Merx Private Credit Fund

Deed of Amendment and Restatement

in relation to the Merx Wholesale Unit Trust Scheme Master Trust Deed and the Merx Private Credit Fund (formerly the MERX Wholesale 1 PIE Trust) – Establishment Deed

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Merx Funds Management Limited (**Manager**)
Public Trust (**Trustee**)

Deed of Amendment and Restatement

in relation to the Merx Wholesale Unit Trust Scheme Master Trust Deed and the Merx Private Credit Fund (formerly the MERX Wholesale 1 PIE Trust) – Establishment Deed

Details		**3**
Agreed terms		**4**
1.	**Defined terms and interpretation**	**4**
1.1	Defined terms	4
1.2	General construction	4
2	**Variation of Trust Deeds**	**4**
2.1	Variation of Master Trust Deed	4
2.2	Variation of Establishment Deed	4
3.	**Appointment of Trustee**	**4**
3.1	Appointment of Trustee	4
4.	**Transfer and vesting of Scheme property**	**4**
4.1	Transfer of Scheme Property	4
4.2	Trustee to hold Scheme Property	4
4.3	Parties to execute documents	5
5.	**Indemnity**	**5**
5.1	Indemnity in favour of Trustee	5
6.	**Miscellaneous**	**5**
6.1	Severance	5
6.2	Counterparts	5
6.3	Delivery	5
6.4	Governing Law	5
Signing Page		**6**
Schedule 1 - Amended Master Trust Deed		
Schedule 2 - Amended Establishment Deed		

Deed of Amendment and Restatement

in relation to the Merx Wholesale Unit Trust Scheme Master Trust Deed and the Merx Private Credit Fund (formerly the MERX Wholesale 1 PIE Trust) – Establishment Deed

DETAILS

Date

8 January 2026

Parties

Name	**Merx Funds Management Limited**	
Short form name	**Manager**	
Notice Details	Attention:	Andrew Dunning
	Email:	andrew@merx.co.nz
	Address:	Level 15, 51 Shortland Street, Auckland CBD, Auckland 1010, New Zealand

Name	**Public Trust**	
Short form name	**Trustee**	
Notice Details	Attention:	Susanna Lee
	Email:	susanna.lee@publictrust.co.nz
	Address:	Level 16, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

BACKGROUND

A. The Manager is party to a master trust deed dated 30 June 2022 and as amended on 12 December 2023 (**Master Trust Deed**) for the Merx Wholesale Unit Trust Scheme (the **Scheme**) and an establishment deed dated 30 June 2022 and as amended on 12 December 2023 (**Establishment Deed**) for the MERX Wholesale 1 PIE Trust (to be renamed the Merx Private Credit Fund) (the **Fund**).

B. Pursuant to clause 26.1 of the Master Trust Deed and clause 13.1 of the Establishment Deed, the Manager may amend and restate those deeds where the amendment or replacement is approved by written special resolution. The Unitholders of the Fund have approved the amendments set out in this deed.

C. As part of the agreed amendments, the Manager wishes to:
   (i) appoint Public Trust as the independent trustee of the Scheme and the Fund, with all necessary changes to reflect the splitting of the Manager's original role between the Manager and the Trustee;
   (ii) clarify and, in some cases, amend cost and fee arrangements for the Scheme and the Fund; and
   (iii) rename the Fund the Merx Private Credit Fund,

   to be effective on and from on and from the date of this deed or such other date as is agreed between the parties (**Effective Date**).

D. Public Trust has agreed to be appointed as Trustee and to be bound by the terms of the amended and restated Master Trust Deed and Establishment Deed.

AGREED TERMS

1. Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires, capitalised terms have the meaning given to them in the Master Trust Deed or the Establishment Deed, as appropriate.

1.2 General construction

The provisions of clause 1.3 of the Master Trust Deed apply in this Deed.

2. Variation of Trust Deeds

2.1 Variation of Master Trust Deed

With effect from the Effective Date, the Master Trust Deed is amended and restated in the form and with the changes shown in Schedule 1.

2.2 Variation of Establishment Deed

With effect from the Effective Date, the Establishment Deed is amended and restated in the form and with the changes shown in Schedule 2.

3. Appointment of Trustee

3.1 Appointment of Trustee

The Trustee has agreed to be appointed as trustee of the Scheme and the Fund and to be bound by the terms of the Master Trust Deed and Establishment Deed as amended and restated by this deed with effect on and from the Effective Date.

4. Transfer and vesting of Scheme property

4.1 Transfer of Scheme property

The Manager and the Trustee declare that all assets of the Scheme held by the Manager (including by its custodians and / or nominees) in its capacity as trustee of the Scheme will on and from the Effective Date transfer and / or vest in the Trustee (or any of its custodians and / or nominees) in its capacity as trustee of the Scheme.

4.2 Trustee to hold Scheme property

The Trustee will on and from the Effective Date hold the assets of the Scheme transferred and / or vested in it (or any of its custodians and / or nominees) subject to the powers and provisions of the Master Trust Deed.

4.3 Parties to execute documents

Each of the parties will do such things and execute such documents when called upon as may be neces sary for the vesting or transfer of the assets of the Scheme in the Trustee (or any of its custodians and / or nominees).

5. Indemnity

5.1 Indemnity in favour of Trustee

The Manager undertakes to the Trustee and its successors that it will, at all times on and from the Effective Date, indemnify and keep indemnified and hold harmless the Trustee against any action, litigation, proceedings, damages, claims, demands, loss, liability, costs and expenses, (including, without limitation, any legal fees and disbursements) arising directly out of or in connection with the Scheme, where such claims arise in relation to the Manager's duties and responsibilities as trustee of the Scheme prior to the Effective Date and do not give rise to a right of indemnity for the trustee out of the assets by virtue of clause 25.2 of the Master Trust Deed.

6. Miscellaneous

6.1 Severance

If any provision of this Deed is:

(a) held to be invalid or unenforceable, then such invalidity or unenforceability will attach only to such provision; or
(b) varied by statute or by a ruling of any court, such variation will be deemed to have been validly made,

and will not in any way affect or render invalid or unenforceable any other provisions of this Deed.

6.2 Counterparts

This deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this deed by executing any counterpart. All parties agree that any counterpart may be signed and / or witnessed using electronic signatures.

6.3 Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties (each a Delivering Party) immediately on the earlier of:

(a) physical delivery of an original of this deed, executed by the relevant Delivering Party, into the custody of the other party or the other party's solicitor; or
(b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a photocopied or scanned copy of an original of this deed, executed by the relevant Delivering Party, to the other party or the other party's solicitor.

6.4 Governing law

This Deed is governed by, and is to be construed in accordance with, New Zealand law.

Signing page

EXECUTED as a deed

MERX FUNDS MANAGEMENT LIMITED by:

Signature of Director

Andrew Owen Dunning

Name of Director

Signature of Director

Name of Director

SIGNED on behalf of PUBLIC TRUST by its attorney, and in the presence of:

Signature of Attorney

Elena Vinton

Name of Attorney

Signature of Witness

Susanna Lee
Manager Client Services
Public Trust Corporate Trustee Services
Auckland

Name of Witness

Occupation of Witness

City/town of residence

UNCLASSIFIED

CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY

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

1 by deed dated 10 November 2022, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number PA 12606310.1; and

2 at the date hereof I hold the position of Head of Client Services (Auckland) with Public Trust; and

3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 8 January 2026

Signature of attorney

UNCLASSIFIED

Schedule 1 – Amended Master Trust Deed

Merx Wholesale Unit Trust

Scheme Master Trust Deed

Amended and restated on

Merx Funds Management Limited (**Manager**)
Public Trust (**Trustee**)

Merx Wholesale Unit Trust
Scheme Master Trust Deed

Details		**4**
Operational Provisions		**5**
1.	Defined terms and interpretation	5
2.	Constitution of the Scheme and Funds	10
3.	The Funds	11
4.	Nature of Units	12
5.	Issue of Units	13
6.	Valuations	15
7.	Transfer, transmission and registration of Units	16
8.	Redemption of Units	19
9.	Side-pocketing	21
10.	Joint holders of Units	23
11.	Registered holder absolute owner	23
12.	Confirmation Statements	24
13.	Unit Registers	24
14.	Management	25
15.	Borrowing powers of the Trustee	27
16.	Manager's and Trustee's powers to invest	28
17.	Investment Records	30
18.	Distributions	30
19.	Trustee's Functions, Powers and Covenants	32
20.	Manager's Powers, Duties and Covenants	33
21.	Removal and Retirement of Manager	36
22.	Removal and Retirement of Trustee	37
23.	Remuneration of Trustee	38
24.	Remuneration of Manager	39

Merx Wholesale Unit Trust
Scheme Master Trust Deed

25.	Trustee's and Manager's responsibilities and indemnities	41
26.	Unitholders bound by this deed	44
27.	Limitation of liability of Unitholders	44
28.	Record, financial statements, auditing and reporting	44
29.	Information and Reports to Trustee	45
30.	Auditor	46
31.	Meetings of Unitholders and directions to Trustee	46
32.	Notices to Unitholders	47
33.	Notices between Manager and Trustee	48
34.	Amendment to Trust Deed	48
35.	Period of Trusts	49
36.	Procedure on winding up	49
37.	Payments to Unitholders	50
38.	Unclaimed moneys	50
39.	Deductions and adjustments for taxes	50
40.	Law applicable	50
Signing Page		**57**

Merx Wholesale Unit Trust
Scheme Master Trust Deed

DETAILS

Date

8 January 2026

Parties

Name	**Merx Funds Management Limited**	
Short form name	**Manager**	
Notice Details	Attention:	Andrew Dunning
	Email:	andrew@merx.co.nz
	Address:	Level 15, 51 Shortland Street, Auckland CBD, Auckland 1010, New Zealand

Name	**Public Trust**	
Short form name	**Trustee**	
Notice Details	Attention:	Susanna Lee
	Email:	susanna.lee@publictrust.co.nz
	Address:	Level 16, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

BACKGROUND

A. The Manager wishes to establish a wholesale managed investment scheme (the **Scheme**), within which it will operate one or more funds as unit trusts (**Fund** or **Funds**) within the Scheme, as a means of providing investors with exposure to credit assets in New Zealand.

B. Interests in the Funds in the Scheme will be offered by way of a non-regulated offer for the purposes of the *Financial Markets Conduct Act 2013* and applicants will be limited to Qualifying Investors (as that term is defined in this Trust Deed).

C. The Trustee has agreed to be the trustee and the Manager has agreed to be the manager of the Scheme.

D. Each Fund within the Scheme will be established and any terms or conditions specific to that Fund are to be set out in a separate deed (**Establishment Deed**) as provided for in this Trust Deed.

OPERATIONAL PROVISIONS

1. Defined terms and interpretation

1.1 Definitions

In this deed:

Application means an application for Units in a Fund made from time to time in accordance with clause 5.

Application Fee means, in respect of each Fund, the Manager's fee (if any) for issuing Units in such Fund determined in accordance with clause 24.1.

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

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

Authorised Investments means, in respect of each Fund, the investments which may be included in the relevant Fund as specified in the relevant Establishment Deed (as may be amended pursuant to clause 16.16), Offer Materials, or as otherwise notified to Unitholders in writing from time to time.

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

Class means a class of Units in accordance with clause 4.2.

Custodian means a person appointed by the Trustee to hold the Investments of the Scheme or a Fund under clause 2.4, and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Investments under clause 2.4 or such other person who is designated or appointed by the Trustee to perform, or to whom is contracted, the function of holding some or all of the scheme property under the Scheme from time to time pursuant to clause 2.5.

Date of Termination means, in respect of the Scheme or a Fund, the date of its termination determined in accordance with clause 35.

Distribution Date means the last day of each Distribution Period.

Distribution Period means such period or periods (if any) that the Manager from time to time determines for a Distribution in terms of clause 18.1.

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

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

Establishment Deed means a deed executed by the Manager and Trustee by which a Fund is established in form set out in Schedule 2 – Form of Establishment Deed (clause 2.3) or such other form as the Manager and Trustee may determine.

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

Financial Statements means, in respect of the Scheme or a Fund, general purpose financial statements of the Scheme or a Fund prepared for each financial year in accordance with NZ GAAP and any relevant legislation.

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

FMA means the Financial Markets Authority.

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Fund means each fund created by an Establishment Deed.

GST means tax chargeable under the Goods and Services Tax Act 1985.

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

(a) the Market Value of the Investments of that Fund, excluding deferred tax assets, on that Valuation Day; and

(b) any income accrued or payable in respect of that Fund on that Valuation Day but not included in such Market Value; and

(c) if the Manager so determines in its absolute discretion, any deferred tax assets of that Fund (if applicable).

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

Investment means, in respect of each Fund, the Loans, or any other investments made or held on trust by the Trustee (or any Custodian appointed under clause 2.5) at any relevant time.

Issue Price means, in respect of each Fund, the price at which the Manager sells or issues Units in such Fund determined in accordance with clause 5.10.

Loans means loans made to borrowers in New Zealand.

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

(a) PIE Tax, except for PIE Tax in respect of which a deduction has been made from a Distribution or Redemption Price paid to a Unitholder or in respect of which any Units have been redeemed by the Manager; or

(b) a contingent liability except to the extent that the Manager decides an allowance should be made for contingent liabilities; or

(c) any amount which results from treating Unitholder's Units as liabilities.

Managed Investment Scheme has the meaning given in the FMCA.

Manager Reporting Agreement means the agreement between the Manager and the Trustee setting out the reporting obligations of the Manager to the Trustee as agreed from time to time.

Market Value means the market value of any Investment or proposed Investment determined in accordance with clause 6.3.

Month means calendar month.

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

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

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

Non-Regulated Offer means an offer of Units which is not a Regulated Offer.

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

Offer Materials means any written document or documents by which Units may be offered for issue and includes an information memorandum or similar document setting out the general terms of investment that are applicable to all Unitholders in a Fund.

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

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

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

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

PIE Rules means any obligation or requirement in the Tax Act, the Tax Administration Act 1994 or any other statute or regulation (or any administrative requirement of the Inland Revenue Department or any other revenue authority) relating to a PIE.

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

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

Qualifying Investor means a person who is a "wholesale investor" (as that term is defined in clause 3 of Schedule 1 of the FMCA) or any person in New Zealand or overseas who is otherwise entitled to receive an offer of Units without requiring disclosure under part 3 of the FMCA or the relevant equivalent legislation in respect of any person overseas.

Redemption Fee means, in respect of each Fund, the Manager's fee (if any) for redeeming Units in such Fund determined in accordance with clause 24.4.

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

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

Regulated Offer has the meaning given to it in section 41 of the FMCA.

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

Related Party has the meaning given in the FMCA.

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

Related Party Benefit has the meaning given in the FMCA.

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

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

Tax includes all income tax, withholding tax, GST, capital gains tax, fringe benefit tax, stamp, registration and other duties and other taxes, levies, imposts, deductions and charges whatsoever and wheresoever and by whomsoever levied, imposed, deducted, charged or withheld together with interest thereon and penalties (unless, and then only to the extent that, this deed provides otherwise) with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof; but does not include income tax payable by the Manager or the Trustee on their own income.

Tax Act means the Income Tax Act 2007.

Tax File Number has the meaning given to it in the Tax Act.

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

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

Unit Register means, in respect of each Fund, the register of Unitholders in such Fund maintained pursuant to clause 13.

Unit Registrar means the Manager or such other Person appointed under clause 13 who keeps the relevant Unit Register.

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

(a) such days specified in the relevant Establishment Deed; and

(b) each other day as the Manager decides (being additional to or in substitution for the days referred to in (a) above).

