

Master Trust Deed

For the Aspiring Trusts

Aspiring Asset Management Limited

Manager

and

The New Zealand Guardian Trust Company Limited

Trustee

Date

2007

Contents

1.	Interpretation.....	1
2.	Creation of the Funds	6
3.	The Funds.....	7
4.	Nature of Units	7
5.	Issue of Units	8
6.	Valuations.....	11
7.	Transfer, transmission and registration of Units	11
8.	Repurchase or Redemption of Units	13
9.	Joint holders of Units	16
10.	Registered holder absolute owner	17
11.	Holding Statements	17
12.	Unit registers.....	17
13.	Management.....	18
14.	Borrowing powers of the trustee.....	19
15.	Manager's and trustee's powers to invest.....	20
16.	Investment records	23
17.	Distributions.....	23
18.	Trustee's powers and covenants.....	24
19.	Manager's powers, duties and covenants	25
20.	Removal and retirement of Manager	27
21.	Removal and retirement of trustee	28
22.	Remuneration of Trustee.....	29
23.	Remuneration of Manager.....	30

24. Reimbursement of expenses	31
25. Trustee’s and Manager’s responsibilities and indemnities	32
26. Unitholders bound by this Deed	34
27. Limitation of liability of Unitholders	35
28. Accounts and Reports	35
29. Auditor	39
30. Meetings of Unitholders and directions to trustee.....	39
31. Notices to Unitholders.....	40
32. Notices between Manager and Trustee	41
33. Amendment to Deed	41
34. Period of trusts	42
35. Procedure on winding up.....	42
36. Payments to Unitholders.....	43
37. Withholding taxes	43
38. Law applicable	44
Schedule 1: Meeting Procedures (clause 30.1).....	45
Schedule 2: Form of Establishment Deed (clause 1.1)	51

This **Deed** is made on

2007

between (1) **Aspiring Asset Management Limited** (the **Manager**)

and (2) **The New Zealand Guardian Trust Company Limited** (the **Trustee**).

Introduction

- A. The Manager and the Trustee are parties to a master trust deed dated 19 December 2005, as amended by a Deed of Amendment dated 6 March 2007 (the **Existing Deed**).
- B. Clause 33.1(c) of the Existing Deed provides that the Trustee and the Manager may make an alteration, modification, variation or addition to the provisions of the Existing Deed if in the case of a change affecting all Unitholders, the change is authorised by an Extraordinary Resolution of all Unitholders as if they were beneficiaries of a single Fund.
- C. The Manager wishes to amend the Existing Deed to amend the definition of "Market Value" and to make amendments desirable in the event any Fund established under the Existing Deed elects to become a Portfolio Investment Entity.
- D. The amendments have been approved by an Extraordinary Resolution of all Unitholders.
- E. Accordingly, the Trustee and the Manager have agreed to enter into this Deed to amend and restate the Existing Deed.

It is agreed

In accordance with the powers of amendment contained in clause 33.1(c) of the Existing Deed it is declared that with effect from 1 October 2007 the Existing Deed is amended by substituting the provisions of the Existing Deed with all of the provisions of this Deed so that from 1 October 2007 the Funds will be established and administered in accordance with the provisions of this Deed.

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 in accordance with NZ GAAP for each Financial Year.

Act means the Unit Trusts Act 1960.

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.

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 15.10).

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

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.

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 Trustee 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 Trustee 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.

Extraordinary Resolution has the meaning given to it in paragraph 11.1 of Schedule 1.

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) and includes the period commencing on the date of this Deed and ending on 31 March 2006.

Fund means each unit trust 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.

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

Investment means, in respect of each Fund, each asset held on trust by the Trustee (or its nominee 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 5.11.

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.

Market Value of an Investment on any Valuation Day means:

- (a) in respect of Investments which are listed on an Exchange, the last sale 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 last sale price then the bid price, or if the last sale price or bid price is not considered by the Manager or the Trustee to be an accurate measure, the value determined by the Manager, in consultation with the Trustee, having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee 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 Trustee 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 last sale 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 last sale price the bid price of that Investment or if the last sale price or bid price is not considered by the Manager or the Trustee to be an accurate measure, the value determined by the Manager, in consultation with the Trustee, having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee 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 Trustee 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 Trustee. 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 Trustee) having regard to such information as the Manager considers appropriate, including without limitation, if the Trustee 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 3 of the Financial Reporting Act 1993.

Offer Document means, in relation to each Fund or one or more Funds, the document or documents, however described, issued by the Manager by which Units may be offered for issue.

Ordinary Resolution has the meaning given to it in paragraph 11.2 of Schedule 1.

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).

PIE means Portfolio Investment Entity as defined in the Income Tax Act 2004.

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

PIE Tax means tax payable by a Fund, the Trustee or the Manager (whether deferred or current) which is determined by reference to Prescribed Investor Rates of Unitholders or is

otherwise determined by the Trustee 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 2004.

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.

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

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

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 12.1(b) 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 8.11.

1.2 Interpretation

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

borrow includes the raising of money by any means including acceptances, deposits, financial leases, debt factoring with recourse and the deferral of the purchase price of assets or services;

this Deed includes a reference to each Establishment Deed;

clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs

and schedules to this Deed;

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;

the singular includes the plural and vice versa; and

parties to this Deed includes their successors and permitted assigns and, in the case of the Trustee, any nominee of the Trustee appointed in accordance with clause 2.6;

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. **Creation of the Funds**

2.1 **Appointment of Trustee**

The Trustee is appointed as the trustee of each of the Funds and agrees to act as trustee 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.

2.2 **Appointment of Manager**

The Manager is appointed 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.

2.3 **Establishment Deeds**

Subject to clause 2.4, each 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 Trustee'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 Trustee deem appropriate or which the Trustee deems necessary.

