

**BOOSTER INVESTMENT SERIES II**

**TRUST DEED**

**BOOSTER INVESTMENT MANAGEMENT LIMITED**

**PUBLIC TRUST**

Effective from 18 September 2019

**TABLE OF CONTENTS**

PARTIES .....	1
BACKGROUND .....	1
COVENANTS .....	2
DELETION & REPLACEMENT.....	2
1     DEFINITIONS & INTERPRETATION.....	2
2     PURPOSE.....	14
3     ESTABLISHMENT OF THE BOOSTER INVESTMENT SERIES II AND THE CREATION OF SCHEMES AND FUNDS .....	14
4     UNITS.....	18
5     ISSUE OF UNITS.....	19
6     CONSOLIDATION AND SUBDIVISION OF UNITS .....	19
7     CESSATION OF ISSUES OF UNITS .....	20
8     APPLICATION FOR UNITS .....	21
9     ISSUE PRICE AND ISSUE OF UNITS.....	24
10    REDEMPTION OF UNITS .....	24
11    SWITCHING OF FUNDS .....	28
12    TRANSFER AND TRANSMISSION OF UNITS .....	29
13    UNIT REGISTER.....	31
14    CERTIFICATES .....	33
15    MANAGEMENT.....	33
16    THE SUPERVISOR .....	38
17    BORROWING POWERS.....	41
18    SUPERVISOR’S AND MANAGER’S ADDITIONAL POWERS AND INDEMNITIES .....	43
19    INVESTMENTS .....	48
20    DISTRIBUTIONS .....	50
21    RELATED PARTY TRANSACTIONS .....	52
22    REMUNERATION OF THE SUPERVISOR .....	53

---

23	APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR .....	54
24	REMUNERATION OF THE MANAGER.....	55
25	APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER .....	57
26	LIMITATION OF LIABILITY .....	58
27	ACCOUNTS .....	59
28	AUDITOR.....	61
29	MEETINGS OF UNIT HOLDERS .....	61
30	NOTICES .....	62
31	INFORMATION ABOUT RELEVANT INTERESTS.....	63
32	AMENDMENTS TO DEED.....	63
33	WINDING UP.....	64
34	ARBITRATION.....	66
35	GOVERNING LAW .....	66
36	WAIVER.....	67
37	PROVISIONS WHICH APPLY IF A SCHEME IS A PIE.....	67
38	SEVERANCE .....	70
39	SUBPART 1 OF PART 2 OF THE CONTRACT AND COMMERCIAL LAW ACT 2017.....	71
40	DELIVERY.....	71
	EXECUTION.....	72
	SCHEDULE 1.....	74
	SCHEDULE 2.....	75
	SCHEDULE 3.....	78

---

DEED dated

18 September 2019

## PARTIES

- 1 **BOOSTER INVESTMENT MANAGEMENT LIMITED** a Company at Wellington ("**Manager**")
- 2 **PUBLIC TRUST** a New Zealand Crown Entity established under the Public Trust Act 2001 ("**Supervisor**")

## BACKGROUND

- A. The Booster Investment Series II was established by a Trust Deed dated 7 January 2019 (**Original Deed**) in order to establish and manage a variety of Managed Investment Schemes in accordance with the Financial Markets Conduct Act 2013 and its regulations which will invest in a range of investments whereby persons may acquire interests in Managed Investment Scheme Funds established in each Managed Investment Scheme. The Managed Investment Schemes will be offered in accordance with the Trust Deed governing the Booster Investment Series II as amended from time to time.
  - B. The Booster Investment Scheme 2 (the **Scheme**) was the first Managed Investment Scheme (**Original Scheme**) established under the Original Deed on 7 January 2019. Additional Schemes may be added to the Booster Investment Series II. In addition, the Private Land and Property Fund was the first Fund established in the Original Scheme (**Original Fund**) under the Original Deed.
  - C. The Parties wish to enter into this Deed to reflect updates as a result of the NZX Listing Rules being amended recently by the New Zealand Stock Exchange.
  - D. The Supervisor and the Manager consider the amendments referred to in Recital C above comply with the terms of clauses 32.1(c) and 32.1(f) of the Original Deed.
  - E. Prior to executing this Deed:
    - a. The Supervisor has in respect of the amendments certified to the effect that it is satisfied that the amendments do not have a material adverse effect on Unit Holders and has obtained a certificate from a lawyer that the Original Deed as amended and consolidated by this Deed will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 on the basis set out in the certificate.
  - F. It is intended that the benefits and obligations of this Deed shall enure not only to the Manager and the Supervisor but also to the extent provided in this Deed to every Unit Holder who has agreed with the Manager and/or the Supervisor to be bound by the provisions of this Deed.
-

## COVENANTS

### DELETION & REPLACEMENT

**Deletion and Replacement:** The words within the Original Deed are deleted and replaced with those contained within this Deed on and from the date of execution.

## 1 DEFINITIONS & INTERPRETATION

1.1 **Definitions:** In this Deed unless the context otherwise requires:

**“Accumulation Fund”** means a Fund the terms of which provide that earnings and gains will not be distributed and will be added to the Fund;

**“Act”** or **“FMCA”** means the Financial Markets Conduct Act 2013;

**“Additional Scheme”** means a separate Scheme constituted pursuant to clause 3.7;

**“Adjusted Fund Value”** means the Fund Value excluding any Tax Liability or the amount of any Tax Relief of that Fund;

**“Adjusted Gross Fund Value”** means the Fund Value grossed up for all liabilities (including liabilities from any underlying investments) excluding any Tax Liability or the amount of any Tax Relief of that Fund;

**“Annual Report”** means the annual report required by Regulation 62 of the Regulations;

**“Assets”** means, in relation to a Fund, the Investments and other assets forming a constituent part of the Fund;

**“Auditor”** means the auditor of the Booster Investment Series II appointed pursuant to clause 28;

**“Authorised Investments”** means, in relation to a Fund, and subject to any express limitation or expansion in the relevant Establishment Deed or clause 19 of this Deed, such class or classes of Investments agreed between the Supervisor and the Manager, including any or all of the following:

- (a) any share, security (as defined in the Act) or like interest in any company, partnership, or other Person;
  - (b) deposits with or loans to (with or without security) any Person;
  - (c) debentures, bonds, notes, debt securities (as defined in the Act) or similar obligations (with or without security) issued by any Person;
  - (d) bills of exchange or promissory notes made, drawn, or accepted by any Person;
  - (e) Real Property;
-

- (f) Mortgages of any Real Property;
- (g) Cash, foreign currencies, foreign exchange contracts;
- (h) any interest of any nature in any real or personal property of any nature whatsoever;
- (i) Futures Contracts, options contracts and swap contracts;
- (j) any right or option to acquire or take up any of the above;
- (k) any other investment, right, interest, obligation or property of any nature whatsoever nominated by the Manager and approved by the Supervisor,

and without prejudice to the generality of (a) to (k) above includes:

- (l) units, sub-units or other interests in any managed investment scheme or similar undertaking or scheme; and
- (m) stocks, bonds, Mortgages, or securities of, or deposits with, any government, public, municipal or local body or authority in any part of the world;

**“Authorised Representative”** means a person authorised pursuant to a resolution of the directors or other governing body of a corporation which is a Unit Holder to act for it as its representative at any meeting of Unit Holders;

**“Booster Investment Series II”** means all the Schemes established under this Deed;

**“Booster Investment Scheme 2”** means the Original Scheme established under this Deed;

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

**“Breach”** has the meaning specified in clause 37.3;

**“Business Day”** means a day upon which registered banks are open for business in Wellington;

**“Cash”** includes a cheque and bank cheque and cash deposits made by electronic transfer;

**“Certificate”** means any certificate issued pursuant to clause 14;

**“Class”** means all those Units attributable to a Fund that have identical rights, privileges, limitations and conditions and that confer an equal undivided beneficial interest in the same Fund;

---

**“Closed Fund”** has the meaning specified in clause 7.2(a);

**“Commencement Date”** means, in relation to a Fund, the date which the Manager by notice in writing to the Supervisor specifies as the date on which that Fund is to commence, or, if no such notice is given by the Manager to the Supervisor, the date of the first invitation for subscriptions or applications for Units issued by the Manager in respect of that Fund;

**“Disclosure Document”** means any PDS or Register Entry required by the Act and includes any amendment to such documents;

**“Distribution Date”** means, in relation to a Fund, such periodic date as the Manager may fix from time to time for the purpose of determining distributions of Income from that Fund;

**“Electronic Communication”** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone 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) a deed executed by the Manager and the Supervisor by which an Additional Scheme is established as described in clause 3.7; and
- (b) this Deed, for the purposes of the Original Scheme;

**“Excess Units”** has the meaning specified in clause 37.3;

**“Exchange”** means any recognised financial product market in New Zealand or any other country which brings buyers and sellers of financial products (including Authorised Investments) together, including any stock, commodities, futures and options exchange market;

**“Financial Markets Legislation”** has the meaning set out in section 6(1) of the Act;

**“Financial Year”** means, in relation to any Scheme:

- (a) the period commencing on the Commencement Date of that Scheme and ending on the next following 31 March; and
  - (b) each subsequent period of one year thereafter commencing on 1 April; and
  - (c) the period commencing on 1 April immediately preceding the date of termination of that Scheme and ending on the date of termination of that Scheme,
-

or such alternative period as the Supervisor and the Manager may agree;

**“Fixed Management Fee”** means the fixed management fee charged by the Manager for a Fund as determined in accordance with clause 24.1;

**“FMA”** or **“Financial Markets Authority”** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011;

**“Fund”** has the meaning specified in clause 3.10;

**“Fund Criteria”** are the particulars as set out in Schedule I to this Deed that the Supervisor and the Manager may consider necessary or appropriate for that Fund, as varied from time to time, and which is used to distinguish one Fund from another;

**“Fund Update”** has the meaning in regulation 5 of the Regulations;

**“Fund Value”** means:

(a) where a Scheme has not been divided into Funds in accordance with clause 3.10, in relation to that Scheme and any Valuation Day, such sum as is ascertained and fixed by the Manager in respect of that Scheme and that Valuation Day by deducting from the aggregate of:

- (i) the amount of Cash forming part of the Scheme; and
- (ii) the Market Value of all other Assets of the Scheme (including for the avoidance of doubt all accrued income of the Scheme on that Valuation Day),

the aggregate of the Liabilities of that Scheme;

(b) where a Scheme has been divided into Funds in accordance with clause 3.10, in relation to any Fund and any Valuation Day, such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- (i) the amount of Cash forming part of the Fund; and
- (ii) the Market Value of all other Assets of the Fund (including for the avoidance of doubt all accrued income of the Fund on that Valuation Day),

the aggregate of the

- (i) Liabilities attributable to that Fund; and
-

- (ii) all costs, charges and other outgoings (other than those which in the reasonable opinion of the Manager are not material) incurred or accrued in connection with the Liabilities of that Fund or otherwise in connection with that Fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment);

**“Futures Contract”** means a contract for the sale or purchase of a financial or physical commodity, right or interest of any nature, such sale or purchase to be effected at some time later than the date at which that contract is entered into but does not include the sale and purchase of securities on standard terms and conditions of settlement;

**“Income”** means, in relation to any Fund, the net income earned by that Fund, determined in accordance with the provisions of clauses 20.6 and 20.8;

**“Income Entitlement”** means, in relation to a Unit, the amount to be distributed to a Unit Holder in respect of that Unit and includes, where the Scheme is a PIE, the Unit’s proportionate share in any Income that has not been allocated to Unit Holders and is held by the Scheme;

**“Independent Expert”** means an appropriately qualified person nominated by the Manager and agreed to by the Supervisor;

**“Investment”** means, in relation to any Fund, each Asset or right (including any Cash, property, securities, rights or rebate in respect of any Tax and any income accrued or payable in respect of the Fund to the extent considered appropriate by the Manager) held at any relevant time by the Supervisor or its nominee in respect of that Fund;

**“Issue Price”** means, in respect of each Fund, the price for issue of Units determined in accordance with clause 9.1;

**“Issuer Obligations”** has the meaning given to it in section 6(1) of the Act;

**“Liabilities”** means, in relation to any Fund, all incurred or accrued liabilities, costs, charges and other obligations and outgoings of the Supervisor, acting in its capacity as supervisor of the relevant Scheme that are attributable to that Fund (other than those which in the opinion of the Manager are not material), that are or will become payable from that Fund including, without limitation, the amount of any Tax Liability attributable to that Fund but excluding:

- (a) contingent liabilities (except to the extent that the Manager determines that an allowance should be made for such liabilities); and
  - (b) such liabilities debts and other obligations of the Supervisor in respect of which by the terms of this Deed the Supervisor is not entitled to be indemnified out of
-

that Fund;

**“Management Fees”** means the fees for managing a Fund as determined in accordance with clause 24.1;

**“Manager”** means the party to this Deed named as the Manager or such other company as may from time to time be carrying out the function of manager of the Booster Investment Series II pursuant to clause 15;

**“Market Value”** in relation to any Investment as at any Valuation Day means:

- (a) in respect of Investments which are listed on an Exchange, by reference to the price quoted for the last sale of that Investment on the relevant Exchange before that Valuation Day, or if there has been no such sale, or if the last sale is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager having regard to such information as the Manager considers appropriate, including without limitation the advice of an Independent Expert (if any);
- (b) in respect of Investments which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, provided that the Manager and the Supervisor may agree upon some other form of appropriate determination as to value in respect of any specific Investment from time to time;
- (c) in respect of Real Property Investments, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor based on:
  - i. a valuation provided by an independent registered valuer at a minimum once every three years; and
    - a. in the interim years when an independent valuation referred to subparagraph (c) (i) above is not available, then based on the most recent independent valuation and advice from an independent registered valuer on the market movements of similar assets; or
    - b. in the interim years, another alternative methodology as agreed between the Supervisor and the Manager; or
  - ii. another alternative methodology as agreed between the Supervisor and the Manager.

with any such independent valuation and advice provided to the Supervisor.

- (d) in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or failing such agreement according to principles of valuation determined by an Independent Expert;
-

and where in respect of an Investment to which sub-paragraph (a) or (b) applies and the relevant information as to value is not received within twenty four (24) hours of the time fixed on a Valuation Day for determination of the Fund Value, the value of that Investment which applied on the preceding Valuation Day (“Adopted Value”) shall apply, but an Adopted Value shall not be applied on more than two successive Valuation Days;

“**Maximum Value of Units**” means, in relation to any Fund, such aggregate Unit Value of Units of that Fund as may be determined by the Manager from time to time as the maximum aggregate Unit Value which shall be held by a Unit Holder or which may be the subject of an initial application for the issue of Units or additional application for the issue of Units in accordance with clauses 8 and 9, withdrawal of Units in accordance with clause 10, switch of Units in accordance with clause 11, or transfer of Units in accordance with clause 12;

“**Minimum Value of Units**” means, in relation to any Fund, such aggregate Unit Value of Units of that Fund as may be determined by the Manager from time to time as the minimum aggregate Unit Value which shall be held by a Unit Holder or which may be the subject of an initial application for the issue of Units or additional application for the issue of Units in accordance with clauses 8 and 9, withdrawal of Units in accordance with clause 10, switch of Units in accordance with clause 11, or transfer of Units in accordance with clause 12;

“**Month**” means calendar month;

“**Monthly Date**” means the last Business Day of each Month in each year;

“**Mortgage**” means any mortgage or charge secured over Real Property or any share in any mortgage or charge secured over Real Property including any contributory mortgage held by a trustee or nominee, any sub-mortgage sub-charge secured over Real Property and any Mortgage Backed Securities or other mortgage related security;

“**Mortgage Backed Security**” means any Investment conferring or creating an interest, whether legal or equitable, in any Mortgage by virtue of any agreement, declaration of trust or otherwise;

“**NZX**” means NZX Limited;

“**Office**” means the registered office from time to time of the Manager;

“**Operative Date**” has the meaning specified in clause 6.1(a);

“**Original Fund**” means the Fund known as the Private Land and Property Fund with the Fund Criteria set out in Schedule 2;

---

**“Original Scheme”** means the Booster Investment Scheme 2 and for the time being includes the Original Fund;

**“PDS” or “Product Disclosure Statement”**, in respect of any Regulated Offer, has the meaning set out in section 6(1) of the Act;

**“Performance Fee”** means the performance fee charged by the Manager for a Fund as determined in accordance with clause 24.1;

**“Person”** means and includes a natural person, company, corporation, corporation sole, managed investment scheme, government or a body of persons (whether corporate or unincorporated);

**“PIE Rules”** means the provisions of the Tax Act that relate to the taxation of a Portfolio Investment Entity;

**“Portfolio Investment Entity” or “PIE”** means a portfolio investment entity as that term is defined in section YA 1 of the Tax Act;

**“Portfolio Investor Proxy” or “PIP”** has the same meaning as in section HM 33 of the Tax Act;

**“Prescribed Investor Rate” or “PIR”** has the same meaning as in section YA 1 of the Tax Act;

**“Qualified Auditor”** has the meaning set out in section 461E of the Act;

**“Quarterly Date”** means the last Business Days of March, June, September and December in each year;

**“Quarter or Quarterly”** means each of the periods ending on 31 March, 30 June, 30 September and 31 December in each calendar year.