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

1.2 Interpretation

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

(a) borrow includes the raising of money or the incurring of financial indebtedness by any means including acceptances, deposits, financial leases, debt factoring with recourse, the deferral of the purchase price of assets or services, exposure under futures contracts, contracts for differences, call and put options or any financial product where a Fund has an actual or contingent liability to pay money at a future date;

(b) this Deed includes a reference to the relevant Establishment Deed and any amendments to this Deed or the relevant Establishment Deed as the context requires;

(c) clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;

(d) any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;

(e) the singular includes the plural and vice versa; and

(f) parties to this Deed includes their successors and permitted assigns and, in the case of the Trustee, any nominee of the Trustee appointed in accordance with clause 2.5;

(g) The Index to and headings in this Deed are used for convenience only and do not affect its interpretation in any way.

1.3 The provisions of this Deed that apply to the Scheme and each Fund are deemed to include the provisions implied by any Relevant Law (if applicable) for as long as those provisions are in force and any provision of this Deed that is contrary to such implied provisions is void to the extent that it is contrary.

1.4 Where any frameworks and methodologies specified in notices issued by the FMA are applicable to a Scheme and relate to any matter to be provided for under this Deed, the provisions of this Deed which deal with such matters are deemed to be modified to the extent necessary to adopt such frameworks and methodologies.

1.5 Notwithstanding any provision of this Deed, where a matter is to be or may be interpreted pursuant to any provision of this Deed by reference to NZ GAAP or the New Zealand equivalent to international financial reporting standards, the Manager may elect not the follow NZ GAAP or the New Zealand equivalent to international financial reporting standards.

1.6 Currency

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

Where so provided in the relevant Establishment Deed, the functional currency for a Fund may be determined to be a currency other than the New Zealand currency and amounts payable, calculated or recorded in respect of that Fund may be denominated in that other currency, including the Issue Price, Redemption Price, fees, Market Value, Liabilities, Gross Asset Value and Net Asset Value for the Fund.

1.7 Trusts Act

The provisions of the *Trusts Act 2019* are modified or excluded as follows:

(a) Section 31 (duty not to exercise power for own benefit) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

(b) Section 34 (duty to avoid conflict of interest) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

(c) Section 36 (duty not to profit) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

(d) Any provision of the Trusts Act 2019 or rule of law restricting the remuneration of the Manager or Trustee including but not limited to section 37 of the Trusts Act 2019 is excluded and the provisions of this Trust Deed are modified accordingly.

(e) Section 38 (duty to act unanimously) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

(f) Sections 142 to 146 (alternative dispute resolution) is excluded from the provisions of this Trust Deed and the provisions of this Trust Deed are modified accordingly.

2. Constitution of the Scheme and Funds

2.1 Appointment of Trustee

The Trustee is appointed as the Trustee of the Scheme and agrees to act as Trustee for the Unitholders to hold the assets of each Fund in trust for the relevant Unitholders upon the terms and conditions contained in this Deed and the relevant Establishment Deed(s) in accordance with all Relevant Law.

2.2 Manager

The Manager is appointed to act as the manager of the Scheme and each Fund upon the terms and conditions contained in and to perform its obligations in this Deed and the relevant Establishment Deed(s) in accordance with all Relevant Law.

2.3 Establishment of Funds

Each Fund shall be established by an Establishment Deed in the form set out in Schedule 2 – Form of Establishment Deed (clause 2.3) or such other form as the Trustee and the Manager may agree, which shall include, where otherwise not provided in this Deed, such of the following matters as shall be applicable to the relevant Fund:

(a) the name of the Fund;

(b) the date of commencement of the Fund;

(c) a description of the Authorised Investments for the Fund;

(d) the method of determining the Market Value of Investments;

(e) the method of calculation of the Issue Price for each type of Unit;

(f) the determination of the Valuation Days;

(g) the date for delivery of Redemption Requests and the Valuation Day on which Redemption Requests are effective;

(h) the rights attaching to different classes (if any) of Unit;

(i) the provisions applicable to determination of the Distribution Period and the amount of Distributions;

(j) the maximum amount of the Manager's fees (including the Application Fee and management fees);

(k) any applicable borrowing restrictions or requirements; and

(l) any other matters which the Manager and the Trustee deem appropriate or which the Trustee deems necessary.

2.4 Conflict Provisions

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

2.5 Custodian

(a) The Trustee may appoint in writing, any one or more persons to be Custodians in which any of the Investments of the Funds are to be vested.

(b) If authorised in writing by the Trustee, a Custodian appointed under clause 2.5(a) may itself ap point one or more sub-custodians in which any of the Investments of the Funds are to be vested.

(c) The Trustee, in consultation with the Manager, will agree with the Custodian or sub-custodian appointed pursuant to clause 2.5(b), the fees that may be charged and the extent to which expenses will be reimbursed out of the Scheme or any Fund.

(d) Where the Trustee appoints a Custodian in respect of a Fund in accordance with clause 2.5(a), the Trustee shall take all reasonable steps to ensure that the custodial functions for the Funds are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Trustee were performing the custodial functions itself.

(e) The Trustee may agree to limit the liability and/or indemnify the Custodian in accordance with clause 25.4.

3. The Funds

3.1 Authorised Investments

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

3.2 The Constitution of the Investments

The Investments for a Fund shall consist of all of the cash, property, assets and rights for the time being held by the Trustee (or the Custodian) in respect of that Fund including:

(a) the proceeds of sale of any Investments;

(b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained by the Trustee (or the Custodian); and

(c) all income from the Fund held pending distribution or reinvestment.

3.3 Separate Funds

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

3.4 No Claim

No Unitholder in one Fund shall by virtue of being a Unitholder in such Fund have any claim on any other Fund.

3.5 New Funds

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

4. Nature of Units

4.1 Beneficial interests in Funds

The beneficial interest in each Fund is divided into Units. Units in a Fund may be issued to any Person provided they are a Qualifying Investor.

4.2 Classes of Units

Different Classes of Units may be issued with such rights, terms of issue, obligations and restrictions as the Manager sets out in an Establishment Deed, or otherwise as determined by the Manager.

4.3 Equal but not specific Fund interests

(a) Subject to the rights attaching to unpaid or partly paid Units and other Units with special rights, every Unit (other than a fractional Unit) confers an equal interest in the Fund to which it relates and is of equal value. A fractional Unit shall confer a proportional interest in the relevant Fund but shall not confer any voting rights on the holder.

(b) A Unit does not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Unitholder is entitled to require the transfer to such Unitholder of any of the Investments nor (subject to the rights of Unitholders created by this Deed and by law) is any

Unitholder entitled to interfere with or question the exercise or nonexercise by the Manager or the Trustee of any of the Funds, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of that Fund.

4.4 Consolidation or division of Units

The Manager may, by written notice to the Trustee, determine that, in respect of any Fund, all holdings of Units in such Fund are to be consolidated or divided proportionately so as to alter the Number of Units on Issue with effect from the close of business on the relevant day. Where such consolidation or division involves a fraction of a Unit in relation to any particular Unitholder, the number of Units which that Unitholder is entitled to shall be rounded up or down to two or more decimal places, at the discretion of the Manager.

4.5 No interest in other Funds

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

5. Issue of Units

5.1 Application Procedure

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

(a) complete and lodge with the Manager an Application in writing or by Electronic Communication in the form from time to time prescribed by the Manager specifying the application moneys to be applied by the Trustee to the purchase of Units in the particular Fund and including such evidence as to Qualifying Investor status as may be required. An initial Application shall be signed, autho rised or authenticated by or on behalf of the applicant in such manner as the Manager may prescribe from time to time or may be required by law; and

(b) forward to the Manager for payment to the Trustee the aggregate of the Application Fee (if any) and the Issue Price.

5.2 Manager's Discretion

The Manager may in its absolute discretion:

(a) accept or refuse to accept in whole or in part any Application and the Manager is not required to give any reason or ground for such refusal; and

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

5.3 Refund of Application Moneys

(a) Once the Manager has made a decision to reject an Application, the Manager must as soon as practicable refund or arrange for the Trustee to refund the relevant Application moneys (without interest).

(b) Where Units are redeemed under clause 5.2(b), the Manager must request the Trustee to pay the Redemption Price for such Units to the relevant Unitholder.

(c) Where Units are voided under clause 5.2(b) the Trustee shall refund the Application moneys to the relevant Unitholder and pay such additional compensation to the relevant Unitholder as it determines appropriate after consultation with the Manager.

5.4 Number of Units

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

5.5 Payment to Trustee; Registration and Issue of Units

The Manager must:

(a) pay all Application moneys to the "Merx Private Credit Fund Applications" bank account, for each Fund which is controlled by the Trustee forthwith on receipt of such moneys;

(b) on issue of a Unit, enter the name of the Unitholder on the appropriate Unit Register; and

(c) comply with applicable laws relating to the notification, or certification to Unitholders, of their respective holdings of Units.

5.6 Minimum Application Amounts

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

5.7 Restrictions on Sale or Issue of Units

(a) The Manager may at any time or times by notice in writing to the Trustee determine that no further Units shall be issued pursuant to this Deed or any Establishment Deed in respect of any Fund after a date specified in the notice to the Trustee either for any specified period or until the Deed is terminated. In such event the Manager will not after the date specified in the notice issue any further Units under this Deed or any Establishment Deed in respect of any Fund for the specified period or until this Deed is terminated whichever situation applies.

(b) No Unit may be sold or issued by the Manager after receipt by the Trustee of a notice of termination given by the Manager pursuant to clause 35.1(a)(iii) except with the prior consent in writing of the Trustee.

5.8 Issue or Purchase of Units

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

(a) a subscription for Units to be issued from the relevant Fund;

(b) a request for the purchase from the Manager of Units in the relevant Fund owned by the Manager; or

(c) a request for the purchase from an existing Unitholder of Units in the relevant Fund owned by that Unitholder.

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

5.9 Issue Date

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

5.10 Issue Price of Units

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

5.11 Commission etc

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

5.12 Compliance with Relevant Law

The Manager must, in accepting Applications, comply with all Relevant Law, to the extent applicable to the Manager and the Trustee is respect of a Non-Regulated Offer. The Manager must use its best endeavours to ensure that the Offer Materials for the Scheme or a Fund (as applicable) at all times comply with all Relevant Law, to the extent applicable to a Non-Regulated Offer.

5.13 No Regulated Offers

The Manager must not make a Regulated Offer of any Unit in a Fund.

5.14 Compensation

If reimbursement or compensation is payable to a Unitholder or former Unitholder, the Manager must comply with all its obligations under this Deed except that the Manager may, in consultation with the Trustee, choose not to pay any reimbursement or compensation to any Unitholder or former Unitholder that amounts to less than $20 (or such other amount as the Manager and the Trustee may agree from time to time).

5.15 Issue of Units for PIE Rebates

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

6. Valuations

6.1 Net Asset Valuation

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

(a) all Liabilities of the relevant Fund determined on an accruals basis up to the time of the day (if any) set out in the relevant Establishment Deed on the relevant Valuation Day; and

(b) such other provisions as the Manager or the Trustee thinks necessary or desirable for accrued or contingent liabilities or losses including a provision for the costs of realisation of any Investments and redemption of Units.

6.2 Period of Effectiveness of Valuations

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

6.3 Determination of Market Value

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

(b) If the Manager determines that special circumstances warrant an alteration to the basis of determination of the Market Value, the Manager may with the approval of the Trustee alter the basis of determination of the Market Value of an Investment and/or the Net Asset Value of a Fund.

(c) The Manager may from time to time engage any valuer or other suitably qualified persons for the purposes of fixing the Market Value of any Investment and will do so at least annually in respect of each Investment. The Manager is entitled to rely upon the advice of any such valuer or other person.

6.4 Cancellation of Units to maintain Unit Price

Where the Establishment Deed for a Fund provides for the issue of Units at a fixed Issue Price of NZ$1.00, and the Net Asset Value per Unit determined under this clause 6 is less than NZ$1.00, the Manager may, in its discretion, either:

(a) cancel Units or fractions of Units; or

(b) consolidate Units in accordance with clause 4.4 above, to restore the Net Asset Value per Unit to NZ$1.00.

6.5 Subdivision of Units to maintain Unit Price

Where the Establishment Deed for a Fund provides for the issue of Units at a fixed Issue Price of NZ$1.00, and the Net Asset Value per Unit determined under this clause 6 is more than NZ$1.00, the Manager may, in its discretion, either:

(a) issue Units or fractions of Units; or

(b) divide Units in accordance with clause 4.4 above, to restore the Net Asset Value per Unit to NZ$1.00.

7. Transfer, transmission and registration of Units

7.1 Units may be Transferred

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

7.2 Form of Instrument of Transfer

The instrument of transfer of any Unit must be:

(a) in writing in any form which the Manager approves from time to time; and

(b) for the minimum number of Units or dollar value (if any) specified in the relevant Establishment Deed or Offer Materials; and

(c) be accompanied by the transfer fee (if any) payable under clause 7.4.

7.3 Registration of Instrument of Transfer

(a) Every instrument of transfer of Units must be delivered for registration to the Manager at its registered office or to the Unit Registrar. If the Manager is not also the Unit Registrar, the Manager will forward the transfer to the Unit Registrar.

(b) The transferor is deemed to remain the Unitholder until the transfer of such Unit is entered in the Unit Register.

(c) Subject to clause 7.6, the Manager shall forthwith register or arrange the registration of each transfer delivered to it in accordance with this clause and to enter the relevant details in the appropriate Unit Register.

7.4 Transfer Fee

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

7.5 Payment of Sums Owed as a Condition to Transfer

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

7.6 Power to Decline Transfer

The Manager may decline to register any transfer:

(a) for non-compliance with any law; or

(b) if the transferee fails to pay the transfer fee (if any); or

(c) if the transfer would result in the transferee or transferor holding less than a minimum number of Units or Units having less than a minimum value, in either case specified by in the Fund Establishment Deed for a Fund; or

(d) if the transfer would or could result in a Fund losing its status as a PIE; or

(e) if the transferee is not a Qualifying Investor.

7.7 Retention of Instrument of Transfer

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

7.8 Closing of the Unit Register for Transfer

(a) Each Unit Register shall be closed for transfers during New Zealand public holidays and on Satur days and Sundays.

(b) Each Unit Register may also be closed for transfers for as many days and at such time or times (not exceeding in the aggregate 28 days in each year) as the Manager thinks fit.

(c) Notwithstanding clause 7.8(b), a Unit Register may be closed for transfers for longer periods with the consent of the Trustee.

(d) The Manager may decline to register any transfer during any period when the relevant Unit Register is closed.

7.9 Transmission Upon Death

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

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

7.10 Transmission by Operation of law

(a) Upon producing the evidence required by clause 7.10(b) the following persons may be registered as the Unitholder in respect of Units or may validly transfer Units (subject to the provisions of this Deed as to transfers):

(i) the committee, statutory representative or manager or attorney of a Unitholder of un sound mind or of a Unitholder whose person or estate is liable to be dealt with in any way under the laws relating to mental health; and

(ii) any Person becoming entitled to Units in consequence of insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of creditors or scheme of arrangement of any Unitholder or otherwise than by transfer.

(b) Any committee, statutory representative, manager or attorney or Person seeking registration pursuant to clause 7.10(a) as a Unitholder in respect of Units or the transfer of Units (as the case may be) must produce such evidence of capacity or of title as is considered by the Manager to be sufficient.

7.11 Refusal of Registration of Transmissions of Units

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

8. Redemption of Units

8.1 Redemption Request

(a) Any Unitholder wishing to redeem his or her Units, must deliver a Redemption Request (which will be irrevocable unless the Manager otherwise agrees in writing) in the form and manner specified in the relevant Establishment Deed or Offer Materials. Each Redemption Request shall be in writing or by Electronic Communication and be in such form as the Manager may for the time being require.