2.4 Information in Offer Documents

The Offer Document 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 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.

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 **Trustee's Nominee Company**

The Trustee may from time to time nominate a company in which is to be vested any of the Funds, but without prejudice to the liability of the Trustee in terms of this Deed.

3. **The Funds**

3.1 **Authorised Investments**

The Investments of each Fund must at all times be Authorised Investments for such Fund. Consequently the investment obligations of the Trustee under this Deed constitute a contrary intention for the purpose of sections 2(5) and 2(5A) of the Trustee Act 1956.

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 Trustee 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 Trustee; 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 Trustee 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 Trustee, 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 down to two decimal places and the remainder disregarded.

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 Trustee 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 Trustee the aggregate of the Application Fee (if any) and the Issue Price and ensure that any cheque is made payable to the Trustee or its nominee appointed pursuant to clause 2.6.

5.2 Manager's Discretion

- (a) The Manager may in its absolute discretion accept or refuse to accept in whole or in part any Application and the Manager is not required to give any reason or ground for such refusal.
- (b) The Manager may in its absolute discretion 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 Trustee to refund the relevant Application moneys (without interest).
- (b) Where Units are redeemed under clause 5.2(b), the Manager must request the Trustee to pay the Redemption Price for such Units to the relevant Unitholder.
- (c) Where Units are voided under clause 5.2(b) the Trustee 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 Entry Fee

The Manager may charge the Unitholders an entry fee on the issue of Units of the amount set out in the relevant Establishment Deed. This fee will be paid into the relevant Fund.

5.5 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 less any applicable Application Fee and/or entry fee, with fractions rounded down to the nearest whole number of Units.

5.6 Payment to Trustee; Registration and Issue of Units

The Manager must:

- (a) pay all Application moneys to the "Applications Bank Account" which is controlled by the Trustee 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.

5.7 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.

5.8 Restrictions on Sale or Issue of Units

- (a) The Manager may at any time or times by notice in writing to the Trustee 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 Trustee 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 Trustee of a notice of termination given by the Manager pursuant to clause 34(d) except with the prior consent in writing of the Trustee.

5.9 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.

5.10 Issue Date

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

5.11 Determination of Issue Price of Units

The Issue Price of each Unit sold or issued by the Manager shall be determined in accordance with the relevant Establishment Deed. The Issue Price shall be rounded down to the nearest four decimal places.

5.12 Different Classes of Units

Where there are different classes of Units in any Fund the method of calculating the Issue Price in respect of each such different class shall be set out in the relevant Establishment Deed.

5.13 Manager's Application Fee

- (a) To the extent 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 and Application Fee of those Units.
- (b) To the extent an Application is satisfied by the issue of Units or the sale of Units owned by an existing Unitholder, the Manager is entitled to receive and retain for its benefit the Application Fee in respect of those Units and, such Application Fee shall be paid to the Manager by the Trustee from the Fund into which the relevant Issue Price is paid.
- (c) Any moneys due to the Manager under this clause will be paid to the Manager by the Trustee as soon as practicable after the date when the relevant Units are issued or sold (as the case may be).

5.14 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.

5.15 Compliance With Securities Laws

The Manager must not issue or offer to the public for subscription or purchase of any Unit unless an Offer Document in relation to that Unit has been issued in accordance with the requirements of applicable law. Each such Offer Document must be in a form approved in all respects by the Trustee.

5.16 Issue of Units for PIE Rebates

Where a PIE Rebate is due to a Unitholder, the Manager may issue Units to the Unitholder (or refund that PIE Rebate to the Unitholder in another manner it determines appropriate) 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 Trustee thinks necessary or desirable for accrued or contingent liabilities or losses including a provision for the costs of realisation of any Investments and redemption or repurchase 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 Trustee 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 Offer Document; 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 Trustee.
- (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. Repurchase or Redemption of Units

8.1 Redemption Request

- (a) Any Unitholder wishing to redeem his or her Units, must deliver an irrevocable Redemption Request to the Manager at its registered office, at the time specified in the relevant Establishment Deed or Offer Document. 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 repurchased or 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 Repurchase or Redeem

- (a) The Manager undertakes to the Trustee (for the benefit of the Unitholders as well as the Trustee) 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 Trustee 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 on which such Unit is redeemed or repurchased.

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

8.3 Exit Date

Subject to clauses 8.11, 8.12 and 8.14, when a Redemption Request is received at the registered office of the Manager, the Manager must repurchase or request the Trustee to redeem the Units with effect from the Valuation Day specified in the relevant Establishment Deed.

8.4 Redemption Price

The Redemption Price of each Unit redeemed or repurchased from the relevant Fund is to be determined by the Manager as at the Valuation Day on which the Unit is redeemed as the Net Asset Value per Unit on that Valuation Day. The Redemption Price shall be rounded up to the nearest four decimal places.

8.5 Exit Fees

The Manager may charge the Unitholders an exit fee on the redemption of Units of the amount set out in the relevant Establishment Deed. This fee will be paid into the relevant Fund.

8.6 Payment of the Redemption Price

- (a) The Redemption Price (less any applicable exit fee) must be paid within 7 Business Days of the Valuation Day on which a Unit is redeemed or repurchased 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 (less any applicable exit fee) 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 Trustee 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 Trustee from the Fund in accordance with clause 8.9(b).

8.7 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 8.9.

8.8 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.

8.9 Redemption of Manager's Units

- (a) The Manager is entitled to request the Trustee 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 Trustee is satisfied that such a request by the Manager relates solely to the redemption of Units held by the Manager then the Trustee 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.

8.10 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 8.9 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 Trustee, the relevant Fund or any Unitholder for any excess over the Manager's Acquisition Price nor is the Trustee, the relevant Fund or any Unitholder obliged to recompense the Manager, for any deficiency below the Manager's Acquisition Price.