**“Ratio”** has the meaning specified in clause 6.1(b);

**“Real Property”** means unlisted land and real estate of every description and every interest therein or relating thereto and includes without limitations:

- (a) estates and interests in freehold and leasehold or other tenure;
  - (b) estates and interests in any stratum or similar estate created pursuant to legislation in New Zealand or elsewhere in the world;
  - (c) any purchase agreement, licence, easement, option or other agreement or right of any type attaching to or relating to land, real estate or any interest therein; and
-

- (d) all building, improvements, plant machinery, fixtures and fittings erected, installed on or relating to land, real estate or any interest therein;

**“Register”** means the register of offers of financial products as defined in section 6(1) of the Act;

**“Register Entry”**, in respect of any Regulated Offer, means the entry for the offer in the Register required under the Act;

**“Registered Scheme”** means a managed investment scheme that for the time being is a registered scheme under the Act;

**“Regulated Offer”** has the meaning set out in section 6(1) of the Act;

**“Regulations”** means any regulations under the Act;

**“Related Company”** has the meaning assigned to that term in section 2(3) of the Companies Act 1993;

**“Related Party”** in respect of a Fund, and as the context requires, has the meaning given to it in section 172 of the Act;

**“Related Party Benefit”** in relation to a Fund, is a benefit:

- (a) that either is given out of the investments of the Fund or creates an exposure to loss for the investments of the Fund; and
- (b) that is given to, or received by, a Related Party; but
- (c) does not include fees or expenses that are paid or reimbursed to the Manager in accordance with the Act or this Deed;

**“Relevant Requirements”** means, as appropriate:

- (a) all laws applicable to the Manager, the Supervisor, the Scheme or a Fund at applicable points in time which may include, without limitation, the Financial Markets Legislation; and
- (b) for any period during which the Units are quoted on any recognised Exchange, the Rules applicable to that Exchange (as amended from time to time and as any such Rules may be waived, from time to time, in relation a Fund or any Units), including, for the avoidance of doubt, the NZX Main Board/Debt Market Listing Rules;

**“Relevant Person”** has the meaning specified in clause 18.7(f);

---

**“Remedy Period”** has the meaning specified in clause 37.3;

**“Rules”** means the rules applicable to issuers of financial products that are quoted on a recognised Exchange;

**“Scheme”** means the Original Scheme or any Additional Scheme;

**“Scheme Assets”** means, in relation to any Scheme the Assets of that Scheme as described in clause 3.6;

**“SIPO”**, means the statement of investment policy and objectives for a Scheme, and each Fund, that meets the requirements of the Act;

**“Special Resolution”** has the meaning specified in paragraph 12.2 of Schedule 3 of this Deed;

**“Standing Application”** means an application for the issue of Units on a regular and periodic basis;

**“Supervisor”** means the supervisor for the time being appointed pursuant to clause 23;

**“Switching Notice”** means a notice given in accordance with clause 11.1;

**“Switch Fund”** has the meaning specified in clause 11.1;

**“Tax”** includes all present and future taxes, duties, levies, deductions, withholdings and charges imposed, assessed or levied by any government authority including any penalties, interest or any other amount imposed in respect of the foregoing;

**“Tax Act”** means the Income Tax Act 2007 and/or the Tax Administration Act 1994 (as applicable);

**“Tax Item”** means any Tax Relief and any amount of deemed or actual income, gain, or accrual that is taken into account for Tax purposes;

**“Tax Liability”** means any Liabilities in respect of Tax after taking into account any applicable Tax Relief but excluding contingent Tax Liabilities (except to the extent that the Manager determines that an allowance should be made for such liabilities);

**“Tax Relief”** means any credit, rebate, offset or in respect of Tax and any cost, deduction, expenditure or loss (including depreciation loss) that is taken into account for Tax purposes;

---

**“Transaction”** means the:

- (a) issue of Units; or
- (b) withdrawal of Units; or
- (c) switching of Units;

**“Unit”** means an undivided part or share in the beneficial interest of a Fund as described in clause 4 and includes part of a Unit;

**“Unit Holder”** means, in relation to a Fund, the person for the time being entered on the Unit Register as the holder of a Unit of that Fund and any executor or administrator of a deceased Unit Holder recognised by the Manager as having title or interest in such Units;

**“Unit Register”** means the register of Unit Holders referred to in clause 13;

**“Unit Value”** means, in relation to any Fund and any Valuation Day, such amount as is ascertained by dividing the Fund Value by the number of Units in that Fund on issue on that Valuation Day rounded down if necessary to the fourth decimal place of a dollar;

**“Valuation Day”** means a day whether periodical or otherwise as specified by the Manager in the PDS as a day on which the Market Value of the Assets of a Fund is determined.

**“Withdrawal Amount”** means, subject to the provisions of the relevant Fund Criteria (if any) and clauses 37.2 and 37.3, the aggregate Unit Value of the number of Units to be redeemed in relation to the Switching Notice or Withdrawal Notice pursuant to clause 11.2(a) or 10.2 (as the case may be) determined on:

- (a) the day that the Switching Notice or Withdrawal Notice (as the case may be) is received; or
  - (b) if that day is not a Valuation Day, on the next Valuation Day; or
  - (c) another Valuation Day as described in the relevant Fund Criteria; and
- in each case less any applicable fees and, in the Manager's discretion, the amount per Unit determined by the Manager from time to time to reflect the cost of disposing of Authorised Investments in the Fund;

**“Withdrawal Fund”** has the meaning specified in clause 11.1;

**“Withdrawal Notice”** means a notice given in accordance with clause 10.2; and

**“Withdrawal Suspension Notice”** means a notice given in accordance with clause 10.10.

---

## 1.2 General construction:

- (a) Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
  - (b) References to statutes or regulations includes all amendments, re-enactments and replacements thereof.
  - (c) Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
  - (d) **Includes, include** and **including** shall be construed without limitation.
  - (e) Where under or pursuant to this Deed, the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
  - (f) If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may select.
  - (g) References to “this Deed” include this Deed and each Establishment Deed establishing the Original Scheme or an Additional Scheme (including their respective schedules) as amended from time to time.
  - (h) 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 generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards where it reasonably thinks fit, subject to agreement with the Supervisor.
  - (i) Whenever there is a reference in this Deed to the Manager having a discretion in relation to a Scheme that is a PIE, including where the Manager is entitled to decide to take one of two steps, the discretion will be interpreted to include the requirement that the Manager must exercise a discretion to ensure that the Scheme maintains its status as a PIE.
  - (j) **Compliance with the Act:** While any Scheme is a Registered Scheme, if any provision in the Deed is inconsistent with the Act or Rules, that provision shall be deemed to be amended or deleted to the extent necessary to make that provision consistent with the Act, and while the Units of any Scheme are quoted on a recognised Exchange, if any provision in the Deed is inconsistent with the
-

Rules, that provision shall be deemed to be amended deleted to the extent necessary to make that provision consistent with the Rules.

- (k) Inclusion of provisions:** The provisions of this Deed are deemed to include the provisions implied or required by Relevant Requirements for so long as those provisions are in force and applicable to this Deed and any provision of this Deed that is contrary to such provisions is void to the extent it is contrary.

## 2 PURPOSE

- 2.1 **Purpose:** The purpose of this Deed is to establish a range of Funds (the Units in which may at any time in the future be quoted on a recognised Exchange) whereby Persons may acquire interests in a variety of different Funds for their own investment purposes.

## 3 ESTABLISHMENT OF THE BOOSTER INVESTMENT SERIES II AND THE CREATION OF SCHEMES AND FUNDS

- 3.1 **Continuation of Supervisor:** The Supervisor is the current trustee and supervisor of the Booster Investment Series II and agrees to act as supervisor of each Scheme, and to hold the Scheme Assets of each Scheme on trust for Unit Holders, upon and subject to the terms and conditions contained or implied in this Deed.

- 3.2 **Continuation of Manager:** The Manager is the current manager of the Booster Investment Series II and agrees to act as manager of each Scheme upon and subject to the provisions of the Act and the terms and conditions contained or implied in this Deed.

### 3.3 Establishment of Schemes:

- (a) The Original Scheme continues to be governed by the terms of this Deed;
- (b) The Supervisor and the Manager may establish Additional Schemes at any time by executing an Establishment Deed in accordance with clause 3.7.

- 3.4 The Original Fund continues to be governed by the terms of this Deed and the Fund Criteria set out in Schedule 2.

### 3.5 Names:

- (a) Each Scheme will be known by the name selected by the Manager from time to time;
  - (b) The Schemes will be known collectively as the Booster Investment Series II;
  - (c) Unless the context otherwise requires, the term "Fund" describes either:
-

- (i) a Scheme in its entirety where the beneficial interest in that Scheme is held by Units that are all of the same Class; or
- (ii) a pool of Assets, if the Assets in a Scheme are divided into two or more pools pursuant to clause 3.10, where the beneficial interest in each pool is held by Units that are all of the same Class,

where each such Scheme is distinguishable from another Scheme by its Establishment Deed and each pool is distinguishable from another pool by its Fund Criteria.

3.6 **Scheme Assets:** The Scheme Assets of each Scheme shall consist of all Assets for the time being held by the Supervisor in respect of the Funds of that Scheme upon the trusts of this Deed including:

- (a) the proceeds of sale or realisation of any Investments of the Funds of that Scheme pending distribution or reinvestment including any amount held separate from the Investments of a Fund in accordance with clause 37.2(i); and
- (b) all additions or accretions thereto; and
- (c) all income therefrom held pending distribution or reinvestment.

3.7 **Additional Schemes:** The Manager may at any time give notice to the Supervisor of its desire to constitute a new Scheme to be governed by this Deed. If the Supervisor agrees, then the Supervisor and the Manager shall enter into an Establishment Deed providing for the establishment of that new Scheme and containing in respect of that new Scheme such of the particulars as the Supervisor and the Manager may consider necessary or appropriate. No such document shall contain any provision which affects the rights or interests of Unit Holders of any Scheme then in existence unless:

- (a) it is authorised by a Special Resolution of the Unit Holders of that Scheme; or
- (b) the same is considered by the Supervisor not to be or likely to become prejudicial to the interests of Unit Holders of any Scheme then in existence.

3.8 **Separate Schemes:** Each Scheme shall constitute a separate and independent Scheme with separate property and liabilities, and the Supervisor and the Manager shall in all respects act so as to give effect to this intention. Without prejudice to the generality of the foregoing:

- (a) the Assets of a Scheme shall not be available to meet the Liabilities attributable to any other Scheme;
  - (b) all Investments made with the moneys of a Scheme shall be held by the Supervisor as the exclusive property of that Scheme and for the exclusive benefit of the Unit Holders who have an interest in that Scheme pursuant to this Deed;
-

- (c) the Supervisor and the Manager shall keep separate records and accounts in respect of each Scheme, and shall not permit the Assets or Liabilities of any Scheme to become intermingled with those of any other Scheme **PROVIDED THAT** nothing in this sub-clause shall prevent the Assets of any Scheme being lent to, deposited with or invested in another Scheme;
- (d) the creation of an Additional Scheme shall not in any way vary or affect any other Scheme nor give rise to any resettlement of any other Scheme; and
- (e) the Manager may at any time at its discretion (upon providing the Supervisor and Unit Holders 30 days prior written notice, and subject to compliance with Relevant Requirements) arrange for the Units in any Scheme (or any Fund within a Scheme) to be quoted on a recognised Exchange

### 3.9 **Supervisor's Nominee Company:**

- (a) The Supervisor may from time to time contract out the holding of any of the Assets of the Funds of any Scheme. The Supervisor shall advise the Manager of any delegation or contracting out under this clause before any such delegation, appointment or contracting out agreement is entered into.
- (b) Any company contracted by the Supervisor under this clause may, if authorised in writing by the Supervisor, in turn contract one or more persons as a nominee in which may be vested all or any Scheme Assets. The Supervisor shall cause any such nominated company and procure each nominated company that appoints any nominee to comply with the relevant covenants and obligations on the part of the Supervisor expressed or implied in the Act, this Deed and the relevant Establishment Deed.
- (c) If a person contracts the holding of any Scheme Assets to another person, the person contracting out that function:
  - (i) must take all reasonable steps to:
    - (A) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed then directly; and
    - (B) monitor the performance of the function;
  - (ii) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function.

### 3.10 **Establishing Funds:**

- (a) The Manager may divide the Assets of a Scheme into two or more pools of Assets and each pool of Assets shall be a Fund;
-

- (b) A Fund will, with the prior written consent of the Supervisor (which must not be unreasonably withheld), be established by the Manager:
  - (i) providing to the Supervisor a document setting out the Fund Criteria for that Fund;
  - (ii) attributing Assets of the Scheme to the Fund; and
  - (iii) issuing and attributing Units of the same Class in accordance with clause 4.2;
- (c) The Manager may from time to time with the written consent of the Supervisor (which must not be unreasonably withheld) amend the Fund Criteria. Any amendments to the Fund Criteria must not be prejudicial to the interests of the current Unit Holders of the Fund;

### 3.11 Separate Funds:

Although each Scheme is intended to be treated as one Registered Scheme and the statutory and other obligations applicable to it construed accordingly, the Assets of each Fund are intended to be treated as separate and independent from the Assets of every other Fund, with separate property and Liabilities, and the Supervisor and the Manager shall in all respects act so as to give effect to this intention. Without prejudice to the generality of the foregoing:

- (a) the Assets attributable to one Fund shall not be available to meet the Liabilities attributable to any other Fund;
  - (b) all Assets attributable to a Fund will be held by the Supervisor or on its behalf by its nominated person(s) or the nominated person(s) nominee(s) as the exclusive property of that Fund for the exclusive benefit of the Unit Holders holding the Class of Units that confer an interest in that Fund;
  - (c) the Manager will keep separately identifiable records and ledger accounts in respect of each Fund and shall not permit the property, Assets or Liabilities of any Fund to become intermingled with those of any other Fund **PROVIDED THAT** nothing in this sub clause shall prevent the Assets of any Fund being lent to, deposited with or invested in another Fund in accordance with this Deed;
  - (d) the creation of a new Fund will not in any way vary or affect any other Fund nor give rise to any resettlement of any other Fund, the relevant Scheme or any other Scheme; and
  - (e) all Units issued in relation to a Fund constitute a separate Class within the relevant Scheme.
-

- (f) where the Assets attributable to a particular Fund are insufficient to meet the Liabilities attributable to that Fund, those Liabilities (other than any Liabilities to a Unit Holder) will be met by the Manager.

3.12 **Conflicts between this Deed and an Establishment Deed:** In the event of any inconsistency between the terms of this Deed and the terms of the Establishment Deed for a Scheme, the Establishment Deed will, subject to the Act, prevail for the purposes of that Scheme.

## 4 UNITS

4.1 **Beneficial Interest in Funds:** The beneficial interest in each Fund shall be divided into Units.

4.2 **Classes of Units:** Subject to the Relevant Requirements, the Units issued in respect of each Fund will be Units of the same Class, with such rights, terms of issue, obligations and restrictions as the Manager determines and notifies to the Supervisor.

4.3 **Equal but not specific interests:** Subject to the provisions of this Deed and to any special rights and restrictions conferred on any Class of Units, each Unit shall confer upon the Unit Holder an equal interest in the relevant Fund, provided that a part of a Unit will only confer that part of the interest that is conferred by a whole Unit and in either case no Unit shall confer on a Unit Holder any interest in any particular part of that Fund, and no Unit Holder shall be entitled to require the transfer to the Unit Holder of any of the Investments of that Fund.

4.4 **No interest in other Funds:** Except as set out in clause 3.11, a Unit of one Fund shall not confer any right or interest upon a Unit Holder in any other Fund.

4.5 **No interference in management etc:** Subject to the rights of the Unit Holders created by this Deed, or by law, no Unit Holder shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of any Fund or any part or parts thereof or to exercise any right, power or privilege in respect of any Authorised Investment.

4.6 **Provisions benefit Unit Holders:** Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind Unit Holders) contained in this Deed, enure for the benefit of and bind each Unit Holder (and all persons claiming through them) as if they were a party to this Deed.

## 5 ISSUE OF UNITS

- 5.1 **Manager may invite offers:** Following the execution of this Deed the Manager may at any time and from time to time invite offers, subscriptions or applications for Units of any Fund to be created pursuant to this Deed upon and subject to the terms and conditions contained in this Deed and the relevant Establishment Deed or Fund Criteria and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine.
- 5.2 **Compliance with legislation:** The Manager shall, in inviting offers in terms of clause 5.1, comply with all Relevant Requirements.
- 5.3 Without limiting clause 5.2, the Manager must, if required by Relevant Requirements, not make a Regulated Offer of Units in a Fund unless:
- (a) the Scheme relevant to the Fund is registered under the Act;
  - (b) a PDS has been prepared and lodged as a Register Entry in respect of the Fund; and
  - (c) all of the information that the Register Entry is required to contain under the Act has been lodged as required with respect to the Scheme and the Fund.
- 5.4 Each PDS and Register Entry must comply with and contain all information required by the Financial Markets Legislation in force at the time and other Relevant Requirements, and otherwise be in a form provided to the Supervisor in advance of lodgement or supply (as the case may be).
- 5.5 The Manager must use its best endeavours to ensure that the PDS and Register Entry for the Scheme and each Fund at all times comply with Financial Markets Legislation.
- 5.6 **Issue may be underwritten:** Any proposed issue of Units may in the Manager's discretion, be underwritten by an underwriter and such underwriter and its nominees or any of them may take up the Units not otherwise subscribed for, and charge underwriting commission and all costs and disbursements of the issue as may be agreed with the Manager, notwithstanding that the underwriter may be a Related Company of the Manager.

## 6 CONSOLIDATION AND SUBDIVISION OF UNITS

- 6.1 **Manager may consolidate or subdivide:** The Manager may at any time following consultation with the Supervisor, by notice in writing to the Unit Holders of a Fund and the Supervisor, cause the Units of that Fund in existence at the date of that notice to be consolidated or subdivided. Each such notice shall:
- (a) specify the date on which such consolidation or subdivision is to take place ("Operative Date");
-

(b) specify the ratio (“Ratio”) which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.

6.2 **Effect of consolidation or subdivision:** As from the Operative Date, each Unit Holder of the relevant Fund shall be deemed to hold a number of Units equivalent to the number held before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, parts of a Unit beyond four decimal places shall be rounded down and disregarded.