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

8.2 Undertaking to Redeem

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

(i) repurchase each Unit to which such Redemption Request relates; or

(ii) request the Trustee to redeem each Unit to which such Redemption Request relates, in each case for an amount equal to the Redemption Price as at the Valuation Day applicable on the date on which such Unit is redeemed.

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

8.3 Exit Date

Subject to clauses 8.10, 8.11 and 8.13, when a Redemption Request is received by the Manager in accordance with clause 8.1, the Manager must repurchase or request the Trustee to redeem the Units with effect from the applicable Valuation Day determined in accordance with the relevant Establishment Deed.

8.4 Redemption Price

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

8.5 Payment of the Redemption Price

(a) The Redemption Price must be paid within 7 Business Days of the Valuation Day on which a Unit is redeemed.

(b) Where the Units referred to in a Redemption Request by a Unitholder are purchased by the Manager, the Manager must pay to the Unitholder the Redemption Price out of the Manager's own funds.

(c) Where the Units referred to in a Redemption Request by a Unitholder are to be redeemed, the Manager must direct the Trustee to apply any cash held by the Trust, dispose of Investments or borrow, to release the aggregate Redemption Price from the relevant Fund. The Manager may pay the Unitholder the aggregate Redemption Price out of the Manager's own funds and, if it does

so, is entitled to retain for its own benefit the moneys released by the Trustee from the Fund in accordance with clause 8.8(b).

8.6 Disposition of Repurchased Units by the Manager

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

8.7 Cancellation of Redeemed Units

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

8.8 Redemption of Manager's Units

(a) The Manager is entitled to request the Trustee to redeem Units held by the Manager in the procedure set out in the Establishment Deed for a Fund provided that the same procedures and valuation provisions apply to both the Manager and Unitholders.

(b) If the Trustee is satisfied that such a request by the Manager relates solely to the redemption of Units held by the Manager then the Trustee must release from the relevant Fund and pay to the Manager the aggregate Redemption Price of the Units to be redeemed within 7 Business Days of the relevant Valuation Day.

8.9 Surpluses and Deficiencies on Redemption of Manager's Units

The Manager is entitled to the benefit of any surplus and is liable for any deficiency of the Redemption Price of a Unit owned by the Manager and redeemed under clause 8.8 over or below the price at which that Unit was acquired by the Manager (the Manager's Acquisition Price) and the Manager is not obliged to account to the Trustee, the relevant Fund or any Unitholder for any excess over the Manager's Acquisition Price nor is the Trustee, the relevant Fund or any Unitholder obliged to recompense the Manager, for any deficiency below the Manager's Acquisition Price.

8.10 Deferral of Redemption and Repurchase

If by reason of:

(a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or

(b) financial, political or economic conditions applying in respect of any financial market; or

(c) the nature of any Investment; or

(d) a Redemption Request is received or a series of Redemption Requests have been received within a period of 3 months that in aggregate relate to more than 5% (or such other percentage as the Manager specifies from time to time by not less than 30 days prior notice to Unitholders) of the Number of Units on Issue in the relevant Fund at the time of the Redemption Request or last Re demption Request in such series; or

(e) the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally,

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of any Unitholders, for the Manager to give effect to Redemption Requests then the

Manager shall notify the Trustee and shall give notice (**Withdrawal Suspension Notice**) to that effect to any Unitholder who gives or has given a Redemption Request or to all Unitholders. A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Redemption Requests given in respect of that Fund until such time as the Manager gives to the Unitholders who gave those Redemption Requests or to all Unitholders notice to the effect that the Withdrawal Suspension Notice is cancelled. The Manager may determine that such Units may be progressively redeemed by instalments with effect from one or more Valuation Days falling in a period determined by the Manager or in total at the expiration of a period determined by the Manager and in any such case the Redemption Price is to be calculated at the Valuation Day or Days applicable on the date on which Units are redeemed.

8.11 Suspension of Redemption and Repurchase

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

(a) the Manager must notify the Trustee of its intention to suspend the right of Unitholders to make Redemption Requests; and

(b) the Manager must immediately call a meeting of Unitholders in the manner set out in this Deed to consider the winding up of the relevant Fund or such other action as the Unitholders deem appropriate.

8.12 Suspension in relation to Manager's Units

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

8.13 Redemption not applicable

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

8.14 Redemption on account of PIE Tax or PIE status

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

(a) on account of any PIE Tax attributable to income allocated to that Unitholder on such date as the Manager determines and in all cases at the Redemption Price applicable on the date of redemption of such Units; and

(b) if the number of Units held by that Unitholder and its associated persons (as defined in the Tax Act) would cause the Fund to lose its status as a PIE.

9. Side-pocketing

9.1 Trustee and Manager may side-pocket

Where the Manager considers in good faith, that it is in the interests of the Unitholders in a Fund, generally to do so (for example, where an investment becomes illiquid, to address liquidity or pricing issues or asset or underlying asset impairment), and with the approval of the Trustee on the basis that it is in the interests of Unitholders generally to do so, the Manager and the Trustee may with effect from a particular date (Record Date) and without the agreement of, or consultation with, those Unitholders:

(a) determine that particular assets and liabilities of a Fund (Side-Pocketed Assets and Liabilities) should be quarantined in accordance with this clause 9; and

(b) reclassify, divide or otherwise reconstruct the Unit holdings of Unitholders in that Fund as at the Record Date so that those holdings consist of:

(i) Units that relate to the assets and liabilities that have not been side-pocketed (Non-Side-Pocketed Assets and Liabilities); and

(ii) Units that relate to the Side-Pocketed Assets and Liabilities (S Units).

9.2 Non-Side Pocketed Assets and Liabilities

The provisions of this deed will apply, with such modifications as are necessary, to the Non-Side-Pocketed Assets and Liabilities (and the Units relating to them) as if the relevant Fund consisted solely of the Non-Side-Pocketed Assets and Liabilities and those Units.

9.3 Side-Pocketed Assets and Liabilities

The provisions of this deed will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the S Units as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and S Units, provided that the Manager and the Trustee may agree special arrangements relating to the Side-Pocketed Assets and Liabilities and the S Units subject to the Trustee's confirmation that it considers in good faith that this is in the best interests of the relevant Unitholders (Special Arrangements). Where any conflict arises between the Special Arrangements agreed between the Manager and the Trustee under this clause 9 and any other provision of this deed, those Special Arrangements will prevail (except to the extent that any applicable legislation requires that other provision to prevail). Without limiting the generality of the proviso to the previous sentence, the Special Arrangements may include:

(a) arrangements preventing Investors from making Redemption Requests in relation to the Side-Pocketed Investments and Liabilities and the S Units;

(b) arrangements preventing the issue of any further Units relating to the Side-Pocketed Investments and Liabilities;

(c) arrangements for the realisation/discharge of the Side-Pocketed Investments and Liabilities;

(d) arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Investments;

(e) arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of S Units);

(f) arrangements relating to the fees and expenses associated with the Side-Pocketed Investments and Liabilities and the related S Units;

(g) arrangements relating to the recovery of PIE Tax from Unitholders holding S Units (including where applicable the recovery of PIE Tax from such Unitholders by way of arrangements relating to Units (if any) held by such Unitholders that relate to the Non Side-Pocketed Investments and Liabilities) and the payment of the Fund's tax liabilities;

(h) arrangements for the treatment of Redemption Requests that remain outstanding as at a Record Date (including, without limitation, the cancellation of any such Redemption Requests); and

(i) such other arrangements as the Manager and the Trustee consider to be appropriate and in the interests of Unitholders of the relevant Fund generally in relation to the side pocketing arrangements contemplated by this clause 9.

9.4 No new Fund

(a) To avoid doubt, the side-pocketing arrangements contemplated by this clause 9 operate within the affected Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate financial statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities, provided that the Manager must prepare accounts in such form as the Trustee considers necessary to provide adequate disclosure to the relevant Unitholders.

(b) Regardless of paragraph (a) above, the Manager and the Trustee may, at any time, decide that the Side-Pocketed Assets and Liabilities will constitute a separate Fund and may accordingly establish a new Fund in accordance with this deed, and segregate such Assets and Liabilities into that separate Fund. In such case the S Units that relate to the Side-Pocketed Assets and Liabilities will become Units in that new Fund.

10. Joint holders of Units

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

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

(b) The Joint Unitholders of any Unit are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;

(c) On the death of any joint Unitholder, the survivor or survivors of them is or are the only Person or Persons recognised by the Manager as having any title to the Unit, but the Manager may require such evidence of death as it may deem fit;

(d) Any one of the Joint Unitholders may give effectual receipts for any Distribution payable to such Joint Unitholders;

(e) For any purposes relating to the relevant Establishment Deed or administration of the relevant Fund, including all other relating to the application of the Tax Act to the Fund as a PIE, the Manager may in its complete discretion either treat the Joint Unitholders as separate Unitholders (in equal shares), or treat the Joint Unitholders as a single person Unitholder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the Joint Unitholders or such other rate as the Manager thinks fit in its complete discretion; and

(f) At any meeting of the Joint Unitholders, any one of them may vote either personally or by rep resentative, attorney or proxy in respect of the Unit as if it were solely entitled thereto, but if more than one Joint Unitholder is present personally or by representative, attorney or proxy, then any vote or other action taken by the Joint Unitholder whose name stands first in the Register in respect of Units shall alone be entitled to vote and act on behalf of the relevant Joint Unitholders.

11. Registered holder absolute owner

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

12. Confirmation Statements

The Manager must establish such procedures regarding statements of the number of Units held by that Unitholder and details of any redemptions, transfers or purchases of Units by that Unitholder, and the frequency and period of those statements, as it thinks fit in order to comply with Relevant Law (as applicable).

13. Unit Registers

13.1 The Register

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

13.2 Reliance upon the Register

Each of the Trustee and the Manager:

(a) is entitled to rely upon entries in the Unit Register or any other information provided by Unitholders as being correct;

(b) is not obliged to make any further enquiry as to the status in relation to the relevant Establishment Deed, or ownership of any Units, or of any claim, entitlement or interest, not so entered in the relevant Unit Register;

(c) has the power, in its absolute discretion, to authorise the correction of any Unit Register upon being satisfied that the Register is incorrect; and

(d) is not liable to each other or any Unitholder or former Unitholder or any other person for relying on the relevant Unit Register or for accepting in good faith as valid any detail recorded on that Unit Register subsequently found to be irregular or not authentic.

13.3 Audit of the Register

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

13.4 Inspection

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

13.5 Copies of Registers

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

13.6 No recognition of trusts

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

14. Management

14.1 Manager's Functions

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

(a) offering Units;

(b) issuing the Units;

(c) managing and investing each Fund's Investments; and

(d) administering each Fund.

14.2 Manager's Duties

The Manager must -

(a) act honestly and in good faith in acting as a Manager; and

(b) in exercising any powers or performing any duties as a Manager —

(i) act in the best interests of the Unitholders; and

(ii) treat the Unitholders equitably; and

(c) not make use of information acquired through being the Manager in order to —

(i) gain an improper advantage for itself or any other person; or

(ii) cause detriment to the scheme participants; and

(d) exercise the care, diligence and skill that a prudent person engaged in the profession of managing Managed Investment Schemes that are not the subject of a Regulated Offer would exercise in the same circumstances; and

(e) carry out its functions in accordance with this Deed and any Establishment Deed, any Offer Materials, and all Relevant Law (as applicable).

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

14.4 Manager's General Management Powers

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

(a) manage and make all decisions relating to Investments including the investment, reinvestment or realisation of any Investment and the exercise of any voting rights associated with any Investment;

(b) make all decisions relating to borrowing, the terms of such borrowing and any securities relating thereto;

(c) determine the terms of all contracts, rights and other matters relating to Investments or Liabilities;

(d) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines;

(e) use its best endeavours and skill to ensure that the affairs of each Fund are conducted in a proper and efficient manner;

(f) use due diligence and vigilance in the exercise and performance of its functions, powers, and duties as manager;

(g) account to the Unitholders for all money that the Manager receives on behalf of each Fund;

(h) not pay out, invest, or apply any money belonging to a Fund for any purpose that is not directed by, or authorised in, this Deed or the relevant Establishment Deed;

(i) supply to the Unitholders, in general meeting, any reasonable oral or written information relating to the affairs of the relevant Fund that any Unitholders has given the manager reasonable notice to supply;

(j) prepare and provide to the Trustee any reports required under this Deed or Relevant Law;

(k) if the Manager believes on reasonable grounds that it has, or may have, or is likely to have contravened any of its obligations under this Deed or Relevant Law in a material respect then the Manager must promptly report such contravention or likely contravention to the Trustee and advise the Trustee of the steps (if any) that is has or intends to take in light of the contravention or likely contravention and the date by which those steps are to be taken;

(l) if the Manager becomes aware of information on the basis of which it could reasonably form the opinion that the Manager, or a Fund, is or is likely to become insolvent, then the Manager must promptly disclose all relevant information relating to the matter to the Trustee and advise the Trustee of the steps (if any) that it has or intends to take and the date by which those steps are to be taken; and

(m) where the Investments are Loans, enforce any security interest provided by a borrower on behalf of the relevant Fund in respect of those Loans.

14.5 Delegation by Manager

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

(a) the Manager must take reasonable steps to:

(i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly; and

(ii) monitor the performance of those functions; and

(b) the delegation or contracting out does not affect the liability of the Manager for the performance of those functions.

14.6 The Manager shall advise the Trustee of any delegation or contracting out under clause 14.5 before any such delegation or contracting out is entered into.

14.7 The Manager may include provisions to protect and assist those dealing with the delegate in the authori sation as the Manager thinks fit. The delegate or contracted party may be a Related Person of the Manager or Trustee.

14.8 Undertakings by the Manager

Without limiting any duty or obligation of the Manager elsewhere in this deed or in Relevant Law, the Manager covenants with the Trustee (for the benefit of Unitholders as well as the Trustee) that the Manager will:

(a) use its best endeavours to ensure that the business of the Scheme and each Fund is carried on in a proper and efficient manner and in accordance with the Offer Materials;

(b) pay to the bank account in the name of the Trustee, or as directed by the Trustee, as soon as practicable after their receipt by the Manager, all moneys belonging to a Fund;

(c) without delay forward to the Trustee all notices and other information relevant to the Trustee received by it or on its behalf in connection with the Scheme, any Fund, or the Investments;

(d) make available to the Trustee the whole of the records of the Manager in respect of each Fund whether kept at its registered office or elsewhere;

(e) give the Trustee such oral or written information as may be required with respect to all matters relating to the Scheme or any Fund and Investment and their management; and

(f) retain in safe keeping all Applications and documents of transfer and transmission or copies or reproductions of those documents and will make those documents available for inspection by or on behalf of the Trustee at any time during normal business hours but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any law to the contrary and first obtaining the Trustee's approval) destroy the document.

15. Borrowing powers of the Trustee

15.1 Borrowing powers

Subject to clauses 15.2, 15.3 and 16.3 in respect of any Fund and unless prohibited by the relevant Establishment Deed, the Trustee has power to, and must, if so directed by the Manager:

(a) borrow money from any Person (including a Unitholder);

(b) for the purpose of such borrowing, enter into loan documents or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such borrowing; and

(c) mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of the relevant Fund as security for any moneys borrowed.

15.2 Limitation on borrowings

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

15.3 Conditions of borrowing

There is no obligation upon the Trustee to comply with any direction given pursuant to clause 15.1 or to complete any loan or security documents unless the Trustee is satisfied that:

(a) the Manager reasonably and in good faith has determined that such transactions are necessary or

desirable in the general interests of the Unitholders of the relevant Fund, or for the purposes of conducting the investment, management, or other operations of the relevant Fund under this Deed — including the repayment or redemption of Units from time to time;

(b) the Trustee's liability is restricted to the Investments from time to time comprising the relevant Fund;

(c) any loan security or other obligation binding on the Trustee does not impose any unreasonable obligation upon the Trustee; and

(d) there has been compliance with any specific borrowing requirements set out in the relevant Establishment Deed.

