

## **Whai Rawa**

Trust deed

## **Whai Rawa Fund Limited**

## **Trustees Executors Limited**

## **Te Rūnanga o Ngāi Tahu**

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**Deed** dated September 2016

## Parties

- 1 **Whai Rawa Fund Limited**, a subsidiary of Te Rūnanga o Ngāi Tahu (**'Manager'**)
- 2 **Trustees Executors Limited** (**'Supervisor'**)
- 3 **Te Rūnanga o Ngāi Tahu**, a body corporate created by the Te Rūnanga o Ngāi Tahu Act 1996 (**'TRoNT'**)

## Background

- A By Trust Deed dated 6 June 2006 ('the Original Trust Deed') the Manager established a unit trust known as Whai Rawa for the benefit of the Members (as defined) to build the wealth of Ngāi Tahu individuals by encouraging savings. It is envisaged that Whai Rawa will achieve this by:
- Encouraging and assisting Ngāi Tahu Whanui members to increase their financial management skills through the promotion of saving and education; and
  - Establishing an individual lifetime savings account that encourages members to save and allows them to receive distributions from Te Rūnanga o Ngāi Tahu; and
  - Facilitating the growth of assets that are fundamental to the welfare of Te Tahu individuals, families and communities by allowing the savings to be used for tertiary education, home ownership or superannuation; and
  - Providing a best of class savings investment vehicle into which Ngāi Tahu Whanui members may invest.
- B The Supervisor is the current trustee of Whai Rawa.
- C TRoNT has powers and functions in respect of Whai Rawa as set out in the Existing Trust Deed.
- D The Supervisor, the Manager and TRoNT have now agreed, pursuant to clause 29 of the Existing Deed, to amend the Existing Deed as a consequence of a change in the law to reflect the requirements of the Financial Markets Conduct Act 2013, and to reflect some administrative adjustments to some of the terms of the Existing Deed that will not adversely affect the rights of Members generally.

## Covenants

In accordance with the powers of amendment contained in clause 29 of the Existing Deed it is declared that with effect from the Effective Date the provisions of the Existing Deed are hereby substituted in their entirety with the provisions of this Deed, so that the Trust Fund established pursuant to the Existing Deed continues in existence without interruption but will now be administered exclusively in accordance with the provisions of this Deed.

# 1 Interpretation

## 1.1 Defined Terms

In this Deed unless the context otherwise requires:

**'Account'** means in respect of each Member, the Member's Savings Account, Matched Savings Account and Distribution Account and any other Account established in respect of the Member pursuant to clause 6;

**'Accounting Period'** means:

a in relation to each Portfolio:

- the period commencing on the Commencement Date of the Portfolio and ending on the next following 30 June; and
- each subsequent period of one year thereafter commencing on 1 July; and
- the period commencing on 1 July immediately preceding the date of termination of the Portfolio and ending on the date of termination of the Portfolio; and

b in relation to the Trust:

- the period commencing on the date of this Deed and ending on the next following 30 June; and
- each subsequent period of one year thereafter commencing on 1 July; and
- the period commencing on 1 July immediately preceding the termination of the Trust and ending on the date of termination of the Trust,

as is applicable in the context, or such alternative period as the Supervisor and the Manager may agree from time to time;

**'Act'** means the Financial Markets Conduct Act 2013;

**'Associated Person'** has the meaning given to it in the Act;

**'Auditor'** means the auditor of the Trust Fund appointed pursuant to clause 26;

**'Authorised Investments'** means those investments referred to or contemplated under clause 17.1;

**'Borrow'** means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments, or otherwise howsoever, whether in New Zealand currency or any other currency and 'Borrowing' and 'Borrowed' have a corresponding meaning;

**'Calendar Year'** means the period from and including 1 January to 31 December in any year.

**'Cash'** includes cheques, bank cheques, bank deposits, bank transfers and bank drafts;

**'Child Member'** means a Member who is, at the time of reference, under the age of 16.

**‘Commencement Date’** means in relation to each Portfolio the date which the Manager by notice in writing to the Supervisor specifies as the date on which that Portfolio is to commence, or, if no such notice is given by the Manager to the Supervisor, the date of the first invitation for subscriptions or applications by the Manager in respect of that Portfolio;

**‘Corporate Account’** means an account established in respect of a Member pursuant to clause 6.6;

**‘Corporate Member’** means a Member other than a natural person who was eligible to join the Trust pursuant to clause 4.1b. or c;

**‘Corporate Member Withdrawal’** means a withdrawal as described in clause 10.9;

**‘Credited Earnings’** means the amounts determined from time to time in accordance with clause 18;

**‘Credited Earnings Rate’** means the rate for each Portfolio determined by the Manager in accordance with clause 18.1;

**‘Custodian’** means a company appointed by the Supervisor in accordance with the Act to hold the Investments of the Trust and includes any nominee appointed by the Custodian (in accordance with the Act);

**‘Death Withdrawal’** means a withdrawal as described in clause 10.6;

**‘Deed’** means this trust deed between Whai Rawa Fund Limited, Trustees Executors Limited and Te Rūnanga o Ngāi Tahu;

**‘Derivatives’** means any agreement which establishes rights and obligations to some underlying instrument, investment, currency, product, index, right or service including agreements commonly known as:

- a swaps;
- b forward role agreement;
- c futures contracts;
- d options;
- e foreign exchange contracts.

**‘Distribution Account’** means an account established in respect of a Member pursuant to clause 6.4;

**‘Education Withdrawal’** means a withdrawal as described in clause 10.3;

**‘Effective Date’** means the date that the Manager elects under the Act to be the date that Whai Rawa is treated as a registered managed investment scheme under the Act;

**‘Elective Member’** means a Member who has attained the age of 65 years and has elected to remain in the Trust as an Elective Member pursuant to clause 4.6a, or a Member who applied to join the Trust as an Elective Member pursuant to clause 4.1.

**‘Electronic Communication’** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium where

the participants can simultaneously communicate with each other throughout the meeting, 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;

**'Exchange'** means any official or formally constituted share, security, unit or other equity ownership interest, futures or options exchange on which a relevant Investment is quoted in any country;

**'Existing Deed'** means the Original Trust Deed including all amendments prior to the adoption of this Deed.

**'Financial Statements'** means financial statements as that term is defined in the Financial Reporting Act 2013;

**'FMA'** means the Financial Markets Authority;

**'Housing Withdrawal'** means a withdrawal as described in clause 10.1;

**'Interim Credited Earnings Rate'** means the interim rate determined by the Manager in accordance with clause 18.2;

**'Investment'** means in relation to the Trust any investment including any Cash made or held at any relevant time by the Trust and means in relation to any particular Portfolio, any investment including any Cash made or held by the Trust attributable to that Portfolio at the relevant time;

**'Investment Manager'** means any investment manager contracted from time to time by the Manager under clause 13.5c to manage all or any of the Investments of the Trust;

**'Issuer Obligations'** has the meaning given to it in the Act.

**'Liabilities'** means debts and other obligations of the Supervisor and the Manager acting in their respective capacity as trustee / Supervisor or manager of the Trust payable from the Trust Fund (including in particular but without limitation all taxes or duties payable by or in respect of the Trust) but excludes contingent liabilities (except to the extent that the Manager with the approval of the Auditor decides that an allowance should be made for such liabilities) and such debts and other obligations of the Supervisor in respect of which by the terms of this Deed the Supervisor is not entitled to be indemnified out of the Trust Fund in all cases to be allocated across the Portfolios on an equitable basis as determined by the Manager in its discretion;

**'Management Costs'** means the costs for managing the Trust or the relevant portion of that fee applicable to a particular Portfolio, determined in accordance with clause 21.1;

**'Manager'** means Whai Rawa Fund Limited or such other person for the time being appointed to act as manager of the Trust pursuant to this Deed;

**'Matched Savings Account'** means an account established in respect of a Member pursuant to clause 6.5;

**'Member'** means a Person whose membership of the Trust has commenced pursuant to clause 4.4 and who has not ceased membership pursuant to clause 4.5 or 4.7;

**'Month'** means calendar month;

**‘Ngāi Tahu Whanui’** has the same meaning as in the Te Rūnanga o Ngāi Tahu Act 1996;

**‘Office’** means the registered office from time to time of the Manager;

**‘Original Trust Deed’** means the trust deed dated 6 June 2006 under which the unit trust known as Whai Rawa was established;

**‘Participating Member’** means a Member other than a Corporate Member or an Elective Member;

**‘Person’** means and includes a natural person, a company, a corporation, a unit trust, a government or a body of persons (whether corporate or unincorporated);

**‘Portfolio’** means an investment portfolio nominated by the Manager in accordance with clause 3.4, comprising all Investments and other assets, Liabilities and obligations for the time being held or owing by the Supervisor upon the trusts of this Deed, attributed to that investment portfolio including:

- a The proceeds of sale or realisation of any Investments of the Trust attributable to that investment portfolio; and
- b All additions, accretions or other assets relating to the Investments attributable to that investment portfolio; and
- c All Interest from the Investments of the Trust attributable to that investment portfolio held pending distribution to the Reserve Account;

**‘Portfolio Election’** means an election made by a Member in accordance with clause 4.3;

**‘Quarterly Date’** means the last days of March, June, September and December in each year;

**‘Register’** means a register referred to in clause 12;

**‘Registered Tribal Individual’** means a person who is a member of Ngāi Tahu Whanui and is registered as a tribal member with Te Rūnanga o Ngāi Tahu in accordance with the Te Rūnanga o Ngāi Tahu Act 1996;

**‘Regulated Offer’** has the meaning given to it in the Act.

**‘Related Company’** has the meaning assigned to that term in Section 2(3) of the Companies Act 1993;

**‘Related Party’** in respect of the Trust, and as the context requires, has the same meaning given in section 172 of the Act;

**‘Related Party Benefit’** has the meaning given to that term in the Act;

**‘Related Person’** in respect of the Manager means any of the following:

- a ‘Related Body Corporate’ of the Manager as defined in section 12(2) of the Act;
- b any director or shareholder of the Manager;
- c a relative of any director of the Manager;
- d any person in which a person referred to in paragraphs (b) or (c) above has a material financial interest; or

e any unit trust, registered superannuation scheme or group investment fund that is owned by, managed by or controlled by the Manager or a Related Body Corporate of the Manager, as approved by TRoNT from time to time;

**'Reserve Account'** means an account established by the Manager pursuant to clause 6.7;

**'Retirement Withdrawal'** means a withdrawal as described in clause 10.5;

**'Savings Account'** means an account established in respect of a Member pursuant to clause 6.1;

**'SIPO'** means the statement of investment policy and objectives for the Trust, (as provided for in the Act), as varied from time to time;

**'Slice Election'** means, in respect of a Unit, the issue by the Manager of the Unit on terms that its redemption is subject to Section CD23 of the Tax Act;

**'Special Circumstances Withdrawal'** means a withdrawal as described in clause 10.8;

**'Special Resolution'** has the meaning specified in the Act;

**'Student Loan'** means a student loan pursuant to the Student Loan Scheme Act 2011;

**'Supervisor'** means the Supervisor for the time being appointed under this Deed;

**'Tax Act'** means the Income Tax Act 2007 or any legislation passed in substitution thereof;

**'Third Party Account'** means an account established in respect of a Member pursuant to clause 6.2;

**'Transfer Account'** means an account established in respect of a Member pursuant to clause 6.3;

**'Trust'** means the trust created by this Deed;

**'Trust Fund'** means the aggregate of all Investments and other assets, Liabilities and obligations for the time being held or owing by the Supervisor upon the trusts of this Deed;

**'Unit'** in respect of a Member means whichever of the Member's Accounts is relevant in the context, and **'Units'** means all of the Member's Accounts, and in respect of the Trust means each of the Accounts;

**'Withdrawal'** means one or more of the withdrawals (as applicable in the context) set out in clause 10;

**'Whai Rawa'** means He Ara Whai Rawa Mo Ngāi Tahu Whanui, comprising the Whai Rawa Elective Scheme and the Whai Rawa Participating Scheme;

**'Whai Rawa Elective Scheme'** means the benefits scheme established pursuant to this Deed for Elective Members;

**'Whai Rawa Participating Scheme'** means the benefits scheme established pursuant to this Deed for Participating Members and Corporate Members;

**'Working Day'** has the meaning given to it in the Interpretation Act 1999.

## 1.2 General construction

- a Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- b References to Acts or statutes includes any regulations made under an Act or statute and all amendments, re-enactments and replacements thereof, and, in the case of the Act, includes, to the extent relevant or necessary, any framework or methodology issued by the FMA under the Act.
- c References to any part of the Trust or the Trust Fund, or any cost, expense, fee or other outgoing of any nature relating to the Trust Fund, being attributed, attributable, or relating to a Portfolio, means as such part of the Trust, the Trust Fund, or any cost, expense, fee or other outgoing as is attributed to that Portfolio from time to time on a fair and equitable basis by the Manager.
- d Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- e Where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Working Day such act, matter or thing shall be done on the following Working Day.
- f If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may select.