6.3 **Manager may divide units into different classes:** The Manager may at any time establish one or more new Funds in accordance with clause 3.10 (“New Fund”) and apportion and divide the Investments of an existing Fund (“Old Fund”) between the Class of Units attributable to the Old Fund and the Class or Classes of Units attributable to the New Fund or New Funds as authorised by the Supervisor. Immediately following such division and apportionment Unit Holders shall hold each Class of Unit in the Old Fund and New Fund or New Funds in proportion to their holding of Units in the Old Fund prior to the creation of the Classes attributable to the New Fund or New Funds.

6.4 **Certificates:** The Manager may make such arrangements as it deems appropriate following a consolidation or subdivision of Units for the cancellation of any existing Certificates and, if required by law or this Deed, the issue of new Certificates.

6.5 **Notification to Unit Holders and Certificates:** The Manager may make such arrangements as the Manager and Supervisor deem appropriate following a consolidation or subdivision of Units for the notification of Unit Holders and the cancellation of any existing Certificates and, if required by law or this Deed, the issue of new Certificates.

## 7 CESSATION OF ISSUES OF UNITS

### 7.1 Manager may determine:

(a) The Manager may at any time or times by notice in writing given to the Supervisor determine that after a date specified in the notice given to the Supervisor, no further Units shall be issued pursuant to this Deed or that no further Units shall be issued in respect of a specified Fund or Funds either for any specified period (which period may subsequently be varied by the Manager by further notice in writing to the Supervisor) or until this Deed is terminated.

(b) If a notice is given to the Supervisor in accordance with clause 7.1(a) the Manager will not after the date specified in the notice issue any further Units under this Deed or the relevant Establishment Deed in respect of such Fund or Funds for the specified period or until this Deed or the relevant Establishment Deed is terminated, whichever situation applies.

### 7.2 Manager to give notice:

---

- (a) Where any determination is made by the Manager in accordance with clause 7.1, the Manager shall forthwith give notice to all Unit Holders of any Fund affected (“Closed Fund”).
- (b) If agreed by the Supervisor, and subject to compliance with all Relevant Requirements relating to disclosure of information, any such notice may specify a Fund or Funds which shall replace the Closed Fund or Closed Funds for the purposes of any Standing Application pending a variation to any such Standing Application by the Unit Holder in accordance with clause 8.2.

## 8 APPLICATION FOR UNITS

### 8.1 Application procedure: Every Person wishing to apply for Units shall:

- (a) complete and lodge with the Manager an application for Units in a specified Fund or Funds in writing or by Electronic Communication in such form or to such specification as is from time to time prescribed by the Manager. An initial application shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the Manager may from time to time prescribe; and
- (b) forward or credit to the Supervisor, or to the Manager (including upon request of the Manager where it forms part of the terms and conditions of the relevant Fund) for payment to the Supervisor, the application moneys in respect of the Units applied for.

### 8.2 Standing Application:

- (a) Subject to the provisions of the relevant Establishment Deed and the relevant Fund Criteria (if any), an application may be designated as a Standing Application for an amount per Month (or such other period as the Manager shall determine) and may include an authorisation to the Manager to initiate direct debits to a bank account nominated by the applicant for relevant application amounts to be credited to the Supervisor.
- (b) Any Standing Application may be varied from time to time by the relevant Unit Holder by completing and lodging with the Manager a replacement application for Units in accordance with clause 8.1.

### 8.3 Manager’s option: Applications for Units may, subject to the provisions of the relevant Establishment Deed and the relevant Fund Criteria (if any), at the option of the Manager be treated as:

- (a) a subscription for Units to be issued from the relevant Fund at the Unit Value:
  - (i) on that day if that day is a Valuation Day; or

- (ii) on a prior Valuation Day if Income and other amounts of the relevant Fund that have accrued between that Valuation Day and the date of subscription do not accrue to the subscribed Units; or
  - (iii) the next Valuation Day; or
  - (iv) another Valuation Day as described in the relevant Fund Criteria (if any); or
- (b) a request for the purchase from a Unit Holder nominated by the Manager of Units in the relevant Fund at the Unit Value:
- (i) on that day; or
  - (ii) if that day is not a Valuation Day, on the next Valuation Day; or
  - (iii) another Valuation Day as described in the relevant Fund Criteria (if any).

**8.4 Manager's discretion:**

- (a) Subject to the Relevant Requirements and the provisions of the relevant Establishment Deed and the relevant Fund Criteria (if any), the Manager may refuse to accept in whole or in part any application and the Manager shall not be required to give any reason or ground for such refusal.
- (b) The Manager shall make a decision on all applications within two (2) Business Days of receipt or a longer period as described in the relevant Fund Criteria (if any).
- (c) Without limiting sub-paragraph (a), the Manager may refuse any application for Units or may, with the applicant's agreement, accept only part of an application for Units if, in the opinion of the Manager, acceptance of the application in full would, or may, threaten the Scheme's eligibility to be a PIE.

**8.5 Refunds:** The Manager shall promptly notify the Supervisor of the rejection of each application in such manner as is from time to time agreed between the Supervisor and the Manager and, where a refund is required, shall immediately refund or arrange for the Supervisor to refund application moneys received in respect of a rejected application.

**8.6 Notification to Supervisor; registration and issue of Units:** The Manager shall:

- (a) pay all application moneys to the Supervisor within five (5) Business Days of receipt of such moneys;
  - (b) on acceptance of an application and issue of Units, enter the name of the Unit Holder on the Unit Register (or, where the Unit Holder is already on the Unit Register, cause the Unit Register to be altered accordingly); and
-

- (c) if required by Relevant Requirements, issue to the Unit Holder a Certificate within 10 Business Days of the issue of the Units.

#### 8.7 **Minimum Value of Units:**

- (a) The Manager may from time to time determine a Minimum Value of Units in respect of applications for Units in any Fund.
- (b) Subject to the Relevant Requirements, if, for any reason, a Unit Holder's holding of Units falls below the applicable Minimum Value of Units, the Unit Holder will, if the Manager so elects and subject to the Relevant Requirements, be deemed to have given a Withdrawal Notice in respect of the remaining Units and the provisions of clause 10 will apply.

#### 8.8 **Maximum Value of Units:**

- (a) The Manager may from time to time determine a Maximum Value of Units in respect of applications for Units in any Fund.
- (b) Subject to the Relevant Requirements, if, for any reason, a Unit Holder's holding of Units rises above the applicable Maximum Value of Units, the Unit Holder will, if the Manager so elects, be deemed to have given a Withdrawal Notice in respect of Units above the Maximum Value of Units and the provisions of clause 10 will apply.

#### 8.9 **Joint Holders of Units:** Where two or more Persons are registered as the holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- (a) the joint holders of any Unit shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
  - (b) on the death of a joint holder, the survivor or survivors shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
  - (c) any one of such joint holders may give Withdrawal Notices, or Switching Notices, execute a transfer of Units or give effectual receipts for any Withdrawal Amount or distribution payable to such joint holders and the Manager and Supervisor may act upon the same and shall not be required to enquire as to the authority of the person giving that notice or receipt;
  - (d) a notice from the Supervisor or Manager given to any one of the joint holders shall be deemed notice to all the joint holders;
  - (e) at any meeting of Unit Holders any one and only one of such joint holders may vote either personally or by duly Authorised Representative or by attorney or
-

proxy in respect of such Unit and in the event of any dispute between joint holders the vote may be exercised by the person whose name appears first on the Unit Register in respect of that Unit or Units; and

- (f) for the purposes of calculating the Tax payable by the Scheme and attributing any such liability to any Unit Holder and for all other purposes relating to the application of the Tax Act to the Scheme, the Manager may in its complete discretion either treat the Unit Holders as separate Unit Holders (in equal shares), or treat the joint Unit Holders as a single Unit Holder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Unit Holders.

## 9 ISSUE PRICE AND ISSUE OF UNITS

- 9.1 **Issue price:** Each Unit of each Fund shall be issued at the Unit Value in relation to the Fund on the Valuation Day on which it is issued plus, in the Manager's discretion, the amount per Unit determined by the Manager from time to time to reflect the cost of acquiring Authorised Investments for the Fund **provided that** Units issued on the first Valuation Day of a particular Fund shall be issued at a Unit price of \$1.00 unless agreed otherwise by the Manager and the Supervisor.
- 9.2 **Number of Units:** The number of Units sold or issued pursuant to an application shall be that number of Units (rounded down, at the Manager's discretion, to four decimal places) that have an aggregate Unit Value equal to the application moneys.
- 9.3 **Application moneys subject to trusts:** All application moneys received by the Manager in payment of the Issue Price for Units pursuant to clause 9.1 shall become subject to the trusts created by this Deed immediately upon receipt by the Manager.
- 9.4 **Fraction of Units:** Notwithstanding clauses 9.1 to 9.3 above, the number of Units held by a Unit Holder may, at the Manager's discretion, include a fraction of a Unit.

## 10 REDEMPTION OF UNITS

- 10.1 **Redemption of Units:** Subject to clauses 10.10 and 10.11, Units may be redeemed at the times and in the manner provided for in clauses 8.7(b) and 8.8(b) and this clause 10 and, the Relevant Requirements, the relevant Establishment Deed and the Fund Criteria (if any).
- 10.2 **Withdrawal Notice:** If any Unit Holder wishes to effect a withdrawal in respect of some or all of the Unit Holder's Units, the Unit Holder shall give notice in writing or by Electronic Communication ("Withdrawal Notice") to the Manager to that effect. Such Withdrawal Notice shall:
-

- (a) be in such form or comply with such specification (if any) as may be prescribed by the Manager and/or the Supervisor from time to time and may, amongst other things, specify:
  - (i) the Fund in respect of which the Unit Holder desires to effect withdrawal;
  - (ii) either a monetary amount or the number of Units in respect of which the Unit Holder desires to effect withdrawal;
- (b) unless otherwise agreed by the Manager, not be able to be revoked by the Unit Holder by whom it has been given.

**10.3 Withdrawal subject to maintaining the legal status of the Scheme:** The Manager shall be able to defer or suspend any particular Withdrawal Notice:

- (a) should that withdrawal cause or threaten the relevant Scheme to lose its legal status under any act or related legislation, including its status as, or eligibility to be, a PIE under the Tax Act. Should the Manager defer or suspend a Withdrawal Notice under this clause 10.3(a), then the Manager shall arrange with the Unit Holder to make the withdrawal in such a manner as to ensure that the Scheme maintains its legal status; or
- (b) in accordance with any specific Fund terms and conditions as prescribed in the Fund Criteria (if any).

**10.4 Minimum Value of Units:**

- (a) Subject to the Relevant Requirements, no Withdrawal Notice shall be given in respect of less than the Minimum Value of Units for the withdrawal of Units in the relevant Fund and, except where all Units held by a Unit Holder are to be redeemed, no Withdrawal Notice shall be given if the effect of the withdrawal would be that the Unit Holder who gave the same would hold less than the Minimum Value of Units in the relevant Fund.
- (b) The Manager may at any time at its discretion waive the requirements of this clause 10.4, either generally or in a particular case or cases.

**10.5 Request for a specified amount:** Where a Unit Holder requests the repurchase of sufficient Units held by them to realise a specified amount the repurchase request shall relate to as many of the Units that will realise at least that specified amount. Any amount realised in excess of the required amount may be re-invested on behalf of the Unit Holder by the Manager in a new Unit or Units as if applied for immediately before the repurchase date.

**10.6 Redemption or purchase:** Subject to the Relevant Requirements, the provisions of the relevant Establishment Deed and the relevant Fund Criteria (if any) and clauses

---

10.8, 13.7 and 37.2 the Manager shall upon receipt of a Withdrawal Notice procure that:

- (a) on or within:
  - (i) fourteen (14) Business Days after that day; or
  - (ii) if that day is not a Valuation Day, fourteen (14) Business Days after the next Valuation Day; or
  - (iii) the number of Business Days as prescribed in the relevant Fund Criteria (if any));

the number of Units to be withdrawn in accordance with that Withdrawal Notice are:

- (iv) redeemed and the holder of those Units is paid the Withdrawal Amount; or
- (v) purchased by the Manager and the holder of those Units is paid the Withdrawal Amount; or
- (vi) purchased from the holder of those Units by some party nominated by the Manager at the Unit Value for such Units; and

for the avoidance of doubt, and without limiting the generality of clause 18.2 it is declared that the obligation of the Manager pursuant to this clause 10.6 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 18.2.

**10.7 Effective Withdrawal Notice:** A Withdrawal Notice given prior to 5.00 pm on the Business Day preceding a Valuation Day shall be effective for that Valuation Day or as otherwise prescribed in the relevant Fund Criteria (if any).

**10.8 Redemption Funds:** In connection with redemption of Units under clause 10.6 the Manager shall have the right to:

- (a) direct the Supervisor pursuant to clause 19.6 to realise Investments of the relevant Fund; and/or
- (b) direct the Supervisor (subject to clause 17.2) to Borrow on behalf of the relevant Fund pursuant to clause 17.1 a sufficient amount;

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clauses 19.4 and 37.2, the Supervisor shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the relevant Fund.

---

10.9 **Cancellation of Units redeemed:** Units redeemed pursuant to this clause 10 shall cease to exist and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the Unit Register in respect of such cancellation.

10.10 **Withdrawal Suspension Notice:** Subject to the Relevant Requirements, if, in respect of the Fund specified in the Withdrawal Notice, the Manager in good faith forms the opinion that it is not practicable or that it would be materially prejudicial to the interests of any Unit Holders in that Fund for the Manager to arrange the redemption or repurchase of Units from that Fund pursuant to clause 10.6 or the realisation of investments attributable to that Fund pursuant to clause 10.8 is not possible:

- (a) by reason of the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- (b) by reason of financial, political or economic conditions applying in respect of any financial market; or
- (c) by reason of the nature of any Investment; or
- (d) by reason of the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally; or
- (e) because the Manager considers that following such redemption the Fund would no longer be in compliance with this Deed, the Tax Act, the relevant Establishment Deed or the relevant Fund Criteria,

then the Manager shall, as soon as reasonably practicable, advise the Supervisor and shall give notice to any holder of Units of the relevant Fund who gives or has given a Withdrawal Notice or a Switching Notice notifying of the suspension of withdrawals or switches ("Withdrawal Suspension Notice"). A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Withdrawal Notices and Switching Notices given in respect of that Fund until such time as the Manager gives to the Unit Holders who gave those Withdrawal Notices or Switching Notices notice to the effect that the Withdrawal Suspension Notice is cancelled.

10.11 **Withdrawals paid by instalment:** Notwithstanding anything contained in this Deed, but subject to the Relevant Requirements:

- (a) if a Withdrawal Notice is received or a series of Withdrawal Notices are received in respect of a Fund within a period of three (3) months that relate to more than two and a half (2.5)% of the Units on issue in that Fund and the Supervisor and the Manager shall both agree in good faith that it is in the general interest of all Unit Holders in that Fund to defer immediate redemption or repurchase then such Units may be repurchased or redeemed by instalments over a period approved by the Supervisor or in total at the expiration of a period to be determined by the Supervisor. The Withdrawal Amount shall be calculated on
-

the Valuation Day or respective Valuation Days on which such Units are repurchased or redeemed; or

- (b) if a Withdrawal Notice is received or a series of Withdrawal Notices are received in respect of a Fund within a period of three (3) months that relate to more than ten (10)% of the Units on issue in that Fund then the Manager may suspend the right of Unit Holders in that Fund to withdraw provided that:
  - (i) the Manager notifies the Supervisor of its intention to suspend the right of Unit Holders in that Fund to withdraw; and
  - (ii) the Manager immediately summons a meeting of Unit Holders in that Fund in the manner required by this Deed to consider the winding up of that Fund.

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

**10.13 Calculation of Units to be redeemed:** If a Withdrawal Suspension Notice is given and is later cancelled, then where the Withdrawal Notice specifies a Withdrawal Amount the number of Units to be redeemed in respect of the Withdrawal Notice shall, subject to the provisions of the relevant Establishment Deed and the relevant Fund Criteria (if any), be calculated as if the reference in clause 10.6 to the next Valuation Day were a reference to the next Valuation Day following the cancellation of that Withdrawal Suspension Notice or such other Valuation Day as described in the relevant Fund Criteria (if any).

**10.14 Order of Redemption:** If a Unit Holder of any Fund gives a Withdrawal Notice which requires redemption of less than all of the Units held by the Unit Holder in that Fund, the Units which are first redeemed by that Unit Holder shall be deemed to be those of the Units held by that Unit Holder which were earliest subscribed or purchased.

## 11 SWITCHING OF FUNDS

**11.1 Switching Notice:** Any Unit Holder may, subject to the relevant Fund Criteria (if any), at any time give a notice in writing or by Electronic Communication (“Switching Notice”) to the Manager to the effect that the Unit Holder wishes to withdraw Units from one Fund (“Withdrawal Fund”) and invest the proceeds of such withdrawal in another Fund or Funds (“Switch Fund” or “Switch Funds”).

**11.2 Contents of Switching Notice:** A Switching Notice shall:

---

- (a) be in such form or comply with such specification as may be prescribed by the Manager from time to time and may, amongst other things:
  - (i) specify a monetary amount or number of Units in the Withdrawal Fund in respect of which the Unit Holder desires to effect withdrawal;
  - (ii) specify the Switch Fund, and, if more than one Switch Fund is specified, specify the proportions in which it is desired to invest in those Switch Funds;
  - (iii) not be for less than the Minimum Value of Units specified for the switch of Units or for a number of Units that would reduce the holding of the Unit Holder in the Withdrawal Fund to less than the Minimum Value of Units;
  - (iv) provide for investment in a Switch Fund of not less than the Minimum Value of Units applicable to that Fund from time to time;
- (b) unless otherwise agreed by the Manager not be able to be revoked by the Unit Holder by whom it has been given;
- (c) authorise the Supervisor to redeem such Units as are necessary to pay any Tax that arises as a result of the Unit Holder giving the Switching Notice and to pay that Tax to the person or authority entitled thereto;

and the provisions of clause 10 shall otherwise apply to a Switching Notice as if it were a Withdrawal Notice in respect of Units in the Withdrawal Fund.