15.4 Third Parties Need not Inquire

No Person from whom the Trustee has or intends to borrow in respect of any Fund needs to enquire as to whether or not the limitation set out in clauses 15.2 and 15.3 have been observed or complied with.

15.5 Trustee may rely on Manager certificate

For the purposes of satisfying itself of the matter set out in clause 15.3(a), above, the Trustee may rely on a certificate provided by the Manager regarding any such determination.

16. Manager's and Trustee's powers to invest

16.1 Investment Policy

(a) The Manager in consultation with the Trustee must ensure that there are Offer Materials for each Fund. Each Fund shall be invested only in the Authorised Investments for that Fund and in accordance with the investment policies specified in the Offer Materials. This requirement shall modify a trustee's general power to invest under section 58 of the Trusts Act 2019.

(b) The Manager may amend or replace the investment policies specified in any Offer Materials only after prior consultation with the Trustee.

16.2 Trustee Discretion as to Investments

The Trustee must refuse to act, and must direct any Custodian appointed pursuant to clause 2.5 to refuse to act, on any direction of the Manager to invest, acquire or dispose of any Investment if in the opinion of the Trustee, given in writing to the Manager, the proposed Investment, acquisition or disposition or transfer of assets into that Fund:

(a) is manifestly not in the interests of the Unitholders;

(b) is contrary to the provisions of this Deed, the relevant Establishment Deed or the investment policies specified in the Offer Materials; or

(c) would result in a breach by the Trustee of any obligations or duties imposed on the Trustee by any rule of law or enactment.

16.3 The Trustee shall not be liable to the Unitholders or the Manager for acting or refusing to act on any such direction by the Manager or directing any Custodian contracted under clause 2.5 to act or refuse to act on any such direction in respect of the acquisition or disposal of any Assets of a Fund in accordance with the provisions of this Deed.

16.4 If the Trustee refuses to act on a direction of the Manager or directs any nominee to refuse to act on a direction of the Manager, the Trustee must notify the Manager in writing of the Trustee's reasons for refusing to do so.

16.5 Investment Directions by the Manager

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

(a) purchase, acquire, sell, transfer or dispose of Investments of any Fund;

(b) enter into any commitments or Liabilities in respect of such Investments;

(c) execute and deliver such contracts, documents, bills, notes, Deeds or other instruments as may be necessary in respect of the foregoing;

(d) take any other action which may be required in respect of the Authorised Investments; and

(e) complete and deliver any votes, voting directions, proxies or related notices;
and (subject to the provisions of clauses 16.2 to16.4), the Trustee will from time to time, to the extent of the Investments of each Fund in its hands or control, act as directed in writing by the Manager.

16.6 Advisers

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

16.7 Dealing with Related Parties

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

16.8 The prohibition under clause 16.7 does not apply to a transaction or series of transactions if the Manager notifies the Trustee about the transaction or transactions in accordance with this Deed, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and:

(a) the Manager first provides a certificate to the Trustee that in the Manager's opinion the transaction is on reasonable arm's length commercial terms; or

(b) the Manager obtains the Trustee's consent for the transaction or transactions.

16.9 Any notification by the Manager under clause 16.8(a) must include reasonable detail of the transaction and the basis on which the transaction is on reasonable arm's length commercial terms.

16.10 Neither the Trustee, the Manager nor any Related Party is liable to account to the relevant Fund or any Unitholder for any profit or loss arising from any transaction entered into in accordance with clause 16.8.

16.11 The Manager will report to the Trustee on a quarterly basis in respect of Related Party dealings, including under clause 16.8. This report will be in a form to be agreed by the Manager and the Trustee and will be provided to the Trustee by the Manager no later than 10 Business Days after the expiry of each quarter of each year.

16.12 Investments in Trustee's Name

The Manager shall cause Investments to be vested in the Trustee or the Custodian appointed in accordance with clause 2.5 and to be registered in the name of the Trustee or such Custodian as soon as reasonably practicable after receipt of the necessary documents and must deliver all certificates or other documents of title for safe custody as directed by the Trustee.

16.13 Bank Accounts

A bank account or accounts in the name of the Trustee or the Custodian appointed in accordance with clause 2.5 must be opened and maintained for each Fund. All moneys belonging to the relevant Fund and coming into the hands of the Manager or the Trustee must be paid to the credit of such bank account. The Trustee shall determine the Persons authorised to operate such bank accounts.

16.14 Notice of Investments to Trustee

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

16.15 Trustee's Right to Limit Liability

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

16.16 Amendment to Authorised Investments

The Manager may amend the definition of Authorised Investments by way of amendment of the Establishment Deed.

17. Investment Records

17.1 Manager to Keep Records

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

17.2 Inspection by Trustee

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

17.3 Reliance on Records

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

18. Distributions

18.1 Determination of Distribution Period and Distributions

The length of a Distribution Period and the method of calculation of Distributions shall be those specified

in the relevant Establishment Deed, or, if the Establishment Deed does not specify the length of a Distribution Period or the method of calculation of Distributions as determined by the Manager.

18.2 Allocation and Distribution

(a) Subject to the terms of this Deed and the applicable Establishment Deed, the Manager will determine the amount of each Distribution (if any).

(b) Unless otherwise specified in the relevant Establishment Deed, a Unit on issue in any Distribution Period entitles the relevant Unitholder to participate in any Distribution for the relevant Distribution Period on a pro rata basis to the number of days it has been on issue.

(c) Distributions may be made in cash or by the issue of Units as provided in, or determined in accordance with, the applicable Establishment Deed.

(d) Payment of cash Distributions must be made within 30 days after the last day of the Distribution Period to which they relate. Issues of new Units must be made on a Valuation Day.

(e) The provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.

(f) The Manager may make a deduction from any Distribution to a Unitholder on account of PIE Tax attributable to income allocated to that Unitholder.

18.3 Reinvestment of Distributions

(a) If the relevant Establishment Deed or Offer Materials so provide, Unitholders may elect to reinvest their Distributions (less any deductions on account of PIE Tax which the Manager is obliged or permitted to deduct) by subscribing for further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial Application or in such other form as may from time to time be determined by the Manager. Any request in such other form must be submitted to the Manager prior to the expiration of the Distribution Period. Any request (whether in an initial Application or at a later date) may be varied or terminated by notice in writing to the Manager at any time.

(b) The Manager will treat such a request as though it were an application to subscribe for further Units in the relevant Fund with the relevant Distribution (less any tax) and accordingly the provisions of clause 5, with such changes as are necessary, apply to the Units issued in accordance with this clause.

(c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Distri bution without giving any reason.

18.4 Disclosure of Information for Tax Purposes

The Manager and the Trustee are authorised to provide any information (including personal information) to the Inland Revenue Department or any other person where the Manager or Trustee (as applicable) consider it reasonably necessary or desirable to do so in order to administer any Fund's taxation obligations, including for the avoidance of doubt any personal information, and without limitation relating to the details of Unitholders, any Distributions of Unitholders or any other details or information arising out of any of the Funds.

19. Trustee's Functions, Powers and Covenants

19.1 Trustee's functions

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

(a) acting on behalf of the Unitholders in relation to:

(i) the Manager;

(ii) any matter connected to this Deed or the terms of any offer of Units;

(iii) any contravention or alleged contravention of this Deed or any Relevant Law by the Manager; and

(iv) any contravention or alleged contravention of the terms of this Deed or any Relevant Law by any other person in connection with each Fund;

(b) holding the Investments of each Fund, or ensuring that the Investment of each Fund is held in accordance with the terms of this Deed; and

(c) performing or exercising of any other functions, powers, and duties conferred or imposed on the Trustee by or under this Deed and Relevant Law.

19.2 Trustee's duties

The Trustee must -

(a) act honestly and in good faith in acting the Trustee of each Fund; and

(b) in exercising its powers and performing its duties as a Trustee:

(i) act in the best interests of the Unitholders; and

(ii) exercise reasonable diligence in carrying out its functions as Trustee;

(c) take all reasonable steps to cause any contravention of this Deed to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Unitholders); and

(d) act in accordance with any direction given by a Special Resolution of the Unitholders that is not inconsistent with any enactment, Relevant Law, or this Deed in relation to —

(i) seeking a remedy to any contravention of this Deed; and

(ii) any other matter connected with the Trustee's functions.

19.3 The Trustee is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by the Unitholders.

19.4 The duty in clause 19.3 is subject to any order of the Court made under any Relevant Law.

19.5 Standard of care

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

19.6 Trustee's Powers

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

19.7 Waivers

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

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

19.9 Trustee's covenants

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

(a) has power to act continuously as Trustee of the Funds and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Trustee under this Deed or which might prevent it from so acting and will act continuously as Trustee under each Fund until such Fund has been wound up in accordance with this Deed or until the Trustee has retired or been removed from office;

(b) will, to the extent appropriate and practicable in the case of each Investment ensure that any documents of title are held in safe custody;

(c) will keep each of the Funds separate from each other and from all other assets, Investments and other property vested in or held by the Trustee; and

(d) will without delay forward to the Manager all notices and other information relevant to the Manager and received by it or on its behalf in connection with each Fund.

20. Manager's Powers, Duties and Covenants

20.1 Manager's powers of management

Subject to clause 14, each Fund shall be managed by the Manager (with full power to delegate to its officers, and employees all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion) which hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed during the period of each Fund. The Manager shall have all powers, authorities, and discretions necessary to enable it to carry out the purposes of each Fund or otherwise to perform and comply with the obligations and duties under this Deed. Nothing contained in this Deed shall be construed to prevent the Manager and the Trustee in conjunction or the Manager or the Trustee separately from establishing or acting as manager or Trustee for trusts whether of a nature similar to or different from the Funds.

20.2 Manager's powers if Fund a PIE

The Manager, as contemplated by the relevant Establishment Deed or otherwise following consultation with the Trustee, may elect that a Fund be a PIE, or cease to be a PIE. Where a Fund is a PIE, the Manager shall for that Fund and otherwise in accordance with the PIE Rules have the following additional powers and discretions:

(a) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of Tax paid or payable by a Fund that is attributable to a Unitholder and to reduce the amount of any distribution otherwise payable to the Unitholder by the amount of such Tax;

(b) to make any other elections as to the method of calculation, allocation or attribution of Tax or any elections or choices in relation to the PIE Rules as it thinks fit, having regard to the interests of Unitholders generally and the requirements of the Tax Act;

(c) to carry out any other tax calculations, allocations or attributions required by the Tax Act;

(d) to adjust a Unitholder's Unit holdings by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or other wise to the extent permitted by law, at any time (including in accordance with clause 5.15);

(e) to elect to offset tax liabilities and refunds in respect of more than one Unitholder and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act;

(f) to allocate the costs associated with being a PIE between Unitholders and Funds on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;

(g) to require that, before accepting an application, the applicant provides their Tax File Number, Prescribed Investor Rate and any other information required by the Tax Act or by the Manager to support compliance with the PIE Rules, and to require at any time a Unitholder to confirm such details on request from the Manager;

(h) to require that any Unitholder provide information to the Manager to enable the Manager to determine whether a Fund continues to meet the PIE eligibility requirements including without limitation details of Units held or deemed to be held by any associated person (as defined in subpart YB of the Tax Act) of the Unitholder where the associated person holds 5% or more of the Units in the Fund or to confirm that the Unitholder either is or is eligible to be a PIE;

(i) to enter into any contractual or administrative arrangements with a Portfolio Investor Proxy for the purposes of ensuring that the Portfolio Investor Proxy meets its responsibilities under section HM 33(3) of the Tax Act, that the application of the PIE Tax regime to relevant investors is managed in a desirable manner; and

(j) to take all steps as the Manager considers necessary or desirable to ensure the Fund is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to a PIE, including (in the Manager's complete discretion) rejecting applications, or re deeming or repurchasing a Unitholder's Units (in accordance with clause 8.14(b) or otherwise).

20.3 Voting Rights on Investments

(a) Except as otherwise expressly provided in this Deed and subject to the provisions of the Trusts Act 2019, all rights of voting conferred by the Investments or any of them are to be exercised in such manner as the Manager may determine. The Trustee must from time to time execute and deliver or cause to be executed and delivered to the Manager or its nominees in a form or forms ap proved by the Trustee such proxies or powers of attorney as the Manager may request.

(b) Neither the Manager nor the Trustee is under any liability or responsibility in respect of the man agement of the corporations or bodies in which the Fund or any part thereof is for the time being invested nor in respect of any vote cast or not cast or action taken or not taken or consent given by the Manager in person by proxy or attorney.

(c) Neither the Trustee nor the Manager nor the holder of any such proxy or power of attorney will incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or Manager or by the holder of such proxy or power of attorney under this Deed and neither the Trustee nor the Manager are under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney except to the extent that such obligation may be attributable to the Trustee's or the Manager's (as the case may be) own negligent or wilful act or default.

20.4 Manager's covenants

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

(a) the Manager has power to act continuously as Manager of the Funds and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Manager under this Deed or which might cause it to prevent it from so acting and will act continuously as Manager under each Fund until such Fund has been wound up in accordance with this Deed or until the Manager has retired or been removed from office;

(b) the Manager will use its best endeavours to ensure that the business of the Manager and each of the Funds is carried on in a proper and efficient manner and in accordance with this Deed, each Establishment Deed and its Offer Materials;

(c) the Manager will not issue a Unit otherwise than at a price calculated in accordance with the provisions of this Deed;

(d) the Manager will prepare or cause to be prepared all distributions and notices which are to be issued pursuant to this Deed and produce them to the Trustee or a person authorised by the Trustee for this purpose so as to afford the Trustee or such authorised person reasonable time to examine and check the same prior to the day on which they ought to be despatched, and the Trustee may rely on the report of the Manager given in respect of the accuracy of such particulars;

(e) the Manager will pay to the Trustee all moneys belonging to each Fund coming to the hands of the Manager;

(f) will without delay forward to the Trustee all notices and other information relevant to the Trustee received by it or on its behalf in connection with any of the Funds or the Investments;

(g) will consult with the Trustee and provide the Trustee with a draft of all Offer Materials in advance so as to provide the Trustee with a reasonable opportunity to comment on those draft documents.

(h) the Manager will retain in safe keeping all Applications and instruments of transfer and transmission, or copies or reproductions thereof, and will make those documents available for inspection by or on behalf of the Trustee at any time during normal business hours, but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any law to the contrary and first obtaining the Trustee's approval) destroy such documents; and

(i) the Manager will ensure that at all times the liability of the Trustee in relation to any contract or agreement or any borrowing entered into by the Trustee at the direction of the Manager, is limited to the Investments of the Relevant Fund or Funds.

21. Removal and Retirement of Manager

21.1 Removal

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

(i) the Manager is removed by written direction of the Trustee after the Trustee certifies, in respect of the relevant Fund, that it is in the best interests of the Unitholders that the Manager should cease to hold office. Without in any way limiting the generality of the foregoing it will be sufficient and valid grounds for such a certificate to be given if the Manager has a receiver or manager or statutory manager appointed or if an order is made or a resolution is passed for the liquidation or winding up of the Manager; or

(ii) the Manager is removed by a Special Resolution of the Unitholders of the relevant Fund; or

(iii) the Manager is substituted by order of a court of law.

(b) If the Manager ceases to hold office pursuant to clause 21.1, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Funds, unless the Trustee agrees to the contrary, and must hand over all records necessary and give reasonable assistance to the new Manager.

21.2 Retirement

The Manager may retire as manager of a Fund at any time without assigning any reason upon giving 90 days' notice in writing to the Trustee of its intention to do so. No such retirement will take effect until a new Manager has been appointed pursuant to clauses 21.3 or 21.4 and has executed the Deed referred to in clause 21.5.

