracting or acting in any capacity as representative or agent; or
- (c) from entering into any contract or transaction whatsoever with any other of them or with any Unitholder; or
- (d) from being interested in any such contract or transaction or otherwise acting as Manager of any other Managed Investment Scheme or holding any asset jointly with a trust; and

none of them are in any way liable to account either to the Supervisor or to the Unitholders or any of them for any profits or benefits howsoever made or derived.

24.14 Dealing in Units: The Supervisor

Subject to the provisions of this Deed, the FMCA and to the Trustee Act 1956, nothing in this Deed is deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of either (in this clause included in the expression the Supervisor) from being a Unitholder or from acting in any

representative capacity for a Unitholder and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, Supervisor, receiver, attorney or agent or in any other fiduciary, vicarious or other professional capacity. Nor shall the acting in any such capacity as aforesaid be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Unitholders on the other by this Deed established or otherwise imposed or implied by law.

24.15 Supervisor's Limited Liability to Unitholders

Notwithstanding anything contained in this Deed, save and except in the case of fraud or of dishonesty or unless the Supervisor has failed to show the degree of care and diligence required of a Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this Deed, the FMCA and by the Trustee Act 1956, in no event is the Supervisor bound to make any payment to Unitholders except out of the relevant Fund or be liable to the Unitholders to any greater extent than the Investments, vested in or received by the Supervisor in accordance with this Deed.

24.16 No Respective Liabilities of Supervisor and Manager

Subject to the Trustee Act 1956 and all Relevant Law, the Manager is not liable for any act or omission of the Supervisor and the Supervisor is not liable for any act or omission of the Manager.

24.17 Reliance Upon Apparently Genuine Documents

Neither the Manager nor the Supervisor is liable for any action taken or omitted or thing suffered by the Manager or Supervisor or the Unitholders in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor (as applicable) to be genuine.

25. UNITHOLDERS BOUND BY THIS DEED

Except where expressly provided to the contrary in this Deed or when the context does not so permit, the terms and conditions of this Deed and each Establishment Deed are for the benefit of and binding on the Supervisor, the Manager and each Unitholder and all Persons claiming through them respectively and as if each Unitholder had been party to and had executed this Deed and each Establishment Deed.

26. LIMITATION OF LIABILITY OF UNITHOLDERS

(a) Except as expressly provided by this Deed no Unitholder is, by reason

alone of being a Unitholder or by reason alone of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency of assets of the Funds as compared with the Liabilities to be met therefrom.

- (b) Subject to subclause (d) of this clause, the rights (if any) of the Supervisor or Manager or of any creditor to seek indemnity are limited to having recourse to the relevant Fund and do not extend to a Unitholder personally in such Person's capacity as a Unitholder.
- (c) On a winding-up of the Fund, no Unitholder has any liability to contribute to any shortfall in the Fund if the Liabilities of the Fund exceed the Gross Asset Value of the Fund except for any liability for any unpaid calls or instalments owing in respect of any Unit.
- (d) Every Unitholder indemnifies the Supervisor, the Manager and the relevant Fund on account of any PIE Tax, or any other taxation attributable to income allocated to that Unitholder and related penalties or interest which has not been satisfied by redeeming Units of, or by deduction from monies paid to, that Unitholder.

27. RECORD, FINANCIAL STATEMENTS, AUDITING AND REPORTING

27.1 Records

- (a) The Manager shall keep or cause to be kept such accounting records as correctly record and explain the transactions and the financial position of each Fund.
- (b) The Supervisor shall (and shall procure that the Custodian shall) from time to time upon request furnish the Manager with any information necessary for the Manager's recording keeping purposes.
- (c) The Manager shall keep at its registered office or such other place it thinks fit, proper books of account that will enable the Financial Statements of each Fund to be prepared following the end of each Financial Year and conveniently and properly audited in accordance with this Deed and the FMCA.
- (d) The Manager shall allow for inspection of all records relating to a Fund to the extent required by the FMCA.

27.2 Annual Financial Statements to be prepared

The Manager shall cause the Financial Statements to be prepared in respect of each Fund in accordance with the FMCA. If requested in writing by the Supervisor, the Manager will provide a draft of the Financial Statements prepared to allow the Supervisor reasonable time to review these documents.

27.3 Audit of Financial Statements

The Manager shall ensure that the Financial Statements prepared for each Fund are audited in accordance with the requirements of the FMCA.

27.4 Auditor's report

The Manager shall deliver to the Supervisor at the same time as the Manager furnishes to the Supervisor the annual Financial Statements, a separate report by the Auditor addressed to the Supervisor in a form to be agreed between the Supervisor, the Manager and Auditor.

27.5 Reporting to the Supervisor

The Manager shall report to the Supervisor, including in relation to:

- (a) possible contraventions of its Issuer Obligations;
- (b) any serious financing problems it has;
- (c) limit breaks;
- (d) unit pricing errors; and
- (e) related party transactions,

to the extent required by the FMCA, and in accordance with the agreement of the Manager and the Supervisor as to the frequency and content of such reports.

27.6 Additional information and reports to the Supervisor

Without limiting either clause 27.5 or the application of the reporting requirements in either the FMCA or the FMC Regulations, the Manager shall provide the Supervisor with such reports at the frequency and with such information as is required by the Supervisor from time to time, and in accordance with the agreement of the Manager and the Supervisor

27.7 Statutory reports

The Manager will prepare reports and updates as required by the FMCA and FMC Regulations and file or submit these as appropriate and consult with the Supervisor as required. Where requested in writing by the Supervisor the Manager will provide drafts of the Fund Update and Annual Reports allowing the Supervisor reasonable time to review. These shall include without limitation the following periodic reports:

- (a) Fund Updates;
- (b) calculations of net tangible assets under the special conditions of the Manager's licence;
- (c) quarterly reports on any Related Party transaction certificates; and
- (d) Annual Reports.

27.8 Custodian reports

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

28. MANAGER'S QUARTERLY CERTIFICATE

Within 1 Month of the end of each quarter the Manager shall deliver to the Supervisor for each Fund the Manager's Quarterly Certificate (or such period as shall be agreed with the Supervisor) in the form provided in Schedule 4 or in such other form as the Supervisor and Manager shall otherwise agree in writing.