8.11 Deferral of Repurchase and 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 may give notice (**Withdrawal Suspension Notice**) to that effect to any Unitholder who gives or has given a Redemption Request. 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 notice to the effect that the Withdrawal Suspension Notice is cancelled. The Manager may determine that such Units may be progressively repurchased or 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 on which Units are repurchased or redeemed.

8.12 **Suspension of Repurchase and 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 Trustee 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.

8.13 **Suspension in relation to Manager's Units**

While there is any deferral or suspension in operation pursuant to clauses 8.11 or 8.12, the Manager shall not be entitled to redeem any Units held by it.

8.14 **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.

8.15 **Redemption on account of PIE Tax**

The Manager may compulsorily redeem a Unitholder's Units 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.

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 Trustee, 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.

10. Registered holder absolute owner

Except as otherwise provided in this Deed, the Manager and the Trustee 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

- (a) A Unit Register of Unitholders in respect of each Fund must be kept by the Manager in a form and manner approved by the Trustee.
- (b) The Manager may appoint a person to keep the Unit Registers on its behalf.
- (c) Such Unit Registers may take the form of a computer printout or any other computer based information storage and retrieval system compiled in a manner approved by the Trustee and such approved printout or system is deemed to be the Unit Register.

12.2 Details to be entered into Register

There must be entered in each Unit Register:

- (a) the names and addresses of the Unitholders, or in the case of joint Unitholders the address of the Unitholder first mentioned in the Unit Register;
- (b) the number and type of Units held by each Unitholder;
- (c) the date on which each parcel of Units was issued to the relevant Unitholder; and
- (d) such other matters as the Manager and Trustee may agree.

12.3 Reliance upon the Register

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

12.4 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.

12.5 Inspection

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

12.6 Copies of Registers

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

12.7 No recognition of trusts

Except as required by law, neither the Manager nor the Trustee 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 Duties

Subject to the powers reserved to the Trustee 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 oral or written information relating to the affairs of the relevant Fund that any Unitholders has given the manager reasonable notice to supply.

13.2 Delegation by Manager

All or any of the powers, authorities, functions and discretions exercisable by the Manager under this Deed may be delegated by the Manager to its officers and employees or to any other Person nominated by the Manager but the Manager remains liable for the acts and omissions of any such officer, employee or Person whether or not the delegate is acting within the terms of its delegated authority.

14. Borrowing powers of the trustee

14.1 Borrowing powers

Subject to clauses 14.2 and 14.3 in respect of any Fund and unless prohibited by the relevant Establishment Deed, the Trustee 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 Trustee to comply with any direction given pursuant to clause 14.1 or to complete any loan or security documents unless the Trustee is satisfied that:

- (a) the Trustee'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 Trustee does not impose any unreasonable obligation upon the Trustee; 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 Trustee 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 trustee's powers to invest

15.1 Investment Policy

The Manager and the Trustee may from time to time agree on a general investment policy for the Manager to follow in connection with the investment of each of the Funds. The Manager shall comply with such agreed policy. The policy shall be set out in the Offer Documents. The Manager and the Trustee may change the policy from time to time provided that the Manager provides Unitholders at least one month's notice before implementing any change in policy and does not implement such change until all Redemption Requests received within that one month notice period have been actioned.

15.2 Trustee's Discretion as to Investments

The Trustee is not obliged to act on any direction of the Manager to invest, acquire or dispose of any Investment if in the opinion of the Trustee, 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 or the relevant Establishment Deed or any relevant investment policy agreed between the Manager and the Trustee; or
- (c) would result in a breach by the Trustee of any obligations or duties imposed on the Trustee by the Trustee Act 1956.

The Trustee is not liable to the Unitholders or the Manager for so refusing to act on any direction or for acting on any such direction or for its opinion.

15.3 Investment Directions by the Manager

Subject to clauses 3.1, 15.1 and 15.2, the Manager will manage each Fund and as necessary may direct the Trustee to:

- (a) purchase, acquire, sell, transfer or dispose of Investments;
- (b) enter into any commitments or liabilities in respect of 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 Investments,

and the Trustee will from time to time, to the extent of the respective Funds in its hands or control, act as directed in writing by the Manager.

15.4 **Advisers**

In relation to the purchase, sale and other dealings with any Authorised Investments by the Trustee, 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.

15.5 **Dealing with Related Parties**

The Manager may not, without the prior approval of the Trustee (which approval shall not be required where any proposed transaction is on normal commercial arms length terms):

- (a) cause any part of any of the Funds to be invested or lodged with the Manager, any director of the Manager, any Related Company of the Manager, or any company or unit trust in which any director of the Manager owns or holds more than 10% of the issued equity capital (together a **Related Person**);
- (b) sell, purchase or otherwise dispose of or acquire any asset or Investment to or from a Related Person or group investment fund, unit trust or other trust or superannuation scheme registered under the Superannuation Schemes Act 1989 and managed by the Manager or by a Related Person; and
- (c) enter into any contract, agreement or other arrangement with any a Related Person to provide management or consultancy or other services.

15.6 **Investments in Trustee's Name**

The Manager shall cause Investments to be vested in the Trustee or its nominee appointed in accordance with clause 2.6 and to be registered in the name of the Trustee or such nominee 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 Trustee.

15.7 **Bank Accounts**

A bank account or accounts in the name of the Trustee or its nominee 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 Trustee must be paid to the credit of such bank account. The Trustee shall determine the Persons authorised to operate such bank accounts.

15.8 Notice of Investments to Trustee

The Manager must give notice to the Trustee of any transaction required to be entered into by the Trustee in relation to borrowing, the giving of securities or the purchase, acquisition, sale or disposition of, or dealing with, the Investments . The Trustee 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 Trustee deems necessary or desirable.

15.9 Trustee's Right to Limit Liability

The Trustee 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.