1.3 The statutory provisions or other terms implied in this Deed under the Act or otherwise at law apply for so long as they are implied in this Deed despite anything to the contrary in this Deed. Any provision in this Deed that is contrary to such implied term is void to the extent it is contrary.

1.4 Where the FMA has published frameworks or methodologies that require certain matters to be calculated, determined, fixed, or carried out in a particular way, any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this Deed. The provisions of this Deed and the Manager's duties and powers shall be construed accordingly.

## 2 Purpose and Intent

### 2.1 Purpose

This Deed establishes a trust to be known as Whai Rawa to be operated for the benefit of Members and to build the wealth of Ngāi Tahu Whanui members and Related Persons by encouraging and assisting savings and education.

### 2.2 Manager's Intent

The Manager has established Whai Rawa for the benefit of the members of Ngāi Tahu Whanui to provide an incentive for saving and the distribution of TRoNT funds, and to provide a vehicle to encourage and assist Ngāi Tahu Whanui members to increase their financial management skills through the promotion of saving and education. The Manager intends to ensure that these primary goals continue to be met under the operation of Whai Rawa.

### **3 Creation of the Trust and Portfolios**

#### **3.1 Appointment of Supervisor**

The Supervisor is appointed and agrees to accept appointment as supervisor for the Members, and to hold the Trust Fund in trust for the Members, upon and subject to the terms and conditions contained or implied in or established pursuant to this Deed.

#### **3.2 Appointment of Manager**

The Manager agrees to act as manager of the Trust upon and subject to the terms and conditions contained or implied in or established pursuant to this Deed.

#### **3.3 Name of Trust**

The Trust shall be known as Whai Rawa or, subject to compliance with any relevant regulatory requirement, by such other name as the Manager may from time to time determine by written notice to the Supervisor.

#### **3.4 Nomination of Portfolios**

The Trust Fund shall be divided into such one or more investment portfolios, and on such terms and conditions as set out in the SIPO as agreed in consultation between the Manager and the Supervisor from time to time. No Portfolio shall be established unless the Supervisor has agreed to the establishment of that Portfolio within the Trust. The Supervisor shall only withhold consent to a new Portfolio where it reasonably considers that the SIPO extends beyond the Authorised Investments and/or it will not be able to readily determine whether any investment falls within the SIPO. No SIPO shall be changed unless the Supervisor is satisfied that the terms and conditions for the Portfolio and related information produced by the Manager are sufficient to enable the Supervisor to determine whether or not any Investment falls within the SIPO. The Investments and other assets of the Trust attributable to each Portfolio shall be held on the trusts of this Deed, provided that in respect of each Portfolio the Manager may from time to time prescribe the:

- a types of Authorised Investment (if any) that may be attributed to the Portfolio, and
- b investment strategy and objectives that will apply to the Portfolio, and
- c such other matters not inconsistent with the terms of this Deed as the Manager considers necessary or desirable for the appropriate administration of the Portfolio.

#### **3.5 Single Trust Fund**

Notwithstanding the division of the Trust Fund into Portfolios pursuant to clause 3.4, the Trust shall comprise a single trust fund with the value of the various Members' interests in the Trust Fund determined by reference to the Member's Accounts. Notwithstanding the fact that the Portfolios do not constitute separate and independent trust funds:

- a the Liabilities attributable to a particular Portfolio shall be met at first instance from the assets of the Trust attributable to that Portfolio;
- b where the assets attributable to a particular Portfolio are insufficient to meet the Liabilities attributable to that Portfolio, those Liabilities shall be met from the Trust Fund in such equitable manner as the Manager with the approval of the Supervisor sees fit;

- c except to the extent required to meet the Liabilities of the Trust attributable to any other Portfolio, all Investments of the Trust attributable to a Portfolio shall be held by the Supervisor for the benefit of the Members who have an interest in that Portfolio pursuant to this Deed; and
- d the Manager shall cause separate records and accounts to be maintained in respect of each Portfolio.

### 3.6 Variation and Merger of Portfolios

The Manager may subject to any express provision in this Deed, any disclosure material relating to the Portfolio in question, and compliance with applicable law:

- a by notice in writing to the Supervisor vary all or any of the terms of any Portfolio prescribed by the Manager under clause 3.4, if:
  - i the Supervisor and the Manager agree that the variation is not material; or
  - ii the proposed change is notified to Members who have an interest in the Portfolio more than two months before the change occurs (whether or not it is to take effect before or after the date of the change); and either
    - A Members with an interest in the Portfolio do not request a meeting as provided for in clause 28.1 (having been invited to request a meeting in the notice); or
    - B Members with an interest in the Portfolio request a meeting as provided for in clause 28.1 and such meeting does not reject the proposed change by Special Resolution; or
- b terminate and merge any one or more Portfolios with any other Portfolio where the Manager considers that doing so would be beneficial for the more convenient, economical or advantageous working, management or administration of the Trust and would not materially prejudice the interests of Members generally, with the terms of the affected Portfolios varied accordingly.

### 3.7 Custodian

The Supervisor may from time to time, subject to and in accordance with the provisions of the Act and this Deed, appoint a Custodian that meets the relevant requirements under the Act in which shall be vested the Investments or some of the Investments of the Trust Fund.

## 4 Membership

### 4.1 Eligibility for Membership

- a Any Registered Tribal Individual is eligible to apply to join:
  - i the Whai Rawa Participating Scheme as a Participating Member, provided that he or she is less than 65 years old at date of entry as a Member; or
  - ii the Whai Rawa Elective Scheme as an Elective Member from 31 July 2007.
- b Any other Person or group of Persons, in each case only if expressly approved by TRoNT for this purpose, and subject to any terms of that approval, is eligible to join the

Trust as either a Participating Member or an Elective Member from 31 July 2007 or a Corporate Member at the direction of TRoNT;

- c TRoNT, and any related entity of TRoNT, are eligible to join the Trust as a Corporate Member.

#### 4.2 Applications for Membership

- a Any Person who is eligible to apply to become a Member must complete and deliver to the Manager an application to join the Trust in the form specified by the Manager.
- b The Manager, unless otherwise directed by TRoNT, may in its discretion (and shall at the direction of TRoNT) refuse to accept any application and shall not be required to give any reason or ground for such refusal.
- c Where the Person who is eligible to become a Member is a minor, or lacks legal capacity to apply to become a Member, that person's legal representative may complete an application form on behalf of the Member and participate in the Trust on behalf of the Member.

#### 4.3 Portfolio Election

- a Where more than one Portfolio exists at the relevant time, the form of the application as specified by the Manager in clause 4.2 must include a requirement for the election of a Portfolio or Portfolios in respect of contributions made by or in respect of a Member. That form shall also provide for a default Portfolio in the event that the Member does not make a Portfolio Election;
- b The Portfolio Election shall nominate a single Portfolio, or if the Manager so permits a number of Portfolios, and a percentage proportion in respect of each Portfolio so that the total of percentage proportions is 100%;
- c The purpose and effect of a Portfolio Election is to require the Manager to have regard to that Portfolio Election, in investing the Trust Fund, and in determining the Credited Earnings Rate to be allocated to a Member's Account pursuant to clause 18;
- d A Member may with the consent of the Manager and in such form and subject to such terms and conditions as may be prescribed from time to time by the Manager, vary or replace a Portfolio Election;
- e If there is more than one Portfolio established pursuant to clause 3.4 the Manager shall elect in its sole discretion which Portfolio shall apply to the Reserve Account for the purposes of determining Credited Earnings under clause 18.

#### 4.4 Commencement of Membership

Membership dates from the date that the Manager receives a correctly completed application, subject to clause 4.2b.

#### 4.5 Termination of Membership

A Member, other than an Elective Member, shall cease to be a Member in the event of:

- a in the case of a Person who joined the Trust as a Registered Tribal Individual, the Member's registration as a Registered Tribal Individual ending for any reason other than voluntary deregistration in terms of clause 4.8;
- b in the case of a Person who joined the Trust pursuant to clause 4.1b, any terms of the approval of that Person's eligibility by TRoNT being breached, as notified to the Manager by TRoNT;
- c the Member dying;
- d the Member attaining 65 years of age and not electing to remain in the Trust as an Elective Member;
- e the Member's Accounts having a nil balance and no contributions having been made to any of the Member's Accounts for at least 12 months, but only with the Member's consent;
- f the Member's Accounts having a nil balance for a period of more than 3 years;
- g a Corporate Member determining to cease being a Member and notifying the Manager in writing.

#### 4.6 Elective Member

A Person becomes an Elective Member if:

- a the Person is a Participating Member who has attained the age of 65 years and, instead of leaving the Trust, has elected to remain in the Trust as an Elective Member; or
- b the Person has applied to join the Trust as an Elective Member and has commenced membership pursuant to clause 4.4.

No period of membership as an Elective Member gives rise to an entitlement to any contributions from TRoNT as either matched savings pursuant to clause 7.2 or distributions pursuant to clause 7.3;

#### 4.7 Termination of Elective Membership

An Elective Member shall cease to be an Elective Member in the event of:

- a in the case of a Person who joined the Trust as a Registered Tribal Individual, the Member's registration as a Registered Tribal Individual ending for any reason other than voluntary deregistration in terms of clause 4.8;
- b in the case of a Person who joined the Trust pursuant to clause 4.1b, any term of TRoNT's approval of that Person's eligibility to join and/or remain a Member being breached, as notified to the Manager by TRoNT;
- c the Member dying;

- d the Member's Accounts having a nil balance and no contributions having been made to any of the Member's Accounts for at least 12 months, but only with the Member's consent;
- e the Member's Accounts having a nil balance for a period of more than 3 years;
- f the Member notifying the Manager in writing that the Member wishes to cease being a Member.

#### 4.8 **Voluntary Deregistration**

A Member who has voluntarily de-registered as a Registered Tribal Individual shall remain a Member of the Trust provided that if the Member is not registered as a Registered Tribal Individual at the end of a Calendar Year, that Member shall not be entitled to any TRoNT contributions pursuant to clause 7.2 or 7.3 in respect of that Calendar Year. For the purposes of this Deed, a person shall be deemed to have voluntarily deregistered as a Registered Tribal Individual if he or she is a member of Ngāi Tahu Whanui but has ceased to be a Registered Tribal Individual for any reason.

#### 4.9 **Classes of Membership**

The Manager may, with the prior approval of TRoNT, create different classes of Members and offer Members different Withdrawal options and other terms within the Trust as it determines.

### 5 **Units and Issue of Units**

#### 5.1 **Beneficial Interest in Trust**

The beneficial interest in the Trust shall be divided into Units. Each Account shall each be one Unit. The Manager may issue each Member with one or more Units. The Manager shall hold the Reserve Account as a Unit in its own name.

#### 5.2 **Issue Price**

Each Unit shall be issued by the Manager for an issue price of \$10, or such other amount (which may be nil) as the Manager may determine from time to time for that purpose. A Member may contribute a greater amount than the issue price when joining the Trust or at any time subsequently, and any such additional contributions shall be added to the value of the Unit.

#### 5.3 **Unequal Interests but no specific interest**

Each Unit shall confer an unequal interest, based on the value of each Member's Accounts, in the Trust Fund. Each Account is a 'Unit' but shall not confer any interest in any particular part of the Trust Fund, and no Member shall be entitled to require the transfer to the Member of any of the Investments of the Trust Fund or otherwise give directions in relation to any of the Investments of the Trust Fund.

#### 5.4 **No interference in management etc**

Subject to the rights of the Members created by this Deed, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor (or any Custodian) of any of the rights, powers, authorities or discretions conferred upon them or

either of them by this Deed or in respect of the Trust Fund or any part or parts thereof, or to exercise any right, power or privilege in respect of any Authorised Investment.

#### **5.5 Provisions benefit Members**

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind Members) contained in this Deed, enure for the benefit of and bind each Member.

## **6 Accounts**

### **6.1 Savings Account**

The Manager shall establish and maintain a Savings Account in respect of each Member that shall be credited or debited with:

- a Any deposit or contribution made by the Member (or the Member's personal legal representative if the Member has joined the Trust pursuant to clause 4.2c) in accordance with clause 7.1; and
- b Credited Earnings determined in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Savings Account; and
- d Any Withdrawal paid to or on behalf of the Member which is properly made from the Savings Account;
- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Savings Account.