29. AUDITOR

29.1 Appointment and Remuneration

A Person or firm of chartered accountants (who is a qualified auditor as defined in the FMCA) selected by the Manager following consultation with the Supervisor must be appointed Auditor of the Funds. The appointment must be made in accordance with the FMCA and the FMC Regulations. The Manager and the Supervisor must agree upon the services to be performed by the Auditor and their scope. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

29.2 Removal/Retirement

The Auditor may at any time and from time to time be removed by the Manager on approval of the Supervisor or if the Supervisor believes it to be in the interests of the

Funds and/or Unitholders it may instruct the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.

29.3 New Appointment

Any vacancy in the office of Auditor must be filled by the Manager following consultation with the Supervisor provided that such person or firm of Chartered Accountants meets the requirements of the Relevant Law.

30. MEETINGS OF UNITHOLDERS AND DIRECTIONS TO SUPERVISOR

30.1 Meetings

Meetings of the Unitholders shall be convened and conducted in accordance with the provisions in Schedule 1 or as otherwise prescribed by law.

30.2 Unitholders' Directions to the Supervisor

By means of a Special Resolution passed at a meeting of Unitholders, the Unitholders have the power to give such directions to the Supervisor as they think proper concerning the relevant Fund, being directions that are consistent with the provisions of this Deed, and where applicable, the FMCA.

30.3 Compliance with Directions

Where any direction is given to the Supervisor pursuant to clause 30.2 in respect of any matter, the Supervisor may comply with the direction and is not 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 Act apply to the High Court for an order in respect of any matter.

31. NOTICES TO UNITHOLDERS

31.1 Notice of Meetings

A minimum 14 days' notice of every meeting of Unitholders must be given to every Unitholder or the Unitholders of the relevant Fund (where the meeting relates only to those Unitholders) by sending it addressed to the Unitholder at the Unitholder's registered address by ordinary, prepaid post or, if that address is outside New Zealand, by airmail, prepaid post.

31.2 Other Notices

In any other case a notice may be given under this Deed to any Unitholder by email or personally by leaving it at the Unitholder's registered address or by sending it addressed to the Unitholder at the Unitholder's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post, or by other means permitted by any rule of law or enactment including the Electronic Transactions Act 2002, with the prior written approval of the Supervisor. A Unitholder must notify the Manager or the Manager's appointed agent of any change of the Unitholder's registered address and the relevant Unit Register shall be altered accordingly. Any notice given to Unitholders by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Unitholders in substantially the same form but with personalised details in respect of each Unitholder, it shall be sufficient to provide the Supervisor with a sample of such a notice.

31.3 Manner of Notice

- (a) Any notice sent by post will be deemed to have been given at the expiration of 72 hours after posting, or in the case of a notice posted to another country, at the expiry of 9 Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted;
- (b) in the case of a facsimile, on the Business Day on which it was despatched or, if despatched after 5.00pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case that there is produced a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;
- (c) in the case of a communication sent by email, on the Business Day on which it was despatched or, if despatched after 5.00pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case the computer system used to transmit the communication has not generated a record that the communication has failed to be transmitted.

31.4 Signature of Notice

The signature to any notice to be given by the Manager or the Supervisor may be written or printed or inserted electronically.

31.5 Calculation of Notice Periods

Subject to the FMCA, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the

day upon which the notice will expire shall be reckoned in the number of days or other period.

31.6 Binding Nature of Notice

Every Person who by operation of law, transfer or other means whatsoever becomes entitled to any Units is bound by every notice which, prior to such Person's name and address being entered in the Unit Register in respect of the Units, has been given to the Person from whom such Person derives the title to the Units.

31.7 Receipt of Notice

Any notice or document delivered or sent by post to or left at the registered address for service of any Unitholder under the provisions of this Deed will (notwithstanding that the Unitholder is then deceased and whether or not the Manager has notice of such deceased Unitholder's death) be deemed to have been duly given in respect of such Unitholder's Units, whether held by such Unitholder solely or jointly with another Person or Persons, until some other Person is registered in the place of the Unitholder as the new Unitholder or joint Unitholder.

32. NOTICES BETWEEN MANAGER AND SUPERVISOR

Any certificate, notice, communication or information required by this Deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager must be given in writing or by facsimile or other agreed electronic means and addressed to the director or principal officer of the party to whom it is intended to be given at its registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this Deed) and must be signed by a duly authorised officer on behalf of the party giving it provided that the Manager and the Supervisor may agree that certain notices or communications may be given by Electronic Communication.

33. AMENDMENT TO TRUST DEED

33.1 Power to Change the Deed

An amendment to or replacement of this Deed has no effect unless made in a manner prescribed by section 139 of the FMCA.

33.2 Subject to meeting the relevant requirements of the FMCA and obtaining the consent of the Supervisor, the court or the FMA (as the case may require), the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed or any Establishment Deed (by means of a deed executed by the Supervisor and the Manager) in any of the

following cases:

- (a) if in the opinion of the Supervisor the change is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Supervisor the change is necessary or desirable for the more convenient, economical or advantageous working, management or administration of any of the Funds or for safeguarding or enhancing the interests of any of the Funds or Unitholders and is not or not likely to become materially prejudicial to the general interests of all Unitholders of the relevant Funds;
- (c) if, in the case of a change affecting all Unitholders, the change is authorised by an Special Resolution of all Unitholders as if they were beneficiaries of a single Fund, the provisions of the Schedule relating to meetings of Unitholders to be read accordingly;
- (d) if, after a change in any law, a change to this Deed is necessary to make any provision of this Deed consistent with such law;
- (e) if, in the case of a change affecting Unitholders in a particular Fund, the change is authorised by Special Resolution of those Unitholders;
- (f) if, in the reasonable opinion of the Manager, the change is necessary or desirable to enable a particular Fund to opt into the PIE taxation regime or to maintain the status of a Fund as a PIE; or
- (g) if the change is authorised or required under any Relevant Law.

33.3 In the case of an amendment to or replacement of this Deed requiring the consent of the Supervisor, the Supervisor must certify to the matters set out under section 139(2) of the FMCA and certify, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 135 to 137 of the FMCA on the basis set out in the certificate.

