

Unit Trust of Samoa Trust Deed

Unit Trust of Samoa (Management) Limited (Manager)

Betham & Company Trustee Limited (Trustee)

CONTENTS

SECTION 1: INTERPRETATION	1
1 INTERPRETATION	1
1.1 Definitions	1
1.2 Construction	5
1.3 Parties bound	7
1.4 Exchange of currencies	7
SECTION 2: CONSTITUTION OF TRUST	8
2 CONSTITUTION OF TRUST	8
2.1 Appointment of Trustee	8
2.2 Appointment of Manager	8
2.3 Name	8
2.4 Units	8
2.5 Rights not attaching to Units	8
2.6 Initial settlement	8
SECTION 3: ISSUE OF UNITS	10
3 OFFER OF UNITS	10
3.1 Offer of Units	10
3.2 Manager may refuse application	10
3.3 Minimum Parcel	10
4 ISSUE OF UNITS	10
4.1 Manager's power to issue	10
4.2 Price of a Unit	10
4.3 Non-cash payment	11
4.4 Brokerage/commission	11
4.5 Entry Fee	11
4.6 Issue date	12
4.7 No fractional Units	12
SECTION 4: REGISTER, JOINT UNITHOLDERS AND UNIT HOLDING ADJUSTMENTS	13
5 REGISTER	13
5.1 Register to be maintained	13
5.2 Appointment of Registrar	13
5.3 Content of Register	13
5.4 Register deemed to be accurate	13
5.5 Unitholders to notify changes	13
5.6 Closure of Register	13
5.7 No equities to be entered upon a Register	14
5.8 Inspection by Trustee and Manager	14
5.9 Joint Unitholders	14
5.10 Reliance on instructions	15

6	ADJUSTMENT TO UNITHOLDINGS	15
6.1	Sale by Manager of small parcels	15
6.2	Consolidation or subdivision of Units	16
6.3	Effect of consolidation or subdivision	16
	SECTION 5: REDEMPTION, REPURCHASE, TRANSFER AND TRANSMISSION OF UNITS	17
7	REDEMPTION OR REPURCHASE OF UNITS	17
7.1	Procedure and applicable provisions	17
7.2	Number of Units less than a Minimum Parcel	17
7.3	Permitted redemptions to be exercised by notice to Manager	17
7.4	Obligation to redeem or repurchase	17
7.5	Amount payable	18
7.6	Withdrawal Price	18
7.7	Exit Fee	18
7.8	Fractions of cents	18
7.9	Order	19
7.10	Delay if consideration not otherwise received	19
7.11	Manager entitled to Units on repurchase	19
7.12	Manager to effect redemptions	19
7.13	Cancellation of Units	19
7.14	Trustee to redeem Manager's Units	19
7.15	Entry on Register	19
7.16	Transfer of Assets	19
7.17	Payment in cash	20
7.18	Payment other than in cash	20
7.19	Suspension of repayment	20
8	TRANSFER OF UNITS	20
8.1	Instrument of transfer	20
8.2	Registration of transfer	21
8.3	Manager may decline to register transfers	21
8.4	Manager to return unregistered transfers	21
8.5	Suspension of registration	21
9	TRANSMISSION OF UNITS	21
9.1	Persons recognised by the Manager	21
9.2	Claimants to prove entitlement	21
9.3	Entitlement on transfer or transmission of Units	22
	SECTION 6: INVESTMENTS AND VALUATIONS	23
10	INVESTMENT	23
10.1	Investment procedure	23
10.2	Investment Policy	23
10.3	Trustee's role	23
10.4	Manager's power of investment	23
10.5	Interested party transactions	23
10.6	Costs	24