### **6.2 Third Party Account**

The Manager may establish (and shall establish on receipt of any contributions in respect of a Member pursuant to clause 7.4) and maintain a Third Party Account in respect of a Member that shall be credited and debited with:

- a Any contribution made by any Person other than the Member for the benefit of the Member in accordance with clause 7.4; and
- b Credited Earnings in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Third Party Account; and
- d Any Withdrawal paid to or on behalf of the Member which is properly made from the Third Party Account; and
- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Third Party Account.

### 6.3 **Transfer Account**

The Manager may establish (and shall establish on receipt of any funds transferred to a Member pursuant to clause 8) and maintain a Transfer Account in respect of each Member that shall be credited and debited with:

- a Any amounts which have been transferred in accordance with clause 8.1; and
- b Credited Earnings determined in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Transfer Account; and
- d Any Withdrawal paid to or on behalf of the Member which is properly made from the Transfer Account; and
- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Transfer Account.

### 6.4 **Distribution Account**

The Manager may establish (and shall establish on receipt of any contributions in respect of a Member pursuant to clause 7.3) and maintain a Distribution Account in respect of each Member that shall be credited or debited with:

- a Any TRoNT distribution to the Member in accordance with clause 7.3; and
- b Credited Earnings determined in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Distribution Account; and
- d Any Withdrawal paid to or on behalf of the Member which is properly made from the Distribution Account; and
- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Distribution Account.

### 6.5 **Matched Savings Account**

The Manager may establish (and shall establish on receipt of any contributions in respect of a Member pursuant to clause 7.2) and maintain a Matched Savings Account in respect of each Member that shall be credited and debited with:

- a Any TRoNT matched saving credited to the Member in accordance with clause 7.2; and
- b Credited Earnings determined in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Matched Savings Account; and
- d Any Withdrawal paid to or on behalf of the Member which is properly made from the Matched Savings Account; and

- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Matched Savings Account.

#### 6.6 **Corporate Account**

The Manager shall establish and maintain a Corporate Account in respect of any Corporate Member that shall be credited and debited with:

- a Any contribution made by a Corporate Member in accordance with clause 7.1; and
- b Credited Earnings determined in accordance with clause 18; and
- c Any other distributions made by the Manager from the Reserve Account established and held by the Manager which is directed by the Manager to be credited to the Corporate Account; and
- d Any Withdrawal paid to or on behalf of a Corporate Member which is properly made from the Corporate Account; and
- e Any expenses of the Trust not met from the Reserve Account as the Manager in its sole discretion determines to allocate to the Corporate Account.

#### 6.7 **Reserve Account**

The Manager shall establish and maintain a Reserve Account that shall be held by the Manager that shall be credited or debited with:

- a An initial contribution of \$10 as the minimum issue price for a Unit; and
- b Credited Earnings as calculated pursuant to clause 18; and
- c Unclaimed benefits; and
- d Allocations to Savings Accounts, Third Party Accounts, Transfer Accounts, Distribution Accounts, Matched Savings Accounts and Corporate Accounts; and
- e Any unclaimed monies that can properly be paid to external parties; and
- f Meeting any expenses of the Trust; and
- g Any amounts forfeited to the Trust; and
- h Any other amounts that can properly be credited or debited to the account;

**provided that** if there are insufficient funds in the Reserve Account to meet the expenses of the Trust or if the Trust or any Portfolio has incurred a negative earning rate pursuant to clause 18 then the Manager may determine that such expenses or negative earnings be debited to Members' Accounts in proportion to these account balances or in the case of a negative earning rate incurred in respect of a Portfolio then on such proportionate basis as the Manager considers equitable having regard to any relevant Portfolio Elections.

#### 6.8 **Additional Accounts**

The Manager may establish one or more additional accounts in respect of any Member or class of Members, as it sees fit.

## 6.9 Valuation methodology

The Investments and other assets in the Scheme are valued in accordance with unit prices calculated by any Investment Manager(s) and/or underlying fund manager(s), plus any Cash, and any interest held in bank accounts.

The value in each Member's Account is the equitable interest of each Member's Account in any underlying investment.

## 7 Contributions

### 7.1 Member Savings

- a A Member may contribute to the Trust at any time, subject to this clause 7.1. The Manager may from time to time specify, and may specify separately for Child Members, Corporate Members and other Members:
  - i The mechanisms by which Members may place savings into the Trust; and
  - ii The minimum amounts of any single amount of saving placed into the Trust; and
  - iii The maximum number of contribution transactions permitted in any one Calendar Year.
- b Any Member savings shall be credited to the Member's Savings Account and may be accessed by the Member only in the circumstances permitted by this Deed.
- c The Manager may from time to time specify a minimum contribution that Members must make to the Trust. At the date of this Deed, other than the minimum price for issuing a Unit determined from time to time by the Manager pursuant to clause 5.2, there is no minimum contribution amount.

### 7.2 Member's Matched Savings

TRoNT may, from time to time, contribute to the Trust by matching savings made by Members in a Calendar Year ('**Member Savings**'), subject to clause 7.5. The amount TRoNT may wish to contribute to the Trust to match Member Savings ('**Matched Savings Amount**') and the terms and conditions under which TRoNT may wish to match Member Savings including (without limitation) the age of eligibility for the Matched Savings Amount ('**Conditions**'), may differ as between Calendar Years and, in a Calendar Year, may differ as between each class of member and as between members within a class. If TRoNT wishes to contribute to the Trust by matching Member Savings in a Calendar Year ('**Qualifying Calendar Year**'), TRoNT shall notify the Manager, at least 3 months, prior to the start of the Qualifying Calendar Year the Matched Savings Amount and the Conditions applying with respect to the Matched Savings Amount, in the Qualifying Calendar Year. The Manager shall then notify the Members of the Matched Savings Amount and the Conditions applying with respect to the Matched Savings Amount, in the Qualifying Calendar Year, prior to the start of the Qualifying Calendar Year. The Matched Savings Amount shall be paid by TRoNT to the Manager at any time, but no later than 31 March in the year following the Qualifying Calendar Year, or as otherwise agreed between TRoNT and the Manager. The Manager shall credit the Matched Savings Amount payable to a Member to the Member's Matched Savings Account as provided in, and in accordance with, the Conditions.

### 7.3 TRoNT Distributions

TRoNT may, from time to time, contribute to the Trust such sums in addition to the Matched Savings Amount contributed pursuant to clause 7.2 ('TRoNT Distribution'), subject to clause 7.5. TRoNT shall notify the Manager of the distribution process, the amount TRoNT may wish to contribute to the Trust with respect to Members ('Distribution Amount') and the terms and conditions under which TRoNT may wish to contribute including (without limitation) the age of eligibility for the Distribution Amount ('Conditions'), in a Calendar Year. The distribution process, the Distribution Amount and the Conditions may differ as between Calendar Years and, in a Calendar Year, may differ as between each class of member and as between members within a class. The Manager shall notify the Members of the Distribution Amount and the Conditions applying with respect to the TRoNT Distribution to be made in a Calendar Year. The Distribution Amount shall be paid by TRoNT to the Manager at any time as agreed between TRoNT and the Manager. The Manager shall credit the Distribution Amount payable to a Member to the Member's Distribution Account as provided in, and in accordance with, the Conditions.

### 7.4 Third Party Contributions

- a Any Person may make contributions to the Trust in respect of a Member. The Manager may from time to time specify:
  - i The mechanisms by which such contributions may be placed into the Trust;
  - ii The minimum amounts of any single contribution placed into the Trust; and
  - iii The maximum number of contribution transactions permitted in any one Calendar Year.
- b Any third party contributions in respect of a Member shall be credited to that Member's Third Party Account and may be accessed by the Member only in the circumstances permitted by this Trust.
- c The Manager may from time to time specify a minimum amount for third party contributions. At the date of this Deed, there is no minimum contribution amount for third party contributions.

### 7.5 No entitlement to TRoNT contributions

A Member who is an Elective Member on the last day of a Calendar Year shall not be entitled to any TRoNT contribution pursuant to clause 7.2 or 7.3 in respect of that Calendar Year. Any Member who at the end of a Calendar Year has voluntarily de-registered as a Registered Tribal Individual shall not be entitled to any TRoNT contribution pursuant to clause 7.2 or 7.3 in respect of that Calendar Year.

## 8 Transfers

### 8.1 Transfers Generally

A Member may transfer any or all of the value in one or more of the Member's Accounts to any other Member provided that:

- a Any amount transferred shall be transferred to the transferee Member's Transfer Account.

- b No amount transferred to a Member's Transfer Account shall be entitled to any TRoNT matched saving pursuant to clause 7.2. If any of the amount transferred is eligible for TRoNT matched savings pursuant to clause 7.2, the matched savings shall be credited to the transferor Member's Matched Savings Account.
- c The Manager may decline to register any transfer where the transfer will be made to a Member who is, at the time of the transfer, entitled to make a Withdrawal from the Trust or where the Manager considers in its discretion, that the transfer is being made to a Member who may be able to apply for a Withdrawal for the purpose of defeating the restrictions on Withdrawals in the Trust. The Manager may set guidelines from time to time in respect of such transfers.

## 8.2 Instrument of Transfer

A transfer of part or all of a Member's Account shall be in such form and subject to such conditions as the Manager may prescribe from time to time.

## 8.3 Manager Discretion

The Manager may decline to register any transfer that does not comply with the provisions of this clause 8 or any terms and conditions made by the Manager pursuant to clause 8.2.

## 8.4 Registration of Transfer

The instrument of transfer shall be sent to the Manager for registration. On being satisfied that the provisions of this clause 8 and all statutory provisions have been complied with and subject to clause 12.7, the Manager will register the transfer.

## 8.5 Manager to Retain Transfer

Every instrument of transfer of part or all of an Account which is registered shall be retained by the Manager for such period as the Manager may determine but any instrument of transfer which the Manager may decline to register shall within ten (10) Working Days after the date on which the transfer is lodged with the Manager be returned to the person lodging the same.

## 8.6 Suspension of Registration

Registration of transfers, or registration of particular categories of transfers, may be suspended at such times and for such periods as the Manager may from time to time determine.

# 9 Provisions Relating to Withdrawals

## 9.1 Withdrawal Request

The Manager may require a Member to complete a withdrawal request, in the form specified by the Manager from time to time, where the Member applies for a Withdrawal.

## 9.2 Child Member

A Child Member shall not be entitled to any Withdrawal, however a Death Withdrawal shall be payable in the event of a Child Member's death.

### 9.3 **Information Required**

The Manager may require a Member to provide such information and/or undertakings, and direct the payment of any Withdrawal, as the Manager requires to enable the Manager to ensure any conditions applying to a Withdrawal for that Member are met.

### 9.4 **Timing of Withdrawals**

The Manager may specify, from time to time, that some or all Withdrawals (as applicable) may only be withdrawn on a Quarterly Date, or more frequently as it determines.

### 9.5 **Suspension of Withdrawals**

If by reason of:

- a a decision to terminate any one or more of the Portfolios; or
- b the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- c financial, political or economic conditions applying in respect of any financial market; or
- d the nature of any Investment; or
- e the occurrence or existence of any other circumstance or event relating to the Trust 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 Members generally, for the Manager to give effect to any request for a Withdrawal, then the Manager may give notice ('Withdrawal Suspension Notice') to that effect to any Member who wishes to make a Withdrawal. A Withdrawal Suspension Notice shall have the effect of suspending the operation of all Withdrawal requests until such time as the Manager gives to the Members who made Withdrawal requests notice that the Withdrawal Suspension Notice is cancelled.

### 9.6 **Cancellation of Withdrawal Suspension Notice**

The Manager shall, unless the Supervisor otherwise agrees, give notice of cancellation of a Withdrawal Suspension Notice not later than ninety (90) days after the date upon which that Withdrawal Suspension Notice is given. The Supervisor will not unreasonably withhold its agreement to an extension of the operation of a Withdrawal Suspension Notice beyond that period of ninety (90) days. Unless extended in accordance with the provisions hereof, a Withdrawal Suspension Notice shall be deemed to be automatically cancelled upon the expiration of that ninety (90) day period.

### 9.7 **Unclaimed Withdrawals**

Should any Withdrawals which become due to any Member, such as a Death Withdrawal or when a person ceases to be a Member pursuant to clause 4.5, remain unclaimed for a period of six (6) years from the date entitlement arose they will revert to the Reserve Account. As a consequence the Manager shall not be required to pay such unclaimed Withdrawals to the Crown pursuant to the Unclaimed Money Act 1971 or the Trustee Act 1956.