21.3 Temporary Manager

(a) The power to appoint a temporary manager shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.

(b) The power of appointing a temporary Manager of a Fund where a vacancy in the office of Manager arises is vested in the Trustee.

21.4 New Manager Appointment

(a) Subject to all applicable laws, the power of appointing a new permanent manager of the Funds shall be vested in the retiring manager in the case of its retirement under clause 21.2, but, except where the new permanent manager is a Related Body Corporate of the Manager, no new permanent manager shall be so appointed without the approval of the Trustee (such approval not to be unreasonably withheld).

(b) The Trustee may exercise the power to appoint a new permanent manager of the Funds where:

(i) the Manager does not exercise its power to appoint a new permanent manager under clause 21.4(a) within 10 Business Days of a vacancy in the office of Manager of the Funds occurring; or

(ii) where the Manager ceases to hold office under clause 21.1(a).

(c) If the Trustee fails or refuses to appoint a new permanent manager under clause 21.4(b), such new manager may be appointed by Special Resolution.

(d) Upon any vacancy occurring in the office of Manager in respect of the Funds, the Trustee may, in its discretion, summon a meeting of the relevant Unitholders and must take such steps as that meeting or any subsequent meeting of Unitholders may require to secure the appointment of any temporary Manager appointed by the Trustee or some other qualified Manager of the relevant Fund. Any meeting of Unitholders may ratify the appointment of any Manager appointed by the Trustee or may appoint a new Manager.

21.5 New Manager to Execute a Deed

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

21.6 Retiring Manager Released

From the date of execution by the new Manager of a deed in accordance with clause 21.5 the retiring Manager is absolved and released from all such covenants under this Deed in relation to the relevant Fund (except in respect of any prior breach in respect of which the retiring Manager is not indemnified under this Deed) and the new Manager must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Manager under this Deed in all respects as if such Manager had been originally named as a party to this Deed as manager of the relevant Fund.

22. Removal and Retirement of Trustee

22.1 Removal

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

(a) if the Trustee is disqualified from being a trustee under the Trusts Act 2019;

(b) the Unitholders of the relevant Fund by Special Resolution remove the Trustee from office;

(c) the Trustee is removed from office as Trustee by the High Court on the application of the Manager; or

(d) the Manager gives not less than 180 days' written notice to the Trustee.

22.2 Retirement

(a) The Trustee may retire as trustee of a Scheme at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do.

(b) However, no such retirement shall take effect until:

(i) all functions and duties of the position of Trustee have been performed and requirements met, or

(ii) the High Court consents, or

(iii) another trustee has been appointed pursuant to clause 22.3 and has executed the Deed referred to in clause 22.4 and all of the Investments of the relevant Fund have been transferred to the new Trustee.

22.3 New Appointment

The power of appointing a new Trustee of the Funds (in place of a Trustee which has retired or been removed from office) is vested in the Manager. No Person can be appointed as a new Trustee unless qualified to act as such pursuant to the Trusts Act 2019. If the Manager fails or refuses to appoint a new Trustee, such new Trustee may be appointed by Special Resolution of the Unitholders.

22.4 New Trustee to Execute a Deed

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

22.5 Retiring Trustee Released

From the date of execution by the new Trustee of a Deed in accordance with clause 22.4, the retiring Trustee is absolved and released from all such covenants under this Deed (except in respect of any prior breach in respect of which the retiring Trustee is not indemnified under this Deed) and the new Trustee must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Trustee under this Deed in all respects as if such Trustee had been originally named as a party to this Deed. For the avoidance of doubt, the retiring Trustee shall be entitled to payment of all fees, and reimbursement of all expenses, accrued before it ceased to hold office under this deed.

23. Remuneration of Trustee

23.1 Fees Applicable to Specific Funds

(a) The Trustee is entitled to charge in respect of each Fund, and to be paid out of each Fund, the annual or other fees calculated and payable in the amounts agreed in writing between the Manager and the Trustee, unless otherwise as set out in the relevant Establishment Deed.

(b) The Trustee may, in respect of any Fund, after agreement with the Manager and by giving at least 3 months' notice to that effect to all Unitholders in the relevant Fund increase (subject to the maximum amounts set out in the relevant Establishment Deed) the fees payable in respect of any Fund.

(c) If the Trustee wishes to increase its fees and the Manager and the Trustee are unable to agree on the amount of the Trustee's fees, the matter shall be referred to the arbitration of a single arbitrator if one can be agreed on, otherwise to two arbitrators and their umpire, such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.

23.2 Special Fees

In addition to any fees payable to the Trustee under clause 23.1, the Trustee is entitled to charge, in respect of each Fund, such special fees for services of an unusual or onerous nature outside the Trustee's regular services (including by way of example, convening meetings of Unitholders, considering breaches of trust and exercising discretions), calculated and payable as set out in the relevant Establishment Deed.

23.3 GST

The Trustee is entitled to receive, in addition to the fees referred to in clause 23.1 and clause 23.2 any GST or duty or similar tax or duty payable in respect of such fee.

24. Remuneration of Manager

24.1 Manager's Application Fee

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

24.2 Management Fee

In addition to the remuneration payable under clause 24.1, the Manager may charge for its services as manager of the relevant Fund such management fees as are specified in the relevant Establishment Deed. The fee shall be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund.

24.3 Performance Fee

In addition to the management fee payable under clause 24.2, the Manager may charge a performance fee as specified in the relevant Establishment Deed, Offer Materials or otherwise notified to Unitholders. The fee may be payable from the gross income of the relevant Fund or, insofar as that may be insufficient, from the capital of the relevant Fund or by Unitholders directly to the Manager.

24.4 Manager's Redemption Fee

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

24.5 Other Fees

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

24.6 Alteration or Waiver of Fees

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

(a) increase (subject to the maximum amounts set out in the relevant Establishment Deed) or decrease the fees payable in respect of any Fund or by the relevant Unitholders; or

(b) provided that any such fee is permitted under the relevant Establishment Deed, commence charging any such fee which is not currently being charged.

24.7 GST

The Manager is entitled to receive, in addition to the fees referred to in clauses 24.1 to 24.5 (as altered from time to time in accordance with clause 24.6) any GST or duty or similar tax or duty payable in respect of such fees.

24.8 Expenses of each Fund

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

(a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation and operation of the Fund, the appointment of the Trustee, the preparation of any Offer Materials, the acquisition, registration, custody, disposal of or other dealing with Investments of the Fund, including Fund accounting, Fund administration, registration, information management systems relating to Unitholders or Investments, and credit recovery costs, bank charges and stamp duty (if any), and the expenses of any agents or nominated company of the Trustee or the Manager both within and outside New Zealand by the Manager or the Trustee;

(b) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the research, investigation and negotiation for the acquisition for the Fund of any asset which comes within the definition of Authorised Investments, whether or not it is in fact acquired;

(c) the fees and expenses of the Auditor relating to the audit of the Fund;

(d) any fees, commissions or costs payable to a Unitholder or any other party by agreement with the Manager in relation to the referral of, or other services in relation to the acquisition of an Authorised Investment;

(e) all taxes, duties and imposts charged to or payable by the Trustee or Manager (whether by any taxing authority or any other Person) in connection with the Fund or the relevant Investments on any account whatsoever;

(f) interest and other expenses relating to borrowing and discounts and acceptance and other fees in respect of bill facilities;

(g) the costs of convening and holding any meeting of Unitholders;

(h) the costs in respect of preparation, communication and distribution of all accounts, distribution statements, notices, monthly and quarterly updates and other reports and other documents provided to all or any Unitholders in accordance with the provisions of this Deed or general correspondence relating to the Fund;

(i) the fees and expenses of any solicitor, barrister, valuer, accountant or other Person from time to time engaged by the Manager or by the Trustee in the discharge of their respective duties under this Deed;

(j) all costs of preparing, printing and distributing certificates, accounts, distribution statements, any Offer Materials, research publications and any other Unitholder communications;

(k) expenses in connection with the keeping of the Unit Register;

(l) travel expenses relating to specific research relating to an Investment or attendance at meetings relating to an Investment for and on behalf of Unitholders irrespective of domicile;

(m) any other expenses properly and reasonably incurred by the Trustee or the Manager in connection with carrying out their respective duties under this Deed; and such reimbursement to be plus GST (or any similar tax or duty) if any.

24.9 Collective Costs

Where any costs, charges, fees or expenses referred to in clause 25.1 relate to more than one Fund rather than any one individual Fund then such costs, charges, fees or expenses are to be apportioned between each of the relevant Funds on such fair and equitable basis as may be determined by the Manager.

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

25.1 No Personal Liability

The Trustee and (except as otherwise expressly provided in this Deed) the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action for or in connection with the affairs of any Fund, are, and are deemed to be, each acting for and on behalf of the Fund and not in their own respective capacities. Neither the Trustee nor (except as otherwise expressly provided in this Deed) the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation of the Funds, but the relevant Fund only is liable or subject to levy or execution.

25.2 Indemnity

If contrary to the provisions of clause 25.1 either the Trustee or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of any Fund or any action taken or omitted in connection with any Fund, (other than in respect of the Trustee or Manager's negligence) then the Trustee or the Manager (as the case may be) is entitled to indemnity and reimbursement out of the relevant Fund to the full extent of such liability (including, for the avoidance of doubt, PIE tax) and the costs of any litigation or other proceedings in which such liability has been determined including without limitation legal fees and disbursements to the maximum extent provided by law.

25.3 Power to indemnify investment managers and administration manager s

The Manager may agree (in consultation with the Trustee):

(a) to limit the liability (in connection with its services in respect of one or more Funds) of; and/or

(b) to indemnify and reimburse out of the assets of a Fund,

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

25.4 Power to indemnify Custodians

The Trustee may agree:

(a) to limit the liability (in connection with its services in respect of one or more Funds), of: and/or

(b) to indemnify and reimburse out of the assets of a Fund,

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

25.5 Wilful Breach

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

25.6 Reimbursement of expenses

The Trustee and (except as otherwise expressly provided in this Deed) the Manager are each entitled to be reimbursed out of each Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Trustee or Manager (as the case may be) under this Deed for the relevant Fund, and without prejudice to the generality of the foregoing, are entitled to be indemnified against any expense or liability which may be incurred by the Trustee or the Manager (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Deed.

25.7 Breach of duty

Nothing in this deed has the effect of exempting the Trustee or Manager against, any liability for breach of trust where it fails to show the degree of care and diligence required of it in that capacity, having regard to the provisions of and the powers, authorities and discretions conferred by this deed, and that failure causes or results in a loss being incurred by the Fund.

25.8 Reliance on Manager by Trustee

Subject to the provisions of this Deed, and the Trusts Act 2019, the Trustee is not and will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager (including, for the avoidance of doubt and not by way of limitation, any decision of the Manager to invest any Fund or any part thereof in any futures contracts, foreign exchange contracts and options, interest rate and currency swap contracts or options entered into for the purpose of hedging) or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Trustee to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Trustee in any step taken by it) except to the extent that the loss is attributable to the Trustee's own negligent or wilful act or default.

25.9 Reliance Upon Advice

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

25.10 Reliance Upon Documents

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

25.11 Manager's Discretion and Authority

Except insofar as is otherwise expressly provided in this Deed the Manager as regards all the powers, authorities and discretions vested in it by this Deed has absolute and uncontrolled discretion as to their

exercise, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to the Trustee and the approval of or supervision by the Trustee wherever required.

25.12 Trustee's Discretion and Authority

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

25.13 Dealing in Units: The Manager

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

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

(b) from otherwise at any time contracting or acting in any capacity as representative or agent; or

(c) from entering into any contract or transaction whatsoever with any other of them or with any Unitholder; or

(d) from being interested in any such contract or transaction or otherwise acting as Manager of any other Managed Investment Scheme or holding any asset jointly with a trust; and

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

25.14 Dealing in Units: The Trustee

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

25.15 Trustee's Limited Liability to Unitholders

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

25.16 No Respective Liabilities of Trustee and Manager

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

25.17 Reliance Upon Apparently Genuine Documents

Neither the Manager nor the Trustee is liable for any action taken or omitted or thing suffered by the

Manager or Trustee or the Unitholders in reliance upon any document or writing of any type reasonably believed by the Manager or the Trustee (as applicable) to be genuine.

26. Unitholders bound by this deed

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

27. Limitation of liability of Unitholders

27.1 Limitation of liability of Unitholders

(a) Except as expressly provided by this Deed no Unitholder is, by reason alone of being a Unitholder or by reason alone of the relationship hereby created with the Trustee or with the Manager, under any personal obligation to indemnify the Trustee or the Manager or any creditor of them or of either of them in the event of there being any deficiency of assets of the Funds as compared with the Liabilities to be met therefrom.

(b) Subject to subclause (d) of this clause, the rights (if any) of the Trustee or Manager or of any creditor to seek indemnity are limited to having recourse to the relevant Fund and do not extend to a Unitholder personally in such Person's capacity as a Unitholder.

(c) On a winding-up of the Fund, no Unitholder has any liability to contribute to any shortfall in the Fund if the Liabilities of the Fund exceed the Gross Asset Value of the Fund except for any liability for any unpaid calls or instalments owing in respect of any Unit.

(d) Every Unitholder indemnifies the Trustee, the Manager and the relevant Fund on account of any PIE Tax, or any other taxation attributable to income allocated to that Unitholder and related penalties or interest which has not been satisfied by redeeming Units of, or by deduction from monies paid to, that Unitholder.

28. Record, financial statements, auditing and reporting

28.1 Records

(a) The Manager shall keep or cause to be kept such accounting records as correctly record and explain the transactions and the financial position of each Fund.

(b) The Trustee shall (and shall procure that the Custodian shall) from time to time upon request furnish the Manager with any information necessary for the Manager's recording keeping purposes.

(c) The Manager shall keep at its registered office or such other place it thinks fit (including in electronic form), proper books of account that will enable the Financial Statements of each Fund to be prepared following the end of each Financial Year and conveniently and properly audited in accordance with this Deed.

(d) The Manager shall allow for inspection of all records relating to a Fund to the extent required by Relevant Law.

28.2 Annual Financial Statements to be prepared

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

28.3 Audit of Financial Statements

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

28.4 Auditor's report

Within four months of the end of each Financial Year, the Manager shall deliver to the Trustee and each Unitholder the annual Financial Statements of the relevant fund, together with a separate report by the Auditor addressed to the Trustee in a form to be agreed between the Trustee, the Manager and Auditor.

28.5 Reporting to the Trustee

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

(a) possible contraventions of its obligations under this Deed or any Relevant Law;

(b) any serious financing problems it has;

(c) limit breaks;

(d) unit pricing errors; and

(e) related party transactions,

and in accordance with the agreement of the Manager and the Trustee as to the frequency and content of such reports.

28.6 Additional information and reports to the Trustee

Without limiting either clause 28.4, the Manager shall provide the Trustee with such reports at the frequency and with such information as is required by the Trustee from time to time, and in accordance with the agreement of the Manager and the Trustee.

28.7 Custodian reports

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

29. Information and Reports to Trustee

Without limiting the requirements under any Relevant Law, the Manager must supply the Trustee the information and reports set out in the Manager Reporting Agreement, which may be amended by mutual agreement between the Manager and the Trustee from time to time.

30. Auditor

30.1 Appointment and Remuneration

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

30.2 Removal/Retirement

The Auditor may at any time and from time to time be removed by the Manager on approval of the Trustee or if the Trustee believes it to be in the interests of the Funds and/or Unitholders it may instruct the Manager to remove the Auditor. The Auditor may retire upon giving the Manager 30 days' notice in writing.

30.3 New Appointment

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

31. Meetings of Unitholders and directions to Trustee

31.1 Meetings

Meetings of the Unitholders shall be convened and conducted in accordance with the provisions in Schedule 1 – Meeting procedures (clause 31.1) or as otherwise prescribed by law.