33.4 Notice of Amendment

Within 5 working days after an amendment to or a replacement of this Deed is made, the Manager must ensure that notice of the amendment or replacement, and a copy of the Supervisor's certificate for the amendment or replacement pursuant to clause 33.3, is lodged with the Registrar.

33.5 Notice of change

If any amendment is made to this Deed or a particular Establishment Deed, the Manager must send a summary of the amendment to the relevant Unitholders at the

same time as the Financial Statements of the relevant Fund are forwarded to those Unitholders.

34. PERIOD OF TRUSTS

Each Fund commences on the date of its creation and will continue until whichever of the following dates occurs first (the Date of Termination):

- (a) the date of termination (if any) specified in the relevant Establishment Deed;
- (b) the date falling eighty years less two days from 20 November 2006 (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964);
- (c) the date determined by the Unitholders by Special Resolution to terminate the Fund; or
- (d) the date determined by the Manager to terminate the Fund pursuant to a winding-up resolution and as notified to the Supervisor and the relevant Unitholders by not less than 30 days notice.

35. PROCEDURE ON WINDING UP

35.1 The provisions of the FMCA relating to the winding up of a Fund shall apply to the winding up of the Funds.

35.2 Realisation of Investments

From and after the Date of Termination of a Fund, the Supervisor must realise the Investments of the Fund as soon as practicable, provided however that the Supervisor may postpone realisation of all of the Investments if it reasonably considers it is in the interests of Unitholders to do so. In this circumstance, until such realisation of the Investments, the terms of the Fund will continue to apply with such changes as the context may require.

35.3 Retentions by Supervisor

The Supervisor is entitled to retain out of the relevant Fund such amount as the Supervisor considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) in connection with the relevant Fund or arising out of the liquidation of the Fund including the Supervisor's fees due under clause 22 and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Supervisor may employ in connection with the winding up of the Fund. The Supervisor is entitled

to be indemnified in respect of the foregoing from the moneys or assets retained by the Supervisor.

35.4 Application of Realisation

Subject to the retention of any moneys as provided in clause 35.3, the net proceeds of realisation of Investments shall be applied by the Supervisor as follows:

- (a) first, in payment or retention of all costs charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the relevant Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Deed; and
- (b) secondly, in the case of the relevant Fund, in payment to the Unitholders pro rata to the number of Units held by them in the relevant Fund.

35.5 Interim Distributions

If in the opinion of the Supervisor it is expedient to do so the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 35.4.

35.6 Receipts

Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

36. PAYMENTS TO UNITHOLDERS

- (a) Any moneys payable by the Supervisor or by the Manager to a Unitholder under the provisions of this Deed may be paid by cheque that is crossed "non transferable " and made payable to the Unitholder or their respective agents or other authorised Persons.
- (b) The moneys may be given or sent through the post to the Unitholder or their respective agents or other authorised Persons or may be credited to any bank account nominated by the Unitholder.
- (c) Payment of every cheque, if duly presented and paid, and in respect of direct credits, the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.
- (d) If any amount has been deducted on behalf of taxes from a payment to a Unitholder, details of such deduction shall be provided to the Unitholder

when the relevant payment is made.

37. UNCLAIMED MONEYS

If any payment made to any Unitholder at their address recorded in the Unit Register or in accordance with their payment instructions is returned or otherwise unclaimed, the amount thereof shall be retained by the Supervisor on behalf of the relevant Fund and held for such Investor without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of calculating the Net Asset Value per Unit pursuant to this Deed be part of the relevant Fund. Any amount unclaimed shall be transferred to the Crown in accordance with Relevant Law.

38. DEDUCTIONS AND ADJUSTMENTS FOR TAXES

If the Manager or the Supervisor is obliged or permitted by law to:

- (a) make any deduction or withholding on account of taxes (including on account of PIE Tax attributable to income allocated to a Unitholder) from any payment to be made to a Unitholder; or
- (b) redeem any Units on account of PIE Tax attributable to income allocated to a Unitholder,

the Manager or Supervisor (as the case may be) may (and where required by law, shall) make such deduction or the Manager or Supervisor (as the case may be) may (and where required by law, shall) make such deduction or withholding or redeem such Units and shall pay the relevant amount of tax to the Commissioner of Inland Revenue or other taxing authority when due. On payment of the net amount to the relevant Unitholder and the amount deducted or withheld to the tax authorities, the full amount payable to the relevant Unitholder shall be deemed to have been duly paid and satisfied.

39. LAW APPLICABLE

This Deed is governed by the law of New Zealand.

Execution

Executed as a Deed

**Elevation Capital
Management Limited by**

Custobo

Director

CRAIG. H. STOBO

Print Name

[Signature]

Director

Christylna Swoboda

Print Name

SIGNED by Public Trust by its
Attorney in the presence of:



Witness signature



Signature of Attorney

Full Name

Dennis Raymond Church

Name of Attorney

Gerard Joseph Field
Senior Manager Client Services

Auckland

Occupation

Address

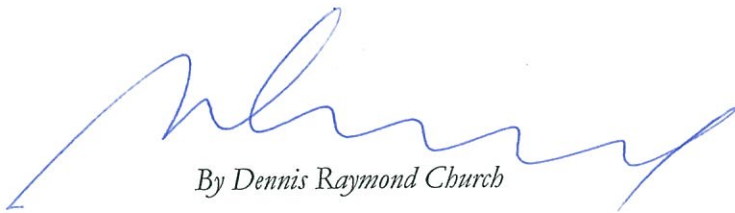
**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Dennis Raymond Church, of Auckland holding the office of General Manager,
Corporate Trustee Services with Public Trust:

HEREBY CERTIFY:

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

SIGNED at *Auckland* this *16* day of *November* 2016


By *Dennis Raymond Church*

Schedule 1: Meeting Procedures (clause 30.1)

1. CONVENING OF MEETINGS

- 1.1 The Manager must summon a meeting of Unitholders of the relevant Fund on:
- (a) the request in writing of the Supervisor
 - (b) the request of Unitholders holding Units that have a combined value of no less than 5% of the value of the Units on issue in the relevant Fund at the date of such request.
- 1.2 If the Manager fails to call a meeting in accordance with this clause the Supervisor shall be entitled to call such a meeting on behalf of the Manager.
- 1.3 The Manager may at any time of its own volition convene a meeting of Unitholders to be held at such place as is acceptable to the Supervisor.