## 9.8 Payment of Withdrawals

Any Withdrawal shall be paid, unless the Manager determines otherwise, by debiting the Member's Accounts in the following priority:

- a The Member's Savings Account;
- b The Member's Third Party Account;
- c The Member's Transfer Account;
- d The Member's Matched Savings Account;
- e The Member's Distribution Account;

provided that the remaining balance in any Account shall not be less than zero.

## 9.9 Redemption

Subject to clauses 9.8 and 12.7 the Manager shall upon receiving a Withdrawal request either:

- a repurchase part or all of the Units equal to the amount requested in the Withdrawal request; or
- b request the Supervisor to redeem part or all of the Units equal to the amount requested in the Withdrawal request.

## 9.10 Tax Elections

The Manager may make a Slice Election in respect of all Units, subject to appropriate consultation taking place with the Supervisor. All Units issued to a Member subject to a Slice Election shall be treated by the Manager as shares of the same class for income tax purposes and not shares of the same class as Units issued to another particular Member. If permitted by law and after appropriate consultation has taken place with the Supervisor, the Manager may revoke any Slice Election previously made, on such basis as the Manager and the Supervisor agree.

# 10 Withdrawals

## 10.1 Housing Withdrawal - Conditions for Approval of Housing Withdrawal

A Member may apply for, and the Manager may approve, a Housing Withdrawal, being a withdrawal from the Member's Accounts for the purposes of home ownership. The Manager may approve the payment and amount of a Housing Withdrawal if all the following conditions are satisfied:

- a The Housing Withdrawal will be used for the purpose of home ownership; and
- b The Member does not own their own home and has not, unless the Manager agrees otherwise, previously owned their own home; and
- c The Member has secured finance or has other finance available to complete the purchase of a home; and
- d The Member intends to reside in the home upon purchase; and

- e A valid sale and purchase agreement is in place or will be put in place once the Housing Withdrawal is approved; and
- f The Member has not previously received a Housing Withdrawal; and
- g The Member is not a Child Member; and
- h The amount of the Housing Withdrawal is not greater than the total balances of the Member's Accounts.

#### 10.2 **Manager Discretion on Housing Withdrawal**

The Manager may, at its discretion, modify or waive any of the conditions in clause 10.1 in special circumstances provided:

- a The Manager is satisfied the overall intent of the Housing Withdrawal is to enable the Member to enter into owner/occupier home ownership; and
- b Conditions 10.1c, 10.1g, and 10.1h above may not be waived.

#### 10.3 **Education Withdrawal - Conditions for Approval of Education Withdrawal**

A Member may apply for, and the Manager may approve, an Education Withdrawal, being a withdrawal from the Member's Accounts for the purposes of financing tertiary education. The Manager may set out in guidelines from time to time for assessing whether or not a course qualifies for the purposes of the Education Withdrawal. The Manager may approve the payment and amount of an Education Withdrawal if all the following conditions are satisfied:

- a The Education Withdrawal is used for the purpose of tertiary education; and
- b The Education Withdrawal is being paid on completion of a bona fide tertiary course of study and the Education Withdrawal will be applied to repay or reduce the Member's Student Loan or, if the Manager in its discretion agrees, will be applied to refund fees paid to a tertiary institution in pursuing tertiary education where the Manager is satisfied such fees have not been subsidised or reimbursed for any other source; or
- c The Education Withdrawal will be applied to meet costs, fees and/or expenses related to tertiary education provided the Manager is satisfied in its sole opinion funds to meet these costs, fees and/or expenses are not otherwise reasonably available to the Member while the Member is undertaking the course of study; and
- d The Member is not a Child Member; and
- e The amount of the Education Withdrawal is not greater than the total balances of the Member's Accounts.

#### 10.4 **Manager Discretion – Education Withdrawal**

The Manager may, at its discretion, modify or waive any of the conditions in clause 10.3 in special circumstances provided:

- a The Manager is satisfied that the overall intent of the Education Withdrawal is the pursuit of tertiary education, and
- b Conditions 10.3d and 10.3e above may not be waived.

#### 10.5 **Retirement Withdrawal - Conditions for Approval of Retirement Withdrawal**

A Member other than a Corporate Member may apply for, and the Manager may approve, a Retirement Withdrawal, being a withdrawal from the Member's Accounts for the purposes of retirement. The Manager may specify minimum amounts for a Retirement Withdrawal from time to time. The Manager will approve the payment and amount of a Retirement Withdrawal if all the following conditions are satisfied:

- a The Member is aged 55 or over; and
- b The Member has not received more than one Retirement Withdrawal payment in the current Calendar Year; and
- c The amount of the Retirement Withdrawal is not greater than the total balances of the Member's Accounts.

The Manager may, at the request of a Member, set up an automatic payment system for the payment of Retirement Withdrawals to the Member provided the above conditions are met.

#### 10.6 **Death Withdrawal – Conditions of Death Withdrawal**

The Manager will pay a Death Withdrawal upon the death of a Member.

#### 10.7 **Payment of Death Withdrawal**

The Death Withdrawal shall be paid by paying the full amount of the Member's Accounts to the Member's personal representatives on receipt of such evidence of entitlement and form of discharge as the Manager sees fit.

#### 10.8 **Special Circumstances Withdrawal – Conditions of Special Circumstances Withdrawal**

Member may apply for, and the Manager may approve, a Special Circumstances Withdrawal, being a withdrawal from the Member's Accounts, where the Manager is satisfied that special circumstances (including but not limited to significant financial hardship as defined in the Income Tax Act 2004) exist on the part of the Member.

#### 10.9 **Corporate Member Withdrawal**

A Corporate Member may apply for a Corporate Member Withdrawal, being part or all of the amounts held in the Corporate Member's Accounts. The Manager will approve that Corporate Member Withdrawal provided the remaining balance in any Corporate Member's Account shall not be less than zero.

#### 10.10 **Ceasing Member Withdrawal**

A Person who ceases to be a Member pursuant to clause 4.5, and who is not otherwise entitled to a Withdrawal, shall be entitled to receive all amounts held in their Member Accounts.

#### 10.11 **Manager Discretion**

The Manager may, with the prior approval of TRoNT, introduce new Withdrawals for Members, or a certain class of Members (pursuant to clause 4.9) from time to time.

## **11 Administration of Members Interests**

### **11.1 No Assignment**

No Member may assign, charge, alienate or borrow against the security of the Member's benefits under this Deed, except as permitted under clause 8.

### **11.2 Bankruptcy of Members**

Notwithstanding any other provisions of the Deed, a Member shall be deemed to have a contingent interest in the Trust which has not become unconditionally vested in a Member or any other person (as the case may be) in accordance with the Deed and provided that:

- a Such contingent interest shall continue until the interest becomes vested in the Member or other person in accordance with the terms of the Deed or until the Member or other person becomes bankrupt, whichever shall first occur;
- b In the event that such a Member or other person becomes bankrupt prior to any contingent interest in any benefit payable under the Trust becoming unconditionally vested in the Member or other person, then, to the maximum extent permitted by law, the Member's or other person's contingent interest in that part of any Withdrawals payable under the Trust which are attributable to contributions made by TRoNT or to any monies transferred from, or contributed to the Trust by, any third party in respect of the Member or other person (and which are not, by the terms of such transfer or contribution, deemed to be contributions made by the Member or other person) shall be forfeited to the Trust;
- c The Manager may in its absolute discretion apply in respect of such Member or other person an amount not exceeding the amount of the Withdrawal which has been forfeited for the maintenance support or otherwise for the benefit of the Member or such other person or such of their dependants as the Manager may in its discretion determine.

### **11.3 Property (Relationships) Act**

Where the Manager is required to do so by the Property (Relationships) Act 1976, it must give effect to any arrangement or deed served on the Manager and entered into in accordance with a Court Order made under Section 31(1) of the Property (Relationships) Act 1976.

### **11.4 Forfeiture on Invalid Tribal Registration**

Where a Member ceases to be a Member pursuant to clause 4.5a, on the basis that his or her registration as a Registered Tribal Individual is found to be incorrect, all amounts standing to the credit of the Member's Matched Savings Account and Distribution Account and an amount equal to any contributions made by TRoNT in respect of the Member to the Trust pursuant to clauses 7.2 or 7.3 held in any other of the Member's Accounts together with all earnings thereon credited from the Reserve Account that do not form part of those accounts for any reason, shall be refunded to TRoNT. The Manager may in its sole discretion deduct a fee from the Member's Accounts for the costs associated with administering that Member's membership in the Trust prior to paying any balance of the Member's Accounts to the Member.

### **11.5 Incapacity**

- a In the event of a Member becoming incapable of managing his or her own affairs then the Member's interest in the Trust and any Withdrawal to which such Member is entitled

under this Deed may be administered by the Manager on such person's behalf until such time as a legal representative has been appointed for that Member.

- b Where a Member's legal representative has completed their application form pursuant to clause 4.2c, and that legal representative becomes incapable of managing the Member's affairs, then the Member's interest in the Trust and any Withdrawal to which such Member is entitled under this Deed shall be administered by the Manager on such person's behalf until a new legal representative has been appointed, or in the case of a minor, until the earlier of that minor reaching age 16 or a new legal representative being appointed.

## **12 Registers**

### **12.1 The Register**

- a The Manager shall keep and maintain or cause to be kept and maintained a separate Register of Members.
- b The Register must be kept in New Zealand and may be:
  - i an electronic register; or
  - ii kept in any other reasonable manner that the Manager thinks fit.
- c The Manager will at the request of the Supervisor provide the Supervisor with a copy of each Register.

### **12.2 Details to be entered in Registers**

There shall be entered in each Register:

- a the names and addresses of the Members;
- b the number and type of Units held by each Member;
- c the date on which the name of every person was entered in the Register as a Member;
- d the date on which any person ceased to be a Member; and
- e any other particulars that the Manager may consider to be desirable or as may be required by the Act.

### **12.3 Audit of the Register**

The Manager shall cause the Register of Members for the Trust to be audited by the Auditor at annual intervals or as otherwise required by the Act. The Supervisor may on not more than one other occasion in an Accounting Period for a specified and reasonable purpose request the Manager to cause each Register or one or more of them to be audited. The Manager shall procure that the Auditor, in completing its audit, shall perform any other functions required by the Act, and comply with its obligations under the Act.

### **12.4 Changes of name or address**

Any change of name or address of any Member shall be notified by such Member to the Manager, in such form as the Manager requires from time to time, and the Manager shall alter the Register accordingly.

## 12.5 **Inspection**

Members (and any other person so entitled by the Act) shall be entitled to rights of inspection of the Register as may be conferred on them by relevant law from time to time.

## 12.6 **Reliance upon Register**

Each of the Manager and the Supervisor shall be entitled:

- a to rely absolutely on the Register as being correct; and
- b for all purposes to treat a person whom it believes to be the person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units without further enquiry; and
- c to deal with Units on the basis of the information recorded in the Register without requiring production or surrender of any form of Certificate or other evidence of ownership that may have been issued from time to time in respect of those Units.

## 12.7 **Evidence of entitlement**

Notwithstanding clause 12.6, the Manager shall be entitled, at its absolute discretion before dealing with any Unit to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question.

## 12.8 **No notice of trust etc**

Except as required by law neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of 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 a Register as the Member, and accordingly no notice of any trust, charge, pledge or equity shall be entered upon any Register.

# 13 **Manager's Duties and Powers**

## 13.1 **Manager's duties**

The Trust Fund and each Portfolio shall be managed by the Manager and the Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed. Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or supervisor for trusts whether of a nature similar to or different from the trusts of this Deed. The Manager will observe and perform the manager obligations under this Deed and the Act.

## 13.2 **Manager's general duties**

The Manager must:

- a act honestly in acting as Manager;
- b in exercising any powers or performing any duties as Manager:
  - i act in the best interests of Members;

- ii treat the Members equitably;
- c not make use of information acquired through being the Manager in order to, and ensure that no director or senior manager of the Manager makes use of information acquired through being a director or senior manager in order to:
  - i not gain an improper advantage for itself or any other person; or
  - ii not cause detriment to the Members;
- d ensure that no director or senior manager of the Manager makes improper use of his or her position as a director or senior manager in order to gain, directly or indirectly, an advantage for itself, himself, herself or any other person or to cause detriment to the Members;
- e without limiting sections 147 to 151 of the FMCA, the Manager shall also give the Supervisor or the Custodian or the Auditor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by the Act or reasonably requested by the Supervisor under the Act with respect to all matters relating to the Trust, the Manager and the Investments and the management and administration of each Portfolio.