31.2 Unitholders' Directions to the Trustee

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

31.3 Compliance with Directions

Where any direction is given to the Trustee pursuant to clause 31.2 in respect of any matter, the Trustee may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction. Where applicable, the Trustee may also at its discretion apply to the High Court for an order in respect of any matter.

31.4 Resolution in lieu of meeting

A written resolution is as valid as if it had been passed at a meeting of Unitholders, in accordance with the procedure set out in regulation 90 of the Financial Markets Conduct Regulations 2014 (with all necessary changes to apply to the Funds).

32. Notices to Unitholders

32.1 Notice of Meetings

A minimum 20 Business Days' notice of every meeting of Unitholders must be given to every Unitholder or the Unitholders of the relevant Fund (where the meeting relates only to those Unitholders) by sending it addressed to the Unitholder at the Unitholder's registered address by ordinary, prepaid post or, if that address is outside New Zealand, by airmail, prepaid post or by sending it to the email address provided in a Unitholder's application.

32.2 Other Notices

In any other case a notice may be given under this Deed to any Unitholder by email or personally by leaving it at the Unitholder's registered address or by sending it addressed to the Unitholder at the Unitholder's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post, or by other means permitted by any rule of law or enactment including Part 4 of the Contract and Commercial Law Act 2017, with the prior written approval of the Trustee. A Unitholder must notify the Manager or the Manager's appointed agent of any change of the Unitholder's registered address and the relevant Unit Register shall be altered accordingly. Any notice given to Unitholders by the Manager must be copied to the Trustee by the Manager provided that, where notices are given to Unitholders in substantially the same form but with personalised details in respect of each Unitholder, it shall be sufficient to provide the Trustee with a sample of such a notice.

32.3 Manner of Notice

(a) Any notice sent by post will be deemed to have been given at the expiration of 72 hours after posting, or in the case of a notice posted to another country, at the expiry of 9 Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted; and

(b) in the case of a communication sent by email, on the Business Day on which it was despatched or, if despatched after 5.00pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case the computer system used to transmit the communication has not generated a record that the communication has failed to be transmitted.

32.4 Signature of Notice

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

32.5 Calculation of Notice Periods

Where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.

32.6 Binding Nature of Notice

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

32.7 Receipt of Notice

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

33. Notices between Manager and Trustee

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

34. Amendment to Trust Deed

34.1 Power to Change the Deed

Subject to obtaining the consent of the Trustee (not to be unreasonably withheld), the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed or any Establishment Deed (by means of a deed executed by the Trustee and the Manager) in any of the following cases:

(a) if in the opinion of the Trustee the change is made to correct a manifest error or is of a formal, technical, or administrative nature;

(b) if in the opinion of the Trustee the change is necessary or desirable for the more convenient, economical or advantageous working, management or administration of any of the Funds or for safeguarding or enhancing the interests of any of the Funds or Unitholders and is not or not likely to become materially prejudicial to the general interests of all Unitholders of the relevant Funds;

(c) if, in the case of a change affecting all Unitholders, the change is authorised by a Special Resolution of all Unitholders as if they were beneficiaries of a single Fund, the provisions of the Schedule relating to meetings of Unitholders to be read accordingly;

(d) if, after a change in any law or guidance, a change to this Deed is necessary to make any provision of this Deed consistent with such law or guidance;

(e) if, in the case of a change affecting Unitholders in a particular Fund, the change is authorised by Special Resolution of those Unitholders;

(f) if, in the reasonable opinion of the Manager, the change is necessary or desirable to enable a particular Fund to opt into the PIE taxation regime or to make any applicable election or choice under the PIE taxation regime or to maintain the status of a Fund as a PIE; or

(g) if the change is authorised or required under any Relevant Law.

35. Period of Trusts

35.1 Period of Trusts

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

(i) the date of termination (if any) specified in the relevant Establishment Deed;

(ii) the date determined by the Unitholders by Special Resolution to terminate the Fund;

(iii) the date determined by the Manager to terminate the Fund pursuant to a winding-up resolution and as notified to the Trustee and the relevant Unitholders by not less than 30 days' notice; or

(iv) any other date required by Relevant Law.

(b) The Manager must, if practicable, give the Trustee and relevant Unitholders not less than 30 days' notice of a Date of Termination under clauses 35.1(a)(i) or 35.1(a)(iv) but, in any event, must give such notice as soon as practicable after becoming aware that such Date of Termination has been determined.

(c) Notwithstanding any other provision of this deed, no Units may be issued after the Date of Termination.

36. Procedure on winding up

36.1 Realisation of Investments

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

36.2 Retentions by Trustee

The Trustee is entitled to retain out of the relevant Fund such amount as the Trustee considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) in connection with the relevant Fund or arising out of the liquidation of the Fund including the Trustee's fees due under clause 23 and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Trustee may employ in connection with the winding up of the Fund. The Trustee is entitled to be indemnified in respect of the foregoing from the moneys or assets re tained by the Trustee.

36.3 Application of Realisation

Subject to the retention of any moneys as provided in clause 36.3, the net proceeds of realisation of Investments shall be applied by the Trustee as follows:

(a) first, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Trustee or the Manager and payable from the relevant Fund and of all remuneration payable to the Trustee and the Manager as provided in this Deed; and

(b) secondly, in the case of the relevant Fund, in payment to the Unitholders pro rata to the number of Units held by them in the relevant Fund.

36.4 Interim Distributions

If in the opinion of the Trustee it is expedient to do so the Trustee may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 36.3.

36.5 Receipts

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

37. Payments to Unitholders

(a) The moneys may be given or sent through the post to the Unitholder or their respective agents or other authorised Persons or may be credited to any bank account nominated by the Unitholder.

(b) If any amount has been deducted on behalf of taxes from a payment to a Unitholder, details of such deduction shall be provided to the Unitholder when the relevant payment is made.

38. Unclaimed moneys

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

39. Deductions and adjustments for taxes

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

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

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

40. Law applicable

This Deed is governed by the law of New Zealand.

Schedule 1 – Meeting procedures (clause 31.1)

1. Convening of meetings

1.1 The Manager must summon a meeting of Unitholders of the relevant Fund on:

(a) the request in writing of the Trustee;

(b) the request of Unitholders holding Units that have a combined value of no less than 5% of the value of the Units on issue in the relevant Fund at the date of such request.

1.2 If the Manager fails to call a meeting in accordance with this clause the Trustee shall be entitled to call such a meeting on behalf of the Manager.

1.3 The Manager may at any time of its own volition convene a meeting of Unitholders to be held at such place as is acceptable to the Trustee.

2. Notice of meetings

2.1 Notice of every meeting must be given to every Unitholder on the relevant Unit Register, the Trustee, and every director of the Manager. At least 20 Business Days' notice of every meeting must be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice must specify:

(a) the place, day and hour of the meeting;

(b) the general nature of the business to be transacted in sufficient detail to enable a Unitholder to form a reasoned judgement in relation to it;

(c) the text of any Special Resolution to be submitted at the meeting; and

(d) the right of a Unitholder to appoint a proxy.

2.2 If a Special Resolution is to be submitted to the meeting:

(a) a draft of the proposed notice of the meeting must be given to the Trustee at least 10 working days before the notice is given under clause 2.1 (or any lesser period approved by the Trustee); and

(b) the notice of the meeting must be accompanied by a document containing the Trustee's comments on the proposed Special Resolution (but only if the Trustee has provided those comments in writing to the Manager at least 5 working days before the notice is given under clause 2.1, or any lesser period approved by the Manager).

2.3 The accidental omission to give notice to or the non-receipt of notice by any Person entitled to that notice does not invalidate proceedings at any meeting.

2.4 The Manager must ensure that the Trustee receives the notices and communications that any Unitholder is entitled to receive in relation to a meeting of those Unitholders.

3. Quorum

3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

3.2 The quorum for meetings of Unitholders is met if Unitholders are present or have cast votes as they are entitled to, where the number of Unitholders present or votes cast represent Unitholders holding no less than 25% of the number of Units on issue.

3.3 If within 15 minutes from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Unitholders must be dissolved. In any other case it will stand adjourned to such day and time not being less than 14 days thereafter and to such place as may be appointed by the Chairperson and at such adjourned meeting the Unitholders present in person or by proxy or by attorney or by authorised representative and entitled to vote shall form a quorum.

3.4 Notice of any such adjourned meeting must be given in the same manner (except in respect of the period of notice which shall be approved by the Trustee) as of an original meeting and such notice must state that the Unitholders present at the adjourned meeting, in the case of a meeting of Unitholders, whatever their number and whatever the number of Units held by them shall form a quorum.

4. Trustee and Manager may attend and speak

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

5. Chairperson

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

(a) no chairperson has been appointed by the Trustee; or

(b) at the meeting, the chairperson appointed by the Trustee is not present within 15 minutes of the time appointed for the start of the meeting.

6. Adjournment of meetings

6.1 The chairperson may with the consent of any meeting at which a quorum is present and must if so directed by the meeting adjourn the meeting from time to time and from place to place.

6.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

7. Voting rights

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

7.2 Votes may be given either personally or by proxy or by attorney.

8. Proxies

8.1 An instrument of proxy shall be in such form as the Manager may stipulate from time to time and need not be witnessed.

8.2 Whenever the chairperson of the meeting or an officer of the Trustee is appointed a proxy for a Unitholder and the Unitholder has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which such Person's proxy shall vote upon any resolution coming before the meeting such Person's vote must be used in favour of the resolution.

8.3 The instrument appointing a proxy must be in writing and signed by or, in the case of Electronic Notice, sent by the Unitholder.

8.4 A Person appointed to act as a proxy need not be a Unitholder.

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

(b) If no such place is appointed then it shall be deposited at the Manager's registered office not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote.

(c) In default of the above the instrument of proxy is not to be treated as valid with the exception that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.

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

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

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

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

9. Power of attorney

9.1 Any Unitholder may by power of attorney appoint an attorney (who need not be a Unitholder) to vote and act on his or her behalf at any meeting.

9.2 Such power of attorney or proof thereof to the satisfaction of the Manager (unless such power of attorney

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

10. Procedure

10.1 A resolution put to the vote of a meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Trustee or any representative of the Trustee or in the case of a meeting of the Unitholders by one or more Unitholders holding or representing not less than 5% of the Number of Units on Issue.

10.2 Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

10.3 If a poll is duly demanded it shall be taken in such manner as the chairperson may direct and the result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.

10.4 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled for any reason whatsoever.

10.5 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forth with. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

10.6 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

10.7 On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all such Person's votes or cast all the votes such Person uses in the same way.

10.8 In the case of a meeting of the Unitholders, on a show of hands every Person present at the meeting and entitled to vote (whether as a Unitholder or as a proxy or attorney or authorised representative) has one vote only. On a poll every Unitholder who is present in person or by proxy or by attorney or by an authorised representative is entitled to one vote for every Unit of which such Unitholder is the holder.

10.9 In the case of joint Unitholders the vote of the senior who tenders a vote whether in person or by proxy or by attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Unitholders. For this purpose seniority is determined by the order in which the names stand in the Unit Register in respect of the joint holding.

11. Resolutions

11.1 A meeting of Unitholders has the following powers exercisable by Special Resolution:

(a) To sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed or into units or other interests in any other Managed Investment Schemes or similar entity;

(b) To sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unitholders howsoever such rights arise;

(c) To assent to any alteration, modification of, variation, or addition to the provisions contained in this Deed or any deed supplemental thereto or the conditions attaching to the Units and to authorise the Manager and Trustee to concur in and execute any supplemental Deed or other document embodying any such alteration or addition;

(d) To give any sanction, assent, release or waiver of any breach or default by the Manager or the Trustee under any of the provisions of this Deed;

(e) To discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this Deed;

(f) To appoint a new Trustee if a vacancy arises in the office of Trustee and the Manager fails to ap point a new Trustee pursuant to this Deed;

(g) To sanction any variation to the Authorised Investments of a Fund;

(h) To give such directions to the Trustee as they think proper concerning the Trust being directions that are consistent with this Deed; and

(i) To direct the removal of the Manager of the Fund.

12. Resolutions bind all Unitholders

12.1 An Ordinary Resolution and a Special Resolution passed at a meeting of the Unitholders duly convened and held in accordance with this Schedule is binding upon all Unitholders present or not present at the meeting. Each of the Unitholders, the Trustee and the Manager is bound to give effect to such resolution accordingly.

12.2 The passing of any such resolution shall as between the Manager, the Trustee, and the Unitholders be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution or Special Resolution as the case may be, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

13. Minutes to be kept

13.1 The Manager shall ensure that minutes are kept of all resolutions and proceedings at every meeting.

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

Schedule 2 – Form of Establishment Deed (clause 2.3)

Parties

Merx Funds Management Limited (**Manager**)
Public Trust (**Trustee**)

Background

A The Manager and the Trustee are parties to a trust deed dated [date] (Master Trust Deed) which sets out the terms and conditions applicable to Funds established by the Manager and the Trustee within such Scheme.

B The Master Trust Deed provides that each fund is to be established by the Manager and the Trustee entering into an Establishment Deed setting out the specific terms and conditions relating to that fund.

C The Master Trust Deed provides that funds are to be established by the Manager and the Trustee entering into an Establishment Deed setting out the specific terms and conditions relating to that fund.

D The Manager has resolved to establish a fund to be known as the [name of fund] or such other name as the Manager shall decide and gives notice to the Trustee (Fund) and the Trustee and the Manager have entered into this deed for the purpose of establishing the Fund with respect to the terms and conditions applicable to it.

It is agreed

1. Creation of Fund

Deposit of Moneys

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

Name of the Fund

1.2 The name of the Fund is [name].

Date of commencement

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

[Functional currency

1.4 For the purposes of clause 1.6 of the Master Trust Deed, the functional currency of the Fund is [insert].]

[Portfolio Investment Entity

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

[Unit classes

1.6 [The Fund shall have a single class of Unit. The rights attaching to that single class of Unit are set out in the Master Trust Deed and this deed.][OR Describe rights attaching to different classes of Units – NB consequential changes likely to be required to remainder of the Establishment Deed.]

2. Authorised Investments

2.1 For the purposes of the Fund, Authorised Investments means [describe Authorised Investments].

3. Market Value, Issue Dates, Valuation Days and Issue Price

[Market Value

3.1 [Any specific method of determining Market Value under clause 6.3(a) of the Master Trust Deed to be set out here.]]

[Issue Date

3.2 Units may only be issued on, or with effect from, a Valuation Day. Units will be issued on the Valuation Day following receipt of application moneys or, if application moneys are received by 2pm on a Valuation Day, Units will be issued on that Valuation Day. If an application is received after 2pm on a Valuation Day, the application will be processed on the next Valuation Day. All application moneys will be held on trust for subscribers in the "Public Trust – as trustee of the Merx [Name of Fund] Applications" bank account until the Units are issued. Any interest earned on application moneys pending issue of Units will be credited to the Manager to cover the costs of administering this bank account.]

Valuation Days

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

Alternative Valuation Days

3.4 The Manager may value the Fund less frequently if, for reasons beyond the Manager's control, valuation is impossible or impracticable on the day in question. In such situations the Manager will value the Fund as soon as reasonably practicable.

Issue Price

3.5 The Issue Price of Units calculated on each Valuation Day shall equal [NZ$1.00 per Unit][the Net Asset Value per Unit on that day [plus % the Net Asset Value per Unit]].

Number of Units Issued

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

4. Minimum Investment and Minimum Transfer

Minimum Amount

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

Minimum Transfer

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

5. Distributions

Distribution Period

5.1 [The Distribution Period for the Fund shall be [each calendar month in each calendar year][other].] [The Fund shall not make Distributions and therefore shall have no Distribution Period].