15.10 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 Trustee 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 28 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 Trustee 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 Extraordinary Resolution approve the proposed variation the Trustee 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 15.10, 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 Trustee**

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

16.3 **Reliance on Records**

The Trustee 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 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 Offer Document 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. No Application Fee shall be charged by the Manager.
- (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 Trustee 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. Trustee's powers and covenants

18.1 Trustee's Powers

The Trustee 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 this Deed, the Trustee 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.

18.2 Waivers

The Trustee 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 Trustee, be materially prejudicial to the interests of the Unitholders.

18.3 Custodians

The Trustee may employ custodians to hold any Investment on such terms as the Trustee may determine provided that no such appointment will absolve the Trustee from any of its obligations relating to the Investments under this Deed or at law. The Trustee shall cause any such company to comply with all the covenants and obligations on the part of the Trustee expressed or implied in this Deed. Any fees payable to the custodian will be determined on an arm's length basis.

18.4 **Trustee's covenants**

The Trustee 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:

- (a) the Trustee has power to act continuously as trustee under the Funds herein set forth 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 trustee under this Deed or which might prevent it from so acting and will act continuously as trustee under the Funds herein set forth until such trusts are determined as herein provided or until it has retired or been removed from office;
- (b) the Trustee will exercise due diligence in carrying out its functions and duties hereunder;
- (c) the Trustee will ensure that any documents of title relating to the Investments are held in safe custody;
- (d) the Trustee will keep each Fund separate from all other assets, investments and other property vested in or held by the Trustee;
- (e) except as herein provided or as authorised by law the Trustee will not sell, mortgage, charge or otherwise part with the possession or ownership of any of the Investments;
- (f) the Trustee without delay will forward to the Manager all notices and other information relevant to the Manager and received by or on behalf of the Trustee in connection with each Fund.

19. **Manager's powers, duties and covenants**

19.1 **Manager's powers of management**

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 Trustee in conjunction or the Manager or the Trustee separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the Funds.

19.2 **Manager's duty**

The Manager shall use its best endeavours to ensure that each Fund is carried on in a proper and efficient manner.

19.3 Appointment of agents

Without in any way affecting the generality of the foregoing, or without in any way releasing the Manager from its obligations under this Deed, the Manager may, in carrying out and performing its duties and obligations:

- (a) by Power of Attorney appoint any Person to be the attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions; or
- (b) appoint by writing or otherwise any Person to be an agent or sub-manager in respect of any Fund or the investments or any part thereof, and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of each Fund (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or Deeds on such terms as it determines recording terms of any such appointment.

19.4 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 Trustee 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 Trustee such proxies or powers of attorney as the Manager may request.
- (b) Neither the Manager nor the Trustee 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 or action taken or consent given by the Manager in person by proxy or attorney.
- (c) Neither the Trustee 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 Trustee or Manager or by the holder of such proxy or power of attorney under this Deed and neither the Trustee 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 Trustee's or the Manager's (as the case may be) own negligent or wilful act or default.

19.5 Manager's covenants

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

- (a) the Manager will use its best endeavours to ensure that each Fund is carried on in a proper and efficient manner;

- (b) the Manager will not issue a Unit otherwise than at a price calculated in accordance with the provisions of this Deed;
- (c) the Manager will prepare or cause to be prepared all distributions, cheques and notices which are to be issued pursuant to this Deed and stamp them as required by law and produce them to the Trustee or a person authorised by the Trustee for this purpose so as to afford the Trustee 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 Trustee 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;
- (d) the Manager will pay to the Trustee all moneys belonging to each Fund coming to the hands of the Manager;
- (e) 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 Trustee 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 Trustee's approval) destroy such documents; and
- (f) the Manager will ensure that at all times the liability of the Trustee in relation to any contract or agreement or any borrowing entered into by the Trustee 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 from office by the High Court pursuant to section 19(1) of the Act on the application of the Trustee, any Unitholder, or the Minister responsible for the time being for the administration of the Act or otherwise as may be permissible by law; or
 - (ii) the Trustee certifies, in respect of the relevant Fund, that it is in the interests of 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
 - (iii) the Unitholders of the relevant Fund by a Section 18 Resolution direct that the Manager should cease to hold office.
- (b) If the Manager ceases to hold office pursuant to clause 20.1(a), the Manager must immediately desist from all management activities.

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 Trustee 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

The power of appointing a temporary Manager of a Fund where a vacancy in the office of Manager arises is vested in the Trustee. No Person can be appointed as a new Manager unless that Person is qualified pursuant to section 4 of the Act.

20.4 New Appointment by Trustee

Upon any vacancy occurring in the office of Manager in respect of any Fund, the Trustee must 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.

20.5 Appointment by Unitholders

If the Trustee fails or refuses to appoint a temporary Manager or if the Unitholders require a new Manager to be appointed, then the power of appointing a new Manager is vested in the relevant Unitholders who must exercise such power by a Section 18 Resolution.

20.6 New Manager to Execute a Deed

Any new Manager must forthwith upon such appointment execute a Deed in such form as the Trustee may require whereby the new Manager undertakes to the Trustee 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.

20.7 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) 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 trustee

21.1 Removal

The Trustee may be removed from office as trustee by:

- (a) the High Court on the application of the Manager or the Minister responsible for the time being for the administration of the Act pursuant to section 10 of the Act or otherwise as may be permissible by law; or
- (b) an Extraordinary Resolution of Unitholders.

21.2 Retirement

- (a) The Trustee 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. No such retirement will take effect until a new Trustee 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 Trustee.
- (b) The Trustee may only retire in respect of all the Funds.