10.7	Investment record	24
10.8	Voting rights of investment	24
11	VALUATIONS	24
11.1	Valuation Register	24
11.2	Periodic valuations of Assets	24
11.3	Basis for valuation	25
11.4	Value to be ascertained of Units	25
11.5	Manager's decision is final	25
11.6	Valuation on a consistent basis	25
	SECTION 7: FINANCIAL STATEMENTS AND THE AUDITOR	26
12	RECORDS AND FINANCIAL STATEMENTS	26
12.1	Records	26
12.2	Annual Report to Trustee and Unitholders	26
12.3	Manager's report	26
12.4	Audit	26
13	THE AUDITOR	26
13.1	Appointment	26
13.2	Auditor may act for others	26
13.3	Auditor's remuneration	26
13.4	Retirement or removal of auditor	26
13.5	Vacancy in office of Auditor	27
13.6	Information to Auditor	27
	SECTION 8: DISTRIBUTIONS TO UNITHOLDERS AND TAX	28
14	DISTRIBUTIONS TO UNITHOLDERS AND TAX	28
14.1	Distributable Amount	28
14.2	Entitlement to Distributable Amount	28
14.3	In specie distributions	28
14.4	Distribution reinvestment	28
14.5	Bonus issues in lieu of distributions	29
14.6	Payment	29
14.7	Transfers	29
14.8	Rights subject to terms of Units	29
14.9	Deduction of Tax	29
14.10	Indemnity for Tax	29
	SECTION 9: THE MANAGER	30
15	MANAGER'S POWERS	30
15.1	General powers	30
15.2	Bank all cash	31
15.3	Power to delegate	32
15.4	Appoint agents	32
15.5	Covenants by Manager	32
15.6	Limit on Manager's responsibility	33

16	FEES AND EXPENSES - MANAGER	33
16.1	Manager's fees	33
16.2	Expenses	34
16.3	Trustee to assist management	34
16.4	Waiver of fees	34
17	REMOVAL AND RETIREMENT OF MANAGER	35
17.1	Criteria for removal	35
17.2	Manager to cease activities	35
17.3	Manager may retire	35
17.4	Trustee to appoint a temporary Manager	35
17.5	Provisions in relation to new manager	35
17.6	Manager's entitlements preserved	36
17.7	Settlement of amounts owing	36
	SECTION 10 THE TRUSTEE	37
18	TRUSTEE'S POWERS	37
18.1	General powers	37
18.2	Limited Investment Policy	37
18.3	Limitation on investment duty	37
18.4	Power to borrow and give guarantees	37
18.5	Appointment of advisors	38
18.6	Nominee	38
18.7	Covenants by Trustee	38
18.8	Trustee's indemnity	39
19	FEES AND EXPENSES - TRUSTEE	39
19.1	Trustee's fees	39
19.2	Reimbursement of expenses	39
20	REMOVAL AND RETIREMENT OF TRUSTEE	40
20.1	Removal of Trustee	40
20.2	Retirement of Trustee	40
20.3	Appointment of a new trustee	41
	SECTION 11: PROVISIONS RELATING TO TRUSTEE AND MANAGER	42
21	INDEMNITY AND RESPONSIBILITIES	42
21.1	Indemnity	42
21.2	Lien	42
21.3	Reliance of Manager and Trustee	42
21.4	Prohibited performance	42
21.5	Tax payments in good faith	42
21.6	Trustee relying on advice	42
21.7	Manager relying on advice	43
21.8	Communication between Manager and Trustee	43
21.9	Discretion of Trustee	44
21.10	Discretion of Manager	44
21.11	No conflicts of interest for Trustee or Manager	44

21.12	Limitation on payments to Unitholders	44
21.13	Failure to carry out agreement	45
21.14	Validity of signatures	45
21.15	No dealings with instruments where unpaid charges	45
21.16	Legal proceedings by Trustee	45
21.17	Resolutions of Unitholders	45
21.18	Forged certificates	45
21.19	Reliance by Manager and Trustee	46
21.20	Disclosure of Information	46
21.21	Priority for remuneration	46
21.22	Limit on Trustee's responsibility	46