### 11.3 **Switching:**

The Manager shall, subject to clauses 10 and 37, and compliance with all Relevant Requirements relating to disclosure of information, on the day of receiving the Switching Notice, or if that day is not a Valuation Day, on the next Valuation Day after that day, procure that the number of Units to be withdrawn under that Switching Notice are dealt with in accordance with clause 10 as if the switch were a withdrawal, except that the proceeds are applied in the acquisition of Units in the Switch Fund or Switch Funds at a price determined in accordance with clause 9 (as if the Switching Notice were an application in respect of those Units) and (if more than one Switch Fund is involved) in the proportions specified in the Switching Notice.

## 12 **TRANSFER AND TRANSMISSION OF UNITS**

12.1 **Transfer generally:** Subject to clause 37.2, all or any of the Units held by any Unit Holder may be transferred by instrument in writing in accordance with clause 12.2 and the Relevant Requirements.

12.2 **Instrument of Transfer:**

---

- (a) Subject to the Relevant Requirements, a transfer of Units shall be in such form as the Manager may approve from time to time and shall be signed by the transferor.
- (b) Where a transfer is effected by the cancellation of Units and issue of new Units pursuant to clause 12.6 and an Establishment Deed provides for the issue of further fully paid Units on such transfer of Units, the instrument of transfer will be deemed to include such Units.

**12.3 Minimum Value of Units:** Subject to the Relevant Requirements, no transfer shall be given in respect of less than the Minimum Value of Units for a transfer and except where all Units held by a Unit Holder are to be transferred, no transfer shall be given if the effect of giving the same would be that the transferor or the transferee Unit Holder would hold less than the Minimum Value of Units in the relevant Fund.

**12.4 Registration of transfers:** On being satisfied that the provisions of this clause 12 and all Relevant Requirements have been complied with and subject to clause 13.7, the Manager will register the transfer in the Unit Register.

**12.5 Manager may decline to register transfer:** Subject to the Relevant Requirements, the Manager may decline to register any transfer at its sole discretion including in the following circumstances:

- (a) where the provisions of clause 12.4 or any applicable statutory provisions have not been complied with; or
- (b) except where all Units held by a Unit Holder in a Fund are to be transferred, if registration of the transfer would result in less than a Minimum Value of Units or more than the Maximum Value of Units standing in the name of the transferee or transferor in any Fund; or
- (c) if registration of the transfer, in the opinion of the Manager, would or could threaten the Scheme's status as, or eligibility to be, a PIE; or
- (d) if there are unpaid amounts owing from the transferor of the Units to the Supervisor or the Manager.

**12.6 Transfers where the Fund is a PIE**

If the Manager receives an instrument of transfer for Units held by a Unit Holder in a Fund which is a PIE, the Manager may adjust a Unit Holder's Units in accordance with clause 37.2, and may elect to effect the transfer either by registering a transfer of Units from the transferor to the transferee or by:

- (a) cancelling the number of Units sought to be transferred (less any Units redeemed to pay any Tax) without any payment to the Unit Holder; and
-

- (b) issuing to the Person named as transferee in the instrument of transfer such number of Units as are cancelled pursuant to paragraph (a) above, treating the transferee as having satisfied payment of the Issue Price by the cancellation of the Units referred to in paragraph (a) above.

12.7 **Manager to retain transfer:** Every instrument of transfer of a Unit which is registered shall be retained by the Manager for such period as the Manager may determine but any instrument of transfer which the Manager may decline to register shall within ten (10) Business Days after the date on which the transfer is lodged with the Manager be returned to the person lodging the same.

12.8 **Suspension of registration:** Subject to the Relevant Requirements, registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine **PROVIDED THAT** the Manager may not suspend registration of transfers for a period exceeding thirty (30) Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably or arbitrarily withheld).

12.9 **Transmission of Units:** The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. However, if that Unit Holder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of such Units and the transfer of Units is not registered before the death of the deceased Unit Holder, the Manager may register that transfer notwithstanding that the Manager at the time of such registration has notice of that Unit Holder's death.

12.10 **Transfer by operation of law:** Any person having authority to administer the estate of a mentally disordered person and any person becoming entitled to any Units in consequence of the death, bankruptcy or liquidation of any Unit Holder may upon producing such evidence of capacity or of title as the Manager shall think sufficient be registered as the holder of such Units and subject to the provisions as to transfer contained in this clause 12 may transfer such Units. This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

## 13 UNIT REGISTER

### 13.1 The Unit Register:

- (a) The Manager shall keep and maintain or cause to be kept and maintained a register of Unit Holders in respect of the Booster Investment Series II in a manner that complies with the Relevant Requirements.
-

- (b) The Unit Register may take the form of a computer file compiled in a manner required by the FMA (if any) and as determined by the Manager in consultation with the Supervisor.
- (c) The Unit Register shall be kept or caused to be kept by the Manager at the Office or such other place as the Manager may from time to time approve.
- (d) On request by the Supervisor, the Manager will provide the Supervisor with a copy of the Unit Register in such form as the Supervisor may approve and the Supervisor and/or the Auditor shall be entitled to inspect the Unit Register at any time during the normal working hours of the Manager.

**13.2 Details to be entered in the Unit Register:** There shall be entered in the Unit Register, in respect of each Fund and Scheme:

- (a) the names and addresses of the Unit Holders in the Fund, or in the case of joint Unit Holders the address of the Unit Holder first named in the Unit Register, of the relevant Scheme;
- (b) the number and type of Units held by each Unit Holder;
- (c) the date on which the name of every person was entered in the Unit Register as a Unit Holder;
- (d) the date on which any person ceased to be a Unit Holder; and
- (e) such other details as the Manager may require or as may be required by Relevant Requirements from time to time.

**13.3 Audit of the Unit Register:** The Manager shall cause the Unit Register to be audited by the Auditor at annual intervals or as required by the Act. Such audit shall be completed in accordance with the Act and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of Part 4 of the Act has not been complied with. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause the Unit Register to be audited.

**13.4 Changes of name or address:** Any change of name or address, or information required to be provided under the Tax Act, of any Unit Holder shall be notified by such Unit Holder in writing to the Manager who shall alter the Unit Register accordingly.

**13.5 Inspection:** Any Unit Holder of any Scheme shall be entitled to inspect the Unit Register of that Scheme free of charge at any time during normal working hours of the Manager.

**13.6 Reliance upon the Unit Register:** Each of the Manager and the Supervisor shall be entitled:

- (a) to rely absolutely on the Unit Register as being correct; and
-

- (b) for all purposes to treat a person whom it believes to be the person entered on the Unit Register as the holder of any Units as the legal and beneficial owner of those Units; and
- (c) to effect transfers, redemptions or other dealings of any nature with Units on the basis of the information recorded in the Unit Register without requiring production or surrender of any Certificate issued in respect of those Units.

13.7 **Evidence of entitlement:** Notwithstanding clause 13.6, the Manager shall be entitled, at its absolute discretion but subject to the Relevant Requirements, before giving effect to any transfer, redemption or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in a Unit Register as the holder of the Units in question.

13.8 **No notice of trust etc:** Except as required by the Relevant Requirements or otherwise agreed by the Manager and the Supervisor, neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in the Unit Register as the Unit Holder. Accordingly, no notice of any trust, charge, pledge or equity shall be entered upon the Unit Register unless authorised by the Manager and the Supervisor.

## 14 CERTIFICATES

14.1 **No issue of certificates:** Unless required by Relevant Requirements the Manager shall not be required to issue to a Unit Holder a certificate of Units held by that Unit Holder.

## 15 MANAGEMENT

15.1 **Manager's duties:** Each Fund shall be managed by the Manager and the Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed and as otherwise required by Relevant Requirements for the benefit of the Unit Holders in each Fund. In particular, the Manager must:

- (a) act honestly in acting as manager; and
  - (b) in exercising any powers or performing any duties as Manager:
    - (i) act in the best interests of the Unit Holders;
    - (ii) treat the Unit Holders equitably; and
  - (c) not make use of information acquired through being Manager in order to:
-

- (i) gain an improper advantage for itself or any other Person; or
  - (ii) cause detriment to the Unit Holders; and
- (d) exercise the care, diligence and skill that a prudent person engaged in the profession of managing a Registered Scheme would exercise in the same circumstances; and
- (e) carry out its functions in accordance with this Deed, the SIPO and all other Issuer Obligations.

Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager, supervisor or trustee for trusts whether of a nature similar to or different from the Schemes in the Booster Investment Series II.

15.2 The Manager shall have the same duties and liabilities in the performance of its functions as manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act).

15.3 **Manager's functions:** The Manager shall be responsible for the following functions for each Fund and Scheme:

- (a) offering Units;
- (b) issuing Units;
- (c) managing Fund Assets; and
- (d) administering the Scheme and each Fund.

Without limiting the generality or the above, the Manager shall perform each of the following duties:

- (e) prepare any taxation returns and deal with all other taxation matters in accordance with this Deed;
  - (f) prepare application forms, any Disclosure Documents and other promotional material as required in terms of this Deed and any Relevant Requirements and, in order for the Supervisor to be able to satisfy its statutory obligations, provide to the Supervisor:
    - (i) such application forms and Disclosure Documents in draft form sufficiently far ahead of the proposed registration or distribution date to allow the Supervisor a reasonable period of time to review and provide comments; and
    - (ii) a copy of the Disclosure Documents and any other promotional material as referred to above as soon as practicable after distribution;
-

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

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

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

- (a) exercise its discretion in accordance with clause 3.8(e) to have the Units of any Scheme or Fund quoted on any recognised Exchange;
  - (b) purchase, sell and otherwise deal with Investments upon such terms as the Manager thinks fit;
  - (c) lease and accept surrenders of leases and otherwise deal in any manner with lessees or other occupants of Investments;
  - (d) execute and pay for repairs and improvements relating to Investments;
  - (e) insure any Investment for such amounts and on such conditions and in such types of insurance as may be deemed necessary;
  - (f) attend and vote at meetings;
  - (g) lend money;
  - (h) in accordance with clause 17, arrange for the Fund to borrow or raise money unsecured or secured subject to the conditions contained in this Deed and the relevant Fund Criteria and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the Scheme Assets;
  - (i) develop, build, demolish and otherwise make improvements or alterations to any Real Estate or other Investment in such manner as the Manager thinks fit;
  - (j) instruct and pay from the Fund, agents, consultants and other persons to act in relation to Investments or proposed Investments;
  - (k) make and carry out any takeover proposal, offer or invitation;
  - (l) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager deems fit;
  - (m) create, grant, renew, alter or vary any Mortgage, charge or other encumbrance over the whole or any part of the Fund for any purpose whatsoever and upon
-

such terms and conditions as the Manager may in its absolute discretion think fit;

- (n) agree to enter into and perform any contract option or other right relating to any Investment including any Futures Contract;
  - (o) agree to the release, modification or variation of any rights, privileges or liabilities of any Investments or any securities given in relation thereto;
  - (p) agree to the rearrangement or reconstruction of any Person including any increase or reduction in the capital of the Person;
  - (q) agree to the amalgamation or merger of any Person with any other Person or the sale or other disposition of all or any part of the property or undertaking of any Person;
  - (r) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
  - (s) manage any Real Property or other Investment being an Asset of the Fund and for that purpose at its discretion to employ managing agents and delegate powers of management to such managing agents and to employ or authorise the employment of staff and contractors and to enter into maintenance and management contracts of all kinds at the expense of the Fund;
  - (t) participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership, joint venture or other agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relate to Authorised Investments;
  - (u) consolidate and divide all or any of the Units of the Fund into Units of a larger amount or subdivide all or any Units into Units of a smaller amount in accordance with clause 6.1;
  - (v) perform and enforce agreements;
  - (w) institute, prosecute, compromise and defend legal proceedings including arbitration;
  - (x) enter into or obtain any guarantee, indemnity or similar contract for the benefit of the Fund or a Unit Holder (and whether relating to the guaranteeing of the capital or income of the Fund any amounts to be paid to the Unit Holders in respect of the Fund or otherwise) and to pay any guarantee fee or other consideration from the Fund for any such guarantee, indemnity or similar contract;
-

- (y) group the profits or losses of the Fund with those of any other person and for such purposes to make or to accept subvention or other payments between the Fund and the other person;
- (z) incur and pay charges and expenses which, in the opinion of the Manager, are necessary or desirable to carry out the purposes of the Fund, including tax and other levies imposed on the Scheme or the Manager or the Supervisor in connection with the Fund;
- (aa) invest in pooled or mixed forms of Investments in common with other investors;
- (bb) enter into any Futures Contracts subject to any limitations contained in this Deed, any relevant Fund Criteria or the SIPO; and
- (cc) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines.

15.6 **Delegation by Manager:** Without in any way affecting the generality of clause 15.1 the Manager may in carrying out and performing the duties and obligations on its part which are contained in this Deed, subject to the Manager advising the Supervisor of any delegation or contracting out under this clause before any such delegation, appointment or contracting out agreement is entered into and the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:

- (a) delegate all or any of its powers, authorities, functions and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager;
- (b) by Power of Attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers authorities or discretions; and
- (c) appoint any Person in any part of the world to be an agent, investment manager or sub-manager in respect of all or any of the Investments or of any Fund, or the Investments or any part thereof, and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of any Fund (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

15.7 The Manager must take reasonable steps to monitor the performance of the delegate and of the functions delegated and to 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.

15.8 **Exercise of voting rights by Manager:** Subject to the Manager not acting in breach of its obligations under this Deed or Relevant Requirements:

- (a) All rights of voting conferred by the Investments of a Fund shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Unit Holder shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request.
- (b) The Manager shall not be under any liability or responsibility in respect of the management of any Fund nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

15.9 **Additional Management:** The Manager may from time to time agree to perform for any Unit Holder (or group of Unit Holders), such additional duties or functions in respect of or on behalf of that Unit Holder (or group of Unit Holders) as the Manager and the Unit Holder (or group of Unit Holders) agree.

## 16 THE SUPERVISOR

16.1 **Supervisor's duties:** The Supervisor, in exercising its powers and performing its duties as the supervisor of the Booster Investment Series II, must:

- (a) act honestly in acting as the Supervisor of the Scheme and each Fund; and
  - (b) in exercising any powers or performing duties as Supervisor:
    - (i) act in the best interests of the Unit Holders;
    - (ii) exercise reasonable diligence in carrying out its functions as the Supervisor; and
  - (c) do all things it has the power to do to cause any contravention referred to in clause 16.5(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Unit Holders); and
-

- (d) act in accordance with any direction given by a Special Resolution of Unit Holders (that is not inconsistent with any enactment, rule of law or this Deed and subject to any order of the court made under section 210 of the Act) in relation to:
  - (i) seeking a remedy to a contravention referred to in clause 16.5(a);
  - (ii) any other matter connected with the Supervisor's functions under clause 16.5; and
- (e) do anything that the Supervisor considers necessary to enable it to discharge the Supervisor's statutory duties in relation to the Booster Investment Series.

**16.2 The Supervisor may:**

- (a) act on the advice or the opinion of an accountant, actuary, solicitor or other professional adviser without being responsible for any resulting loss; and
- (b) institute and/or defend and/or compromise legal proceedings against third parties and recover any loss suffered by Unit Holders on behalf of third parties in each case (unless it is to defend legal proceedings) at the direction of the Manager.

**16.3 The Supervisor:**

- (a) is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Unit Holders;
- (b) has the same duties and liability in the performance of its functions as Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act);
- (c) must, in exercising its powers and performing its duties as Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Supervisor would exercise in the same circumstances.

**16.4** Subject to the provisions of this Deed and all Relevant Requirements and the powers, rights and discretions given to the Manager by all Relevant Requirements and this Deed, the Supervisor shall have the rights and powers in respect of a Scheme and each Fund and over and in respect of a Scheme and each Fund which it could exercise if it were the absolute and beneficial owner of such Fund. Notwithstanding the preceding references to the provisions of this Deed, the Supervisor shall have the power to settle and complete all transactions in respect of a Scheme and each Fund.

**16.5 Supervisor' functions:** The Supervisor has the following functions in respect of a Scheme and each Fund:

- (a) act on behalf of the Unit Holders 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 the Issuer Obligations;
  - (iv) any contravention or alleged contravention of the Act by any other Person in connection with the Scheme and each Fund;
- (b) supervising:
  - (i) the performance by the Manager of its functions and its Issuer Obligations;
  - (ii) the financial position of the Manager and each Fund, to ascertain that they are adequate;
- (c) holding the Investments of each Fund, or ensuring that the Investments of each Fund are held, in accordance with sections 156 to 158 of the Act;
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the Act, Financial Markets Supervisors Act 2011 or this Deed.

**16.6 The Supervisor shall:**

- (a) provide to the Manager, as soon as possible following receipt, copies of all notices or documents received by the Supervisor, or any of its nominees, in relation to any Assets of a Fund; and
- (b) at all times be lawfully entitled to act as supervisor of the Booster Investment Series II.

**16.7 Supervisor's delegates:** The Supervisor:

- (a) may authorise any Person or Persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Investment, perform any act, or exercise any discretion within the Supervisor's power. The authorisation must be written. The Supervisor remains liable for the acts or omissions of a delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the authorisation as the Supervisor thinks fit. The delegate may be the Manager or a Related Party of the Manager or the Supervisor;
  - (b) must not delegate its functions (except its function of holding the Investments of a Fund under clause 16.5(c)) unless otherwise permitted by the Act or as
-

permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011;

- (c) shall advise the Manager of any delegation or contracting out before any such delegation, appointment or contracting out agreement is entered into.