21.3 New Appointment

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

21.4 New Trustee to Execute a Deed

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

21.5 Retiring Trustee Released

From the date of execution by the new Trustee of a Deed in accordance with clause 21.4, the retiring Trustee is absolved and released from all such covenants under this Deed (except in respect of any prior breach) and the new Trustee must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Trustee under this Deed in all respects as if such Trustee had been originally named as a party to this Deed.

22. Remuneration of Trustee

22.1 Fees Applicable to Specific Funds

- (a) The Trustee 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 Trustee 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 Trustee wishes to increase its fees and the Manager and the Trustee are unable to agree on the amount of the Trustee'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 Trustee under clause 22.1, the Trustee is entitled to charge, in respect of each Fund, such special fees for services of an unusual or onerous nature outside the Trustee's regular services (including by way of example, convening meetings of Unitholders, 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 Trustee 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 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.

23.5 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 3 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.

23.6 Goods and Services Tax etc

The Manager is entitled to receive, in addition to the fees referred to in clauses 23.1 to 23.3 (as altered from time to time in accordance with clause 23.4) any Goods and Services Tax or duty or similar tax or duty payable in respect of such fees.

24. Reimbursement of expenses

24.1 Expenses of Each Fund

In respect of each Fund, the Manager and the Trustee 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 Offer Document, 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 Trustee 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 Trustee;

- (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 Trustee 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 Trustee in the discharge of their respective duties under this Deed;
- (i) all costs of preparing, printing and distributing certificates, accounts, distribution statements, cheques, any Offer Document and any Unitholder communications;
- (j) expenses in connection with the keeping of the Unit Register; and
- (k) any other expenses properly and reasonably incurred by the Trustee or the Manager in connection with carrying out their respective duties under this Deed.

24.2 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.

25. Trustee's and Manager's responsibilities and indemnities

25.1 No Personal Liability

The Trustee 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. Neither the Trustee 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.

25.2 Indemnity

If contrary to the provisions of clause 25.1 either the Trustee 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 Trustee or Manager's negligence) then the Trustee 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 and the costs of any litigation or other proceedings in which such liability has been determined including without limitation legal fees and disbursements.

25.3 Wilful Breach

The Trustee and the Manager are each liable to each Fund for any loss arising out of wilful default or wilful breach of trust but subject thereto neither the Trustee 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 Trustee or Manager (as the case may be) under this Deed.

25.4 Reimbursement of expenses

The Trustee 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 Trustee or Manager (as the case may be) under this Deed for the relevant Fund, and without prejudice to the generality of the foregoing are entitled to be indemnified against any expense or liability which may be incurred by the Trustee 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.

25.5 Breach of Duty

No provision of clauses 25.1 to 25.4 has the effect of exempting the Trustee or Manager or any director or officer of the Trustee or Manager from, or indemnifying the Trustee or Manager or any such director or officer against, any liability for breach of trust where it or that director or officer fails to show the degree of care and diligence required of it or that director or officer in that capacity, having regard to the provisions of and the powers, authorities and discretions conferred by this Deed.

25.6 Manager's Liability

The Manager shall have the same liability for its acts and omissions in the exercise and performance of its functions, powers and duties as manager of each Fund as it would have if it exercised those functions, powers and duties as a trustee of the Fund and shall be entitled to the same relief from liability as it would be if it were a trustee.

25.7 Reliance on Manager by Trustee

Subject to the provisions of the Trustee Act 1956, the Trustee 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 Trustee to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Trustee in any step taken by it) except to the extent that the loss is attributable to the Trustee's own negligent or wilful act or default.

25.8 Reliance Upon Advice

The Trustee 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 Trustee and the Manager or instructed by the Trustee 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 Trustee or the Manager and believed by the Trustee or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Trustee nor the Manager is liable for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information.

25.9 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 Trustee, the Trustee 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.

25.10 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 Trustee and the approval of or supervision by the Trustee wherever required.

25.11 Trustee's Discretion and Authority

Except insofar as is otherwise expressly provided in this Deed the Trustee 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.

25.12 Dealing in Units: The Manager

Nothing in this Deed prevents any members of the Manager, or in their own right, any officers of the Manager from subscribing for, purchasing, holding, dealing in or disposing of Units or from otherwise at any time contracting or acting in any capacity as representative or agent or entering into any contract or transaction whatsoever with any other of them or with any Unitholder or from being interested in any such contract or transaction or otherwise and none of them are in any way liable to account either to any other of them or to the Unitholders or any of them for any profits or benefits howsoever made or derived.

25.13 Dealing in Units: The Trustee

Subject to the provisions of this Deed and to the Trustee Act 1956, nothing in this Deed is deemed to prohibit the Trustee or any Related Company of the Trustee or any shareholder or officer of either (in this clause included in the expression the **Trustee**) 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, trustee, 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 Trustee and the Manager on the one hand or the Trustee and the Unitholders on the other by this Deed established or otherwise imposed or implied by law.

25.14 Trustee'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 Trustee has failed to show the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the Trustee by this Deed and by the Trustee Act 1956, in no event is the Trustee 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 Trustee in accordance with this Deed.

25.15 No Respective Liabilities of Trustee and Manager

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

25.16 Reliance Upon Apparently Genuine Documents

Neither the Manager nor the Trustee is liable for any action taken or thing suffered by the Manager or Trustee in reliance upon any document or writing of any type reasonably believed by the Manager or the Trustee to be genuine.

26. Unitholders bound by this Deed

The terms and conditions of this Deed and each Establishment Deed are for the benefit of and binding on the Trustee, 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.

27. 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 Trustee or with the Manager, under any personal obligation to indemnify the Trustee or the Manager or any creditor of them or of either of them in the event of there being any deficiency of assets of the Funds as compared with the Liabilities to be met therefrom.

- (b) The rights (if any) of the Trustee or Manager or of any creditor to seek indemnity are limited to having recourse to the Funds 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 Trustee, the Manager and the relevant Fund on account of any PIE Tax attributable to income allocated to that Unitholder and related penalties or interest which has not been satisfied by redeeming Units or by deduction from monies paid to them.