### 13.3 Prime Services of the Manager

The prime services of the Manager in respect of the Trust shall be the issuing or arranging for the purchase of Units, and procuring contribution to the Trust, investment of the Trust Fund, processing related cash flows, and encouraging and assisting saving and education amongst Ngāi Tahu Whanui members. All other services of the Manager carried out pursuant to this Deed shall be regarded as necessary incidents of the Manager carrying out those prime services, except where an additional service in respect of the Trust is separately agreed between the Manager and the Supervisor as a further incidental service in respect of the Trust.

### 13.4 Manager's Powers

Without prejudice to prime services of the Manager being as described at clause 13.3, the Manager shall manage and administer the Trust and each Portfolio for the benefit of the Members with full and complete power of management. In particular, the Manager shall take all steps which in its discretion are necessary or desirable in relation to each Portfolio, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the assets and liabilities of the Trust. The Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full and absolute power to do the following:

- a undertake any task conducive to encouraging and assisting saving and education amongst Ngāi Tahu Whanui members, without limitation including conducting promotional or educational campaigns and assisting with targeted educational initiatives;
- b make all decisions in relation to acquiring and selling Authorised Investments upon such terms as it sees fit;
- c attend and vote at meetings relating to any Investment;

- d make all decisions relating to borrowing by a Portfolio and the terms of such borrowing and any security relating to such borrowing;
- e make and carry out any takeover proposal, offer or invitation;
- f promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- g create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any assets for any purpose whatsoever, subject to clause 15.2 where Borrowings of the Supervisor are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- h initiate or agree to any one or more of the following:
  - i the release, modification or variation of any rights, privileges or liabilities of or in relation to any Authorised Investments;
  - ii the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
  - iii the amalgamation or merger of any corporation with any other corporation;
  - iv the sale or other disposition of all or any part of the property or undertaking of any corporation;
  - v the sale or other disposition of all or any part of the property or undertaking of any corporation;
  - vi enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
  - vii acquire and accept for the Trust any equity of redemption;
  - viii participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
  - ix enter into, perform and enforce agreements;
  - x institute, prosecute, compromise and defend legal proceedings;
  - xi pay all outgoings connected with the Trust or this Deed which are not otherwise payable by the Manager.

### 13.5 Delegation by Manager

Without in any way affecting the generality of clause 13.1, subject to the Act, the Manager may in carrying out and performing the duties and obligations on its part which are contained in this Deed and subject to the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:

- a delegate all or any of its powers, authorities, functions and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager;
- b by Power of Attorney appoint any Person in any part of the world to be 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;
- c contract or appoint any Person in any part of the world to manage all or any of the Investments of the Trust or to be an agent, sub-manager or co-ordinator, arranger or supervisor or trustee of any Investment Manager or sub-manager in respect of the Investments or any of them of any Portfolio 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 any Portfolio (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 the terms of any such appointment.

### 13.6 **Exercise of voting rights by Manager**

All rights of voting conferred by the Investments shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Member shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. The Manager shall not be under any liability or responsibility in respect of the management of any Portfolio nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall 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 given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no 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.

### 13.7 **Taxation**

The Manager shall ensure that all taxes payable out of the Trust Fund are attributed to all Members on an equitable basis. For the purposes of giving effect to the foregoing, the Manager may:

- a make payment from the assets of the Trust attributable to one Portfolio to another Portfolio, so that, by way of example, if one Portfolio (the 'first Portfolio') is in a tax loss position and another Portfolio (the 'second Portfolio') is required to pay a greater amount of tax than the first Portfolio, the Manager may make a payment from the assets of the Trust attributable to the second Portfolio to the first Portfolio as if the first Portfolio had such assets available to it. Any such payment of assets between Portfolios shall be made on such terms so that the Members with an interest in the affected Portfolios considered generally, are not disadvantaged;
- b from time to time make provisions (which shall include making any withholding or deduction) in relation to the Trust Fund, or any Portfolio, or any asset of the Trust Fund

for any tax (including deferred tax or any withholding tax) which is or is expected to be a liability of, or to become payable:

- c out of the Trust Fund; or
- d by the Supervisor in respect of any asset of the Trust attributable to a Portfolio.

Each such provision shall be of the amount which the Manager determines is appropriate and (except where the amount is determined by law) equitable and shall be made in the manner determined by the Manager from time to time.

## **14 Supervisor's Duties and Powers**

### **14.1 Supervisor's duties**

The Supervisor is responsible for the following functions:

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

The Supervisor must not delegate the functions under this clause 14.1, except as expressly permitted by the Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011.

### **14.2 Supervisor's general duties**

The Supervisor must:

- a act honestly in acting as supervisor;
- b in exercising its powers and performing its duties as supervisor, act in the best interests of the Members;
- c exercise reasonable diligence in carrying out its functions as supervisor;

- d do all the things it has the power to do to cause any contravention referred to in clause 14.1a to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members); and
- e subject to any order of a court under section 210 of the Act, act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with any enactment, rule of law, or this Deed in relation to:
  - i seeking a remedy to a contravention referred to in clause 14.1a; and
  - ii any other matter connected with the Supervisor's functions.

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members.

#### **14.3 Duty of Supervisor to comply with professional standard of care**

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

#### **14.4 Supervisor is trustee**

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

#### **14.5 Power of Supervisor to engage expert**

The Supervisor is entitled, in the performance of the Supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- a determine the financial position of the Manager or the Trust; or
- b review the business, operation, or management systems, or the governance, of the Manager or the Trust.

If the Supervisor engages an expert under this clause:

- a the Manager must provide reasonable assistance to the expert to allow the expert to provide the assistance under this clause;
- b the Manager must pay the fees and expenses of the expert, which must be reasonable in the circumstances; and
- c subject to clause 16.8, the Manager is entitled to be indemnified for those fees and expenses out of the Trust Fund.

## **15 Borrowing Powers**

### **15.1 Power to Borrow**

Subject to clause 15.2 the Supervisor has the power to and must, if so directed by the Manager, borrow and raise money for any of the purposes of the Trust or for the purposes of the Trust in relation to a particular Portfolio or Portfolios, on such terms and conditions as the

Manager and the Supervisor think fit and to mortgage, charge, pledge or otherwise create a security interest over all or any of the assets of the Trust and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

## 15.2 **Limitations on Borrowings**

The following restrictions on the power to Borrow conferred by clause 15.1 apply:

- a the aggregate of the principal moneys Borrowed and outstanding from time to time in respect of the Trust may not exceed 10% of the value of the Investments, as determined by the Manager having regard to generally accepted accounting practice current from time to time;
- b the aggregate of the principal moneys Borrowed and outstanding from time to time in relation to any Portfolio may not exceed 10% of the Portfolio Value of that Portfolio, as determined by the Manager having regard to generally accepted accounting practice current from time to time, and the liability of the Supervisor in respect of any such Borrowing shall be limited to the Investments of the Trust from time to time attributable to the Portfolio;
- c as specified in the SIPO (provided always that clause 15.2a and b above shall be met);

Borrowings shall only be entered into or made where the Manager in good faith determines that the Borrowing is necessary or desirable for the sole purpose of conducting the operation of the Trust Fund pursuant to this Deed, including to provide liquidity for the payment of any Withdrawals from time to time. The Supervisor and any lender may rely upon a certificate given by the Manager as to any determination made under this clause 15.2 without further enquiry.

## 15.3 **Third parties need not enquire**

No Person lending or advancing moneys to the Supervisor or completing documents or securities in respect of any such Borrowing needs to enquire as to whether or not the limitations set out at clause 15.2 have been observed or complied with.

## 15.4 **Supervisor's Limitation of Liability**

Notwithstanding clause 15.1, the Supervisor shall be under no obligation to enter into any obligation for the purposes of the Trust unless the Supervisor's liability under the terms of such obligations is limited to the assets held by the Supervisor from time to time under the terms of this Deed.

# 16 **Supervisor's and Manager's Indemnities**

## 16.1 **Supervisor and Manager in representative capacity**

The Supervisor and the Manager, in incurring any debts liabilities or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of the Trust, are each, and shall each be deemed to be, acting for and on behalf of the Members and not in their own respective capacities.

## 16.2 **No personal liability**

Neither the Manager nor the Supervisor shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust, and the Trust only shall be liable or subject to execution.

## 16.3 **Indemnity**

If contrary to the provisions of clause 16.1, 16.2, and 16.6 either the Manager or the Supervisor shall be held personally liable to any other person in respect of any debt, action taken or omitted, or liability or obligation incurred by or on behalf of the Trust, including in respect of its establishment, then the Manager or the Supervisor (as the case may be) shall be entitled to be indemnified out of the Trust, and to the extent applicable from the part of the Trust Fund attributable to any particular relevant Portfolio or Portfolios, to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined. At any time when both the Manager and the Supervisor have a current right to be indemnified out of the Trust in relation to any event or events (whether related or unrelated) that have occurred, the Manager's right to be indemnified shall be subordinate to, and rank behind, the Supervisor's right to be indemnified at that particular point in time.

## 16.4 **Liability for default**

The Manager and the Supervisor shall each be liable for any loss arising out of wilful default or wilful breach of trust but subject thereto and to clause 16.8 neither the Manager nor the Supervisor shall be liable to the Trust or to any member as a result of acting as Manager or Supervisor (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Trust.

## 16.5 **Reimbursement**

Without limiting the generality of the indemnity provided at clause 16.3, the Manager and the Supervisor shall each be entitled to be reimbursed out of the Trust, and to the extent applicable from the part of the Trust Fund attributable to any particular relevant Portfolio or Portfolios, for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as the case may be) under this Deed at any time in the 6 months preceding the claim for reimbursement, or incurred at any earlier date if the Manager and the Supervisor agree that reimbursement from the Trust Fund is appropriate in all the circumstances. Without prejudice to the generality of the foregoing the Manager and the Supervisor shall be entitled to be indemnified against:

- a any expense or liability which may be incurred by the Manager or the Supervisor (as the case may be) in bringing or defending any action or suit in respect of the Trust or the provisions of this Deed;
- b all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an Authorised Investment, including commission, bank charges and stamp duty; all income tax, capital gains tax, stamp duties, financial institutions duties and bank account debits, taxes or any other duty, tax or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other person) in connection with the Trust Fund;

- c costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Members; costs of convening and holding any meeting of Members; costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with the Trust Fund, pursuant to this Deed or any relevant law;
- d the costs of the preparation and execution of this Deed including the fees of solicitors and other advisers;
- e fees and expenses of the Auditor or any auditor, any solicitor, barrister, computer expert or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this Trust Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 13.5c but, for the avoidance of doubt, this indemnity shall not extend to the Manager's own internal costs for acting as manager of the Trust;
- f expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Registers;
- g all costs, charges and expenses incurred in the advertising and promotion of the Trust Fund or otherwise exercising its powers,

provided that the Manager shall not be entitled to reimbursement for any expenses, losses, costs or liabilities incurred in encouraging and assisting saving and education amongst the members of Ngāi Tahu Whanui except to the extent to which the Supervisor is satisfied that any such expense, loss, cost or liability is properly attributable to the Manager's discharge or attempted discharge of its other powers under this Trust Deed in relation to the management of the Trust and the Trust Fund.

## 16.6 **Limitation on liability**

Without prejudice to the generality of clauses 16.1 to 16.4:

- a the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;
- b the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
- c the Manager and the Supervisor may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted (irrespective of whether the opinion, advice, statement or information in question is obtained by the Manager or the Supervisor or both of them) and neither the Supervisor nor the Manager shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;

- d a certificate given pursuant to this Deed signed by not less than two directors of the Manager on behalf of the Manager:
- i as to any fact or matter prima facie within their knowledge and on which the Supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or
  - ii that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Members or any of them;
- may be relied upon by the Supervisor as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing. The statements contained in any such certificate or certificates or in any report or reports given by or on behalf of the Manager pursuant to the provisions of this Deed shall be regarded as conclusive evidence of the facts stated therein.
- e whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary officer or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager;
- f except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
- g nothing in this Deed shall be deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Related Company of the Manager or any shareholder or officer of the Manager ('Relevant Persons') from being a Member or from acting in any representative capacity for a Member. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, Supervisor, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Member and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- h the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by the Trust as a result of any such documents being held by any such person; and
- i the Members of the Trust or Members with an interest in any relevant Portfolio (as applicable) may by Special Resolution further release the Supervisor or the Manager or both from any liability incurred in relation to the Trust and if applicable, the relevant Portfolio, and indemnify the Supervisor or Manager or both from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or Manager ceasing to act in relation to the Trust.

- j The Manager may from time to time indemnify any contracted Investment Manager of the Trust in relation to any costs and / or expenses incurred in the proper performance of the Investment Manager's duties.