SECTION 12: MEETINGS **47**

22 MEETINGS OF UNITHOLDERS **47**

22.1	Manager may convene meetings	47
22.2	Unitholders or Trustee may request convening meetings	47
22.3	Content and period of notice	47
22.4	Omission to give notice	47
22.5	Notice of right to appoint proxies	47
22.6	Attendance at meetings	47
22.7	Quorum required	47
22.8	Quorum for Ordinary Resolution	47
22.9	Quorum for Extraordinary Resolution	47
22.10	No quorum	48
22.11	Chairman's discretion	48
22.12	Chairman	48
22.13	By voice or show of hands	48
22.14	No Chairman's casting vote	48
22.15	Voting entitlements	48
22.16	Votes of joint Unitholders	49
22.17	Votes by authorised persons	49
22.18	Votes of corporations	49
22.19	All votes valid if not challenged at the meeting	49
22.20	Votes by proxy, representative or attorney	49
22.21	Chairman's declaration final	49
22.22	Polls	49
22.23	Instrument of proxy	50
22.24	Proxy need not be a Unitholder	50
22.25	Time for Manager to receive instrument	50
22.26	Content of instrument	50
22.27	Validity of proxy's vote	50
22.28	Unitholders bound by resolutions	51
22.29	Powers exercisable by Extraordinary Resolution of Unitholders	51
22.30	Directions to Trustee	52
22.31	Minutes of meetings	52

SECTION 13: MISCELLANEOUS **53**

23 TERMINATION **53**

23.1	Term	53
23.2	Procedure	53
23.3	Final distribution	53
24	AMENDMENTS	53
24.1	Amendments by supplemental deed	53
25	NOTICES TO UNITHOLDERS	54
25.1	Notice may be given to registered address	54
25.2	Deemed service	54
25.3	Signature on notices	54
25.4	Period of notice	54
25.5	Transferees bound by notices sent to the transferor	54
25.6	Notice to deceased persons	54
26	NOTICE TO MANAGER AND TRUSTEE	55
27	UNITHOLDERS BOUND	55
28	LIMITATION OF LIABILITY OF UNITHOLDERS	55
29	INSPECTION OF DEED	55
30	MONEY PAYABLE TO UNITHOLDERS	55
31	UNCLAIMED PAYMENTS	56
32	MINIMUM ECONOMIC AMOUNT	56
33	SEVERANCE	56
33.1	Ability to read down clauses	56
33.2	Severance of invalid clause	56
34	GOVERNING LAW	57
35	COUNTERPARTS	57

UNIT TRUST OF SAMOA TRUST DEED

Date: 9th of July 2010

PARTIES

Unit Trust of Samoa (Management) Limited (the *Manager*)

[Unit Trust of Samoa (Trustee) Company] Limited (the *Trustee*)

BACKGROUND

- A The Manager wishes to establish a unit trust which will be known as the Unit Trust of Samoa.
- B The Trustee has agreed to act as Trustee of the Trust for the benefit of the Unitholders on the terms and conditions set out in this deed.
- C The Manager and the Trustee wish to record in this deed the terms and conditions under which the Trust is to be constituted and administered.

BY THIS DEED the parties agree as follows:

SECTION 1: INTERPRETATION

1 INTERPRETATION

1.1 Definitions

In this deed unless the context requires otherwise:

Act means the Unit Trusts Act 2008.

Assets means all the Property, rights and assets of the Trust.

Auditor means the person or persons for the time being appointed as auditor of the Trust pursuant to this deed.

Authorised Investments means, subject to any express limitation in this deed and any supplemental deed, any cash, property (as defined in the Trustee Act 1975), securities, right (contractual or otherwise, including derivatives such as futures and swaps, and contracted rights under underwriting agreements) or interest (equitable or otherwise) including, without limitation, such class or classes of investments agreed between the Trustee and the Manager.

Business Day means a day other than a Saturday or Sunday on which banks are open for general banking business in Apia, Samoa.

Cut-off Date means, where the Manager has elected that a Redemption Period applies to the Trust, the latest time determined by the Manager by which a Withdrawal Request must be received by the Manager for the Units the subject of that

Withdrawal Request to be redeemed or repurchased (in accordance with this deed) in the Redemption Period following that time.

Distributable Amount means the amount determined by the Manager as being the amount to be distributed to the Unitholders (on an individual basis or otherwise) from the Trust (whether from capital or income) in accordance with the terms of issue of the Units in the Trust.

Distribution Account means the account to which amounts may be transferred pursuant to *clause 14.2*.

Entry Fee means an amount (if any) derived in accordance with *clause 4.5(a)*.