2. NOTICE OF MEETINGS

- 2.1 **Notice of every meeting must be given in the manner provided in Schedule 11 of the FMC Regulations to every Unitholder on the relevant Unit Register, the Supervisor, and every director of the Manager and the Auditor At least fifteen days' notice at least of every meeting must be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice must specify**
- (a) the place, day and hour of the meeting and
 - (b) the general nature of the business to be transacted in sufficient detail to enable a Unitholder to form a reasoned judgement in relation to it
 - (c) the text of any Special Resolution to be submitted at the meeting
 - (d) the right of a Unitholder to appoint a proxy
- 2.2 If a Special Resolution is to be submitted to the meeting -
- (a) a draft of the proposed notice of the meeting (including any explanatory memorandum under Schedule 11 of the FMC Regulations) must be given to the Supervisor at least 10 working days before the notice is given under clause 2.1 (or any lesser period approved by the supervisor); and
 - (b) the notice of the meeting must be accompanied by a document containing the supervisor's comments on the proposed Special Resolution (but only if

the Supervisor has provided those comments in writing to the Manager at least 5 working days before the notice is given under clause 2.1, or any lesser period approved by the Manager).

- 2.3 The accidental omission to give notice to or the non-receipt of notice by any Person entitled to that notice does not invalidate proceedings at any meeting.
- 2.4 The Manager must ensure that the Supervisor receives the notices and communications that any Unitholder is entitled to receive in relation to a meeting of those Unitholders.

3. QUORUM

- 3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum for meetings of Unitholders is met if Unitholders are present or have cast votes as they are entitled to under clause 11 of Schedule 11 of the FMC Regulations, where the number of Unitholders present or votes casted represent no less than 25% of the number of Unitholders who are entitled to vote:
- 3.3 If within 15 minutes from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Unitholders must be dissolved. In any other case it will stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the Chairperson and at such adjourned meeting the Unitholders present in person or by proxy or by attorney or by authorised representative and entitled to vote shall form a quorum.
- 3.4 Notice of any such adjourned meeting must be given in the same manner (except in respect of the period of notice which shall be approved by the Supervisor) as of an original meeting and such notice must state that the Unitholders present at the adjourned meeting, in the case of a meeting of Unitholders, whatever their number and whatever the number of Units held by them shall form a quorum.

4. SUPERVISOR AND MANAGER MAY ATTEND AND SPEAK

Any director, officer or solicitor of the Supervisor and any other Person authorised in that behalf by the Supervisor and any director, officer or solicitor of the Manager or any other Person authorised in that behalf by the Manager may attend any meetings and all such Persons have the right to speak at the meeting.

5. CHAIRPERSON

The Unitholders present may choose one of their number to be chairperson of the

meeting if—

- (a) no chairperson has been appointed by the Supervisor; or
- (b) at the meeting, the chairperson appointed by the supervisor is not present within 15 minutes of the time appointed for the start of the meeting.

6. ADJOURNMENT OF MEETINGS

- 6.1 The chairperson may with the consent of any meeting at which a quorum is present and must if so directed by the meeting adjourn the meeting from time to time and from place to place.
- 6.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

7. VOTING RIGHTS

- 7.1 The only persons entitled to vote in person or by proxy or by attorney or by authorised representative at a meeting of the Unitholders are the Unitholders registered in the Unit Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Votes may be given either personally or by proxy or by attorney.

8. PROXIES

- 8.1 An instrument of proxy shall be in such form as the Manager may stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairperson of the meeting or an officer of the Supervisor is appointed a proxy for a Unitholder and the Unitholder has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which such Person's proxy shall vote upon any resolution coming before the meeting such Person's vote must be used in favour of the resolution.
- 8.3 The instrument appointing a proxy must be made in accordance with the FMC Regulations and otherwise in writing under the hand of the appointor or of such Person's attorney duly authorised in writing.
- 8.4 A Person appointed to act as a proxy need not be a Unitholder.
 - (a) The instrument appointing a proxy and the power of attorney or other

authority (if any) under which it is signed or a copy of such power or authority shall be deposited at such place as the Manager may in the notice convening the meeting appoint.

- (b) If no such place is appointed then it shall be deposited at the Manager's registered office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote.
- (c) In default of the above the instrument of proxy is not to be treated as valid with the exception that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.

8.5 Unless it states to the contrary a proxy is valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy is valid after the expiration of 12 months from the date of its execution but this provision is not construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.

8.6 An instrument of proxy in favour of the chairperson of the meeting or the chairperson, (howsoever expressed) is valid and effective as though it were in favour of a named Person and constitutes the Person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.

8.7 A Person appointed proxy has the right to speak at a meeting and to demand or join in demanding a poll and (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) has power generally to act at the meeting for the Unitholder concerned.

8.8 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or, in the case of a meeting of the Unitholders, the transfer of the Units in respect of which the vote is given with the exception that no intimation in writing of such death, insanity, revocation or transfer must have been received by the Manager at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

9. POWER OF ATTORNEY

- (a) Any Unitholder may by power of attorney appoint an attorney (who need not be a Unitholder) to vote and act on his or her behalf at any meeting.
- (b) Such power of attorney or proof thereof to the satisfaction of the Manager

(unless such power of attorney or such proof has previously been produced to the Manager before the time of holding the meeting at which the attorney proposes to vote) be produced for inspection at such place as the Manager may in the notice convening the meeting direct or (if no such place is appointed) then at the Manager's registered office. Such attorney if so empowered may appoint a proxy for the Unitholder granting the power of attorney.

10. PROCEDURE

- (a) A resolution put to the vote of a meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or any representative of the Supervisor or in the case of a meeting of the Unitholders by one or more Unitholders holding or representing not less than 5% of the Number of Units on Issue.
 - (b) Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.2 If a poll is duly demanded it shall be taken in such manner as the chairperson may direct and the result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
- 10.3 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled for any reason whatsoever.
- 10.4 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.5 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 10.6 On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all such Person's votes or cast all the votes such Person uses in the same

way.