#### 16.7 **Apportionment**

Any expense, cost or liability of the Trust shall be apportioned amongst any one or more of the Portfolios in such equitable manner as the Manager may in its discretion determine, subject to any direction from time to time given by the Supervisor. The Supervisor or the Manager may at any time elect not to seek reimbursement from the assets of the Trust attributable to any particular Portfolio for any expense, cost or liability, without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

#### 16.8 **Degree of care and skill required**

No provision of clauses 16.1 to 16.7 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, or indemnifying the Supervisor or Manager or any such director or officer against, any liability where any such person fails to properly perform its duties under clause 13.2 (in the case of the Manager) or clause 14.2 (in the case of the Supervisor) or fails to exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

#### 16.9 **Best endeavours**

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

#### 16.10 **Manager to provide information**

The Manager shall:

- a make available upon demand to the Supervisor for inspection all books and papers relating to the Trust and each Portfolio; and
- b give to the Supervisor such information as the Supervisor requires with respect to all matters relating to the Trust and each Portfolio.

#### 16.11 **Contrary Intent**

The Supervisor shall not have any duty or obligation to exercise the care, diligence or skill of a prudent person in the business of managing investments, other than to the extent required by the Trust Deed or the Act. It is hereby expressed, as a contrary intention for the purposes of section 13D(1) of the Trustee Act 1956 only, that the duties imposed on the Supervisor by sections 13B and 13C of that Act shall not apply, in relation to the Authorised Investments.

## **17 Investments**

### **17.1 Authorised Investments**

The Trust Fund may be invested in any investment, interest or estate, whether in New Zealand or any other country and whether legal or equitable, corporeal or incorporeal, freehold, leasehold or some other tenure, in or in relation to any or all of:

- a any share, security (as defined in relevant legislation) or like interest in any company, partnership, or other Person;
- b cash deposits with or loans to (with or without security) any Person;
- c debentures, bonds, notes, debt securities (as defined in relevant legislation) or similar obligations (with or without security) issued by any Person;
- d bills of exchange or promissory notes made, drawn, or accepted by any Person;
- e mortgages or submortgages of any real property;
- f Cash, foreign currencies, foreign exchange contracts;
- g any interest of any nature in any real or personal property of any nature whatsoever;
- h Derivatives;
- i Units, sub-units or other interests in any unit trust scheme, group investment fund, or other form of collective investment vehicle;
- j stocks, bonds, mortgages, or securities of, or deposits with, any government, public, municipal or local body or authority in any part of the world;
- k interests in any of the foregoing including interests and assets held by custodians or nominees or in collective or pooled investment schemes but excluding legal title to such assets for so long as they are so held;
- l any other investment, right, interest, obligation or property of any nature whatsoever nominated by the Manager and approved by the Supervisor.

### **17.2 Supervisor's discretion**

The Supervisor shall not act, and will direct any Custodian not to act, on the direction of the Manager to acquire or dispose of any Authorised Investment if in the opinion of the Supervisor conveyed in writing to the Manager the proposed acquisition or disposition:

- a is contrary to the provisions of this Deed;
- b would result in a breach of law;
- c is manifestly not in the interests of Members of the Trust,

and the Supervisor and any Custodian shall not be liable to the Members or the Manager for so refusing to act on any direction or for acting on any direction. If the Supervisor refuses to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for refusal.

### 17.3 **Manager directs Supervisor**

The Manager will manage the Trust and as and when required may, from time to time, in relation to any Portfolio and having regard to the SIPO but subject to clause 17.2, direct the Supervisor or any nominee of the Supervisor appointed in accordance with clause 3.7 in respect of:

- a The investment and management of any Investments;
- b The purchase, acquisition, sale, transfer, replacement and disposition of Investments;
- c The amendment or modification of any Investments; and
- d The entering into of any commitments or liabilities that are related to Authorised Investments,

and the Supervisor or any Custodian will from time to time, to the extent of the Portfolio available at the time, act as directed in writing by the Manager.

### 17.4 **Vesting and Custody of Investments:**

Any Investments shall as soon as reasonably practicable after acquisition by the Supervisor be held by the Supervisor or any Custodian on trust for the Trust, and the documents (if any) evidencing the Investments shall be held in safe custody by the Supervisor or any Custodian, and shall remain so vested and held until the same shall be sold or disposed of pursuant to the provisions of this Deed. The Supervisor shall be jointly and severally liable with any company nominated by the Supervisor in accordance with this clause for the performance of the functions imposed pursuant to the Act with respect to the Trust.

### 17.5 **Action on limit breaks**

The Manager must report to the Supervisor any breaches of any limits under the SIPO and take any action required to the extent required by the Act.

### 17.6 **Pricing Errors**

The Manager must report to the Supervisor in relation to any material pricing error or material non-compliance with any methodology for pricing managed investment products set out in this Deed or notices issued by the FMA, and must correct such error or non-compliance and take any prescribed steps, to the extent required by the Act. For the purposes of section 168 of the Act and regulation 99 of the Financial Markets Regulations 2014, the minimum reimbursement or compensation level for pricing errors or non-compliance is an amount determined by the Manager on a case-by-case basis based on relevant industry guidelines which take into account the size, type, and/or frequency of the issue and the costs of reimbursement or compensation.

### 17.7 **Related party transactions**

The Manager (and any contracted Investment Manager, or other person to whom the Manager has contracted out or delegated some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given, except to the extent permitted by the Act.

## **18 Credited Earnings**

### **18.1 Determination of Credited Earnings Rates**

For the purpose of distributing investment earnings (net of expenses) of the Trust Fund to Members' Accounts and the Reserve Account the Manager shall after each Quarterly Date, or at such other times as the Manager shall decide, determine a Credited Earnings Rate for the Trust or each Portfolio (as applicable) to be applied for the previous quarter. The Credited Earnings Rate shall take account of all investment earnings for the previous quarter including realised and unrealised capital gains, accrued interest, dividends, any taxes or duties payable, and all fees and expenses which can be properly be debited to the Trust Fund. For the avoidance of doubt, the Credited Earnings Rate may be negative.

### **18.2 Determination of Interim Credited Earnings Rate**

For the purposes of the determination of Withdrawal amounts, the Manager may from time to time declare an Interim Credited Earnings rate for the Trust or any Portfolio to apply for any period or periods prior to the determination of the first Credited Earnings Rate or after the period to which the Credited Earnings rate last determined in terms of clause 18.1 applies.

### **18.3 Allocation of Credited Earnings as at Quarterly Dates**

The Manager shall have absolute discretion in determining the Credited Earnings to be credited to Member's Accounts and, at the Manager's discretion, the Reserve Account. For the purposes of determining the amount of Credited Earnings to be credited to Members Accounts and the Reserve Account as at the end of each quarter (or such other times that the Manager has decided under clause 18.1) the Manager shall have regard to the Credited Earnings Rate for each Portfolio Election (if any) of each Member (and the Manager in respect of the Reserve Account). In allocating Credited Earnings the Manager shall not have the power to reduce the Credited Earnings for the purpose of transferring a loss in one Portfolio to another Portfolio. The Credited Earnings Rate shall be applied at the end of each quarter to the daily balances of Members' Accounts (and, unless the Manager determines otherwise, the daily balance of the Reserve Account) during the quarter.

### **18.4 Allocation of Credited Earnings in respect of Withdrawals**

For the purpose of determining the amount of Credited Earnings to be credited to a Member's Accounts in the event of a Withdrawal which, at the Manager's discretion, is to include Credited Earnings up to the date of Withdrawal and will result in an Account having a zero balance the Interim Credited Earnings Rate shall be applied to the daily balances of the Account up to the date of Withdrawal. Unless the Manager in its discretion determines otherwise, no adjustment shall subsequently be made in respect of that Member's Withdrawal amount for any difference between the Interim Credited Earnings rate and the Credited Earnings Rate determined by the Manager at the end of the quarter.

## **19 Remuneration of the Supervisor**

### **19.1 Remuneration basis**

The Supervisor shall be paid out of the Trust Fund, in respect of each Portfolio a fee as agreed upon with the Manager from time to time, in respect of each Portfolio, for its services as Supervisor of the Trust.

## 19.2 Reimbursement of taxes

The Supervisor shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985 ('GST').

## 19.3 Fee calculated on a daily basis

The fee referred to in clause 19.1 shall be calculated and accrued daily on the basis of the relevant Portfolio Value from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of the Portfolio in question from time to time) and paid monthly in arrears.

## 19.4 Supervisor's expenses

Notwithstanding clauses 19.1 and 19.2, in consideration of the Supervisor agreeing to act as supervisor of the Trust, but except to the extent such expenses are reimbursed to the Supervisor directly by the Manager, the Supervisor shall be entitled to deduct from each Portfolio:

- a the Supervisor's reasonable legal expenses in respect of the preparation and ongoing advice in respect of this Deed; and
- b the Supervisor's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor reasonably contemplated by this Deed,

net of any GST input credit of the Supervisor (if any), including, without limitation, convening meetings, attendances at meetings, modification of this Deed, waiver of breaches, and winding up or amalgamation of any of the Portfolios. Unless the Supervisor and the Manager are satisfied that any such expenses relate to just one Portfolio, the Manager shall apportion such expenses across each Portfolio on an equitable basis (as determined by the Manager in its discretion).

## 20 Removal And Retirement Of Supervisor

### 20.1 Removal under law

The Supervisor may be removed from office as supervisor:

- a by the FMA, if the FMA is satisfied that the Manager and the Supervisor no longer meet the requirements of section 127(1)(e) of the Act;
- b by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011; or
- c subject to clause 20.3, by a Special Resolution.

### 20.2 Retirement

Subject to clause 20.3, the Supervisor may retire at any time without assigning any reason upon giving ninety (90) days' notice in writing to the Manager of its intention so to do and subject to the due appointment of a new Supervisor and the transfer to such new Supervisor of all of the Investments and all other property or assets of any nature of the Trust Fund.

### 20.3 **Restrictions on removal or retirement of Supervisor**

The Supervisor may not be removed or retire under clauses 20.1 or 20.2 respectively unless:

- a all functions and duties of the position have been performed; or
- b another licensed supervisor has been appointed, and has accepted the appointment, in its place; or
- c the High Court consents.

### 20.4 **Appointment of new Supervisor**

The power of appointing a new Supervisor of the Trust (in place of a Supervisor which has retired pursuant to clause 20.2 or been removed from office pursuant to clause 20.1) shall be vested in the Manager with the prior approval of TRoNT. No person shall be appointed as a new Supervisor unless qualified to act as such pursuant to section 5 of the Act. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution at a meeting of Members of the Trust.

## 21 **Costs of the Manager**

### 21.1 **Management Costs**

The Manager shall be paid out of the Trust Fund, in respect of each Portfolio, all costs and expenses attributable to its role as Manager of the Trust (in addition to those set out in clause 16.5) for the prime services of the Manager referred to in clause 13.3 (net of any GST input credit to the Manager). For as long as the Manager's only function is to act as manager of the Trust, all the Manager's proper costs and expenses that have not been met from any other source shall be paid out of the Trust Fund.

### 21.2 **Manager's entitlements**

The Manager shall be entitled:

- a at its sole discretion at any time and from time to time to waive or reduce the Management Costs either generally or in relation to a particular Portfolio or Portfolio or Member or category of Members or Transaction;
- b to receive, in addition to the Management Costs, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax as that term is defined in the Goods and Services Tax Act 1985.

### 21.3 **Calculation of costs**

The Management Costs shall be calculated on such basis as the Manager and the Supervisor may agree in respect of the Portfolio in question from time to time and paid monthly in arrears.

### 21.4 **No profit**

The Manager shall be fully reimbursed from the Trust Fund for any costs and expenses, but shall not be entitled to any further payments from the Trust Fund for its role as Manager of the Trust.

## **22 Removal and Retirement of Manager**

### **22.1 Removal**

- a The Manager shall cease to hold office as manager of the Trust if:
  - i The Manager is removed from office by the High Court as provided in the Act or by such other means as may at any relevant time be prescribed by law;
  - ii The Manager is removed by written direction of the Supervisor after the Supervisor certifies that it is in the best interests of the Members of the Trust that the Manager should cease to hold office;
  - iii The Members of the Trust by Special Resolution direct that the Manager should cease to hold office; or
  - iv The Manager shall have a receiver appointed or if an order is made or a resolution passed for the liquidation of the Manager.
- b If the Manager ceases to hold office pursuant to clause 22.1a, the Manager and any delegate of the Manager shall immediately desist from all activities related to the Trust unless the Supervisor agrees to the contrary.