Exit Fee means an amount (if any) derived in accordance with *clause 7.7(a)*

Extraordinary Resolution means a resolution passed at a meeting of Unitholders duly convened and carried by a majority of not less than three fourths of the persons validly voting thereat upon a vote by voice or a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three fourths of the votes validly cast on such poll.

Financial Statements means the financial statements referred to in Section 7 of this deed, which shall be prepared in accordance with that Section, the Act, international financial reporting standards (as adopted by the Samoa Institute of Accountants), and any other relevant statutory requirements, as varied, augmented or limited as is considered necessary or desirable by the Manager.

Financial Year means a year ending on 30 June (or such other date as the Manager nominates and the Trustee agrees) where the Trust has been and is in existence, or that part of such a year occurring:

- (a) from the commencement of the Trust to the following 30 June; or
- (b) from the 1 July preceding the termination of the Trust to the termination of the Trust.

Government means the Government of the Independent State of Samoa, or any entity controlled indirectly or directly by the Government of the Independent State of Samoa.

Investment Policies means the policies in relation to investment and other matters affecting the financial position in respect of the Trust adopted from time to time in accordance with *clause 10.2*.

Issue Price means, in relation to a Unit, the price calculated in accordance with *clause 4.2*.

Liabilities means all liabilities of the Trust (including liabilities accrued but not yet paid) and any provision which the Manager decides in consultation with the Auditor should be taken into account in determining the liabilities of the Trust, but excluding any amount which results from treating Units as liabilities.

Manager means the manager of the Trust for the time being appointed under the provisions of this deed.

Manager's Group means the Manager and all of its subsidiaries.

Minimum Parcel means such amount or amounts (expressed as a tala amount (or amounts) or an amount of Units) as the Manager may determine in respect of the Trust.

Ordinary Resolution means a resolution passed at a meeting duly convened and held in accordance with this deed and carried by a majority of not less than one half of the persons validly voting at the meeting upon a vote by voice or show of hands or, if a poll is duly demanded, by a majority consisting of not less than one half of the votes validly given on such poll.

Property means real or personal property.

Prospectus means the most recent prospectus or other offering document pursuant to which Units in the Trust are offered (including any statement prepared in accordance with the Act).

Record Date means a time and date determined by the Manager for the purpose of determining the persons presently entitled to a Distributable Amount in respect of the Trust.

Redemption Period means, if elected by the Manager, a period of not less than 5 Business Days in every calendar month which the Manager may determine as the period during which the Manager will cause Units to be redeemed or repurchased in accordance with this deed.

Register means the register of Unitholders maintained pursuant to *clause 5.1*.

Registrar means any person appointed by the Manager pursuant to *clause 5.2*.

Related Person means, in relation to the Manager or the Trustee, as the case may be:

- (a) a holding company or subsidiary of the Manager or the Trustee;
- (b) any director or shareholder of the Manager or the Trustee;
- (c) a grandparent, parent, brother, sister, brother in law, sister in law, child, child's spouse, grandchild or grandchild's spouse of any director of the Manager or the Trustee;
- (d) any person in which a person referred to in paragraph (b) or (c) above has a material financial interest; or
- (e) any unit trusts, group investment funds or similar schemes managed by the Manager, or by any holding company or subsidiary of the Manager.

Request Time means the time on the date on which the Manager (or any other person appointed by the Manager for such purpose) has received and accepted a

Withdrawal Request, any period of notice duly given in the Withdrawal Request has expired and the Units referred to in the Withdrawal Request are eligible for redemption under *clause 7*, and shall mean a time determined by the Manager where the provisions of this deed provide that a Withdrawal Request is not required to be given.

Required Majority except where this deed or the law require otherwise, means a simple majority and in all other circumstances means the majority required by this deed or the law as the case may be.

Resolution means:

- (a) a resolution passed at a meeting of Unitholders:
 - (i) on a show of hands or by voice, by the Required Majority of Unitholders present in person; or
 - (ii) if a poll is duly demanded, by Unitholders holding the Required Majority of Units present and voting on the poll, in person or by proxy; or
- (b) a resolution in writing signed by Unitholders holding the Required Majority of the Units in the Trust.