- 10.7 In the case of a meeting of the Unitholders, on a show of hands every Person present at the meeting and entitled to vote (whether as a Unitholder or as a proxy or attorney or authorised representative) has one vote only. On a poll every Unitholder who is present in person or by proxy or by attorney or by an authorised representative is entitled to one vote for every Unit of which such Unitholder is the holder.
- 10.8 In the case of joint Unitholders the vote of the senior who tenders a vote whether in person or by proxy or by attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Unitholders. For this purpose seniority is determined by the order in which the names stand in the Unit Register in respect of the joint holding.

11. RESOLUTIONS

- 11.1 A meeting of Unitholders has the following powers exercisable by Special Resolution:
- (a) To sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed or into units or other interests in any other Managed Investment Schemes or similar entity;
 - (b) To sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unitholders howsoever such rights arise;
 - (c) To assent to any alteration, modification of, variation, or addition to the provisions contained in this Deed or any deed supplemental thereto or the conditions attaching to the Units and to authorise the Manager and Supervisor to concur in and execute any supplemental Deed or other document embodying any such alteration or addition;
 - (d) To give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
 - (e) Subject to the FMCA, to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
 - (f) To appoint a new Supervisor if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new Supervisor pursuant to this Deed;

- (g) To sanction any variation to the Authorised Investments of a Fund.
- (h) To give such directions to the Supervisor as they think proper concerning the Trust being directions that are consistent with this Deed and the FMCA; and
- (i) To direct the removal of the Manager of the Fund.

12. RESOLUTIONS BIND ALL UNITHOLDERS

- (a) An Ordinary Resolution and a Special Resolution passed at a meeting of the Unitholders duly convened and held in accordance with this Schedule is binding upon all Unitholders present or not present at the meeting. Each of the Unitholders, the Supervisor and the Manager is bound to give effect to such resolution accordingly.
- (b) The passing of any such resolution shall as between the Manager, the Supervisor, and the Unitholders be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution or Special Resolution as the case may be, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

13. MINUTES TO BE KEPT

- (a) The Manager shall ensure that minutes are kept of all resolutions and proceedings at every meeting..
- (b) Any such minutes as if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings had or by the chairperson of the next succeeding meeting are prima facie evidence of the matters in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings of the meeting had duly passed and conducted.

Schedule 2: Form of Establishment Deed (clause 1.1)

This is an indicative draft only. Certain provisions may need to be deleted or amended and new provisions may need to be added, or a new form adopted as the Manager and the Supervisor may agree.

This Deed is made on 2006

between (1) Elevation Capital Management Limited (the Manager)

and (2) Public Trust (the Supervisor).

RECITALS:

- A. The Manager and the Supervisor are parties to a Master Trust Deed dated [] (the Deed) which sets out the terms and conditions on which Units in each Fund managed by the Manager will be offered for subscription to the public.
- B. The Deed provides that each Fund shall be established by the Manager and the Supervisor entering into an 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 “[]” (the 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. INTERPRETATION

1.1 Trust Deed Definitions

In this Deed all terms defined in the Deed which are not separately defined in this Deed have the same meanings where used in this Deed.

1.2 Additional Definitions

In this Deed, unless the context otherwise requires:

Adjusted Net Asset Value means the Net Asset Value adjusted by adding back any liability for the Manager’s performance fees which have been deducted in calculating the Net Asset Value

Distribution Period means a period of 6 months commencing on the day following a Distribution Date or, in the case of the first Distribution Period, on the date of this Deed and ending on the first Distribution Date;

Distribution Date means the last day of September and March, or such other day which the Manager may determine by 1 month's written notice to the Unitholders; and

Break Fee means the fee of a percentage of the Unitholder's aggregate Redemption Price payable by a Unitholder on the redemption of Units in accordance with clause 8.2.

Fund means the relevant fund as established by this Deed.

References to the Deed means the Deed as from time to time amended or supplemented.

2. CREATION OF FUND

2.1 Establishment of the Fund

Upon execution for this Deed, the trusts created by this Deed and the Deed in respect of the Fund will be deemed to have been established.

2.2 Name of the Fund

The Fund established under this Deed is named the [] Fund.

3. AUTHORISED INVESTMENTS

For the purposes of the Fund, Authorised Investments means any interest of any nature in any real or personal property of any nature whatsoever and includes derivatives or other treasury products and any right or option to acquire or take up any such interest.

4. ISSUE AND VALUATION DATES AND ISSUE PRICE

4.1 Issue dates

Units may only be issued on, or with effect from, a Valuation Day. Units will be issued on the Valuation Day following receipt of application moneys or, if application moneys are received by 2pm on a Valuation Day, Units will be issued on that Valuation Day. If an application is received after 2pm on a Valuation Day, the application will be processed on the next Valuation Day. All application moneys will be held on trust for subscribers in the "Public Trust - Elevation Capital Applications"

bank account until the Units are issued. Any interest earned on application moneys pending issue of Units will be credited to the Manager to cover the costs of administering this bank account.

4.2 Valuation Days

The Valuation Day for the Fund is the last Business Day of each month.

4.3 Alternative Valuation Days

The Manager may value the Fund less frequently if, for reasons beyond the Manager's control, valuation is impossible on the day in question.

4.4 Issue Price

The Issue Price of Units calculated on each Valuation Day shall equal the Net Asset Value per Unit on that day [plus % the Net Asset Value per Unit].

4.5 Number of Units issued

The number of Units that a Unitholder will receive will be determined by dividing the Unitholder's application moneys by the Issue Price on the Valuation Day on which the Units are issued. Fractions of Units will be rounded up or down to two or more decimal places, at the discretion of the Manager.

5. MINIMUM INVESTMENT AND MINIMUM TRANSFERS

5.1 Minimum Amount

The minimum initial amount that can be invested in the Fund (if any) will be determined by the Manager and disclosed in the PDS. The Manager, may accept applications for amounts less than the minimum initial amount so disclosed.

5.2 Minimum Transfer

The minimum number of Units which can be transferred (if any) will be determined by the Manager and disclosed in the PDS. The Manager may waive any such minimum requirement at its discretion.

6. DISTRIBUTIONS

6.1 Distributable Income

On or before each Distribution Date, the Manager shall decide whether to make a Distribution on that date and if so how much that Distribution should be. No prior notice to Unitholders is required of the Manager's decision.

6.2 Capital or income

Distributions may be of capital and/or income as determined by the Manager.