**16.8 Right of Supervisor to engage expert:** The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- (a) determine the financial position of the Manager, a Scheme or a Fund; or
- (b) review the business, operation, management systems or governance of the Manager, a Scheme or a Fund.

**16.9** If the Supervisor engages an expert under clause 16.8, the Manager must:

- (a) provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 16.8; and
- (b) pay the experts reasonable fees and expenses and shall be indemnified for those fees and expenses out of the relevant Fund, subject to any limits under this Deed or the Act.

**16.10 Supervisor may require independent valuations:** Notwithstanding clause 16.8, the Supervisor shall be entitled at any time to appoint an independent valuer to determine, at the expense of the relevant Fund, the net asset value of a Fund.

**16.11 Proceedings:** The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of this Deed and may recover any loss suffered by any Unit Holders on their behalf in respect of their Units.

## **17 BORROWING POWERS**

**17.1 Borrowing powers:** Subject to clauses 17.2, 17.3 and 19.4 in respect of any Fund, the Supervisor has power to and must if so directed by the Manager:

- (a) Borrow money from any Person (including a Unit Holder);
  - (b) for the purpose of such Borrowing, enter into loan documentation 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 Assets forming part of the relevant Scheme as security for any moneys Borrowed.
-

**17.2 Limitation on Borrowings:** Where Borrowing does not form part of a Fund's investment strategy and objectives, the Supervisor may only Borrow:

(a) in respect of a Scheme that has not been divided into two or more Funds if, at the time of the proposed Borrowing, the aggregate of the principal moneys Borrowed and outstanding in respect of the Scheme or secured against the Assets of that Scheme, together with the amount proposed to be borrowed, would not exceed fifty (50)% of the Fund Value of the Scheme.

(b) in respect of a Scheme that has been divided into two or more Funds if, at the time of the proposed Borrowing;

(i) the aggregate of the principal moneys Borrowed and outstanding in respect of the relevant Fund or secured against the Assets attributable to that Fund, together with the amount proposed to be borrowed, would not exceed five (5)% of the Fund Value of the Fund;

(ii) such Borrowing is only intended to cover a temporary Cash shortfall; and

(iii) the Manager is satisfied that such Borrowing is in the best interests of Unit Holders in the relevant Fund.

**17.3** For the avoidance of doubt where Borrowing forms part of a Fund's investment strategy and objective the Supervisor may borrow up to an amount agreed between the Supervisor and the Manager in accordance with the limits described in the Fund Criteria and SIPO.

**17.4 Conditions of Borrowing:** There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 17.1 or to complete any loan or security documents unless the Supervisor is satisfied that:

(a) the Supervisor's liability is restricted to the Assets from time to time comprising the relevant Fund;

(b) other than in accordance with and subject to clause 3.11 the Assets of any Fund shall not be or become liable in respect of Borrowing made by or on behalf of another Fund;

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

(d) there will be compliance with clause 17.2. In satisfying itself whether clause 17.2 will be complied with in any instance the Supervisor may rely upon a certificate of the Manager as conclusive evidence to that effect unless the Supervisor has actual knowledge that the requirements of clause 17.2 will not be satisfied.

---

17.5 **Third Parties need not enquire:** No Person from whom the Supervisor has or intends to Borrow in respect of any Fund needs to enquire as to whether or not the limitation set out in clauses 17.2 and 17.3 have been observed or complied with.

## 18 **SUPERVISOR'S AND MANAGER'S ADDITIONAL POWERS AND INDEMNITIES**

18.1 **Supervisor's additional powers:** In addition to any other powers granted under this Deed or by law, the Supervisor may, subject to any Relevant Requirements:

- (a) in accordance with clause 17, borrow or raise money unsecured or secured subject to the conditions contained in this Deed and the relevant Fund Criteria and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the Assets of the relevant Scheme, provided that nothing in this sub-clause shall require the Supervisor to take any action which it reasonably believes would cause it to breach its obligations under any rule of law or under the Deed;
- (b) waive any breach, or anticipated breach of this Deed by the Manager on such terms as it considers necessary provided no such waiver may be made where if it required an amendment to the Deed would require consent under the Act;
- (c) in the event of a material error being made in calculating a Unit Value on any Valuation Day, determine a minimum level of reimbursement or compensation to be paid to or in respect of any disadvantaged Unit Holder or former unit holder for the purposes of regulation 99 of the Regulations. Reimbursement or compensation of amounts lower than a minimum of \$20 per Unit Holder or former unit holder will not be paid unless, in the Supervisor's sole discretion, the Supervisor determines that it is fair and equitable for an alternative minimum to apply. This minimum level, determined at the date of this Deed, shall be reviewed in consultation with the Manager at such times as the Supervisor considers reasonable and such other minimum as is determined by the Supervisor to be appropriate shall become the minimum;
- (d) appoint an authorised person to attend meetings of the Manager, including board meetings, investment committee meetings and other administrative meetings, to the extent that such meetings relate to the Booster Investment Series II; and
- (e) inspect the Manager's premises, upon giving the Manager 24 hours written notice, to the extent necessary to enable the Supervisor to perform the Supervisor's duties under this Deed.

18.2 **Supervisor and Manager in representative capacity:** The Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of a Scheme or Fund in the Booster Investment Series II are each, and shall each be deemed to be,

---

acting for and on behalf of the Unit Holders in the relevant Scheme or Fund and not in their own respective capacities.

- 18.3 **No personal liability:** Neither the Supervisor nor the Manager shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of a Fund in the Booster Investment Series II, but that Fund only shall be liable or subject to execution.
- 18.4 **Indemnity:** If contrary to the provisions of clause 18.2 and 18.3 either the Supervisor or the Manager shall be held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of a Fund in the Booster Investment Series II or any action taken or omitted in connection with a Fund in the Booster Investment Series II, then the Supervisor or the Manager (as the case may be) shall, subject to the Act, be entitled to the fullest extent permitted by Relevant Requirements to indemnity and reimbursement out of the relevant Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined except to the extent that such expense or liability is caused by the failure of the Manager or the Supervisor (as the case may be) to meet the standard of care required by Relevant Requirements.
- 18.5 **Liability for default:** The Supervisor and the Manager shall each be liable for any loss arising out of wilful default or wilful breach of trust but subject thereto neither the Supervisor nor the Manager shall be liable to a Scheme or Fund in the Booster Investment Series II or to any Unit Holder as a result of acting as Supervisor or Manager (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of any Scheme or Fund.
- 18.6 **Reimbursement:** The Supervisor and the Manager shall each be entitled to be reimbursed for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Deed. Without prejudice to the generality of the foregoing the Supervisor and the Manager shall be entitled to be indemnified against:
- (a) any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of a Fund in the Booster Investment Series II or the provisions of this Deed;
  - (b) all expenses, costs or liabilities incurred in respect of Tax in connection with any Fund or the acquisition, registration, custody, disposal of or other dealing with an Authorised Investment, including interest, fees and other charges incurred on money borrowed to pay any expenses, costs or liabilities incurred in respect of Tax;
  - (c) costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Unit Holders;
-

- (d) costs of convening and holding any meeting of Unit Holders;
- (e) costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with any Fund pursuant to this Deed or any Relevant Requirements;
- (f) all costs, charges and expenses of and incidental to the preparation, execution and stamping any deeds supplemental hereto;
- (g) fees and expenses of any solicitor, barrister, computer expert or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 15.6(c);
- (h) all costs, charges and expenses incurred in the advertising and promotion of the Booster Investment Series II, Schemes or any Funds;
- (i) any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of Units; and
- (j) any cost, charges and expenses incurred in performing additional duties or functions in accordance with clause 15.9.

PROVIDED THAT the Manager shall not be entitled to be reimbursed for and shall bear the expense or cost incurred in:

- (k) establishment and maintenance of accounting systems and the keeping of accounting records and the Unit Register;
- (l) all costs, charges and expenses (including legal costs incurred by the Manager or the Supervisor) of and incidental to the preparation, execution, stamping and distribution of this Deed and any Disclosure Document prepared in respect of any Scheme under the Booster Investment Series II; and
- (m) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealings with an Authorised Investment, including commission and bank charges.

**18.7 Limitation on liability:** Without prejudice to the generality of clauses 18.2 to 18.6:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;
-

- (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
  - (c) the Supervisor and the Manager may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion advice statements or information;
  - (d) whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, or officer of the Manager or by any other person or persons, authorised by the Manager;
  - (e) except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
  - (f) nothing in this Deed shall be deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Related Company of the Manager or any shareholder or officer of the Manager (“Relevant Persons”) from being a Unit Holder or from acting in any representative capacity for a Unit Holder. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Unit Holder and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
  - (g) the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by a Fund in the Booster Investment Series II or as a result of any such documents being held by any such person; and
  - (h) the Supervisor is entitled to rely on the Manager’s assessment of the validity of any signature on any transfer, application or other instrument if such reliance is based on a reasonable belief that the signature is genuine and any order by a court or competent jurisdiction against the Supervisor for damages in favour of
-

any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement of any other person, be borne by the relevant Scheme except to the extent that such loss may be attributable to the Supervisor's own negligence or wilful default.

- 18.8 **Apportionment to Fund:** If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of one or several Funds, then that expense, cost or liability shall be apportioned to that Fund or amongst those Funds in such manner as the Manager with the approval of the Auditor may conclusively determine. The Supervisor or the Manager may at any time elect not to seek reimbursement from any Fund for any expense, cost or liability without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).
- 18.9 **Apportionment to Unit Holder:** If any expense, cost or liability shall in the opinion of the Supervisor or Manager be incurred on account of a particular Unit Holder (or group of Unit Holders) then that expense, cost or liability shall be apportioned to that Unit Holder (or amongst that group of Unit Holders) in such manner as the Manager may conclusively determine.
- 18.10 **Degree of care and skill required:** No provision of clauses 18.1 to 18.9 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager or indemnifying the Supervisor or Manager or any such director or officer against, any liability for breach of trust where any such person fails to show the degree of care, diligence and skill that a prudent person engaged in the profession or business of acting as a supervisor or manager respectively would exercise unless the Manager is exercising a power of investment, in which case clause 15.4 applies.
- 18.11 **Best endeavours:** The Manager shall use its best endeavours to ensure that the Funds are carried on in a proper and efficient manner.
- 18.12 **Manager to comply with Rules:** For so long as Units in one or more Funds are quoted on any Exchange, the Manager shall comply with those Rules as are applicable and taking account of any waivers granted in relation to those Rules.
- 18.13 **Manager to provide information:** The Manager shall:
- (a) make available upon demand to the Supervisor for inspection all books and papers relating to a Scheme and the Funds and allow reasonable access to all electronic records in respect of each Unit Register;
  - (b) give to the Supervisor such information as the Supervisor requires with respect to all matters relating to a Scheme and the Funds; and
  - (c) give the Supervisor or the Auditor such oral or written information and such reports and certificates as may be reasonably required with respect to all
-

matters relating to the Funds, the Investments and the management of each Fund; and

- (d) provide, for so long as Units in one or more Funds are listed on an Exchange, any updates and/or reports required to be provided by the Manager pursuant to the relevant Rules.

**18.14 Indemnity by Manager:** The Manager shall indemnify and keep indemnified the Supervisor against all losses suffered and liabilities incurred by the Supervisor:

- (a) through the unauthorised acts, breach of the provisions of this Deed, negligence, fraud or dishonesty of the Manager or its officers, agents or employees; or
- (b) as a result of an act or omission by the Supervisor where such act or omission occurs because the Supervisor has followed directions given to it in writing by the Manager pursuant to the provisions of this Deed; or
- (c) as a result of the Manager exercising its powers under this Deed not to approve any action which the Supervisor notifies the Manager in writing it wishes to take.

**18.15** The Supervisor may for the purposes of carrying out its obligations under this Deed appoint and engage any valuers, brokers, accounting, investment, financial or other qualified advisers or such other persons (which person or persons may be related to the Supervisor) as the Supervisor may deem necessary to assist it in performing its obligations under this Deed or as otherwise required to perform its obligations under this Deed in respect of any Fund, any Investment (including the acquisition or disposal of an Investment) or any Borrowing.

**18.16** The Supervisor shall be entitled to redeem Units held by any Unit Holder to enable it to pay any fees, costs, expenses or Liabilities incurred by or attributed to that Unit Holder, including any Tax which becomes due and payable on behalf of that Unit Holder.

## **19 INVESTMENTS**

**19.1 Authorised Investments:** The Assets of each Fund shall be invested only in Authorised Investments and in accordance with the SIPO. This requirement shall constitute a 'contrary' intention' for the purposes of sections 2(5) and 2(5A) of the Trustees Act 1956.

**19.2 SIPO:** The Manager:

- (a) in consultation with the Supervisor, must ensure there is a SIPO that provides adequately for the investment policy and objectives of a Scheme and for each Fund in accordance with section 164 of the Act.
  - (b) may amend the SIPO only after giving prior written notice to the Supervisor.
-

- 19.3 **Amendments to Authorised Investments:** If the Manager and the Supervisor agree that it is in the interests of Unit Holders to vary the definition of “Authorised Investments” for a particular Fund so as to add or exclude any particular form of investment, then the Manager will give notice to all current Unit Holders in that Fund a statement setting out the details of the proposed amendment. Provided that Unit Holders holding more than ten (10)% of the Units on issue in that Fund do not give notice to call a meeting of Unit Holders to discuss the proposed amendments within thirty (30) days of giving notice, then the Supervisor and the Manager may by deed give effect to the proposed amendment.
- 19.4 **Supervisor’s discretion:** Notwithstanding clauses 17.1 or 19.6, the Supervisor must refuse to act, and must direct any nominee appointed under clause 3.9 to refuse to act, on the direction of the Manager to invest, acquire, dispose of or transfer any Investment, enter into any loan security or other obligation, or exercise rights of voting conferred by the investments, if, in the opinion of the Supervisor conveyed in writing to the Manager, the proposed acquisition, disposition or transfer of assets into or out of a Fund, or the loan security or other obligation or exercise of rights of voting conferred by the investments, as the case may be:
- (a) is manifestly not in the interests of Unit Holders of that Fund; or
  - (b) would breach the provisions of this Deed or any rule of law or enactment;
- and the Supervisor shall not be liable to the Unit Holders or the Manager for so refusing to act on any direction or for acting on any direction.
- 19.5 If the Supervisor refuses to act on a direction of the Manager, or directs any custodian or nominee to refuse to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of the Supervisor's reasons for refusing to do so.
- 19.6 **Manager directs Supervisor:** The Manager will manage each Fund for the benefit of the Unit Holders and as and when required may (subject to the provisions of this Deed) direct the Supervisor to:
- (a) invest in, purchase, acquire, realise, sell or dispose of the 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 proxies or related notices,
-

and (subject to the provisions of clause 19.4) the Supervisor will from time to time, to the extent of each Fund in its possession or control, act as directed in writing by the Manager.

- 19.7 **Investments in name of Supervisor:** Any Investments of any Fund shall as soon as reasonably practicable after receipt of the necessary documents by the Supervisor be registered in the name of the Supervisor (or any nominated company or nominee contracted pursuant to clause 3.9), and be held in safe custody by the Supervisor or by such nominated company or nominee some person selected by the Supervisor in accordance with clause (g), and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this Deed.

## 20 DISTRIBUTIONS

- 20.1 **Income Distribution or Retention:** Subject to clause 37, the relevant Establishment Deed, and except in the case of an Accumulation Fund, the Income of each Fund or an amount as determined by the Manager shall on each Distribution Date at the discretion of the Manager be:

- (a) retained by the Supervisor and invested in accordance with the provisions of clause 19; or
- (b) distributed by the Supervisor to Unit Holders of that Fund in accordance with the provisions of clause 20.3; or
- (c) partly retained and invested and partly distributed to Unit Holders.

- 20.2 **Directions to Supervisor:** Subject to clause 20.1, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor in respect of any Fund:

- (a) to wholly or partly reinvest or distribute the Income of that Fund;
- (b) to distribute all or any part of the capital of that Fund, and if necessary to realise Investments in order to produce Cash to make such distribution;

and the Supervisor shall (subject to clause 19.4 in respect of any direction to realise Investments) act in accordance with any such direction.

- 20.3 **Distribution:** All Income Entitlements to be distributed pursuant to clause 20.1 or 20.2 shall be distributed to Unit Holders at such time or times as may be nominated by the Manager in a notice given to the Supervisor pursuant to clause 20.2. Subject to clause 37, if the Income of any Fund is so distributed it shall be distributed amongst Unit Holders in a manner that is fair and equitable.

- 20.4 **Reserve:** The Manager may make provision for part or all of the Income to be held separately as a reserve against any future Liability of the Fund or to mitigate the effect of any volatility of returns and/or Income Entitlements to Unit Holders provided any such reserve may not exceed two (2)% of the total value of that Fund and that such
-

reserve shall not be available to satisfy any amount owing to the Manager or the Supervisor other than an amount owing in respect of a Tax Liability.

**20.5 Reinvestment of Income Entitlements:**

- (a) A Unit Holder's Income Entitlements will be distributed in the form of further Units in the Fund or automatically reinvested into the Fund. The Income Entitlements may be distributed or reinvested less any deduction or withholding for or on account of Tax.
- (b) The Manager may, however, permit Unit Holders in a Fund to elect to have their Income Entitlements distributed to them or to a nominated bank account. The decision to allow such distribution is solely at the Manager's discretion.
- (c) If the Manager permits Unit Holders to have their Income Entitlements distributed to them, Unit Holders may elect this option by making a written request to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.
- (d) Notwithstanding the foregoing, the Manager may decline to effect any distribution of Income Entitlements without giving reasons.