### **22.2 Retirement**

The Manager may retire without giving any reason upon giving not less than ninety (90) days' notice in writing to the Supervisor of its intention to do so, or such lesser notice as the Supervisor may in its discretion accept at the time. No such retirement shall take effect until a new Manager has been appointed and has executed the deed as referred to in clause 22.5.

### **22.3 Temporary Manager**

The Supervisor shall have power to appoint a temporary Manager upon a vacancy in the office of Manager. Such temporary Manager shall have all the powers conferred on the Manager by this Deed or by law until a replacement Manager is appointed.

### **22.4 Replacement Manager**

The Supervisor shall upon a vacancy in the office of Manager occurring take all reasonable steps to appoint a replacement Manager. If no such appointment is made within 60 days after the vacancy occurs, the Supervisor shall summon a meeting of Members and shall take such steps as that meeting or any subsequent meeting of Members may require to secure the appointment of a new Manager of the Trust. TRoNT's approval must be obtained before a replacement Manager is appointed.

### **22.5 Retiring Manager released**

A new Manager appointed pursuant to clause 22.4 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Members to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and

obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

## **23 Other Costs**

- 23.1 The Manager shall be entitled to pay from the Trust Fund any other costs reasonably incurred in managing the Trust, including;
- a The costs of any Investment Manager;
  - b The costs of and / or associated with administration of the Trust;
  - c The costs the Supervisor;
  - d The costs of the Custodian.

## **24 Limitation of Liability**

### **24.1 Limitation**

Subject to clauses 16 and 27.4 but notwithstanding anything else contained in this Deed or any rule of law:

- a no Member shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Trust or any Portfolio;
- b nothing in this Deed or in the relationship between the Members shall be deemed to create a partnership amongst Members;
- c subject to clauses 3.5, 7 and 31.3, neither the Supervisor nor the Manager shall be or act as agent for the Members in respect of any interest in any Portfolio, and neither shall have power to incur liabilities on behalf of any Member or pledge the credit of any Member beyond the extent of their investment in the Trust.

## **25 Financial Statements**

### **25.1 Accounting Records**

The Manager shall keep or cause to be kept proper accounting records of or relating to the Trust and the Portfolios and shall keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Trust and the Portfolios and the matters in respect of which such receipt and expenditure takes place and of all the sales, purchases and other transactions relating to the Investments and the Liabilities of the Trust or Portfolios (as applicable), the issue of Units and of all other matters for which accounting records should properly be kept. The Supervisor shall provide from time to time to the Manager any information necessary for this purpose.

### **25.2 Annual financial statements**

The Manager shall cause to be prepared annual Financial Statements in respect of the Trust for each Accounting Period together with such other financial statements in respect of each Portfolio as the Manager and the Supervisor may agree from time to time.

### 25.3 **Audit**

All Financial Statements prepared in accordance with clause 25.2 shall be audited by the relevant Auditor who shall report to the Manager in accordance with law.

### 25.4 **Reports to Supervisor**

The Manager in respect of each Portfolio shall furnish to the Supervisor at the same time as the Manager furnishes to the Supervisor a copy of the annual Financial Statements pursuant to clause 25.6, a separate report by the Auditor stating the matters agreed from time to time by the Auditor, the Manager and the Supervisor.

### 25.5 **Manager's certificate**

The Manager shall furnish to the Supervisor a certificate relating to the management of the Trust and each Portfolio in such form and at such times and the Manager and the Supervisor may from time to time agree.

### 25.6 **Annual Reports**

Within four (4) calendar months of the end of each Accounting Period or otherwise as prescribed by law, the Manager shall forward to the Supervisor and to each Member as at that date:

- a a copy of the annual Financial Statements of the Trust together with the Auditor's report thereon; and
- b such other material or information as may be prescribed by law, or as may otherwise be agreed between the Manager and the Supervisor from time to time.

### 25.7 **Regulatory compliance**

The Manager shall at all relevant times provide, file, or lodge all reports, returns, statements, information or other material required by law to be provided, filed, or lodged with the Supervisor, any public registry, or regulatory authority.

## **26 Auditor**

### 26.1 **Audit**

The Manager shall ensure that the Financial Statements for the Trust are audited and reported on by the Auditor in accordance with the requirements of the Act, and that a copy of the Financial Statements and the Auditor's Report thereon are forwarded promptly to the Supervisor, and to the extent required by law to every Member within any timeframe prescribed by law from time to time.

### 26.2 **Appointment**

The auditor of the Trust shall be a qualified auditor, as that term is defined in the Act, appointed by the Manager in consultation with the Supervisor.

The Manager must:

- a before recommending the appointment or reappointment of a person as an Auditor:
  - i consult with the Supervisor on the appointment or reappointment; and

- ii ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
- b notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
- c not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

The Manager must, before recommending the appointment or reappointment of a person as the Auditor:

- a give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Manager's compliance with this Deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
- b consult with the Supervisor on the nature and scope of any such engagement.

The Manager must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:

- a that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Manager being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor;
- b that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Manager being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement;
- c that the Auditor will, at the request of the Supervisor, provide the Supervisor with any information relating to the Manager that the Supervisor requests, that is within the Auditor's knowledge, and that is, in the Auditor's opinion, relevant to the exercise or performance of the Supervisor powers or other duties of the Supervisor; and
- d that the Auditor will report serious problems in relation to the Manager as required by section 199 of the Act.

### 26.3 Remuneration

The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Fund and apportioned between the various Portfolios in accordance with clause 16.7.

## 26.4 Removal

The Auditor may at any time be removed from office by the Manager, after consultation with the Supervisor or by a Special Resolution. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.

## 26.5 Vacancy

Any vacancy in the office of the Auditor occurring under clause 26.4 shall be filled by the Manager (after consultation with the Supervisor) appointing an auditor qualified for appointment in terms of clause 26.2.

## 27 Taxation Liability

### 27.1 Definitions

In this clause 27:

'**Relevant Person**' means a Member and the Member's personal representatives or successors;

'**Tax**' includes all taxes, duties levies and other charges including penalties and interest.

'**Taxation Amount**' means, in relation to a Relevant Person:

- a any tax payable by or on account of that person or in respect of that person's Units or any contribution received in respect of that person;
- b any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Member.

### 27.2 Deductions

The Supervisor or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from the Trust Fund or (if applicable) from any relevant Portfolio.

### 27.3 Application of deduction

Amounts deducted under clause 27.2 shall be applied in:

- a payment of the Taxation Amount to the Person entitled thereto, or
- b reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and
- c any balance shall be refunded to the Relevant Person.

### 27.4 Indemnity

Each Relevant Person shall indemnify the Supervisor (or any Custodian) and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Supervisor (or any Custodian) in respect of that Relevant Person.

## 27.5 Interest

Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

## 28 Meetings of Members

### 28.1 Request of Members

Subject to clause 28.3, the Manager shall summon a meeting of the Members of the Trust or Members with an interest in a particular Portfolio, upon the request in writing of:

- a the Supervisor;
- b Members holding Units that have a combined value of no less than 5% of the value of Units on issue in any particular Portfolio or Portfolios; or
- c any other person entitled by the Act to summon a meeting.

### 28.2 Manager's holding

For the purposes of clause 28.1, the Manager's holding in the Reserve Account shall not be taken into account when assessing whether or not the required thresholds for calling meetings have been met.

### 28.3 Manager may convene

Notwithstanding clause 28.1, the Manager may at any time after prior consultation with the Supervisor, convene a meeting of the Members of the Trust, or of Members with an interest in any particular Portfolio or Portfolios.

### 28.4 Proceedings

All meetings of Members shall be convened and held in accordance with the provisions set out in the Schedule to this Deed and otherwise as prescribed by law.

### 28.5 Directions

The Members of the Trust or Members with an interest in any Portfolio shall, by means of a Special Resolution, have the power to give such directions to the Supervisor as they think proper concerning the Trust, or that Portfolio as applicable being directions that are consistent with the provisions of this Deed and any relevant law.

### 28.6 Discretion

Where any direction is given to the Supervisor pursuant to clause 28.5 in respect of any matter the Supervisor may (but shall not be obliged to) comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Supervisor may at its discretion apply to the High Court for directions in respect of the matter.

## **29 Notices**

### **29.1 To Member**

Any notice to be given to any Member may be given either personally or by sending it by post to the address of the Member shown in the relevant Register or by Electronic Communication. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the third day following the day of posting.

### **29.2 Notice to manager, legal representative etc**

A notice may be given by the Manager to the manager of a mentally disordered person, or the Persons entitled to a withdrawal in consequence of the death or bankruptcy of a Member, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

### **29.3 Notice where no address**

If any Member has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two (2) notices posted to a Member are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Member shall give notice in writing to the Manager of some other address, the address of the Member for all purposes of this Deed shall be deemed to be the Office.

### **29.4 Calculation of notice period**

Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.

### **29.5 Notice to Supervisor or Manager**

Any notice, communication, certificate or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice PROVIDED THAT the Manager and the Supervisor may agree from time to time as to certain notices or communications that may be given by Electronic Communication.

### **29.6 Copy of notice to Members**

A copy of every notice given to Members under this Deed shall be given, at the same time at which it is given to the Members, to the Supervisor.

## **30 Amendments to Deed**

### **30.1 Power to amend**

The Supervisor and the Manager may, with the prior approval of TRoNT, at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager):

- a if the Supervisor is satisfied that the change does not have a material adverse effect on Members; or
- b if the change is approved by, or contingent on approval by a Special Resolution or Special Resolutions of the Members that are or may be adversely affected by the change.

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

### **30.2 Procedure for amendments**

Prior to any amendment in accordance with clause 30.1, the Supervisor will obtain and/or provide any certificates required by the Act. Where any amendment has been made to this Deed the Manager will notify all Members or the affected Members within such timeframe (if any) as may be prescribed by law from time to time, in accordance with clause 29 or in such other form as the Manager and the Supervisor consider appropriate in the circumstances.

## **31 Winding Up**

### **31.1 Winding up generally**

The Trust shall determine and be wound up upon the occurrence of the earliest of the following events:

- a if the winding up is authorised pursuant to clause 31.2;
- b the expiration of a period of eighty (80) years less one day from the date of the Original Trust Deed, or such greater period as may be permitted by law from time to time for the operation of trusts similar in nature to the Trust; or
- c if the Trust is required to be wound up under the Act.

### **31.2 Power to commence winding up**

- a Where the Manager believes that it is in the best interests of Members to wind up the Trust, and has the prior approval of TRoNT, the Manager may give notice to the Members setting out details of the reasons for the winding up of the Trust and stating that if Members holding 10% or more of the value of the Units in the Trust on the date of that notice give notice to the Manager within thirty (30) days of the date of the notice that they disapprove of the proposed winding up then the Manager will call a meeting of Members to consider the proposed winding up.
- b If Members holding 10% or more of the value of Units in the Trust give notice requiring a meeting the Manager shall forthwith convene a meeting of Members to consider the proposed winding up. If at a meeting duly convened and held the Members by Special

Resolution approve the proposed winding up then the winding up shall be authorised for the purposes of clause 31.1a,

provided that the Manager's holding in the Reserve Account shall not be taken into account when assessing whether or not the required thresholds in these clauses a or b have been met.

### **31.3 Notice by Supervisor:**

The Supervisor shall within fourteen (14) days after the occurrence of any event referred to in clause 31.1 give to each Member notice of the occurrence of that event and of the intention of the Supervisor to distribute the Trust Fund. From the date of the giving of such notice no further requests for withdrawals or applications for Units shall be accepted.

### **31.4 Procedure**

The Supervisor shall as soon as is practicable after the occurrence of an event referred to in clause 31.1 (but subject to compliance with clause 31.2):

- a sell, call in and convert into cash the whole of the Trust Fund;
- b pay out, discharge or otherwise make proper provision for the Liabilities of the Trust;
- c distribute the Trust Fund (or so much of the Trust Fund as may from time to time be available for distribution), less all costs and expenses incurred by the Supervisor and the Manager in respect of the winding up, amongst Members in proportion to the value of the respective Units held by them as at the date notice is given under clause 31.2, based on the value of those Units determined in respect of that date.

### **31.5 Winding up of a Portfolio**

A Portfolio shall determine and be wound up upon the occurrence of the earliest of the following events:

- a if the Manager resolves to wind up that Portfolio or to wind up every Portfolio and gives notice to the Supervisor accordingly; and
- b if the Trust is wound up.