6.3 Distributions

- (a) On each Distribution Date, the Manager shall calculate the Distribution (if any) per Unit by dividing the gross amount to be distributed on such Distribution Date by the number of Units on Issue.
- (b) Each Unitholder on the relevant Distribution Date shall receive the same Distribution per Unit irrespective of the period during which the Unitholder has held the relevant Units.

6.4 Period for Distribution

Following calculation of the Distribution per Unit pursuant to clause 6.3, the Distributions shall be distributed by the Manager as soon as practicable (but no later than 30 Business Days) after the Distribution Date together with a distribution statement.

7. BORROWING

The aggregate of the principal money borrowed and outstanding in respect of the Fund or secured against the investments of the Fund may not exceed 20% of the Gross Asset Value of the Fund.

8. REDEMPTION OF UNITS

8.1 Redemption dates

Subject to clauses 8.10 and 8.11 of the Deed, Units will be redeemed with effect from the first Valuation Day which occurs following the day which is 30 days after the date on which the relevant Redemption Request is received by the Manager. If a Redemption Request is received after 5pm on any day, it will be deemed to have been received on the following Business Day. The Manager may in its sole discretion redeem Units with effect from an earlier Valuation Day.

8.2 Redemption Price

The Redemption Price of Units calculated on each Valuation Day shall equal the Net Asset Value per Unit on that day .

8.3 Payment of Redemption Price

The Redemption Price, less any Break Fee, shall be paid within 7 Business Days of the relevant Valuation Day.

9. FEES

9.1 Application / Redemption Fee

There shall be no Application or Redemption Fee for the Fund.

9.2 Management Fee

The Manager shall be entitled to charge the Fund and retain for its own use a monthly management fee of X% of the Gross Asset Value of the Fund on the last Business Day of each month. The monthly management fee is payable by the Supervisor out of the Fund within 14 days of the end of each calendar month.

9.3 Administration Fee

The Manager shall be entitled to charge the Fund and pay to an administration manager employed by the Manager (or retain for its own use if the Manager provides administrative services), an annual administration fee of the percentages per annum of the Gross Asset Value of the Fund specified below, subject to minimum annual fees of \$X. The annual administration fee is payable monthly by the Supervisor out of the Fund within 14 days of the end of each calendar month.

Gross Asset Value	Annual administration fee
Up to and including \$50,000,000	%
From \$50,000,001 up to and including \$100,000,000	%
From \$100,000,001 onwards	%

9.4 Supervisor's Fee

- (a) The Supervisor shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the Supervisor but not exceeding X% per annum of the Gross Asset Value of the Fund, subject to minimum quarterly fees of \$X.
- (b) The Supervisor may also charge special fees in accordance with clause 22.3 of the Deed for the services and in the amounts agreed in writing by the Manager and the Supervisor.

10. TRUST DEED

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

Execution

Executed as a Deed

**Elevation Capital Management
Limited by**

Director

Director

Print Name

Print Name

**SIGNED by Public Trust by its
Attorney in the presence of:**

Witness signature

Signature of Attorney

Full Name

Name of Attorney

Occupation

Address

Schedule 3 Monthly report (Clause 30.9.2)

A - INVESTMENT POSITION vs. SIPO

	<i>Asset Class (this form can be customised to suit funds)</i>				
<i>Fund A</i>	<i>Asset A</i>	<i>Asset B</i>	<i>Asset C</i>	<i>Asset D</i>	<i>Asset E</i>
Actual (\$)					
Actual (%)					
SIPO Range					

<i>Fund B</i>	<i>Asset A</i>	<i>Asset B</i>	<i>Asset C</i>	<i>Asset D</i>	<i>Asset E</i>
Actual (\$)					
Actual (%)					
SIPO Range					

B - RELATED PARTY TRANSACTIONS DETAILS

Related Party Benefit Transaction

(list transactions)

Other Related Party Transactions

(list transactions)

C - SUMMARY OF PERFORMANCE AS AT [DATE]

INVESTMENT RETURNS

<i>Fund A</i>	<i>current month</i>	<i>3 month</i>	<i>6month</i>	<i>1 year</i>	<i>3 year</i>

<i>Actual (%)</i>					
<i>Benchmark</i>					

<i>Fund B</i>	<i>current month</i>	<i>3 month</i>	<i>6month</i>	<i>1 year</i>	<i>3 year</i>
<i>Actual (%)</i>					
<i>Benchmark</i>					

D - NET ASSET VALUE AND UNITS

<i>Fund Name</i>	<i>Total NAV</i>	<i>No. units on issue</i>	<i>NAV per unit</i>	<i>Published Unit Price</i>
Fund A				
Fund B				
Fund C				

Provide explanation where NAV per unit is different from Published Unit Price.

E - UNITHOLDERS DETAILS FOR THE QUARTER ENDED

Investors at the beginning of the period	[number]
New Investors	[number]
Closed Investors accounts	[number]
Investors at the end of the period	[number]
Number of investors per fund	
Fund A	[Number]
Fund B	[Number]
Fund C	[Number]

F MANAGEMENT ACCOUNTS FOR THE FUNDS AND THE SCHEME

G – PORTFOLIO VALUATION (LIST OF INVESTMENTS) AND SCHEDULE OF INVESTMENTS TO BE RECEIVED IN THE NEXT 20 DAYS

H – MANAGEMENT ACCOUNTS FOR THE FUND(S)

I – CUSTODIAN REPORTS DISCLOSING ALL INVESTMENTS HELD BY THE CUSTODIAN ON BEHALF OF THE FUND(S)

- Transaction reports
- Client Holdings Reports
- Security Reconciliations

J – COMPLAINTS REGISTER

J. PIE COMPLIANCE REPORT

K. NET TANGIBLE ASSETS FOR THE LAST MONTH FOR THE MANAGER IN RESPECT OF ITS MANAGED INVESTMENT SCHEME LICENCE

L PRODUCT INFORMATION REPORT

- any relevant legislation;
- the Deed;
- any relevant Establishment Deed;
- [Management agreement, delegation agreement, and investment guideline and or SIPOs (*list as appropriate*)].

("Governing Documents").