**20.6 Determination of Income:** In determining Income of any Fund for any period there shall be taken into account all income due and receivable and all costs charges and expenses due or accrued, charged or chargeable against income including without limiting the generality of the foregoing:

- (a) all costs and disbursements incurred in connection with the relevant Fund or the administration thereof and chargeable against income including fees payable to the Supervisor and the Manager;
  - (b) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the relevant Fund including (without limitation) the convening of meetings of Unit Holders;
  - (c) all Tax Liabilities in respect of the relevant Fund;
  - (d) such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the relevant Fund for that period; and
  - (e) the fees and expenses of the Auditor in connection with the audit of the relevant Fund;
-

For the avoidance of doubt Income of a Fund may be a negative amount.

- 20.7 **Deductions must be specifically provided for:** No deduction from the income of a Fund shall be made by the Manager or the Supervisor unless specifically provided for in this Deed or the relevant Establishment Deed.
- 20.8 **Determination by Auditor:** If any question shall arise as to whether any money or property constitutes Income or not or whether any expense is chargeable against Income or not, then such question shall be determined by the Auditor.
- 20.9 **Portfolio Investment Entity:** The amount to be distributed to Unit Holders of a Scheme that is a PIE may differ as between Unit Holders as a result of the exercise of the Manager's discretions in clause 37 to adjust Unit Holders' Income Entitlements to reflect the effect of the PIE Rules.

## 21 RELATED PARTY TRANSACTIONS

- 21.1 **Transactions with Related Parties:** Subject to the Relevant Requirements, the Manager (and any investment manager, administration manager, or other Person to whom the Manager has contracted out or delegated some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given.
- 21.2 However, clause 21.1 does not apply to a transaction or series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:
- (a) the Manager obtains the Supervisor's consent for the transaction or transactions under clause 21.3; or
  - (b) section 174 of the Act applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.
- 21.3 The Supervisor must not consent to a transaction or transactions under clause 21.2(a) unless one of the following applies and the Supervisor certifies to that effect:
- (a) the Supervisor considers that the transaction or transactions are in the best interests of the Unit Holders; or
  - (b) the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Unit Holders of the relevant Fund that are affected or potentially affected by the transaction or transactions.
- 21.4 Subject to clauses 15.1 to 15.5 and clauses 21.1 to 21.3, the Manager may, where a transaction:
-

- (a) will cause any part of any Asset of any Fund to be invested or lodged with the Manager or any Related Party of the Manager; or
- (b) is to sell, purchase or otherwise dispose of or acquire any Asset or Investment to or from the Manager or any Related Party of the Manager or managed investment scheme or other trust or scheme managed by the Manager or by such Related Party of the Manager; or
- (c) is to enter into any contract, agreement or other arrangement with any Related Party of the Manager to provide management or consultancy services or any other services that the Manager considers desirable,

enter into the transaction only if the transaction is on reasonable commercial terms and the provisions contained in clause 21.5 are satisfied.

- 21.5 Before entering into a transaction or series of transactions under clause 21.4, the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that complies with section 175 of the Act signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager.
- 21.6 **No liability to account:** None of the Manager, Supervisor or any Related Party shall be liable to account to any Scheme, Fund or Unit Holder for any profit or loss arising from any transaction entered into in accordance with clauses 21.4 and 21.5 unless the Manager or Supervisor has failed to meet the standard of care required of it by clauses 15.4 and 16.3(c).
- 21.7 The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clauses 21.4 and 21.5. The acquisition of Units in one Fund by another Fund, and any disposal thereof, will not require any notification or certification under clause 21.5 or this clause 21.7.
- 21.8 **Limitation of powers:** The powers contained in this clause 21 are subject to clause 19.1.

## 22 REMUNERATION OF THE SUPERVISOR

- 22.1 **Remuneration basis:** Subject to the Act, the Supervisor shall be paid by the Manager for its services hereunder a fee as may be agreed from time to time in writing between the Supervisor and the Manager.
- 22.2 **Reimbursement of taxes:** The Supervisor shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.
-

**22.3 Supervisor's expenses:** In consideration of the Supervisor agreeing to act as trustee of the Booster Investment Series II, the Supervisor shall be paid by the Manager from the Assets of the Funds:

- (a) the Supervisor's reasonable legal expenses in respect of the preparation, execution and on-going advice in respect of this Deed or any Establishment Deed;
- (b) the Supervisor's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor reasonably contemplated by this Deed or any Establishment Deed but not relating to any particular Fund or Funds to the exclusion of other Funds;
- (c) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an Authorised Investment or any Borrowing including commission and bank charges;
- (d) all costs, charges and expenses (including legal costs) of and incidental to the preparation, execution and stamping of this Deed or any Disclosure Document prepared for any Scheme; and
- (e) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Unit Register.

**22.4 Waiver of fees:** The Supervisor may waive or reduce the amount of any fees payable to the Supervisor by a Unit Holder or in respect of any Fund either generally or specifically in any particular case and for any period.

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

**23.1 Removal of Supervisor:** The Supervisor will cease to hold office as supervisor if the Supervisor is removed:

- (a) by the FMA if the FMA is satisfied that the Supervisor no longer meets the requirements in section 127(1)(e) of the Act (not to be an associated person of the Manager);
- (b) by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011;
- (c) subject to the requirements of section 193(2) of the Act being met, by the Unit Holders by Special Resolution.

**23.2 Retirement:** The Supervisor may retire at any time without assigning any reason upon giving ninety (90) days' notice (or such lesser period as may be agreed with the Manager) in writing to the Manager of its intention so to do. The Supervisor shall retire if the Supervisor itself goes into liquidation. No retirement under this clause will

---

take effect until the requirements of section 193(2) of the Act have been met, the new Supervisor has executed the deed referred to in clause 23.5 and all of the Assets of all of the Funds have been transferred to the new Supervisor.

23.3 The Supervisor shall not be entitled to retire as supervisor of only some of the Funds or Schemes, and if it elects to retire, shall do so in respect of all of the Funds in the Booster Investment Series II.

23.4 **Appointment of Supervisor:** There shall at all times be one supervisor of the Booster Investment Series II who:

- (a) must not be an associated person (within the meaning of section 12(1) of the Act) of the Manager;
- (b) is a Person who holds a licence to act as supervisor of a management investment scheme under Financial Markets Legislation; and
- (c) must otherwise be a Person entitled by Relevant Requirements to act as the supervisor of the Booster Investment Series II.

Subject to all Relevant Requirements, the power of appointing a new Supervisor of the Booster Investment Series II (in place of a supervisor which has retired pursuant to clause 23.2 or been removed from office pursuant to clause 23.1) shall be vested in the Manager. No Person shall be appointed as Supervisor unless that person meets the requirements of Financial Markets Legislation. If the Manager fails or refuses to appoint a new supervisor, such new supervisor may be appointed by a Special Resolution at a meeting of Unit Holders of all Schemes in the Booster Investment Series II. The relevant Funds shall be wound up if a new Supervisor is not appointed within two months of the vacancy occurring.

23.5 **New Supervisor to execute a deed:** Any new Supervisor must forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and the Unit Holders to be bound by all the covenants on the part of the former Supervisor under this Deed from the date of such appointment.

23.6 **Retiring Supervisor released:** From the date of execution by the new Supervisor of a Deed in accordance with clause 23.5, the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any prior breach in respect of which the retiring Supervisor is not indemnified under this Deed) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such new supervisor had been originally named as a party hereto.

## 24 REMUNERATION OF THE MANAGER

24.1 **Management Fees:** Subject to Act, the Establishment Deed for the relevant Scheme and the Fund Criteria for any Fund:

---

- (a) the Manager shall be paid out of the Fund in respect of its services hereunder the following fee(s), as specified in the relevant Establishment Deed or Fund Criteria and may prescribe, charge and allocate such fee to a Unit Holder in that Fund:
  - (i) Fixed Management Fee; and/or
  - (ii) Performance Fee;
- (b) the Manager may prescribe and charge a Unit Holder a fee for a Transaction. The fee for a Transaction will not exceed five (5)% of the Unit Value of the Units subject to the Transaction.

**24.2 Manager's entitlements:** The Manager shall be entitled:

- (a) at any time and from time to time after consultation with the Supervisor to alter the amount of a Management Fee in respect of any Fund by giving at least one (1) month's prior notice to that effect to all Unit Holders of that Fund;
- (b) at its sole discretion at any time and from time to time to waive or reduce the Management Fee either generally or in relation to a particular Fund or Funds or Unit Holder or Transaction;
- (c) to receive, in addition to the Management Fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax as that term is defined in the Goods and Services Tax Act 1985.

**24.3 Fixed Management Fees calculated on a daily basis:** The Fixed Management Fee referred to in clauses 24.1 shall be calculated daily by reference to the Adjusted Fund Value of each Fund (or as otherwise agreed between the Manager and the Supervisor as specified in the relevant Fund Criteria) determined before taking into account the amount of any accrued Fixed Management Fee) from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of any Fund), and shall be paid in arrears on each Monthly Date and on the date of termination of the period of that Fund.

**24.4 Performance Fee calculation:** The Performance Fee referred to in clause 24.1 shall be calculated on such basis as the Manager and the Supervisor may agree in respect of any Fund, and shall be paid in arrears on a frequency as the Manager and the Supervisor may agree.

**24.5 Waiver of fee:** The Manager may waive or reduce the amount of any fee payable to the Manager by a Unit Holder or in respect of any Fund either generally or specifically in any particular case and for any period.

---

## 25 APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER

- 25.1 **Appointment:** The Booster Investment Series II shall have a manager, who:
- (a) must not be an associated person (within the meaning of section 12(1) of the Act) of the Supervisor;
  - (b) is a Person who holds a licence to act as a manager of a managed investment scheme under Part 6 of the Act; and
  - (c) must otherwise be a person entitled by Relevant Requirements to act as the manager of the Booster Investment Series II.
- 25.2 **Change subject to written consent of Supervisor:** Subject to clause 25.3, any change in the Manager, or in the terms of the appointment of the Manager shall be subject to the prior written consent of the Supervisor.
- 25.3 **Removal:** Subject to Relevant Requirements, the Manager shall cease to hold office as manager of the Booster Investment Series II if the Manager is:
- (a) removed by written direction of the Supervisor after the Supervisor certifies, in respect of the Booster Investment Series II, pursuant to section 185(1)(a) of the Act, that it is in the best interests of Unit Holders 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:
    - (i) is in breach of its obligations under this Deed; or
    - (ii) fails to carry out its duties to the satisfaction of the Supervisor; or
  - (b) is wound up (except for the purpose of amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager; or removed by a Special Resolution of the Unit Holders; or
  - (c) substituted from office by court order on the application of the Supervisor, the FMA or a Unit Holder under sections 207, 208 or 209 of the Act.
- 25.4 If the Manager ceases to hold office pursuant to clause 25.3, the Manager and any delegate of the Manager must immediately desist from all activities related to the Booster Investment Series II and any Scheme or Fund unless the Supervisor agrees to the contrary.
- 25.5 **Retirement:** The Manager may retire as manager of the Booster Investment Series II at any time without assigning any reason upon giving ninety (90) days' notice (or such shorter period as may be agreed between the Manager and the Supervisor) in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a
-

new manager has been appointed and has executed the deed referred to in clause 25.8.

- 25.6 **Temporary Manager:** Subject to the powers of the FMA under the Act, the power of appointing a temporary Manager where a vacancy in the office of Manager arises is vested in the Supervisor. No Person can be appointed as a temporary Manager unless that Person meets the requirements of section 186(3) of the Act.
- 25.7 **Replacement Manager:** Upon any vacancy occurring in the office of the Manager, the Supervisor, or the FMA if there is no Supervisor, must take all reasonable steps to secure, in accordance with this Deed, the appointment of a new Manager in place of the temporary Manager. The Supervisor shall have power by deed to appoint a new manager for the Booster Investment Series II that is qualified for appointment under clause 25.1, in place of a manager which has ceased to hold office pursuant to clause 25.3 or 25.5.
- 25.8 **New Manager to execute a deed:** Any new Manager must forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Unit Holders to be bound by all the covenants on the part of the Manager under this Deed from the date of such appointment.
- 25.9 **Retiring Manager released:** From the date of execution by the new Manager of a deed in accordance with clause 25.8, the retiring Manager shall be absolved and released from all such covenants under this Deed (save in respect of any prior breach in respect of which the retiring Manager is not indemnified under this Deed) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.
- 25.10 **Preservation of name:** Notwithstanding any other provision of this Deed, should Booster Investment Management Limited, or any other related company (in this clause 25.10 called "Booster") cease for any reason to be Manager of the Booster Investment Series II then, unless Booster otherwise agrees in writing, the names of the Schemes and Funds shall be changed so that they no longer include the word "Booster" and the Supervisor shall take such steps as are necessary to remove the name from any Disclosure Documents, other documents, records or other publications relating to the Booster Investment Series II.

## 26 **LIMITATION OF LIABILITY**

- 26.1 **Limitation:** Notwithstanding anything contained in this Deed or any rule of law:
- (a) no Unit Holder shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of any Fund;
-

- (b) nothing in this Deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders;
- (c) neither the Supervisor nor the Manager shall be or act as agent for the Unit Holders in respect of Units in any Fund, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder.

## 27 ACCOUNTS

27.1 **Accounting Records:** The Manager must keep, or cause to be kept, in accordance with the accounting policies that are developed by the Manager for the Booster Investment Series II and each Fund and which comply with Relevant Requirements and generally accepted accounting policies:

- (a) proper accounting records of, or relating to, each Scheme and Fund; and
- (b) true account of all sums of money received and expended by or on behalf of each Fund and the matters in respect of which such receipt and expenditure takes place;
- (c) all the sales, purchases and other transactions relating to the Investments and the Liabilities of each Fund; and
- (d) the issue or transfer of Units.

27.2 In keeping, or causing to be kept, the Manager's proper accounting records under clause 27.1:

- (a) the Manager must have appropriate systems of control and oversight;
- (b) the Manager must keep such accounting records at a suitable secured location accessible by the Supervisor and the Auditor; and
- (c) the provisions of Part 7 of the Act must be complied with.

27.3 **Inspection by the Auditor:** The accounting and other records of the Manager and of the Supervisor in respect of each Scheme and Fund are open to the inspection of each other and the Auditor. The Auditor is entitled to require from the Manager and the Supervisor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

27.4 **Financial statements to be audited:** At the end of each Financial Year, the Manager must, in compliance with Relevant Requirements:

- (a) prepare financial statements for each Fund where required by the Act, for the Scheme, and arrange for them to be audited by the Auditor;
-

- (b) if required by the Supervisor, provide a final draft of audited financial statements to the Supervisor for its review a reasonable time prior to their proposed execution; and
  - (c) arrange for the audited financial statements to be sent or made available to the Supervisor together with any documents and reports required by any Relevant Requirements to be annexed to or to accompany the financial statements.
- 27.5 **Annual Reports:** The Manager shall, within four (4) calendar months of the end of each Financial Year (or such other time as may be prescribed by Relevant Requirements) prepare an Annual Report on each Scheme for that Financial Year as required by the Act or as may otherwise be required by Relevant Requirements. The Manager must provide the Supervisor with a draft Annual Report and allow the Supervisor a reasonable period of time to review and provide comments on the form of the Annual Report.
- 27.6 The Manager shall, on completing any such Annual Report, send a copy to the Supervisor and to any Person to whom a copy of the report is required to be sent under the Act and other Relevant Requirements, in the manner and within any timeframe prescribed by the Act and other Relevant Requirements.
- 27.7 **Auditor's Report to Supervisor:** The Manager shall furnish to the Supervisor at the same time as the Manager furnishes to the Supervisor a copy of the audited financial statements pursuant to clause 27.4, a separate report by the Auditor in the form prescribed by the Supervisor following consultation with the Manager.
- 27.8 **Manager Reporting to Supervisor:** The Manager will provide to the Supervisor:
- (a) such reports as may be specified under the Act or Regulations including, but not restricted to, any reports required in the event of a limit break (within the meaning of section 167 of the Act) or material pricing error or non-compliance (in terms of section 168 of the Act) occurring;
  - (b) any information, certification or reports as set out in a written agreement between the Manager and the Supervisor or as reasonably requested by the Supervisor to enable the Supervisor to comply with Relevant Requirements and the requirements of this Deed.
- 27.9 **Regulatory compliance:** The Manager shall at all relevant times, make publicly available, where required, file or lodge, or cause to be made publicly available, filed or lodged, all Fund Updates, reports, returns, statements, information or other material required by Relevant Requirements to be made publicly available, filed or lodged with any public registry or regulatory authority by the Manager (and Supervisor upon request) in respect of a Scheme or any Fund.
-

## 28 AUDITOR

- 28.1 **Appointment:** The Manager shall (after consultation with the Supervisor in accordance with the Act) appoint as Auditor of the Booster Investment Series II a person qualified for appointment in terms of clause 28.2. Such appointments shall be made as soon as possible after the execution of this Deed.
- 28.2 **Qualifications of Auditor:** The Auditor shall be a Qualified Auditor entitled by Financial Markets Legislation to act as such. The Auditor may also be auditor of the Manager or the Supervisor. The Auditor shall not be an officer or servant (or the partner of an officer or servant) of the Manager or the Supervisor.
- 28.3 **Remuneration and terms of appointment of Auditor:** The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Funds. As appropriate, the expense will be apportioned as to the gross asset value attributed to each Fund. The terms of appointment of an Auditor must meet the requirements of Financial Markets Legislation.
- 28.4 **Removal and Retirement of Auditor:** The Auditor may at any time be removed by the Manager with notice to the Supervisor. The Manager must also remove the Auditor if the Supervisor, believing it to be in the best interests of the Booster Investment Series II and/or Unit Holders, instructs the Manager to do so. The Auditor may retire upon the expiration of not less than ninety (90) days' notice in writing to the Manager.
- 28.5 **Vacancy:** Any vacancy in the office of auditor occurring under clause 28.4 shall be filled by the Manager (after consultation with the Supervisor in accordance with the Act) appointing as Auditor a person qualified for appointment in terms of clause 28.2.