### **31.6 Procedure for Winding up Portfolio**

Within 14 days of winding up a Portfolio under clause 31.5, the Manager must give to each Member holding Units in the Trust relating to the relevant Portfolio or Portfolios notice of the winding up and of the intention of the Manager to reinvest the assets of the Trust attributable to that Portfolio or those Portfolios. From the date of the giving of such notice no withdrawal requests shall be given in respect of Units relating to that Portfolio or those Portfolios. Such notice shall invite the Member to make a new Portfolio Election. A notice given by the Manager pursuant to this clause will contain such requirements and be in such form as the Manager may prescribe from time to time. A notice given by the Manager pursuant to this clause may also specify a particular Portfolio ('Default Portfolio') in favour of which the relevant Member shall be deemed to have made a Portfolio Election if no Portfolio Election is received from the Member prior to that time.

**31.7 Cashing Up of Portfolio**

Following the expiration of the notice period prescribed in clause 31.6, the Manager shall as soon as is practicable and in respect of each Portfolio in question:

- a sell, call in and convert into Cash the whole of the Investments of the Trust attributable to that Portfolio; and
- b pay out, discharge or otherwise make proper provision for the Liabilities of the Trust attributable to that Portfolio.

**31.8 Reinvestment of Portfolio**

The Cash held in respect of each relevant Member, following the cashing up of a Portfolio in accordance with clause 31.7 shall be reinvested by the Manager:

- a in accordance with any Portfolio Election given by that Member; or
- b in the absence of a Portfolio Election, in the Default Portfolio as specified by the Manager pursuant to clause 31.6.

**31.9 Supervisor's Obligations**

In addition to the above, the Supervisor will comply with its obligations as set out in the Act in respect of the winding up of the Trust or relevant portfolio.

**32 Contracts (Privity Act) 1982**

32.1 For the purposes of the Contracts (Privity Act) 1982, the Manager and the Supervisor acknowledge that this Deed confers legally enforceable benefits on each Member, subject to compliance with the terms of this Deed.

**33 Governing Law**

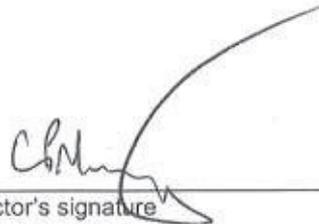
**33.1 New Zealand Law**

This Deed shall be governed by and construed in accordance with the law of New Zealand.

**Execution**

Signed for Whai Rawa Fund Limited  
by:

  
\_\_\_\_\_  
Director's signature  
KRISTEN KOHERE-SOUTHERN  
Director's name

  
\_\_\_\_\_  
Director's signature  
CHRISTOPHER ARI MURPHY  
Director's name

SIGNED by  
Trustees Executors Limited by



*[Handwritten signature]*

Authorised Signatory

[Sign]

Robert Gatward

[Print name in full]

*[Handwritten signature]*

Authorised Signatory

[Sign]

Melanie Lyn Hewitson

[Print name in full]

Witness to Authorised Signatory's signature:

Witness to Authorised Signatory's signature:

Signature: *[Handwritten signature]*  
[Print name in full]

Signature: *[Handwritten signature]*  
[Print name in full]

Occupation: Business Analyst  
Auckland

Occupation: Business Analyst  
Auckland

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Address: Level 7, 51 Shortland Street  
PO Box 4197  
Auckland 1140

Facsimile: (09) 308 7101  
For: Robert Gatward (Team Manager)

Signed for Te Rūnanga o Ngāi Tahu  
by:

*[Handwritten signature]*

Authorised Signatory

[Sign]

JULIAN WILCOX

[Print name in full]

Witness to Authorised Signatory's signature:

Signature: *[Handwritten signature]*  
[Print name in full] Matthew Ian Rush

Occupation: Solicitor

Address: Christchurch

## **Schedule 1 Meetings of Members**

Pursuant to Regulation 83(1)(b) of the Financial Markets Conduct Regulations 2014, these meeting provisions represent, to the extent permitted, a departure from the meetings procedures set by Schedule 11 of the Financial Markets Conduct Regulations 2014.

### **1 Venue of Meetings**

- 1.1 A meeting of the Members of the Trust or of Members with an interest in any Portfolio shall be held in such place in the city or town in which the Office is situated or as the Manager determines.

### **2 Notice of Meetings**

- 2.1 Notice of every meeting must be approved by the Supervisor five (5) Working Days' prior and shall be given in the manner provided in this Deed to:
- a every Member of the Trust or every Member with an interest in the Portfolio (as appropriate) who has supplied to the Manager an address for the giving of notices;
  - b every person upon whom the ownership of any Unit of the Trust or who has an interest in a Portfolio (as appropriate) devolves as a legal personal representative or an assignee in bankruptcy of a Member where the Member but for death or bankruptcy would be entitled to receive notice.
- 2.2 A copy of the notice shall be sent to the Supervisor, the Manager, every director of the Manager, and the auditor of the Manager at the same time as notice is sent under paragraph 2.1.
- 2.3 At least fifteen (15) working days' notice of every meeting shall 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 shall specify:
- a the place, day, and hour of the meeting;
  - b the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it;
  - c the text of any Special Resolution to be submitted to the meeting;
  - d the right of a Member to appoint a proxy.
- 2.4 If a Special Resolution is to be submitted to the meeting:
- a a draft of the proposed notice (including any explanatory memorandum or similar document that will accompany the notice) must be given to the Supervisor at least ten Working Days before the notice is given to Members (or any lesser period approved by the Supervisor); and
  - b the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Manager at least five Working Days

before the notice is to be given to Members, or any lesser period approved by the Manager).

- 2.5 An irregularity in a notice of meeting is waived if:
- a all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver; or
  - b the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Members.
- 2.6 The accidental omission to give notice to or the non-receipt of notice by a Subscriber entitled to that notice does not invalidate proceedings at any meeting.
- 2.7 A notice of meeting that contains a Special Resolution to approve a Related Party Benefit must contain, and be accompanied by, the matters required by the Act.

### **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 Members shall be:
- a Members present in person or by proxy or by attorney or by Authorised Representative holding not less than, in the case of a meeting at which a Special Resolution is to be submitted, Units with a combined value of no less than twenty five (25) per cent of the value of Units of the Trust held by those members who are entitled to vote on the business to be transacted at the meeting; and
  - b in any other case, at least 2 Members present in person or by proxy or by attorney or by Authorised Representative holding not less than ten (10) percent of the value of Units of the Trust.
- 3.3 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Members shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than ten (10) working days thereafter and to such place as may be appointed by the Chairman and at such adjourned meeting if a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person or by proxy or by attorney or by Authorised Representative appointed pursuant to paragraph 10 of this Schedule and entitled to vote whatever the value of Units held by them shall be a quorum.
- 3.4 To avoid doubt, a Member participating in a meeting by means of audio, audio and visual, or Electronic Communication is present at the meeting and part of the quorum.
- 3.5 Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Members present at the adjourned meeting whatever their number and whatever the value of Units held by them shall form a quorum.

## **4 Supervisor and Manager may attend and speak**

- 4.1 Any director, officer or solicitor and any other person or persons authorised in that behalf by the Supervisor or the Manager may attend any meeting and all such persons shall have the right to speak at the meeting in that capacity but shall have no voting rights.

## **5 Chairman**

- 5.1 A person nominated in writing by the Supervisor shall preside at every meeting.

## **6 Adjournment of Meetings**

- 6.1 The chairman may with the consent of any meeting at which a quorum is present and shall 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 shall be the Members registered in the 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 For the avoidance of doubt, except where permitted by the Act, the Manager and its Associated Persons are not entitled to, and must not, vote their interest on a resolution of Members if they have an interest in the resolution or matter other than as a Member.

## **8 Proxies**

- 8.1 Votes may be given either personally or by proxy or by attorney and also in the case of a corporation by an authorised representative. An instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairman of the meeting or an officer of the Supervisor is appointed a proxy for a Member and the Member 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 the proxy is to vote upon any resolution coming before the meeting the vote shall be used in favour of the resolution.
- 8.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or of an attorney duly authorised in writing or if the appointer is a corporation either under seal or under the hand of an officer or attorney so authorised.
- 8.4 A person appointed to act as a proxy need not be a Member.
- 8.5 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 certified by a notary public or in such manner as the Manager shall approve shall be deposited at such place as the Manager may in the notice convening the meeting appoint or (if no such place is appointed) then at the Office not less than forty-eight (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 and in default the instrument of proxy shall not be treated as valid provided

that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.

- 8.6 A proxy shall unless the contrary is stated thereon be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve (12) months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.
- 8.7 An instrument or proxy in favour of the chairman of the meeting or the chairman, (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointer.
- 8.8 A person appointed proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Member concerned.
- 8.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or the transfer of the Units in respect of which the vote is given provided that no intimation in writing of such death, mental disorder, revocation or transfer is received by the Manager at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **9 Power of Attorney**

- 9.1 Any Member may by power of attorney appoint an attorney (who need not be a Member) to vote and act on behalf of the Member at any meeting and such power of attorney or proof thereof to the satisfaction of the Manager shall (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 Office. Such attorney if so empowered may appoint a proxy for the Member granting the power of attorney.

## **10 Representative of the Company**

- 10.1 A person authorised pursuant to a resolution of the directors or other governing body of a corporation which is a Member to act for it as its representative at any meeting ('Authorised Representative') shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Member.
- 10.2 An Authorised Representative shall be entitled to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting, or for the taking of a poll, at which the Authorised Representative proposes to vote.

## **11 Procedure**

- 11.1 A resolution put to the vote of a meeting shall 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 chairman or

the Supervisor or any representative of the Supervisor or by one or more Member holding or representing not less than five (5%) per cent of the value of Units in the Trust or relating to the relevant Portfolio (as applicable). Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 11.2 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 11.3 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Member or on behalf of Members.
- 11.4 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty (30) days from the date of the meeting) and place as the chairman may direct. The result of such poll shall be 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.
- 11.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 11.6 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 votes or cast all the votes used in the same way.
- 11.7 On a show of hands every person present at the meeting and entitled to vote (whether as a Member or as a proxy or attorney or Authorised Representative) shall have one vote only. On a poll every Member who is present in person or by proxy or by attorney or by an Authorised Representative shall be entitled to one vote for every whole Unit held.

## **12 Resolutions**

- 12.1 The expression 'Special Resolution' has the meaning given to it in the Act.
- 12.2 A meeting of Members of the Trust shall have the following powers exercisable by Special Resolution:
  - a Power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Members of the Trust howsoever such rights shall arise;
  - b Power to assent to any alteration, modification, variation, or addition to the provisions contained in the Trust Deed or any Deed supplemental thereto or the conditions attaching to the Units of the Trust and to authorise the Manager and Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;

- c Power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
- d Subject to the Act, power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
- e Power to appoint a new Supervisor of the Trust if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new Supervisor pursuant to clause 20.4;
- f Power to give directions to the Supervisor of the Trust as to the appointment of a new Manager in accordance with clause 22.4 of the Deed;
- g Power to sanction the winding up of the Trust.

12.3 A meeting of holders of Units relating to a Portfolio shall have the following powers in respect of that Portfolio exercisable by Special Resolution:

- a Power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the holders of Units relating to that Portfolio howsoever such rights shall arise;
- b Power to assent to any alteration, modification, variation or addition to the terms of that Portfolio, and to authorise the Manager and Supervisor to concur in an execute or issue any supplemental or replacement terms or any other document embodying any such change, notwithstanding that such change might be inconsistent with or not contemplated under any disclosure material previously issued that relates to that Portfolio;
- c Power to give any sanction, assent, release or waiver of any breach or default in relation to that Portfolio by the Manager or the Supervisor under any of the provisions of this Deed;
- d Subject to the Act, power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission in relation to that Portfolio for which the Manager or the Supervisor has or may become responsible under this Deed;
- e Power to sanction the winding up of that Portfolio

**PROVIDED THAT** no such sanction, assent, release or waiver shall be effective if it materially and adversely affects:

- the interests of Members generally, without the approval of a separate Special Resolution of the Members of the Trust; or
- the interests of certain Members generally (being holders of Units relating to another particular Portfolio or Portfolios), without the approval of a separate Special Resolution passed in relation to every Portfolio so affected.

## 13 Special Resolution Binds All Members

13.1 Subject to the proviso to paragraph 12, a Special Resolution passed at a meeting duly convened and held in accordance with this Schedule shall be binding upon all Members

whether present or not present at the meeting and each of those Members, the Supervisor and the Manager shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Manager, the Supervisor and those Members be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

## **14 Minutes to be kept**

- 14.1 Minutes of all resolutions and proceedings at every meeting shall be made by the Supervisor or if the Supervisor shall not be present at any meeting by some person appointed by the chairman of such meeting and duly entered in books from time to time provided for that purpose by the Supervisor and any such minutes as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Members shall be prima facie evidence of the matters therein stated and until the contrary is proved every respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had.