28. Accounts and Reports

28.1 Accounting Records

The Manager must, in respect of each Fund:

- (a) keep or cause to be kept proper records of or relating to the Fund including records of all sales, purchases and other transactions relating to the Investments and the Liabilities of the Fund and issue or transfer of Units;
- (b) keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Fund; and
- (c) prepare annual financial statements for the Fund and arrange for such statements to be audited by the Auditor.

The Trustee must give to the Manager from time to time any information necessary for these purposes.

28.2 Inspection by the Auditor

The accounting and other records of the Manager and of the Trustee in respect of the Funds are open to the inspection of each other and the Auditor. The Auditor is entitled to require from the Manager and the Trustee such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

28.3 Accounts to be Sent to Unitholders and Trustee

At the end of each Financial Year, the Manager must prepare the relevant Accounts and arrange for them to be audited and sent to the Unitholders in the relevant Funds and the Trustee together with all other documents and reports in the manner required by any applicable law.

28.4 Information to Trustee

The Manager shall from time to time:

- (a) give or cause to be given to the Trustee copies of any financial statements, report, notice or circular issued to the Unitholders at the time of such issue;
- (b) give or cause to be given to the Trustee a copy of the monthly portfolio valuation including a list of investments to be received within 20 days of each month end;
- (c) give to the Trustee such other information as the Trustee requires with respect to all matters relating to each Fund;
- (d) at the request of the Trustee by not less than 14 days' notice in writing (which request shall only be made when the Trustee considers that special circumstances warrant such request and so certifies in writing to the Manager specifying such special circumstances), give to the Trustee:
 - (i) copies of its financial statements, each duly audited and signed and made up as at the end of the next month occurring after the expiry of the said notice, or as at such other date as the Trustee and the Manager agree, together with all documents and reports required by the Financial Reporting Act 1993 to be annexed to or to accompany such statements; and
 - (ii) a report by the Auditors setting out the information referred to in clause 28.5 in respect of the financial statements so requested with such adaptations as may be necessary or such of that information as may be required by the Trustee,

such financial statements and Auditors report to be provided within two months after the relevant accounting date, or within such longer period as the Trustee may in its discretion agree;

28.5 Auditor's Reports to Trustee

The Manager shall from time to time during the currency of each Fund, give to the Trustee at the same time as the Manager gives the audited Accounts to the Trustee a separate report by the Auditor stating:

- (a) in the performance of their duties as auditors they have not become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Manager or the Trustee by the Act, the Financial Reporting Act 1993, the Securities Act 1978 or by this Deed or in any guidelines, policy statements or similar agreements entered into by the Manager and the Trustee in relation to this Deed or the Offer Document (copies of which have been provided to the Auditor) and if so, giving particulars thereof;
- (b) that their audit has not disclosed any matter (and if so particulars thereof) calling in their opinion for further investigation by the Trustee in the interests of the Unitholders;

- (c) that they have perused the manager's certificate given pursuant to clause 28.6 since the last report by the Auditor and so far as matters which they have observed in the performance of their duties as auditors are concerned, they have no reason to believe that:
 - (i) the statements made in sub-clauses (s), (t), (u) and (v) of the certificate referred to in clause 28.6 are incorrect; and
 - (ii) the remaining statements made in such certificate are not unreasonable;
- (d) whether or not from the normal audit tests they have conducted to issue an opinion on the financial statements as a whole, they are satisfied that all amounts due to the Unitholders whether by way of Distribution, redemption, repurchase or otherwise have been paid; and
- (e) whether or not the method of valuation of the Investments and Liabilities of the Fund has been in accordance with this Deed; and
- (f) that for the relevant financial year, they have audited each Register which has been maintained in accordance with the requirements of Section 51 of the Securities Act 1978.

28.6 **Manager's Report**

Within two calendar months of the end of each financial quarter of each Fund the Manager shall give to the Trustee a certificate signed by one director of the Manager on behalf of the Directors of the Manager setting out in detail as at the date to which the certificate relates (or in relation to the period from the date to which the certificate relates up to the date to which the present certificate relates) any matters which since the date of the last such certificate (or in the case of the first of such certificates since the date of this Deed) have in the Manager's opinion occurred to adversely affect the interests of the Unitholders and without prejudice to the generality thereof stating to the best of the Manager's knowledge and belief after having made all due enquiry whether or not in relation to each Fund:

- (a) all amounts due and payable to the Unitholders have been paid;
- (b) the Manager has duly maintained the Unit Register or has procured that the Unit Register has been duly maintained, in each case in accordance with this Deed;
- (c) the Manager has duly observed and performed all covenants, conditions and agreements and provisions binding upon it under this Deed and any guidelines, policy statements or other agreement between the Manager and the Trustee entered into in relation to this Deed and any Offer Document;
- (d) there has been any deviation in the accounting method or method of valuation of Investments or Liabilities of the Fund;
- (e) any material trading or capital loss has been sustained by the Fund and if so particulars thereof;
- (f) any material contingent liabilities have been incurred by the Fund and if so the amount thereof and whether or not any contingent liability has or is likely to mature within the succeeding twelve months which will materially affect the Fund;