Distributable Income

5.2 On or before each Distribution Date, the Manager shall, in its discretion, decide whether to make a Distribution on that date and if so the amount of the Distribution. No prior notice to Unitholders is required of the Manager's decision.

5.3 Distributions may be of capital and/or income as determined by the Manager in its discretion.

Distributions

5.4 On each Distribution Date, the Manager shall calculate the Distribution (if any) per Unit by dividing the gross amount to be distributed on such Distribution Date by the number of Units on Issue.

5.5 A Unit on issue in any Distribution Period entitles the relevant Unitholder to participate in any Distribution for the relevant Distribution Period on a pro rata basis to the number of days it has been on issue.

Period for payment of Distributions

5.6 Following calculation of the Distribution per Unit pursuant to clause 5.4, the Distributions shall be distributed by the Manager as soon as practicable (but no later than 20 Business Days) after the Distribution Date together with a distribution statement.

Distribution reinvestment

5.7 [Unitholders may elect to reinvest their Distributions in accordance with clause 18.3 of the Master Trust Deed.][Unless a Unitholder elects otherwise, each Unitholder is deemed to have elected to reinvest their Distributions in accordance with clause 18.3 of the Trust Deed.]

6. Borrowing

6.1 [The aggregate of the principal money borrowed and outstanding in respect of the Fund or secured against the investments of the Fund may not exceed [20]% of the Gross Asset Value of the Fund.][No borrowing is permitted in respect of the Fund.]

7. Redemption of Units

Exit Dates

7.1 Subject to clauses 8.10 and 8.11 of the Master Trust Deed and for the purposes of clause 8.3 of the Master Trust Deed, Units will be redeemed with effect from the first Valuation Day which occurs after the date on which the relevant Redemption Request is received by the Manager. If a Redemption Request is received after 5pm on any day, it will be deemed to have been received on the following Business Day. The Manager may in its sole discretion redeem Units with effect from an earlier Valuation Day.

Redemption Price

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

Payment of Redemption Price

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

8. Fees

Application / Redemption Fee

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

Management Fee

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

8.3 The Manager shall be entitled to charge the Fund and retain for its own use a performance fee [describe performance fee, including any hurdle and high water mark features].

Trustee's Fee

8.4 The Trustee shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the Trustee.

8.5 Without limiting clause 8.4 above, the Trustee may also charge special fees in accordance with clause 23.2 of the Master Trust Deed for the services and in the amounts agreed, or calculated in accordance with a methodology agreed, in writing by the Manager and the Trustee.

Administration Manager's Fee

8.6 Any administration manager appointed for the Fund shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the administration manager, subject to the prior agreement of the Trustee.

Other Fees and Charges

8.7 The Manager and the Trustee may charge or recover out of the Fund such other fees and amounts as are specified in the Offer Materials, Master Trust Deed, or this Establishment Deed.

9. Trust Deed

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

10. Interpretation

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

Merx

Signing page

EXECUTED as a deed

MERX FUNDS MANAGEMENT LIMITED by:

Signature of Director

Andrew Owen Dunning

Name of Director

Signature of Director

Name of Director

SIGNED on behalf of PUBLIC TRUST by its attorney, and in the presence of:

Signature of Attorney

Signature of Witness

Name of Attorney

Name of Witness

Occupation of Witness

City/town of residence

Signing page

EXECUTED as a deed

SIGNED by
MERX FUNDS MANAGEMENT LIMITED by:

Signature of Director

Name of Director

Signature of Director

Name of Director

SIGNED on behalf of PUBLIC TRUST by its attorney, and in the presence of:

Signature of Witness

Susanna Lee
Manager Client Services
Public Trust Corporate Trustee Services
Auckland

Name of Witness

Occupation of Witness

City/town of residence

Signature of Attorney

Elena Vinton, Head of Client Services (Auckland)

Name of Attorney

UNCLASSIFIED

CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY

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

1 by deed dated 10 November 2022, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number PA 12606310.1; and

2 at the date hereof I hold the position of Head of Client Services (Auckland) with Public Trust; and

3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 8 January 2026

Signature of attorney

UNCLASSIFIED

Schedule 2 – Amended Establishment Deed

Merx Private Credit Fund

Establishment Deed

Formerly the MERX Wholesale 1 PIE Trust

Amended and restated on

Merx Funds Management Limited (**Manager**)
Public Trust (**Trustee**)

Merx Private Credit Fund – Establishment Deed

Formerly the MERX Wholesale 1 PIE Trust

DETAILS

Date

8 January 2026

Parties

Name	**Merx Funds Management Limited**	
Short form name	**Manager**	
Notice Details	Attention:	Andrew Dunning
	Email:	andrew@merx.co.nz
	Address:	Level 15, 51 Shortland Street, Auckland CBD, Auckland 1010, New Zealand

Name	**Public Trust**	
Short form name	**Trustee**	
Notice Details	Attention:	Susanna Lee
	Email:	susanna.lee@publictrust.co.nz
	Address:	Level 16, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

BACKGROUND

A. The Manager and the Trustee are parties to a trust deed dated on or about the date of this deed (Master Trust Deed) which sets out the terms and conditions applicable for the Merx Wholesale Unit Trust Scheme (the Scheme) and any other Funds established by the Manager and Trustee within the Scheme.

B. The Master Trust Deed provides that each Fund is to be established by the Manager and the Trustee entering into an Establishment Deed setting out the specific terms and conditions relating to the fund.

C. The Manager resolved to establish a fund to be known as the Merx Private Credit Fund (formerly the MERX Wholesale 1 PIE Trust) or such other name as the Manager shall decide and gives notice to the Trustee (Fund) and the Trustee and the Manager have entered into this deed for the purpose of establishing the Fund with respect to the Scheme and the terms and conditions applicable to it.

D. This deed and the Master Trust Deed, read together, form the governing document for this Fund.

IT IS AGREED

1. Creation of Fund

Deposit of Moneys

1.1 Upon execution of this deed, the Master Trust Deed, the Manager will deposit, by way of subscription, the sum of $100 with the Trustee to be held upon the trust created by this deed and the Master Trust Deed.

Name of the Fund

1.2 The name of the Fund is the Merx Private Credit Fund.

Date of commencement

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

Functional currency

1.4 For the purposes of clause 1.6 of the Master Trust Deed, the functional currency of the Fund is New Zealand dollars.

Portfolio Investment Entity

1.5 It is intended that the Fund will be a PIE, provided that the Fund meets the eligibility requirements to be a PIE under the PIE rules in the Income Tax Act 2007.

Unit classes

1.6 The Fund shall have a single class of Unit. The rights attaching to that single class of Unit are set out in the Master Trust Deed and this deed.

2. Authorised Investments

2.1 For the purposes of the Fund, Authorised Investments means any investments set out in the Offer Materials for the Fund or as otherwise notified to Unitholders from time to time.

3. Market Value, Issue Dates, Valuation Days and Issue Price

Market Value

3.1 For the purposes of clause 6.3(a) of the Master Trust Deed, Market Value is to be determined by the Manager in accordance with the Master Trust Deed.

Issue Date

3.2 Units may only be issued on, or with effect from, a Valuation Day. Units will be issued on the Valuation Day following receipt of application moneys or, if application moneys are received by 2pm on a Valuation Day, Units will be issued on that Valuation Day. If an application is received after 2pm on a Valuation Day, the application will be processed on the next Valuation Day.

All application moneys will be held on trust for subscribers in the "Public Trust – as trustee of the Merx Private Credit Fund – Applications" bank account until the Units are issued. Any interest earned on application moneys pending issue of Units will be credited to the Manager to cover the costs of administering this bank account.

Valuation Days

3.3 The Valuation Day is the last Business Day of each month or as otherwise provided for under the Master Trust Deed. The Manager may value the Fund more frequently.

Alternative Valuation Days

3.4 The Manager may value the Fund less frequently if, for reasons beyond the Manager's control, valuation is impossible or impracticable on the day in question. In such situations the Manager will value the Fund as soon as reasonably practicable.

Issue Price

3.5 Units will be issued at a fixed Issue Price of NZ$1.00 per Unit.

Number of Units Issued

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

4. Minimum and maximum holding and transaction values

Minimum holding

4.1 There is no minimum ongoing holding in the Fund.

Maximum holding

4.2 There is no maximum initial investment and ongoing holding in the Fund, subject to the Manager's powers under the Master Trust Deed in relation to meeting PIE requirements.

Minimum transaction values

4.3 The minimum value for a transaction in relation to Units is:
(a) for an issue of Units, $5,000; and
(b) for a redemption of Units, $5,000.

The Manager may waive any such minimum requirement at its discretion.

5. Distributions

Distribution Period

5.1 The Distribution Period for the Fund shall commence on a Valuation Day and end on the day immediately prior to the following Valuation Day.

Distributable Income

5.2 The amount of the Distribution in relation to any Distribution Period shall be the amount that the Manager determines is necessary to maintain the Net Asset Value per Unit at $1 at the end of that Distribution Period. Distributions may be made in cash or by the issue of Units.

5.3 Distributions may be of capital and/or income as determined by the Manager in its discretion.

Distributions

5.4 On each Distribution Date, the Manager shall calculate the Distribution (if any) per Unit by dividing the aggregate amount to be distributed on such Distribution Date by the number of Units on Issue.

5.5 A Unit on issue in any Distribution Period entitles the relevant Unitholder to participate in any Distribution for the relevant Distribution Period on a pro rata basis to the number of days it has been on issue.

Period for payment of Distributions

5.6 Following calculation of the Distribution per Unit pursuant to clause 5.4, the Distributions shall be distributed by the Manager as soon as practicable (but no later than 20 Business Days) after the Distribution Date together with a distribution statement.

Distribution reinvestment

5.7 Unitholders may elect to reinvest their Distributions in accordance with clause 18.3 of the Master Trust Deed.

6. Borrowing

6.1 No borrowing is permitted in respect of the Fund.

7. Redemption of Units

Exit Dates

7.1 Subject to clauses 8.10 and 8.11 of the Master Trust Deed and for the purposes of clause 8.3 of the Master Trust Deed, Units will be redeemed with effect from the first Valuation Day which occurs after the date on which the relevant Redemption Request is received by the Manager. If a Redemption Request is received after 5pm on any day, it will be deemed to have been received on the following Business Day. The Manager may in its sole discretion redeem Units with effect f rom an earlier Valuation Day.

Redemption Price

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

Payment of Redemption Price

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

8. Fees and Costs

Redemption Fee

8.1 There shall be no Redemption Fee for the Fund for a Redemption Request provided in the form and manner specified in the Master Trust Deed and Offer Materials more than 6 months from the Unitholder's requested redemption date.

8.2 A Redemption Fee of 2.5% of the Redemption Price of each Unit redeemed is payable into the Fund upon a redemption if a Redemption Request is provided less than 6 months from the date the Unitholder requests redemption of Units.

Management Fee

8.3 The Manager shall be entitled to charge the Fund and retain for its own use a monthly management fee of 1.95% per annum of the Net Asset Value of the Fund (or such other amount as set out in the Offer Materials from time to time) on the last Business Day of each month. The monthly management fee is payable in arrears out of the Fund within 14 days of the end of each calendar month.

Performance Fee

8.4 The Manager shall be entitled to charge the Fund and retain for its own use a performance fee equal to 20% of the Fund's income over an annual hurdle rate of the official cash rate plus 4% per annum calculated and paid monthly in accordance with the Schedule.

Trustee's Fee

8.5 The Trustee shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the Trustee.

8.6 Without limiting clause 8.5 above, the Trustee may also charge special fees in accordance with clause 23.2 of the Master Trust Deed for the services and in the amounts agreed, or calculated in accordance with a methodology agreed, in writing by the Manager and the Trustee.

Administration Manager's Fee

8.7 Any administration manager appointed for the Fund shall be paid a fee at the times and in the amounts agreed in writing by the Manager and the administration manager, subject to the prior agreement of the Trustee.

Other Fees and Charges

8.8 The Manager and the Trustee may charge or recover out of the Fund such other fees and amounts as are specified in the Offer Materials, Master Trust Deed, or this Establishment Deed.

9. Trust Deed

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

10. Interpretation

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

Schedule

Performance Fee calculation

The Manager is entitled to receive a Performance Fee equal to 20% of the Fund's net income (after fees and costs) over an annual hurdle rate of the official cash rate (OCR) plus 4%.

The Performance Fee is calculated and paid monthly (by the Manager).

The hurdle rate is calculated as at the last Business Day of each month as an annualised return on the average balance of Unitholders for the period at a rate of the OCR plus 4% per annum (the month then ending).

By way of example — Month ending 31 January

	1 - 31 January 2025
Average Unit Holders Funds (L12M)	$20,000,000
Hurdle Rate (OCR + 4%)	(*4.25% (OCR) + 4.00%*) = 8.25%
Hurdle Rate Return Required	$140,137
Fund Income for the Month (Net)	$224,000
Income Above Hurdle Rate (Net)	$83,863
Performance Fee Payable	$16,773

Merx

Signing page

EXECUTED as a deed

MERX FUNDS MANAGEMENT LIMITED by:

Signature of Director

Andrew Owen Dunning

Name of Director

Signature of Director

Name of Director

SIGNED on behalf of PUBLIC TRUST by its attorney, and in the presence of:

Signature of Witness

Susanna Lee
Manager Client Services
Public Trust Corporate Trustee Services
Auckland

Name of Witness

Occupation of Witness

City/town of residence

Signature of Attorney

Elena Vinton

Name of Attorney

UNCLASSIFIED

CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY

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

1 by deed dated 10 November 2022, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number PA 12606310.1; and

2 at the date hereof I hold the position of Head of Client Services (Auckland) with Public Trust; and

3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 8 January 2026

Signature of attorney

UNCLASSIFIED

Merx

Nominee Appointment Deed

in relation to pre-existing assets of the Merx Private Credit Fund

MinterEllisonRuddWatts.

This **DEED** is made on 8 January 2026

Parties

Name	**Merx Funds Management Limited**	
Short form name	**Nominee**	
NZBN	9429050645602	
Notice details	Attention:	Andrew Dunning
	Email:	andrew@merx.co.nz
	Address:	Level 15, 51 Shortland Street, Auckland CBD, Auckland 1010, New Zealand

Name	**Public Trust**	
Short form name	**Trustee**	
NZBN	9429041913222	
Notice details	Attention:	Manager Client Services, Corporate Trustee Services
	Email:	CTS.Enquiry@PublicTrust.co.nz
	Address:	Level 16, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

Introduction

A The Trustee has been appointed to replace the Nominee in its capacity, and to the extent it acted, as the trustee of the Trust pursuant to a deed of amendment and restatement of the master trust deed dated on or about the date of this deed.

B The Trustee has agreed to appoint the Nominee to continue to hold certain Loan Assets and the Nominee has agreed to hold those Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Unitholders, on and subject to the terms of this deed and on and from the Effective Date.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this deed, all terms defined in the Trust Deed which are not separately defined in this deed shall have the same meanings where used in this deed, and unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

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

Loan Assets means the loans and other Investments of the Trust and specified in the Schedule, represented by the contracts and associated other documents, agreed to be subject to this deed.

Trust means the Merx Private Credit Fund.

Trust Deed means the master trust deed dated 30 June 2022 for the Merx Wholesale Unit Trust Scheme and an establishment deed dated 30 June 2022 for the Trust, as amended and restated on or about the date of this deed.