## 29 MEETINGS OF UNIT HOLDERS

- 29.1 **Meetings:** Meetings of the Unit Holders may be convened any time and must be convened when required by the Act. All meetings of the Unit Holders shall be conducted in accordance with the provisions in Schedule 3.
- 29.2 The Manager must hold an annual meeting each year if and when required under regulation 92 of the Regulations if the relevant Scheme meets the definition of a close-ended scheme in accordance with section 92 of the Regulations.
- 29.3 **Directions to the Supervisor:** By means of a Special Resolution passed at a meeting of Unit Holders, the Unit Holders have the power to give such directions to the Supervisor as they think proper concerning a Fund or the relevant Scheme (as the case may be), being directions that are consistent with the provisions of this Deed and, where applicable, the Act.
- 29.4 **Compliance with directions or orders:** Where any direction is given to the Supervisor pursuant to clause 29.3 in respect of any matter the Supervisor may comply with the direction, and is not liable for anything done or omitted by it by reason of its following
-

the direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the Act apply to the High Court for directions in respect of any matter.

### 30 NOTICES

- 30.1 **Notice of meetings:** Notice of any meeting of Unit Holders must be given in accordance with the provisions of Schedule 3.
- 30.2 **To Unit Holder:** Any notice to be given to any Unit Holder may be given either personally or by sending it by post to the address of the Unit Holder shown in the Unit Register or by Electronic Communication. A notice may be given to the joint holders of a Unit by giving the notice to any joint holder. Subject to the Relevant Requirements, where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the fifth day following the day of posting.
- 30.3 **Notice to manager, legal representative etc:** A notice may be given by the Manager to the manager of a legally incapacitated Person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the legally incapacitated Person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the legal incapacity, death or bankruptcy had not occurred.
- 30.4 **Notice where no address:** If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two (2) notices posted to a Unit Holder are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this Deed shall be deemed to be the Office.
- 30.5 **Calculation of notice period:** Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.
- 30.6 **Notice to Supervisor or Manager:** Any notice, communication or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice **PROVIDED THAT** the Manager and the Supervisor may agree that certain notices or communications may be given by Electronic Communication.
-

30.7 **Copy of notice to Unit Holders:** A copy of every notice given to Unit Holders under this Deed shall be given, at the same time at which it is given to the Unit Holders, to the Supervisor.

### 31 INFORMATION ABOUT RELEVANT INTERESTS

31.1 Subject to the Relevant Requirements, the Supervisor or Manager may disclose any information provided by a Unit Holder pursuant to subpart 5 of Part 5 of the FMCA to:

- (a) any Exchange on which Units in one or more Funds are listed from time to time, provided that disclosure to that Exchange is only permitted for so long as the Units to which the disclosure relates are listed on that Exchange; or
- (b) any Taxing Authority, law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.

### 32 AMENDMENTS TO DEED

32.1 **Power to amend:** Subject to the provisions of the Act and any other Relevant Requirements, the Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager) if:

- (a) in the opinion of the Supervisor the same is made to correct a manifest error or is of a formal or technical nature; or
  - (b) in the reasonable opinion of the Manager such amendment is necessary or desirable to maintain the status of a Scheme or a Fund as a PIE under the PIE Rules or other relevant legislation or to permit and to operate more efficiently under such legislation; or;
  - (c) in the opinion of the Manager and the Supervisor the same is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Booster Investment Series II or to take advantage of any initiative, including any Crown guarantee, which is likely to be advantageous to Unit Holders generally or for safeguarding or enhancing the interests of the Booster Investment Series II or Unit Holders and is not or not likely to become materially prejudicial to the general interests of all Unit Holders of a Scheme or relevant Fund; or
  - (d) in the case of a change affecting all Unit Holders, the change is authorised by a Special Resolution of all Unit Holders as if they were beneficiaries of a single Fund, the provisions of the Schedule relating to meetings of Unit Holders to be read accordingly; or
-

- (e) the same materially affects only the Unit Holders of a particular Fund, the Unit Holders of which have authorised the same by a Special Resolution; or
- (f) in the opinion of the Manager and the Supervisor after a change in any of the Relevant Requirements or requirement of any statutory authority affecting managed investment schemes, a change to this Deed is necessary or desirable; or
- (g) in the opinion of the Supervisor the same is necessary or desirable to obtain listing of any Units on any stock exchange.

**32.2 Procedure for amendments:** Where any amendment has been made to this Deed the Manager will notify all Unit Holders or the Unit Holders of the relevant Fund or Funds as the case may be in writing in summary form of all amendments made to the Deed such notification to be forwarded to those Unit Holders in any event no later than three (3) months after the date the amendments are made.

### **33 WINDING UP**

**33.1 Winding up generally:** Subject to clause 33.2, a Fund shall determine and be wound up upon the occurrence of the earliest of the following events:

- (a) if the Manager resolves to wind up that Fund or to wind up every Fund and gives notice to the Supervisor accordingly; or
- (b) in the case of every Fund, if pursuant to any statutory power a court or regulatory authority orders that the Scheme be wound up; or
- (c) in the case of a Fund in the Booster Investment Series II, the expiration of eighty (80) years from the date of this Deed or such later period provided for by any law relating to the maximum duration of trusts; or
- (d) in the case of a Fund in an Additional Scheme, the expiration of a period of eighty (80) years from the date on which that Additional Scheme was established or such later period provided for by any law relating to the maximum duration of trusts; or
- (e) if the office of Supervisor becomes vacant, and a new Supervisor is not appointed within two months of the vacancy occurring; or
- (f) in accordance with any other relevant law.

**33.2 Winding up of a Scheme:** Where every Fund established under a Scheme is to be wound up pursuant to clause 33.1, or if, in the opinion of the Supervisor, it is appropriate to wind up that Scheme, or if so required by the FMA, the Supervisor shall resolve to wind up that Scheme. A copy of the resolution must be provided to the Manager in accordance with clause 33.5.

**33.3 Notice by Manager:** The Manager shall within fourteen (14) days after the occurrence of any event referred to in clause 33.1 or 33.2, give to each Unit Holder

---

having an interest in the relevant Fund or Funds notice of the occurrence of that event and of the intention of the Manager to distribute the Fund Assets of that Fund or those Funds. Except as provided in clause 33.4, from the date of the giving of such notice no Withdrawal Notice shall be given in respect of that Fund or those Funds.

33.4 Switching Notices on Winding up: Except where the Scheme is to be wound up pursuant to clause 33.2, a notice given by the Manager pursuant to clause 33.3 may invite the Members affected to give a Switching Notice to the Manager in accordance with clause 11 within such period as the Manager in consultation with the Supervisor may prescribe. If agreed by the Supervisor, at the request of the Manager a notice given by the Manager pursuant to clause 33.4 shall specify a particular Fund ("Default Fund") in favour of which the relevant Unit Holder shall be deemed to have given a Switching Notice in accordance with clause 11 on expiration of the prescribed period if no Switching Notice is received from the Unit Holder prior to that time. Following the expiration of such period or in the absence of such an invitation by the Manager, the Fund shall be dealt with in accordance with clause 33.5.

33.5 Procedure: In respect of each Fund in question, but subject to:

- (a) compliance with clause 33.3;
- (b) in the case of a resolution passed under clauses 33.1 or 33.2, compliance with sections 212 and 213 of the FMCA; and
- (g) allowance for any period in which Switching Notices may be given or deemed to be given pursuant to clause 33.4;

the Supervisor shall, as soon as is practicable after the occurrence of an event referred to in clause 33.1 or 33.2, sell, call in and convert into Cash the whole of the Assets of the Fund.

33.6 The Supervisor is entitled to retain out of the relevant Fund or Funds the amount that the Supervisor and the Manager consider necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) and tax. Any such amount includes, at the Supervisor's and Manager's discretion:

- (a) provision for PIE Tax in connection with the Scheme or Fund or any Unit Holder or arising out of the liquidation of a Fund;
  - (b) any fees payable to the Supervisor or the Manager; and
  - (c) the fees of any agents, solicitors, bankers, accountants, Auditors or other Persons (including the Manager) whom the Supervisor may employ in connection with the winding up of the Scheme or Fund.
-

The Supervisor is entitled to be indemnified in respect of the foregoing from the moneys or Assets retained by the Supervisor.

- 33.7 Application of realisation: Subject to the retention of any moneys as provided in clause 33.6, the net proceeds of realisation of Investments shall be applied by the Supervisor as follows:
- (a) first, in payment or retention of all Liabilities, PIE Tax and contingent liabilities and all other costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Scheme or relevant Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Deed; and
  - (b) secondly, in payment to, or for the benefit of, the Unit Holders, (including holders of part Units) pro rata to the respective holding of Units held by them in the relevant Fund.
- 33.8 Interim distributions: If in the opinion of the Manager it is expedient to do so, the Manager may direct the Supervisor to make interim payments or distributions on account of the moneys to be distributed in accordance with clause 33.7.
- 33.9 Receipts: Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.
- 33.10 Final accounts: The Supervisor must on a wind up of the Scheme comply with the requirements of section 213 of the FMCA.

#### 34 **ARBITRATION**

- 34.1 Any dispute arising between the Manager and the Supervisor in relation to any matters contained in this Deed, or in relation to the Booster Investment Series II or the Schemes or Funds established pursuant to this Deed, shall be referred to the arbitration of a single arbitrator, and if the Supervisor and the Manager cannot agree on the arbitrator then by an arbitrator chosen by the Arbitrators and Mediators Institute of New Zealand Inc, any such arbitration to be conducted in accordance with the Arbitration Act 1996. Nothing in this clause shall prevent the Supervisor applying to the court for directions in respect of any matter arising in respect of the Funds.

#### 35 **GOVERNING LAW**

- 35.1 **New Zealand Law:** This Deed shall be governed by and construed in accordance with the law of New Zealand.
-

**36 WAIVER**

36.1 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of any other party's obligations under this Deed is to:

- (a) operate as a waiver or prevent the subsequent enforcement of that obligation; or
- (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

**37 PROVISIONS WHICH APPLY IF A SCHEME IS A PIE****37.1 Additional powers to be exercised at Manager's discretion**

- (a) The Manager may elect that a Scheme or a Fund in its own right be a PIE, or cease to be a PIE, in its absolute discretion.
- (b) The Manager will have the additional powers and discretions listed in clause 37.2 in respect of any Scheme or Fund that is, or is intended to be or become, a PIE.
- (c) Subject to applicable law, the additional powers and discretions set out in clause 37.2 below may be exercised in the Manager's absolute discretion at any time and in any manner the Manager thinks appropriate.

37.2 **Additional powers:** In respect of any Scheme or Fund that is, or is intended to be or become, a PIE, the Manager may:

- (a) treat a Unit Holder as a member of, or exclude a Unit Holder from, a Class or Classes solely for the purposes of determining the Tax payable by the Scheme or Fund;
  - (b) determine a Unit Holder's proportionate interest in any Fund solely for the purposes of determining the Tax payable by the Scheme or Fund under the Tax Act;
  - (c) determine what Tax payment or calculation method under the Tax Act will apply to any Fund;
  - (d) determine the period under the Tax Act for calculating and allocating the Tax and Tax Items of any Fund;
  - (e) determine the Tax and Tax Items of any Scheme or Fund and allocate the Tax and Tax Items to or within a period or any Fund determined by the Manager;
  - (f) attribute Tax or Tax Relief to a Unit Holder under the Tax Act;
-

- (g) set off the Tax attributable to a Unit Holder against the Tax Relief attributable to a Unit Holder across any Funds within the Scheme or a Fund in which the Unit Holder has a Tax Liability;
  - (h) adjust a Unit Holder's entitlements under this Deed (including the Unit Holder's entitlement to Units, Income Entitlements, and Withdrawal Amounts) in accordance with the Tax Act to take account of the amount of any Tax or Tax Relief attributable to that Unit Holder, including by way of:
    - (i) reduction or increase in the amount of any distribution otherwise payable to, or applied for the benefit of, the Unit Holder; or
    - (ii) cancellation, redemption or sale of Units of the Unit Holder; or
    - (iii) crediting a Unit Holder with further Units (including by way of bonus issue); or
    - (iv) adjustment to the amount of any payment required to be made by the Unit Holder to the Scheme or Fund;
  - (i) holding any amount attributable to satisfy the Tax Liability of a Unit Holder separate from the Investments of a Fund;
  - (j) disclose any information to any Person as required by the Tax Act or where the Manager considers it reasonably necessary or desirable to do so in order to administer or satisfy the Scheme's obligations under the Tax Act;
  - (k) take any steps which the Manager considers to be in the best interests of Unit Holders prior to electing that the Scheme or Fund be or become a PIE;
  - (l) take all other steps and do all other things as the Manager thinks necessary or desirable to transition a Scheme or Fund to and from being a PIE or to administer the Scheme or Fund as a PIE; and
  - (m) perform any act, or require the Supervisor to perform any act, including making all elections, filing all returns and providing any information to any Person the Manager considers necessary or desirable to:
    - (i) ensure the Scheme or Fund qualifies or continues to qualify as a PIE; or
    - (ii) to give effect to the powers and discretions set out in this clause 37.2; or
    - (iii) otherwise to comply with the requirements imposed by the Tax Act.
  - (n) allocate Tax or Tax Relief between any Funds of the Scheme and make any other transfers or payments necessary to equitably distribute the Tax and/or Tax Relief of the Fund or Scheme across the Funds as if each Fund was treated as a separate tax paying entity.
-

- (o) resettle the Assets of a Fund into a separate Scheme or Fund without notice to the Unit Holders of that Class where that Fund does not or is likely not to meet the relevant PIE eligibility criteria and as a consequence causes or threatens the Fund's or Scheme's eligibility to remain a PIE.

**37.3 Disposals of Units to avoid exceeding investor interest size requirements:**

Notwithstanding clause 8.8, if a Unit Holder exceeds the PIE investor interest size requirement prescribed in the PIE Rules (a "Breach") in respect of a Fund, the Breach will be remedied within the period determined in accordance with the PIE Rules (the "Remedy Period") and the Manager may take the following steps to ensure that the Breach is remedied:

- (a) as soon as practicable after the Manager becomes aware of the Breach, the Manager may give written notice to the relevant Unit Holder(s) of the Breach, including details of the number of Units ("Excess Units") giving rise to the breach;
- (b) the Unit Holder will then have a period consisting of the relevant Remedy Period less thirty (30) days to remedy the Breach, but if the Manager becomes aware of the Breach and determines that there are thirty (30) days or less to remedy the Breach then the Breach will be deemed to have not been remedied under this paragraph (b); and
- (c) if the Breach has not been remedied upon expiry of the period in paragraph (b) above, then the Manager must, within the remaining thirty (30) days of the Remedy Period, in its discretion, sell, redeem, or repurchase the amount of the Excess Units in order to remedy the Breach, and:
  - (i) the Manager must account to the relevant Unit Holder for the proceeds of any disposal of the Excess Units after deduction of all expenses arising from such disposal; and
  - (ii) neither the Manager nor the Supervisor is required to maximise the Unit price for any disposal and in any event, will not be liable to any Unit Holders for any loss on disposal.

**37.4 Provision of information where a Scheme is a PIE:** The Manager may request any Unit Holder or applicant to provide information to the Manager to enable the Manager to meet administration requirements of the Tax Act and the PIE Rules and to determine whether a Scheme or Fund continues to meet the PIE eligibility requirements of the PIE Rules and, in particular, the Manager may request any Unit Holder or applicant to:

- (a) where the Scheme or Fund is a PIE, provide such information pertaining to any Unit Holder as the Manager considers reasonably necessary to ensure that the Scheme or Fund can comply with its obligations as a PIE under the PIE Rules; or
  - (b) provide details of Units held by any associated person (as defined in the Tax Act) of the Unit Holder or applicant where the associated person holds five (5)% or more of the Units in the Scheme or Fund; or
-

(c) confirm that:

- (i) the Unit Holder or applicant is, or is eligible to be, a PIE; or
- (ii) the Unit Holder or applicant either is, or is eligible and intends to be, a Portfolio Investor Proxy (“PIP”); or

(d) if the Unit Holder or applicant is, or is eligible and intends to be, a PIP:

- (i) confirm that the Unit Holder or applicant has provided the information specified in the Tax Act; and
- (ii) provide any other information to establish that the PIP has met its obligations under the Tax Act.

(e) If the Manager requests a Unit Holder or applicant to provide information to the Manager pursuant to this clause, the Unit Holder or applicant must supply such information within thirty (30) days of the request.

**37.5 Fair dividend rate powers:** Where the Manager considers it necessary or desirable in the Manager’s complete discretion that a Fund should meet the unit valuer’s requirements in section EX 53 of the Tax Act, the Fund will be treated as having assigned to each Unit Holder an interest in a proportion of the net returns from Investments of the Fund corresponding to the Unit Holder’s Income Entitlement in the Fund.

## **38 SEVERANCE**

**38.1** If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly. To the extent that any provision of this Deed is inconsistent with the Act or Rules as applicable to the Manager from time to time, the Act shall prevail over the Rules, and the Rules shall prevail over this Deed.

**38.2** If at any time NZX has granted a ruling (as defined in the NZX Main Board/Debt Market Listing Rules) in relation to the Manager authorising any act or omission which, in the absence of that ruling, would contravene either the Rules or this Deed that act or omission will, unless a contrary intention appears in this Deed, be deemed to be authorised by the Rules and by this Deed.