In particular as the Manager of [fund name] (the "Fund[s]"), we certify the following, to the best of our knowledge and belief, subject to such qualifications noted below, that:

Manager

1. there has been no change of the directorship, senior management or ownership of shares of the Manager [or advise otherwise];
2. the Manager has duly observed, performed and complied with all covenants, conditions, agreements and provisions binding upon it under the:
 - a. Governing Documents;
 - b. the [Investment management agreement/Administration Agreement/Service Level Agreement/Management Agreement] between the Manager and the Supervisor dated [date] (as applicable);
 - c. any guidelines, policy statements, or other agreements between the manager and the Supervisor entered into in relation to the Deed;
 - d. the current [Disclosure Documents]; and
 - e. any relevant legislation of which specific aspects are noted below;
3. the Manager is able to pay its debts as they become due in the normal course of business;
4. the value of the Manager's liabilities, including contingent liabilities, is less than the value of the Manager's assets;
5. there was no significant risk or matter that materially prejudiced, or is reasonably likely to materially prejudice, the interests of Investors of the Fund[s] or the ability of the Manager to perform any of its obligations under the Deed;;
6. The Manager was issued a Managed Investment Scheme (MIS) Manager licence by the FMA on [date] subject to the standards conditions which can be found on the Financial Service Providers Register website, FSP number

XXXXX We confirm that the Manager has met these conditions, and more specifically:

- a. no reports were issued to the FMA in respect of the Scheme (or if there were note the date and provide a copy)
 - b. no changes were reported to FMA in respect of the Scheme (and if there were, attach copies of correspondence)
7. the net tangible assets of the Manager, calculated in accordance with the Standard Conditions for managed investment scheme manager licences, as at <date> were <\$amount>.

Investments

8. no material trading or capital loss have been sustained by the Fund[s].
9. no material contingent liabilities have been incurred by the Fund[s].
10. no matter has arisen relating to an investment which has materially and adversely affected or would be reasonably likely to materially and adversely affect an Investment or Fund[s];
11. except as previous advised in writing by the Manager, there are no other matters relevant to the Investments or [any of] the Fund[s], reasonably required by the Supervisor to be disclosed;
12. all Related Party Transactions were dealt with in accordance with of the Deed, in that relevant certificates have been provided to the Supervisor or prior consent of the Supervisor has been obtained. For the avoidance of doubt, transactions between Funds are not Related Party transfers;
13. no Fund has any borrowings/the Fund(s) has/have the following borrowings which have been undertaken in accordance with clause [relevant clause] of the Deed and within guidelines agreed to by the directors and with other representations contained in the current Disclosure Documents;
14. no bank accounts were opened or closed of which the Supervisor has not been notified;
15. the apportionment of any transaction expenses and reimbursements between Investors was conducted on the basis of formal policies and procedures adopted by the Manager, with any such amounts being equitably applied to each Investor's account to whom the relevant transactions related;
16. the assets of the Fund[s] were held in the name of the Supervisor or such other person or persons as nominated by the Supervisor;

17. all income derived from the assets of the Fund[s] and available to be received was received by the Fund[s] and allocated to the relevant Fund[s];
18. there were no matters relevant to the assets of the Fund[s] which would cause the Supervisor to request information from the Manager in accordance with the Governing Documents which the Supervisor has not been notified of.

SIPO and Limit Breaks

19. The last Regulation 95 Quarterly Limit Break Report to the Supervisor was issued on [Date]. The following Non-Material Limit Break Report[s] were issued to the Supervisor: [Nil/list by date of report].
20. Except as disclosed in the quarterly Limit Breaks Reports, the Investments of the Fund[s] at all times have been dealt with or invested within investment parameters in accordance with the current SIPO and Disclosure Documents;
21. The guidelines and procedures set out in the [Investment Mandates/SIPO] were appropriate for the Fund[s] and remain consistent with the Disclosure Documents;

Product compliance

22. there is on issue a PDS dated [date] which is accurate in all material respects and complies with the requirements of the FMCA and Regulations;
23. all Register Entries have been uploaded, are current and are not misleading;
24. all fund updates required by the FMCA have been issued and are fully compliant with the FMCA and the Regulations;
25. there are no material contractual commitments (other than in respect of investment trading activities) or contingent liabilities or guarantees that are not disclosed in the attached reports and there are no other matters, which should be brought to the attention of the Supervisor;
26. the Fund[s] complied with the eligibility criteria and requirements of a Portfolio Investment Entity as set out in the Income Tax Act 2007;

Anti-Money Laundering and Countering Financing of Terrorism Act 2009

27. the Manager has, where required, conducted customer due diligence, account monitoring, record keeping and suspicious transaction reporting in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and met its reporting obligations;

Foreign Account Tax Compliance Act

28. the Manager has, where required, registered itself and the Fund[s] with the US Internal Revenue Service, a programme in place to identify US persons, conducted due diligence and obtained self-certifications, and met its reporting obligations in accordance with the Intergovernmental Agreement entered into by New Zealand and the United States of America in respect of the Foreign Account Tax Compliance Act;

Accounting and Tax

29. the Fund[s] books and records were kept up-to-date and all bank accounts of the Fund[s] were reconciled to the relevant bank statements at the end of the period to which this certificate relates;
30. proper accounting and internal control processes were maintained;
31. the Fund[s] are able to pay their debts as they become due in the normal course of business;
32. the value of the Fund[s] liabilities, including contingent liabilities, is less than the value of the Fund[s] assets;
33. all money paid out of the bank account[s] has [have] been used to pay for withdrawals, Authorised Investments, fees, taxes, or expenses authorised by the Deed and for the credit of Investors and in no other way;
34. all payments due and payable were made on or before their final due date and were properly accounted for;
35. all fees have been calculated in accordance with the provisions of the Governing Documents;
36. there has been no departure from the agreed accounting standards and valuation methods including but not limited to the following:
- a. no departure in the accounting standards or method of valuation of assets (including Investments) or Liabilities of the Fund[s];
 - b. no circumstances have arisen which render adherence to the existing method of valuation of any part of the assets (including Investments) or Liabilities of the Fund misleading or inappropriate [and if so include particulars of those circumstances];
 - c. no significant departures from internal control procedures that should be brought to either the attention of the Auditor or the Supervisor. Proper internal control procedures have been maintained and adhered to by the Manager;

37. the Fund["s"] liability for taxation, not limited to full and adequate provision for taxation liabilities to be paid or reclaimed (including deferred taxation) has been assessed and has been properly recorded, tax payments have been made by the due date and there are no outstanding tax issues;
38. the Manager has attended to all tax matters related to the Fund(s) to ensure compliance with the Income Tax Act 2007 and there are [no matters] (or) [the following matters] to be brought to the Supervisor's attention;
39. We note:
 - a. the following Regulation 97 Pricing Error (Material) Report[s] were issued since the last certificate [Nil/Date of report[s] issued].
 - b. The following Regulation 97 Pricing Error (Non-Material) Report[s] were issued since the last certificate [Nil/Date of report[s] issued].
 - c. A report of immaterial pricing errors that occurred during the quarter is attached.