Suspension Notice means a notice given by the Manager under *clause 7.19*.

Tax means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties.

Trust means the trust established under this deed.

Trustee means the trustee of the Trust for the time being appointed under the provisions of this deed and, in respect of the Trust Assets, includes any nominee company of the Trustee nominated pursuant to *clause 18.6* in which the Assets are vested.

Unit means subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units, an undivided share in the beneficial interest in the Trust as provided in this deed and means a Unit in the Trust.

Unit Price means, in relation to a Unit, such amount as is ascertained by the Manager by deducting from the aggregate of:

- (a) the Value of all Assets of the Trust; and
- (b) any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purpose of making a fair estimated market value determination of the total value of the Trust having due regard to international financial reporting standards (as adopted by the Samoa Institute of Accountants) (with any modifications which in the opinion of the Manager should be made in making that determination on such modifications);

the aggregate of:

- (c) all Liabilities of the Trust; and
- (d) any other amounts which, in the opinion of the Manager should be included in such aggregate for the purpose of making a fair and reasonable determination of the total value of the Trust having due regard to international financial reporting standards (as adopted by the Samoa Institute of Accountants) (with any modifications which in the opinion of the Manager should be made in making that determination on such modifications).

and then dividing the remainder by the number of Units on issue at the time. The product shall be rounded to the nearest two decimal places of a Unit in such manner as the Manager shall decide.

Unitholder means the person registered as the holder of a Unit in the Trust (including persons jointly registered).

VAGST means value added goods and services tax chargeable in accordance with the Value Added Goods and Services Tax Act 1992/1993.

Valuation Date means a date at which the Manager calculates the Unit Price of the Trust.

Valuation Register means the valuation register referred to in *clause 11.1*.

Value means in relation to an Asset of or to be acquired by the Trust, the value shown in the Valuation Register or if its value is not shown in the Valuation Register, the value determined in accordance with *clause 11*.

Valuer means an independent expert appointed by the Manager from a panel of experts approved by the Trustee generally or for the asset class in question.

Withdrawal Amount means the amount of the proceeds of a redemption or repurchase of Units which the Unitholder wishes to receive or be paid to another persons as a result of the redemption or repurchase.

Withdrawal Price means the amount payable to a Unitholder (or any other person in accordance with the Unitholder's instructions) upon a redemption or a repurchase of a Unit, determined under *clause 7.6*.

Withdrawal Request means a written or electronic instruction acceptable to the Manager from a Unitholder or any person appointed by the Unitholder for such purpose, to withdraw an amount from the Trust, which has been received by the Manager (or any other person appointed by the Manager for such purpose) pursuant to *clause 7.3*, or otherwise a withdrawal request deemed to have been received by the Manager under the provisions of this Deed.

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

Business Days: anything required by this deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;

Clauses and Schedules: a reference to a clause is to a clause of this deed;

Currency: a reference to any monetary amount is to Samoan currency;

Defined Terms: words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meanings given to them in this deed;

Documents: a reference to any document, including this deed, includes a reference to that document as amended, supplemented (by supplemental deed or otherwise) or replaced from time to time;

Fees: where this deed provides that any fees, expenses, or other amounts shall be payable to the Trustee, the Manager, or any other person, the amounts payable shall be increased by the amounts of any VAGST or other Tax or duty payable in respect thereof;

International Financial Reporting Standards: 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 international financial reporting standards (as adopted by the Samoa Institute of Accountants) 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 international financial reporting standards;

Headings: headings appear as a matter of convenience and do not affect the construction of this deed;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this deed;

Parties: a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to Samoan time;

Units: notwithstanding any provision of this deed, Units are not to be treated as liabilities for any purpose under this deed;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 Parties bound

This deed binds the Trustee, the Manager and the Unitholders, former Unitholders and any person claiming through any of them as if each of them had been a party to this deed.

1.4 Exchange of currencies

Where, for the purposes of any provision of this deed, it is necessary to determine the Samoan currency equivalent of a sum expressed in a non- Samoan currency (or a non- Samoan currency equivalent of a sum expressed in Samoan currency) such sum shall, unless otherwise agreed in writing by the Trustee either generally or in any particular case, be converted to Samoan currency (or the non- Samoan currency, as the case may be) on such basis as is from time to time acceptable to the Manager provided always that in so determining a currency equivalent of any Asset or Liability, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between Samoan currency and the non- Samoan currency in respect of the Asset or Liability.