**38.3** Notwithstanding clause 37.1, if a provision of this Deed is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and

(b) in any other case, the whole provision is hereby severed,  
and the remainder of this Deed has full force and effect.

**39 SUBPART 1 OF PART 2 OF THE CONTRACT AND COMMERCIAL LAW ACT 2017**

39.1 This Deed shall take effect as a contract (as well as a deed) to the extent provided in this Deed and shall be enforceable for the benefit of every Unit Holder from time to time except that, for the purposes of section 13 of the Contract and Commercial Law Act 2017, the benefit so extended to Unit Holders is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this Deed without the consent of any Unit Holder, other than as so provided.

**40 DELIVERY**

40.1 Without limiting any other mode of delivery, this Deed may be delivered by each of the parties to this Deed by:

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this Deed, executed by that party, into the custody of the other party or its solicitors; or
  - (b) transmission, in electronic form by any means of electronic communication (including facsimile or email of a scanned copy) to the other party or its solicitors, by that party, its solicitors or any other person authorised in writing by that party, of an original of this Deed, executed by that party, and the parties hereby consent to such form of delivery.
-

**EXECUTION**

**SIGNED** on behalf of **BOOSTER INVESTMENT MANAGEMENT LIMITED** of which we have consented to having our digital signature applied in accordance with the New Zealand Contract and Commercial Law Act 2017 by:



---

Director: Allan Yeo

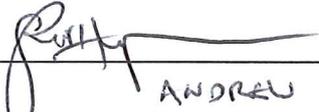


---

Director: Paul Foley

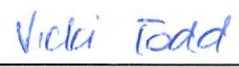
---

EXECUTED under the name of PUBLIC TRUST by:

  
\_\_\_\_\_  
Attorney ANDREW HUXFORD

In the presence of:

  
\_\_\_\_\_  
Witness Signature

  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Address

**SCHEDULE 1**

**Fund Criteria**

**Name of Fund:**

**Retail or Wholesale Offer:**

**FMCA Schedule 4 or 5 offer:**

**Authorised Investments:**

**Investment Strategy and Objectives:**

**Minimum Value of Units:**

**Distribution Dates:**

**Management Fees:**

**Fixed Management Fee [include detail or state nil]**

**Performance Fee [include detail or state nil]:**

**Supervisor Fees:**

**PIE Status:**

**Maintenance of PIE status:**

**Special Terms (if any):**

---

## SCHEDULE 2

### Fund Criteria

<b>Name of Fund:</b>	Private Land and Property Fund
<b>Date of Establishment:</b>	7 January 2018
<b>Retail or Wholesale:</b>	Retail
<b>FMCA Schedule 4 or 5 Offer:</b>	Schedule 4
<b>Authorised Investments:</b>	As per clause 1.1 of the Booster Investment Series II Trust Deed.  The asset allocation for the Private Land and Property Fund ( <b>Fund</b> ) is included in the Booster Investment Scheme 2's Statement of Investment Policy and Objectives.
<b>Investment Strategy and Objectives:</b>	<p><b>Investment objective.</b> The Fund aims to provide investors with a complementary and enhanced risk / return outcome compared to traditional listed property investments.</p> <p><b>Return objective.</b> The Fund aims to generate an annual average long-term return of 8% (before tax, but after all fees and charges) from a combination of income distribution and capital growth.</p> <p><b>Investment strategy.</b> The Fund aims to invest primarily in a diversified range of agricultural and horticultural land and property in New Zealand, which may be supplemented with direct investments in industrial, commercial, and retail properties, both in New Zealand and overseas.</p> <p>It may borrow money to invest in more land and properties or to develop land and properties already held by the Fund.</p> <p>Upon establishment, it is intended that the Fund will gain investment exposure by investing directly in the wholesale fund, Booster Investment Scheme Private Land and Property Portfolio. The Booster Investment Scheme is, a separate managed investment scheme managed by the Manager.</p> <p>This may change from time to time following consultation with the Supervisor.</p>
<b>Minimum Value of Units:</b>	<ul style="list-style-type: none"> <li>- The Minimum Value of Units and Minimum Value of Units for the initial application for the issue of Units is \$1,000.</li> <li>- The Minimum Value of Units for an additional investment for the issue of Units (other than Units purchased on an Exchange) is \$500 lump sum.</li> <li>- The Minimum Value of Units for a withdrawal of Units, switch of Units, or transfer of Units (other than units transferred on an Exchange) is \$500.</li> </ul>
<b>Distribution Dates:</b>	The Fund will consider the payment of a distribution to investors of any net cash income received from the Wholesale Fund (after allowing for any other expenses).
<b>Management Fees:</b>	Fixed Management Fee: The Fixed Management Fee of 1.00%pa is calculated in accordance with clause 24.3 of the Deed.

	Performance Fee: Nil
<b>Supervisor Fees:</b>	Supervisor Fees are paid by the Manager as agreed between the Supervisor and the Manager from time to time.
<b>PIE Status:</b>	The Fund will make the required elections to be treated as a PIE.
<b>Maintenance of PIE status:</b>	Where relevant, the Manager has the power to take such steps and actions, including preventing a Unit Holder's withdrawal from the Fund and declining applications for Units in the Fund, so as to maintain the status of the Fund as a PIE.
<b>Special Terms (if any):</b>	<p>The clause references below refer to clauses within the Booster Investment Series II Trust Deed dated 7 January 2019 (as amended from time to time).</p> <p><b>Application for Units</b></p> <ul style="list-style-type: none"> <li>- <b>Clause 8.2:</b> No standing applications are permitted for the Fund, except as determined by the Manager.</li> <li>- <b>Clause 8.3:</b> Units will be issued or purchased at the Unit Value on the Valuation Days determined by the Manager and in accordance with the Disclosure Documents.</li> <li>- <b>Clause 8.4:</b> Subject to clause 8.6, the Manager shall decide on all applications within one Month following the Month the application was received or such other period agreed with the Supervisor.</li> </ul> <p><b>Redemption of Units</b></p> <ul style="list-style-type: none"> <li>- <b>Clause 10.3(b):</b> The Manager (after consultation with the Supervisor as to notice/timing/duration) can defer any Withdrawal Notice in its discretion where it determines there is insufficient liquidity to effect the Withdrawal Notice or if the Manager considers the Withdrawal Amount cannot be calculated in a fair manner.</li> <li>- <b>Clause 10.7:</b> A Withdrawal Notice is effective on the next Valuation Day following expiry of a notice period determined by the Manager and agreed to by the Supervisor and as described in the Product Disclosure Statement ). The Valuation Day on which a Withdrawal Notice is effective is the 'Relevant Valuation Day'</li> <li>- <b>Clause 1.1, definition of "Withdrawal Amount":</b> The Withdrawal Amount is determined as at the Relevant Valuation Day.</li> <li>- <b>Clause 10.6:</b> Upon the acceptance by the Manager of a Withdrawal Notice, the Manager shall procure that the Withdrawal Notice will be processed within 5 Business Days of the Relevant Valuation Day, or longer depending on available liquidity to pay the requested withdrawal.</li> <li>- <b>Clause 10.13:</b> Following cancellation of a Withdrawal Suspension Notice, the Valuation Days on which existing Withdrawal Notices become effective shall be determined by the Manager in consultation with the Supervisor, having regard to:</li> </ul>

	<ul style="list-style-type: none"><li>- the notice period determined by the Manager for the purposes of clause 10.7,</li><li>- the liquidity needs of the Fund, and</li><li>- the equitable treatment of Unit Holders.</li></ul> <p><b>- Clause 17.2, Borrowing</b></p> <p>Borrowing forms part of the Fund's investment strategy and objective – the Manager may borrow up to 65% of the value of the Fund's Assets, with security limited to the relevant Assets. A soft limit of 50% will apply to provide a suitable margin in case of any increase in gearing due to a fall in Asset values.</p> <p>Note that the Fund will take into account any borrowing that is in place in an underlying investment (if any).</p>
--	---

---

**SCHEDULE 3****MEETINGS OF UNIT HOLDERS**

(Clause 29.1)

**1 VENUE OF MEETINGS**

1.1 A meeting of the Unit Holders of a Fund shall be held in such place in the city or town in which the Office is situated, as the Manager determines.

**2 Notice of Meetings**

2.1 Notice of every meeting shall be given in compliance with Relevant Requirements and in the manner provided in the Deed to:

- (a) every Unit Holder of a Fund who has supplied to the Manager an address for the giving of notices;
- (b) every person upon whom the ownership of any Unit of a Fund devolves as a legal personal representative or an assignee in bankruptcy of a Unit Holder where the Unit Holder but for death or bankruptcy would be entitled to receive notice.

2.2 A copy of the notice shall be sent to the Supervisor.

2.3 At least fifteen (15) Business Days' notice of every meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice shall specify:

- (a) the place day and hour of the meeting; and
- (b) the general nature of the business to be transacted and sufficient detail to enable a Unit Holder to form a reasoned judgement in relation to it and understand the effect of any resolution or change proposed; and
- (c) the text of any Special Resolution to be submitted to the meeting; and
- (d) the right of a Unit Holder to appoint a proxy.

2.4 Without limiting clause 2.3, where a notice is in respect of proposed changes to this Deed, the notice shall be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed deed and shall state that the changes have been approved by the NZX.

2.5 The accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate proceedings at any meeting.

---

### **3 Quorum**

- 3.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum for a meeting shall be Unit Holders of a Fund present in person or by proxy or by attorney or by Authorised Representative holding:
  - (a) other than a meeting requiring a Special Resolution, not less than ten (10)% of the number of Units of the Fund for the time being in existence; or
  - (b) if a Special Resolution is to be submitted, the greater of (a) or not less than twenty-five (25)% of the number of Unit Holders of the Fund for the time being.
- 3.3 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the request of Unit Holders shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than ten (10) Business Days thereafter and to such place as may be appointed by the Chairman. At such adjourned meeting the Unit Holders of the Fund present in person or by proxy or by attorney or by Authorised Representative and entitled to vote shall be a quorum.
- 3.4 Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Unit Holders of the Fund present at the adjourned meeting whatever their number and whatever the number of Units held by them shall form a quorum.

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

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

### **5 Chairman**

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

### **6 Adjournment of meetings**

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

### **7 Voting rights**

- 7.1 The only persons entitled to vote in person or by proxy or by attorney or by Authorised Representative shall be the Unit Holders of the Fund 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 or by Authorised Representative.

## 8 Proxies

- 8.1 Votes may be given either personally or by proxy or by attorney and also in the case of a corporation by an Authorised Representative. An instrument of proxy shall be in such form as the Manager shall stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairman of the meeting or an officer of the Supervisor is appointed a proxy for a Unit Holder and the Unit Holder has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which the proxy is to vote upon any resolution coming before the meeting the vote shall be used in the manner directed by the Manager.
- 8.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or of an attorney duly authorised in writing or if the appointer is a corporation either under seal or under the hand of an officer or attorney so authorised.
- 8.4 A person appointed to act as a proxy need not be a Unit Holder.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a notary public or in such manner as the Manager shall approve shall be deposited at such place as the Manager may in the notice convening the meeting appoint. If no such place is appointed then it is to be deposited at the Office not less than forty eight (48) hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the person named in the instrument proposes to vote. In default, the instrument of proxy shall not be treated as valid provided that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.
- 8.6 A proxy shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve (12) months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney or representative otherwise than by way of an instrument of proxy.
- 8.7 An instrument or proxy in favour of the chairman of the meeting or the chairman, (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointer.
- 8.8 A person appointed proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is
-

specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Unit Holder concerned.

- 8.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or the transfer of the Units in respect of which the vote is given provided that no intimation in writing of such death, mental disorder, revocation or transfer is received by the Manager at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **9 Power of Attorney**

- 9.1 Any Unit Holder may by power of attorney appoint an attorney (who need not be a Unit Holder) to vote and act on behalf of the Unit Holder at any meeting. Such power of attorney, or proof thereof to the satisfaction of the Manager, shall (unless such power of attorney or such proof has previously been produced to the Manager) before the time of holding the meeting at which the attorney proposes to vote be produced for inspection at such place as the Manager may in the notice convening the meeting direct or (if no such place is appointed) then at the Office. Such attorney if so empowered may appoint a proxy for the Unit Holder granting the power of attorney.

## **10 Representative of the Company**

- 10.1 An Authorised Representative of a corporation which is a Unit Holder shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Unit Holder.
- 10.2 An Authorised Representative shall be entitled to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting, or for the taking of a poll, at which the Authorised Representative proposes to vote.

## **11 Procedure**

- 11.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Supervisor or any representative of the Supervisor or by one or more Unit Holders holding or representing not less than five (5)% of the number of Units in the Fund in existence. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 11.2 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
-

- 11.3 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Unit Holder or on behalf of Unit Holders.
- 11.4 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than one month from the date of the meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 11.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 11.6 On a poll votes may be given either personally or by proxy or by attorney or by an Authorised Representative. On a poll a person entitled to more than one vote need not use all votes or cast all the votes used in the same way.
- 11.7 On a show of hands every person present at the meeting and entitled to vote (whether as a Unit Holder or as a proxy or attorney or Authorised Representative) shall have one vote only. On a poll every Unit Holder who is present in person or by proxy or by attorney or by an Authorised Representative shall be entitled to one vote for every whole Unit held.

## 12 Resolutions

- 12.1 The expression "Special Resolution" means a resolution passed at a meeting of Unit Holders of the Fund duly convened and held in accordance with the provisions of this Schedule and carried by a majority of not less than three-fourths ( $\frac{3}{4}$ ths) of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths ( $\frac{3}{4}$ ths) of the votes given on such poll.
- 12.2 The expression "Special Resolution" also means a resolution relating to a matter that is required by the Act or this Deed to be done by way of Special Resolution.
- 12.3 A meeting of Unit Holders of a Fund shall have the following powers exercisable by Special Resolution:
- (a) to sanction the exchange of Units of the Fund for, or the conversion of such Units into shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed;
  - (b) to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders of the Fund howsoever such rights shall 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 of the Fund and to authorise the Manager and Supervisor to concur in and execute any supplemental deed or other document embodying any such alteration or addition;

- (d) to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
- (e) Subject to the Act, to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
- (f) to appoint a new Supervisor if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new Supervisor pursuant to clause 23.4;
- (g) to give directions to the Supervisor as to the appointment of a new Manager in accordance with clause 25.7;
- (h) to sanction the exchange of Units of the Fund for, or the conversion of Units of the Fund into, units or interests in any other managed investment scheme or similar entity;
- (i) to sanction the winding up of the Fund
- (j) to direct the removal of the Manager;
- (k) to give such directions to the Supervisor as they think proper concerning the Fund, being directions that are consistent with the provisions of the Deed and any Relevant Requirement,

**PROVIDED THAT** no such sanction, assent, release, waiver or directions which materially and adversely affects the interests of Unit Holders of another Fund shall be effective without the approval of a separate Special Resolution of the Unit Holders of such other Fund.

### 13 Resolutions bind all Unit Holders

- 13.1 Subject to Relevant Requirements and the proviso to clause 12.3, a resolution or a Special Resolution, passed at a meeting duly convened and held in accordance with this Schedule, shall be binding upon all Unit Holders of the Fund whether present or not present at the meeting. Each of those Unit Holders, the Supervisor and the Manager shall be bound to give effect thereto accordingly. The passing of any such resolution shall as between the Manager, the Supervisor and those Unit Holders be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution **PROVIDED THAT** a resolution which adversely affects the interests of a particular Unit Holder or a class of Unit Holders only as opposed to the interests of the Unit Holders of the Fund generally shall
-

not be binding on such Unit Holder or class of Unit Holders unless such Unit Holder agrees or such Unit Holders agree to be bound by the terms of such resolution.

**14 Minutes to be kept**

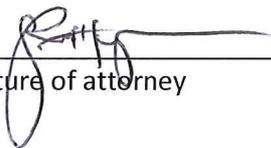
- 14.1 Minutes of all resolutions and proceedings at every meeting shall be made by the Supervisor or, if the Supervisor shall not be present at any meeting, by some person appointed by the chairman of such meeting and duly entered in books from time to time provided for that purpose by the Supervisor.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

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

I, *Andrew Hughes, of Auckland* hold the office of *General Manager Corporate Trustee Services* at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 28 August 2019, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand; and
- 2 at the date hereof I hold the position of *General Manager Corporate Trustee Services* with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 18 September 2019

  
\_\_\_\_\_  
Signature of attorney



DLA Piper New Zealand  
Chartered Accountants House  
50-64 Customhouse Quay  
PO Box 2791  
Wellington 6140  
New Zealand  
DX SP20002 WGTN  
T +64 4 472 6289  
F +64 4 472 7429  
W [www.dlapiper.com](http://www.dlapiper.com)

Our ref: 1026837

3 September 2019

The Directors  
Booster Investment Management  
Limited  
Level 19, Aon Centre  
1 Willis Street  
WELLINGTON 6142

The Board  
Public Trust  
Ground Floor  
New Zealand Rugby House  
100 Molesworth Street  
WELLINGTON 6140

**CERTIFICATE PURSUANT TO SECTION 139 OF THE FINANCIAL MARKETS  
CONDUCT ACT 2013**

We certify that the trust deed for the Booster Investment Series II dated 7 January 2019, when rescinded and substituted in accordance with the trust deed effective from 18 September 2019, will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 (**Act**) and will not contain any provision that is contrary to those implied in the trust deed by or under the Act.

Yours sincerely



**Rachel Taylor**  
Partner

DLA Piper New Zealand is a partnership governed by New Zealand law, which is part of DLA Piper, a global law firm operating through various separate and distinct legal entities.

A list of offices and regulatory information can be found at [www.dlapiper.com](http://www.dlapiper.com).