Administration

40. the Register of Investors has been properly maintained and is up to date including but not limited to the following:
 - a. all amounts due and payable to the Investors whether by way of Entitlement, redemption, repurchase or otherwise have been paid;
 - b. the Unit Register has been duly maintained in accordance with the Deed;
 - c. all calculations of the Entitlements of the Investors and the valuation of the Units have been carried out in accordance with the provisions of the FMCA, Trust Deed and the relevant Establishment Deed.
41. all notices, certificates, reports and other documents required by the Governing Documents have been issued;
42. all valuations of units have been carried out in accordance with the provisions of the Deed and the relevant Establishment Deed. All instances to the contrary (if any) have been reported to the Supervisor as soon as reasonably practical in accordance with relevant legislation;
43. issues of interest in the Fund[s] have been administered in accordance with the Financial Markets Conduct Act 2013;

When used in this certificate the term "material" will have the meaning agreed from time to time between the Supervisor and the Manager, and, in the absence of such agreement, in the

context of financial information, will have the meaning commonly applied under standard accounting concepts.

Signed for and on behalf of the Board of Directors of Elevation Capital Management Limited.

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Director

Director

Date

Date

SCHEDULE 5 Limit Breaks

- 1.1 The Manager must deliver a report to the Supervisor of all breaches under each Fund's SIPO of any limits on either of the following:
- 1.1.1 the nature or type of investments that may be made; or
 - 1.1.2 the proportion of each type of assets that may be invested in,
- with such report to include all of the information required under clause 1.2 below.
- 1.2 For the purposes of the above clause 1.1, the Manager must include the following information:

Nature of breach	As and when reporting	Formal Reporting to Supervisor
Uncorrected limit break (as defined in Regulation 94 of the Regulations)	<p><u>Issue Uncorrected Limit Break Report (refer Regulation 94 of the Regulations).</u> This report must contain all of the information specified in Regulation 96 of the Regulations.</p> <p>To be reported within 7 Business Days of the Manager becoming aware</p>	<p>To be included in <u>Regulation 95 Quarterly Limit Break Report</u> (refer Regulation 95 of the Regulations). To be provided to the Supervisor within 10 Business Days of end of quarter.</p> <p>Instead of providing all the information that has already been provided in the <u>Uncorrected Limit Break Report</u>, it is sufficient to provide the date of the <u>Uncorrected Limit Break Report</u>, together with a confirmation that the information remains correct and any updates.</p>
Corrected limit break (corrected within 5 Business Days after the date the Manager becomes aware of the limit break)	<p><u>Issue Initial Corrected Limit Break Report to Supervisor.</u></p> <p>This report must contain all of the information specified in Regulation 96 of</p>	<p>To be included in <u>Regulation 95 Quarterly Limit Break Report</u> (refer Regulation 95 of the Regulations). To be provided to the Supervisor within 10 Business Days of end of quarter.</p> <p>Include all the information as</p>

	<p>the Regulations.</p> <p>To be reported within 7 Business Days of the Manager becoming aware</p>	<p>required in the <u>Initial Corrected Limit Break Report</u> or attach the Initial Non Material Limit Break Report to the Supervisor provided it followed the Regulation 96 format (refer Regulation 96 of the Regulations).</p>
<p>Incidental - Non-material limit break</p>	<p><u>Issue Initial Non Material Limit Break Report to Supervisor.</u></p> <p>The report must contain all of the information specified in Regulation 96 of the Regulations, and explain why the Manager did not consider the limit break to be material.</p> <p>To be reported within 7 Business Days of the Manager becoming aware</p>	<p>To be included in the Manager's Quarterly Certificate to the Supervisor (see clause 19 of schedule 4).</p>

SCHEDULE 6 Pricing Errors

- 1.1 The Manager must deliver a report to the Supervisor with such report to include all of the information required under clause 1.2 below.
- 1.2 For the purposes of the above clause 1.1, the Manager must include the following information:

Nature of breach	As and when reporting	Formal Reporting to Supervisor
Material Pricing Error or Non-Compliance (as 'Pricing Error' or 'Non-Compliance' is defined in Regulation 97 of the Regulations)	<p><u>Regulation 98 Pricing Error (Material) Report</u></p> <p>The report must contain the information specified in Regulation 98 of the Regulations (and Regulation 99 of the Regulations, if applicable).</p>	To be included as an attachment to the Manager's Periodic Certificate to the Supervisor (see clause 39 of schedule 4).
Non-material but Reportable** Pricing Error or Non-Compliance (as 'Pricing Error' or 'Non-Compliance' is defined in Regulation 97 of the Regulations)	<p><u>Regulation 98 Pricing Error (Non Material) Report</u></p> <p>The report must contain the information specified in Regulation 98 of the Regulations, except where the information has not been calculated or is not available, a reason must be provided together with an explanation on why the Manager does not consider the error material.</p>	To be included as an attachment to the Manager's Periodic Certificate to the Supervisor (see clause 39 of schedule 4).

Non-material Pricing Error or Non-Compliance (as 'Pricing Error' or 'Non-Compliance' is defined in Regulation 97 of the Regulations)	Nil	To be included as a report of logged items to the Quarterly Manager's Certificate (see clause 39 of Schedule 4).

*"Material" must be determined between the Supervisor and the Manager in accordance with the frameworks and methodologies specified in notices issued by the FMA under subpart 4 of Part 9 of the FMCA (if any).

**"Reportable" must be determined between the Supervisor and the Manager.