1.2 Interpretation

In this deed, unless the context otherwise requires:

(a) a word denoting the singular includes the plural and vice versa;

(b) a word denoting an individual or person includes a company, body corporate, firm, authority, government or governmental authority and vice versa;

(c) a reference to a party in this deed, includes a party's respective successors and permitted assigns;

(d) any obligation to be performed or liability of two or more parties under or in relation to this deed is an obligation or liability of them severally;

(e) headings are for convenience of reference only and shall not affect the construction of this deed;

(f) references to writing includes electronic communications in a form allowed by the Nominee;

(g) references to property means real and personal property, and any estate, share and interest in any real or personal property, and any debt, thing, chose in action or other right or interest, whether in possession or not;

(h) references to currency are to New Zealand currency; and

(i) references to any enactment includes statutes or statutory provisions or orders or regulations made thereunder, and includes:

(i) that statute, provision, order or regulation as amended, modified re-enacted or replaced from time to time (whether before or after the date of this deed); and

(ii) any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation,

2. Creation of trust

2.1 Declaration of bare trust and appointment of Nominee

(a) The Trustee appoints the Nominee as its agent and nominee to hold the Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Unitholders on the terms of this deed to be effective on and from the Effective Date.

(b) The Nominee agrees that it will hold the Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Unitholders, on the terms of this deed on and from the Effective Date.

2.2 Undertaking of Nominee

The Nominee hereby irrevocably declares and undertakes to the Trustee that it will, for so long as it holds Investments pursuant to this deed:

(a) only transfer or otherwise deal with or dispose of any Investment in accordance with the Trustee's instructions;

(b) only exercise any rights in respect of any Investment in accordance with the Trustee's instructions;

(c) promptly report to the Trustee in respect of any instructions it has acted on which were provided by the Manager pursuant to clauses 2.3(a) and (b);

(d) not delegate any of its functions or responsibilities under this deed without the prior consent of the Trustee; and

(e) promptly account to the Trustee for any income, interest, or other distribution, payment, or benefit received by the Nominee in respect of any Investment.

2.3 Manager may provide instructions

The parties agree that, unless and until the Trustee advises the Nominee to the contrary in writing:

(a) the Manager may provide instructions under clause 2.2(a) or (b) on behalf of the Trustee; and

(b) the Nominee may act on any such instructions as if they were given by the Trustee.

If the Trustee notifies the Nominee in writing that the Nominee may no longer act on instructions given by the Manager the Nominee must cease to do so with immediate effect.

3. Removal of the Nominee

3.1 Nominee may resign

(a) The Nominee may resign from its role as bare trustee under this deed by giving written notice to the Trustee, if the Trustee is in material breach of its obligations and fails to remedy the breach within 30 Business Days after becoming aware of the breach.

(b) No resignation under this clause shall be effective until a replacement nominee is appointed in the Nominee's place and a transfer under clause 3.3 to that replacement nominee is complete.

3.2 Trustee may remove

The Trustee shall be entitled to remove the Nominee from its bare trusteeship under this deed with immediate effect by giving notice in writing to the Nominee.

3.3 Transfer of Investments

If the Nominee resigns or is removed from its trusteeship under this deed pursuant to clause 3.1 or 3.2, unless the parties agree otherwise the Nominee shall transfer the Loan Assets held by it to the Trustee or to a nominee specified by the Trustee as directed by the Trustee.

3.4 Termination

Upon the completion of the steps referred to in clause 3.3 this deed will terminate and be of no further force or effect and the Nominee shall be released and discharged from the trusts created by this deed, provided that such termination will not:

(a) affect those provisions which, by their nature, are intended to survive termination; or

(b) release either party from liability for any antecedent breach of this deed up to the date of termination.

4. Liability and Indemnity

4.1 Nominee indemnified

Subject to clauses 4.2 and 4.3(b) below, the Trustee agrees to indemnify the Nominee against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by reason of the Nominee acting as bare trustee and nominee for the Trustee in respect of the Loan Assets.

4.2 Exclusion

The indemnity in clause 4.1 will not apply to the extent that any losses, damages, costs, actions, proceedings, claims and demands which the Nominee incurs are proven to have arisen from the Nominee's own fraud, willful default, gross negligence, unauthorised acts or failure to act in good faith and the best interests of the Unitholders.

4.3 Limitation of liability

(a) If the Nominee is liable to the Trustee for a breach of the terms of this deed or on any other account whatsoever in relation to the transfer, holding, registration or other dealing in or of Loan Assets then that liability shall be limited to the direct (and not consequential) losses, damages and expenses suffered or incurred by the Trustee solely because the Nominee has breached its obligations under the terms of this deed.

(b) The Trustee enters into this deed as the trustee of the Trust and its liability under this deed to the Nominee shall at all times be limited to the assets of the Trust held by it or its nominees at the relevant time and shall never extend to any personal or other assets held by it.

5. Notices

5.1 Service of notices

A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or email to the recipient's address specified in the Parties section above, as varied by any Notice given by the recipient to the sender.

5.2 Effective on receipt

A Notice given in accordance with clause 5.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside New Zealand); and

(c) if sent by email, on the date and time at which it enters the addressee’s information system (as shown in a confirmation delivery report from the sender’s information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 5.2 or, if no confirmation is received, on the next Business Day after the date on which the email was sent),

(d) but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

6. General

6.1 Compliance with laws

The Trustee and the Nominee shall comply with the Trust Deed and all applicable laws in performing its obligations, exercising its rights or doing any other thing under this deed, including the Financial Markets Conduct Act 2013, Trusts Act 2019 and the Companies Act 1993.

6.2 Entire agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

6.3 Amendments

The Nominee and the Trustee may, from time to time, amend or modify all or any of the provisions of this deed by further deed executed by the Nominee and the Trustee.

6.4 Rights and remedies

Unless otherwise expressly provided in this deed, the rights and remedies set out in this deed are in addition to, and not in limitation of, any other rights and remedies under or relating to this deed (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

6.5 No waiver

No delay or failure to exercise any right or remedy under this deed by either party will be deemed a waiver of that right or remedy. To waive a right under the deed, that waiver must be in writing and signed by the waiving party.

6.6 Severability

If any provision of this deed is held to be or becomes invalid or unenforceable under the law, but would be valid or enforceable under the law if that provision was read down, then that provision must be read down to the minimum extent necessary to achieve that result. If that provision cannot be read down, then that provision may be severed from this deed and the parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

6.7 Governing law and jurisdiction

This deed is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

Schedule

Information about the existing loans

Signing page

Executed and delivered as a deed

SIGNED by MERX FUNDS MANAGEMENT LIMITED

Signature of witness

Christopher Swarbrook

Name of witness

Director

Occupation of witness

Auckland, New Zealand

City/town of residence

Signature of director

Andrew Owen Dunning

Name of director

SIGNED by PUBLIC TRUST

Signature of witness

Susanna Lee
Manager Client Services
Public Trust Corporate Trustee Services
Auckland

Name of witness

Occupation of witness

City/town of residence

Signature of Attorney

Elena Vinton, Head of Client Services (Auckland

Name of Attorney

CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY

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

1 by deed dated 10 November 2022, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number PA 12606310.1; and

2 at the date hereof I hold the position of Head of Client Services (Auckland) with Public Trust; and

3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 8 January 2026

_____
Signature of attorney

UNCLASSIFIED

Nominee Appointment Deed

in relation to new assets of the Merx Private Credit Fund

MinterEllisonRuddWatts.

This **DEED** is made on 8 January 2026

Parties

Name	**Merx Nominee Limited**	
Short form name	**Nominee**	
NZBN	9429053078759	
Notice details	Attention:	Andrew Dunning
	Email:	andrew@merx.co.nz
	Address:	Level 15, 51 Shortland Street, Auckland CBD, Auckland 1010, New Zealand

Name	**Public Trust**	
Short form name	**Trustee**	
NZBN	9429041913222	
Notice details	Attention:	Manager Client Services, Corporate Trustee Services
	Email:	CTS.Enquiry@PublicTrust.co.nz
	Address:	Level 16, SAP Tower, 151 Queen Street, Auckland 1010, New Zealand

Introduction

A The Trustee has been appointed as the trustee of the Trust pursuant to a deed of amendment and restatement of the master trust deed dated on or about the date of this deed.

B The Trustee wishes to appoint the Nominee to act as its nominee to hold certain Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Unitholders, on and subject to the terms of this deed to be effective on and from the Effective Date.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this deed, all terms defined in the Trust Deed which are not separately defined in this deed shall have the same meanings where used in this deed, and unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

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

Loan Assets means the loans and other Investments of the Trust, represented by the contracts and associated other documents, agreed to be subject to this deed from time to time in writing between

the Nominee and the Trustee and included in a written register as updated from time to time and maintained by the Trustee.

Trust means the Merx Private Credit Fund.

Trustee means Public Trust.

Trust Deed means the master trust deed dated 30 June 2022 for the Merx Wholesale Unit Trust Scheme and an establishment deed dated 30 June 2022 for the Trust, as amended and restated on or about the date of this deed.

1.2 Interpretation

In this deed, unless the context otherwise requires:

(a) a word denoting the singular includes the plural and vice versa;

(b) a word denoting an individual or person includes a company, body corporate, firm, authority, government or governmental authority and vice versa;

(c) a reference to a party in this deed, includes a party's respective successors and permitted assigns;

(d) any obligation to be performed or liability of two or more parties under or in relation to this deed is an obligation or liability of them severally;

(e) headings are for convenience of reference only and shall not affect the construction of this deed;

(f) references to writing includes electronic communications in a form allowed by the Nominee;

(g) references to property means real and personal property, and any estate, share and interest in any real or personal property, and any debt, thing, chose in action or other right or interest, whether in possession or not;

(h) references to currency are to New Zealand currency; and

(i) references to any enactment includes statutes or statutory provisions or orders or regulations made thereunder, and includes:

    (i) that statute, provision, order or regulation as amended, modified re-enacted or replaced from time to time (whether before or after the date of this deed); and

    (ii) any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation,

2. Creation of trust

2.1 Declaration of bare trust and appointment of Nominee

(a) The Trustee appoints the Nominee, to be effective on and from the Effective Date, as its agent and nominee to acquire and hold the Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Unitholders on the terms of this deed.

(b) The Nominee agrees that it will acquire and hold the Loan Assets on trust for, and as nominee of, the Trustee on behalf of the Fund, on the terms of this deed.

2.2 Undertaking of Nominee

The Nominee hereby irrevocably declares and undertakes to the Trustee that the Nominee will, for so long as it holds Investments pursuant to this deed:

(a) only transfer or otherwise deal with or dispose of any Investment in accordance with the Trustee's instructions;

(b) only exercise any rights in respect of any Investment in accordance with the Trustee's instructions;

(c) promptly report to the Trustee in respect of any instructions it has acted on which were provided by the Manager pursuant to clauses 2.3(a) and 2.3(b);

(d) not delegate any of its functions or responsibilities under this deed without the prior consent of the Trustee; and

(e) promptly account to the Trustee for any income, interest, or other distribution, payment, or benefit received by the Nominee in respect of any Investment.

2.3 Manager may provide instructions

The parties agree that, unless and until the Trustee advises the Nominee to the contrary in writing:

(a) the Manager may provide instructions under clause 2.2(a) or (b) on behalf of the Trustee; and

(b) the Nominee may act on any such instructions as if they were given by the Trustee.

If the Trustee notifies the Nominee in writing that the Nominee may no longer act on instructions given by the Manager the Nominee must cease to do so with immediate effect.

3. Removal of the Nominee

3.1 Nominee may resign

(a) The Nominee may resign from its role as bare trustee under this deed by giving written notice to the Trustee, if the Trustee is in material breach of its obligations and fails to remedy the breach within 30 Business Days after becoming aware of the breach.

(b) No resignation under this clause shall be effective until a replacement nominee is appointed in the Nominee's place and a transfer under clause 3.3 to that replacement nominee is complete.

3.2 Trustee may remove

The Trustee shall be entitled to remove the Nominee from its bare trusteeship under this deed with immediate effect by giving notice in writing to the Nominee.

3.3 Transfer of Investments

If the Nominee resigns or is removed from its trusteeship under this deed pursuant to clause 3.1 or 3.2, unless the parties agree otherwise the Nominee shall transfer the Loan Assets held by it to the Trustee or to a nominee specified by the Trustee as directed by the Trustee.

3.4 Termination

Upon the completion of the steps referred to in clause 3.3 this deed will terminate and be of no further force or effect and the Nominee shall be released and discharged from the trusts created by this deed, provided that such termination will not:

(a) affect those provisions which, by their nature, are intended to survive termination; or

(b) release either party from liability for any antecedent breach of this deed up to the date of termination.

4. Liability and Indemnity

4.1 Nominee indemnified

Subject to clauses 4.2 and 4.3(b) below, the Trustee agrees to indemnify the Nominee against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by reason of the Nominee acting as bare trustee and nominee for the Trustee in respect of the Loan Assets.

4.2 Exclusion

The indemnity in clause 4.1 will not apply to the extent that any losses, damages, costs, actions, proceedings, claims and demands which the Nominee incurs are proven to have arisen from the Nominee's own fraud, willful default, gross negligence, unauthorised acts or failure to act in good faith and the best interests of the Unitholders.

4.3 Limitation of liability

(a) If the Nominee is liable to the Trustee for a breach of the terms of this deed or on any other account whatsoever in relation to the transfer, holding, registration or other dealing in or of Loan Assets then that liability shall be limited to the direct (and not consequential) losses, damages and expenses suffered or incurred by the Trustee solely because the Nominee has breached its obligations under the terms of this deed.

(b) The Trustee enters into this deed as the trustee of the Trust and its liability under this deed to the Nominee shall at all times be limited to the assets of the Trust held by it or its nominees at the relevant time and shall never extend to any personal or other assets held by it.

5. Notices

5.1 Service of notices

A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or email to the recipient's address specified in the Parties section above, as varied by any Notice given by the recipient to the sender.

5.2 Effective on receipt

A Notice given in accordance with clause 5.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside New Zealand); and

(c) if sent by email, on the date and time at which it enters the addressee’s information system (as shown in a confirmation delivery report from the sender’s information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 5.2 or, if no confirmation is received, on the next Business Day after the date on which the email was sent),

(d) but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

6. General

6.1 Compliance with laws

The Trustee and the Nominee shall comply with the Trust Deed and all applicable laws in performing its obligations, exercising its rights or doing any other thing under this deed, including the Financial Markets Conduct Act 2013, Trusts Act 2019 and the Companies Act 1993.

6.2 Entire agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

6.3 Amendments

The Nominee and the Trustee may, from time to time, amend or modify all or any of the provisions of this deed by further deed executed by the Nominee the Trustee.

6.4 Rights and remedies

Unless otherwise expressly provided in this deed, the rights and remedies set out in this deed are in addition to, and not in limitation of, any other rights and remedies under or relating to this deed (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

6.5 No waiver

No delay or failure to exercise any right or remedy under this deed by either party will be deemed a waiver of that right or remedy. To waive a right under the deed, that waiver must be in writing and signed by the waiving party.

6.6 Severability

If any provision of this deed is held to be or becomes invalid or unenforceable under the law, but would be valid or enforceable under the law if that provision was read down, then that provision must be read down to the minimum extent necessary to achieve that result. If that provision cannot be read down, then that provision may be severed from this deed and the parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

6.7 Governing law and jurisdiction

This deed is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

Signing page

Executed and **delivered** as a deed

SIGNED by MERX NOMINEE LIMITED

Signature of witness

Christopher Sucklund

Name of witness

Director

Occupation of witness

Auckland, New Zealand

City/town of residence

Signature of director

Andrew Owen Dunning

Name of director

SIGNED by PUBLIC TRUST

Signature of witness

Name of witness

Susanna Lee
Manager Client Services
Public Trust Corporate Trustee Services
Auckland

Occupation of witness

City/town of residence

Signature of Attorney

Elena Vinton

Name of Attorney

CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY

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

1 by deed dated 10 November 2022, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number PA 12606310.1; and

2 at the date hereof I hold the position of Head of Client Services (Auckland) with Public Trust; and

3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 8 January 2026

Signature of attorney

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