SECTION 2: CONSTITUTION OF TRUST

2 CONSTITUTION OF TRUST

2.1 Appointment of Trustee

The Trustee is appointed trustee of the Trust and agrees to act in respect of the Trust as trustee for the Unitholders, and to hold the Assets of the Trust as the exclusive property of the Trust in trust solely for the Unitholders, upon and subject to the terms and conditions expressed or implied in this deed and the Act.

2.2 Appointment of Manager

The Manager is appointed manager of the Trust and agrees to act as the manager upon and subject to the terms and conditions expressed or implied in this deed and the Act, and to observe and perform its obligations under this deed and the Act.

2.3 Name

The Trust shall be known as the Unit Trust of Samoa. Notwithstanding any name given to the Trust pursuant to this deed or any supplemental deed, the Manager may, subject to compliance with all legal and regulatory requirements, change the name of the Trust by written notice to the Trustee. The Manager shall notify Unitholders of any change of name of the Trust when next convenient for the Manager.

2.4 Units

The beneficial interests in the Trust shall be divided into Units. Each Unit shall be of equal value and shall confer an equal interest in the relevant balance of the Trust's assets, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units. No Unit shall confer any interest in any particular part of the Trust or in any Asset.

2.5 Rights not attaching to Units

Subject to the Unitholders' rights created by this deed and the Act, no Unitholder shall be entitled to:

- (a) *Acquire particular Assets:* require the transfer to him or her of any of the Assets; or
- (b) *Question discretions:* interfere with or question the exercise or non-exercise by the Trustee or the Manager of the rights, discretions and powers of the Trustee and the Manager in their dealings with the Trust or the Assets or any part thereof; or
- (c) *Exercise rights concerning the Assets:* by virtue of holding Units, attend meetings whether of shareholders, unitholders or otherwise or vote or take part in or consent to any action concerning any Property or corporation in which the Trust holds an interest.

2.6 Initial settlement

When the Manager (or its nominee) pays \$100 to the Trustee by way of subscription by the Manager (or its nominee) for 100 Units in the Trust, the Trust shall be constituted on the terms contained in this deed and with the Manager (or its

nominee) as its initial beneficiary. Such Units will be redeemable for cash after all other Units in the Trust have been redeemed.

SECTION 3: ISSUE OF UNITS

3 OFFER OF UNITS

3.1 Offer of Units

The Manager may from time to time do either or both of the following:

- (a) invite applications from any person or persons to subscribe for or purchase Units; or
- (b) offer Units to any person or persons for subscription or purchase;

in either case in compliance with all applicable requirements of the Act and all other applicable legislation, for the Issue Price and on the terms and conditions contained in this deed and such other terms and conditions (not being inconsistent with this deed) as are determined by the Manager from time to time. Without limiting the generality of the foregoing, the terms and conditions may restrict or limit (in whole or in part) the ability of any person or persons to obtain the redemption or repurchase of Units under Section 5.

3.2 Manager may refuse application

The Manager may in its absolute discretion accept or refuse an application for Units in whole or in part without reason, and may limit the size of the Trust in its discretion.

3.3 Minimum Parcel

Without limiting *clause 3.2*, the Manager may refuse any application for Units in the Trust which is less than the Minimum Parcel.

4 ISSUE OF UNITS

4.1 Manager's power to issue

- (a) *Manager's discretion:* the Manager may issue Units at any time, to any person, and in any number it thinks fit (and the Manager reserves the right to accept and process applications for Units only on such days or during such periods determined by the Manager from time to time and specified in the Prospectus).
- (b) *Issue of Units ranking equally with existing Units:* the Manager may issue Units in the Trust ranking equally with all existing Units. Any such issue will not be treated as an action affecting the rights attached to the existing Units and the Manager need not first offer those Units to existing Unitholders.
- (c) *Manager to issue certificates:* the Manager shall issue certificates evidencing the issue of Units in the Trust, in such form and within such time frames as the Manager shall decide, subject to any relevant law. The Manager may issue certificates evidencing the issue of Units, in such form and within such time frames as the Manager shall decide, even if it is not required to do so by law.