- (g) any circumstances which affect the Fund have occurred which materially and adversely affect the interests of the Unitholders and whether any circumstances have arisen which render adherence to the existing method of valuation of any part of the Investments or Liabilities of the Fund misleading or inappropriate and if so particulars of those circumstances;
- (h) full and adequate provision for taxation liabilities (excluding PIE Tax) to be paid or reclaimed (including deferred taxation) has been made;
- (i) the directors of the Manager:
 - (i) consider that their policies and investment strategy are currently appropriate and have been adhered to at all times;
 - (ii) consider that the Investments of the Fund at all times have been dealt with or invested in accordance with any policies agreed to by the directors and with other representations contained in the relevant Offer Document;
- (j) all moneys intended for the Fund have been paid into the relevant bank account and no such moneys have been applied in any other way;
- (k)
 - (i) all moneys paid out of the relevant bank account have been paid for Authorised Investments or for fees or expenses authorised by this Deed and in no other way;
 - (ii) all moneys paid out of the relevant bank account for Authorised Investments are held in accordance with the provisions of this Deed or, if not, their absence is accounted for; and
 - (iii) all Investments are vested in the name of the Trustee or its nominee;
- (l) all fees have been calculated in accordance with the provisions of this Deed and the relevant Establishment Deed;
- (m) all calculations of the Distributions of the Unitholders and the valuation of the Units have been carried out in accordance with the provisions of this Deed and the relevant Establishment Deed;
- (n) all Unitholders who have given appropriate notice of their desire to be repaid have received payment of the amounts to which they are entitled in accordance with the provisions of this Deed;
- (o) statements have been issued to all Unitholders in accordance with clause 11;
- (p) appropriate control procedures are in place for the operation of each trust bank account, held in the name of the Trustee or its nominee (this includes the unit trust bank accounts and the Applications Bank Account), have been reviewed and reconciled daily and there are no material unreconciled items. Reconciling items are being followed up regularly and there are no material reconciling items over one month old other than unrepresented cheques;
- (q) procedures are in place to ensure compliance with the Financial Transactions Reporting Act 1996;

- (r) all reasonable steps have been taken to comply fully with the Income tax Act 2004 (including allocating income, expenses, losses and tax credits to Unitholders and calculating tax and adjusting Unitholder's interests) and the Tax Administration Act 1994 (including requesting all Unitholders to confirm their Prescribed Investor Rates within the last 12 months) during the period and PIE Tax has been paid by the due date;
- (s) the Fund has met the PIE eligibility requirements for the period, and reasonable measures were in place to monitor and manage and potential breaches of the PIE eligibility criteria;

and also stating as at the quarterly or other date to which the certificate relates:

- (t) the Net Asset Value of the relevant Fund;
- (u) the Number of Units on Issue;
- (v) the Net Asset Value per Unit;
- (w) the aggregate Distributions paid to Unitholders since the previous certificate provided under this clause; and
- (x) details of all transactions with Related Persons (as defined in clause 15.5) during the period.

29. Auditor

29.1 Appointment and Remuneration

A Person or firm of chartered accountants selected by the Manager and approved by the Trustee and as otherwise qualified under section 2C of the Securities Act 1978 must be appointed Auditor of the Funds. The Manager and the Trustee 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 Trustee or if the Trustee 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 with the approval of the Trustee appointing a Person or firm of chartered accountants to be Auditor qualified under section 2C of the Securities Act 1978.

29.4 Restrictions on Auditor

The Auditor may be the auditor of the Manager, or of the Trustee, or of any other trust whether of a similar nature to the Funds of this Deed or otherwise.

30. Meetings of Unitholders and directions to trustee

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 Trustee

By means of a Section 18 Resolution passed at a meeting of Unitholders, the Unitholders have the power to give to the Trustee their opinions or directions in relation to the exercise of the Trustee's powers.

30.3 Compliance with Directions

Where any direction is given to the Trustee pursuant to clause 30.2 in respect of any matter, the Trustee may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction.

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 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, by Electronic Communication, or by advertisement with the prior written approval of the Trustee. A Unitholder must notify the Manager 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 Trustee 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 Trustee 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 48 hours 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 Trustee may be written or printed.

31.5 Calculation of Notice Periods

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 in pursuance of 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 Trustee

Any certificate, notice, communication or information required by this Deed to be given by the Manager to the Trustee or by the Trustee to the Manager must be given in writing and addressed to the secretary, 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 Trustee may agree that certain notices

or communications may be given by Electronic Communication.

33. Amendment to Deed

33.1 Power to Change the Deed

The Trustee and 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 Trustee and the Manager) in any of the following cases:

- (a) if in the opinion of the Trustee the change is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Trustee 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 Extraordinary 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 affecting unit trusts, 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 an Extraordinary Resolution of those Unitholders; or
- (f) if the change is authorised pursuant to clause 15.10.

33.2 Notice of Amendment

If any amendment is made to this Deed or a particular Establishment Deed, the Manager must:

- (a) send a summary of the amendment to the relevant Unitholders at the same time as the Accounts of the relevant Fund are forwarded to those Unitholders; and
- (b) register a copy of the relevant amending deed in accordance with the Securities Act 1978.

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 the date of this Deed (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 Ordinary Resolution to terminate the Fund;
or
- (d) the date determined by the Manager to terminate the Fund as notified to the Trustee and the relevant Unitholders by not less than 30 days notice.

35. Procedure on winding up

35.1 Realisation of Investments

From and after the Date of Termination in relation to a Fund, the Trustee must realise the Investments of the Fund as soon as practicable, provided however that the Trustee 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.

35.2 Retentions by Trustee

The Trustee is entitled to retain out of the relevant Fund such amount that the Trustee 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 Trustee's fees due under clause 22 and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Trustee may employ in connection with the winding up of the Fund. The Trustee is entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Trustee.

35.3 Application of Realisation

Subject to the retention of any moneys as provided in clause 35.2, the net proceeds of realisation of Investments shall be applied by the Trustee 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 Trustee or the Manager and payable from the relevant Fund and of all remuneration payable to the Trustee 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.

35.4 Interim Distributions

If in the opinion of the Trustee it is expedient to do so the Trustee may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 35.3.

35.5 Receipts

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

36. Payments to Unitholders

- (a) Any moneys payable by the Trustee 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 Trustee 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. Deductions and adjustments for taxes

If the Manager or the Trustee 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,

38. the Manager or Trustee (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. **Law applicable**

This Deed is governed by the law of New Zealand.

Execution

Executed as a Deed

**Aspiring Asset Management
Limited** by

Director

Director

Print Name

Print Name

Executed under the name and seal
of **The New Zealand Guardian
Trust Company Limited**

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Witness to Authorised Signatories' signatures:

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 Trustee
 - (b) the request in writing of one tenth in number of the Unitholders in the relevant Fund, or of a Unitholder or Unitholders in the relevant Fund holding not less than one tenth of the Number of Units on Issue in the relevant Fund at the date of such request.
- 1.2 The Trustee must summon a meeting of Unitholders of the relevant Fund on the request in writing of one tenth in number of the Unitholders in the relevant Fund, or of a Unitholder or Unitholders in the relevant Fund holding not less than one tenth of the Number of Units on Issue in the relevant Fund at the date of such request.
- 1.3 If the Manager fails to call a meeting in accordance with this clause the Trustee shall be entitled to call such a meeting on behalf of the Manager.
- 1.4 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 Trustee.
- 1.5 The Manager shall in accordance with section 12(d)(ii) of the Act lay before any such meeting copies of the last statements and summaries filed with the District Registrar of Companies in accordance with section 20(2A) of the Act

2. Notice of meetings

- 2.1 Notice of every meeting must be approved by the Trustee and given in the manner provided in the Deed to every Unitholder on the relevant Unit Register 3 Business Days prior to the date on which the notice is sent to Unitholders.
- 2.2 A copy of the notice must be sent to the Trustee.
- 2.3 Fourteen 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 the place, day and hour of the meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the terms of the resolutions to be proposed.
- 2.4 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.

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 Unitholders present in person or by proxy or by attorney or by authorised representative holding not less than 5% of the Number of Units on Issue.
- 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 Trustee) 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. Trustee and manager may attend and speak

Any director, officer or solicitor of the Trustee and any other Person authorised in that behalf by the Trustee 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

A Person nominated in writing by the Trustee or any other person appointed in that behalf by the Unitholders present at the meeting, must preside at every 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 Trustee 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 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.
- 8.5
- (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.
- 8.6 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.
- 8.7 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.

8.8 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.

8.9 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

- 9.1 (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

- 10.1 (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 Trustee or any representative of the Trustee 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 The expression **Extraordinary 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 75% 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 75% of the votes given on such poll.
- 11.2 The expression **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.
- 11.3 The expression **Section 18 Resolution** means a resolution passed at a meeting duly convened and held in accordance with the provisions contained in this Schedule and carried on a poll by a majority consisting of not less than 75% of the votes given on such poll, being votes cast (whether in person or by proxy or attorney or authorised representative) by Unitholders holding at least 25% of the Units in existence.
- 11.4 A meeting of Unitholders has the following powers exercisable by Extraordinary 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 unit trust 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 Trustee 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 Trustee under any of the provisions of this Deed;
- (e) Subject to the Securities Act 1978, to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this Deed;
- (f) To appoint a new Trustee if a vacancy arises in the office of Trustee and the Manager fails to appoint a new Trustee pursuant to this Deed;
- (g) To sanction any variation to the Authorised Investments of a Fund.

11.4 A meeting of Unitholders has the following powers exercisable by a Section 18 Resolution:

- (a) To give such directions to the Trustee as they think proper concerning the Trust being directions that are consistent with this Deed and the Act; and
- (b) To direct the removal of the Manager of the Trust.

11.5 A resolution may take effect as both an Extraordinary Resolution and a Section 18 Resolution if the requirements of both types of resolutions are complied with.

12. Resolutions bind all Unitholders

- (a) An Ordinary Resolution, Section 18 Resolution and an Extraordinary 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 Trustee 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 Trustee, and the Unitholders be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution, Extraordinary Resolution or Section 18 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 Trustee will cause to be kept the minutes of all resolutions and proceedings at every meeting or if the Trustee is not present at any meeting the chairperson of such meeting will cause the minutes to be kept.

- (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 Trustee may agree.

This **Deed** is made on 2005

between (1) **Aspiring Asset Management Limited** (the **Manager**)

and (2) **The New Zealand Guardian Trust Company Limited** (the **Trustee**).

RECITALS:

- A. The Manager and the Trustee are parties to a Master Trust Deed dated 19 December 2005 (the **Trust Deed**) which sets out the terms and conditions on which units in unit trusts managed by the Manager will be offered for subscription to the public.
- B. The Trust Deed provides that each unit trust shall be established by the Manager and the Trustee 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 Trustee 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 Trust 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:

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

Fund means the unit trust fund established by this Deed.

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

2. **Creation of Fund**

2.1 **Establishment of Unit Trust**

Upon execution for this Deed, the trusts created by this Deed and the Trust 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.

4.2 **Valuation Days**

The Valuation Day for the Fund is the last Business Day of each month subject to the operation of clause 8.11 of the Trust Deed.

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.

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 Offer Documents. 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 Offer Documents. 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

Subject to clauses 8.11 and 8.12 of the Trust 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. The Redemption Price shall be paid within 7 Business Days of the relevant Valuation Day.

9. Fees

9.1 Application Fee

There shall be no Application Fee for the Fund.

9.2 Management Fees

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

9.3 Performance Fee

9.4 Trustee's Fees

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

10. Trust Deed

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

Execution

Executed as a Deed

**Aspiring Asset Management
Limited by**

Director

Director

Print Name

Print Name

**Executed under the name and seal
of The New Zealand Guardian
Trust Company Limited**

Authorised Signatory

Authorised Signatory

Print Name

Print Name

Witness to Authorised Signatories' signatures:

Signature: _____

Occupation: _____

Address: _____