4.2 Price of a Unit

- (a) Unless otherwise provided in the Prospectus, each Unit shall be issued for the Issue Price calculated by the Manager prevailing at the time the Units are issued in accordance with the following formula:

$$IP = UP + EF$$

where:

IP = Issue Price;

UP = Unit Price;

EF = Any Entry Fee referred to in *clause 4.5* which is to be included in the calculation of the Issue Price.

- (b) Such Issue Price shall be paid to the Manager on behalf of the Trust or may be credited where amounts are credited in the form of Units pursuant to this deed.
- (c) Payment for Units shall be in cash, by bank draft or cheque or, at the Manager's discretion, may in the case of an issue of Units to the Government only, be made in whole or in part by the transfer of:
 - (i) *Authorised Investments*: Authorised Investments of a kind able to be vested in the Trustee in accordance with *clause 4.3* equal in value to the aggregate Issue Price for the Units to be issued; or
 - (ii) *Cash and Authorised Investments*: A combination of both cash and Authorised Investments, as approved by the Manager, equal in value to the aggregate Issue Price for the Units to be issued.

4.3 **Non-cash payment**

If in accordance with *clause 4.2(c)* the Manager accepts payment from the Government in Authorised Investments rather than cash, the Manager must obtain:

- (a) an effective transfer to the Trustee of title to the relevant Authorised Investments, confirmed in a manner approved by the Trustee; and
- (b) if the Manager thinks fit or the Trustee so requires, a valuation by a Valuer of the relevant Authorised Investments.

The Manager may deduct from the acquisition cost of the relevant Authorised Investments, before the number of Units to be issued is calculated, any costs incurred in valuing and transferring the relevant Authorised Investments if such amounts have not been included in the Issue Price.

4.4 **Brokerage/commission**

The Manager may, in its absolute discretion, pay, as an expense of the Trust, brokerage and/or commission on the issue of Units at a rate set by the Manager.

4.5 **Entry Fee**

- (a) The Manager may determine, and deduct and retain for its own benefit, an entry fee either generally or in relation to a particular proposed issue of Units, calculated in such manner and at such level (and subject to such limitations) as the Manager may from time to time determine and specify in the Prospectus. The Manager may, in its discretion, elect to deduct the Entry Fee from any subscription proceeds received by the Manager in respect of those Units instead of including the Entry Fee in the calculation of the Issue Price.

- (b) Where in accordance with *clause 4.2(c)* the application amount received is satisfied by the transfer of Authorised Investments from the Government, instead of taking the Entry Fee into account in the calculation of the Issue Price the Manager may require the Trust to pay the Manager the Entry Fee in cash (having deducted an amount equal to such Entry Fee from the application amounts before calculating the number of Units to be issued at the relevant Issue Price).
- (c) Where in accordance with *clause 4.2(c)* the application amounts are received in a combination of cash and the transfer of Authorised Investments from the Government, the Manager may elect either of the above methods of payment of the Entry Fee or a combination of them which would result in the same amount being deducted from the application amounts and the same Entry Fee being received by the Manager as would have occurred if the Manager elected either alternative solely from time to time.

4.6 Issue date

Units are taken to be issued when:

- (a) the Manager accepts the application for those Units; or
- (b) the consideration against which Units are to be issued is transferred or credited to the Trustee,

whichever happens later. Units issued against consideration paid other than in cleared funds or satisfied by the transfer of Property are void if the money is not subsequently cleared or the title to the Property does not pass to the Trustee (and no income will be payable to the Unitholder in respect of any Units issued against such consideration).

4.7 No fractional Units

Where the number of Units to be issued to a Unitholder in accordance with this clause 4 would, in the absence of this clause 4.7, result in a fraction of a Unit being issued to the Unitholder, that fraction shall be ignored and the number of Units issued to the relevant Unitholder will, at the discretion of the Manager, be round up or down to the nearest whole Unit (and any amount of the subscription price attributable to that fraction of a Unit will accrue to the Manager).

SECTION 4: REGISTER, JOINT UNITHOLDERS AND UNIT HOLDING ADJUSTMENTS

5 REGISTER

5.1 Register to be maintained

The Manager shall keep and maintain or cause to be kept and maintained in respect of the Trust an up-to-date register of Unitholders. The Register may comprise a printout of information kept by computer or other equipment, so long as a printout is available to the Trustee from time to time.

5.2 Appointment of Registrar

The Manager may (but is not obliged to) appoint a registrar to maintain a Register at the expense of the Trust.

5.3 Content of Register

There shall be entered in the Register for the Trust:

- (a) the names and addresses of the Unitholders;
- (b) the number of Units held by each Unitholder;
- (c) the date on which the name of every person was entered in the Register as a Unitholder;
- (d) the date on which any person ceased to be a Unitholder; and
- (e) any other particulars that the Manager or the Trustee may consider desirable to include or are required by law.

5.4 Register deemed to be accurate

The Trustee and the Manager (provided in the case of the Manager that the Manager has exercised reasonable care either itself, or where it has appointed a Registrar, in respect of that appointment):

- (a) shall be entitled to rely absolutely on a Register as being correct; and
- (b) shall not be required to enquire into the authenticity of a Register; and
- (c) shall not incur any liability or responsibility on account of any mistake in a Register.

5.5 Unitholders to notify changes

Any change of name or address of any Unitholder shall be notified by the Unitholder in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

5.6 Closure of Register

The Manager may from time to time close a Register for such period or periods as the Manager may determine, provided that a Register shall not be closed for a period exceeding 30 days in aggregate in each year.

5.7 No equities to be entered upon a Register

Neither the Manager nor the Trustee shall be bound to see to the performance of any trust (express implied or constructive) or of any security interest, charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Unitholder, and accordingly no notice of any trust, security interest, charge, pledge or equity shall be entered upon a Register.

5.8 Inspection by Trustee and Manager

The Trustee and the Manager may inspect a Register at any time.

5.9 Joint Unitholders

Where two or more persons are registered as the Unitholders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- (a) *Maximum of three holders:* the Manager shall not be bound to register more than three persons (unless they are trustees, executors, or administrators of a deceased Unitholder) as the Unitholders of any Unit;
- (b) *Joint and several liability:* the joint Unitholders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (c) *Survivor of joint holders:* on the death of any one of such joint Unitholders, the survivor or survivors of them 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;
- (d) *Transacting the Units:* any one of such joint Unitholders may give instructions in relation to their Units which instruction shall bind all such Unitholders;
- (e) *Receipts:* any one of such joint Unitholders may give effectual receipts for any distribution payable to such joint Unitholders;
- (f) *First holder on Register:* only the person whose name stands first in the Register as one of the joint Unitholders shall be entitled to delivery of any certificate relating to such Unit or to receive notices from the Manager or Trustee, and any notice given to such person shall be deemed notice to all the joint Unitholders;
- (g) *Voting rights:* at any meeting of Unitholders any one of such joint Unitholders may vote, either personally, or by duly appointed and authorised representative, or any attorney, or proxy, in respect of such Unit as if he or she were solely entitled thereto, provided that if more than one of such joint Unitholders is present personally or by duly authorised representative, or attorney or proxy then (both on a poll and on a show of hands) such one of those joint Unitholders so present whose name stands first in the Register in respect of the Unit shall alone be entitled to vote as a Unitholder of the Unit.

For the purposes of this clause 5.9:

- (h) the meaning of the term *joint tenants* shall have the meaning normally ascribed to it by, and shall be construed in accordance with, the principles of the common law as applied in the Independent State of Samoa;
- (i) where liability of a joint Unitholder is joint or several (or both), the extent of that liability shall be construed in accordance with the principles of the common law as applied in the Independent State of Samoa as they relate to the meaning of joint liability, several liability and joint and several liability,

in each case with such modifications as are necessary to reflect that a Unitholder holds Units rather than real property (and to avoid doubt, in the event of any inconsistency between the principles of the common law as applied in the Independent State of Samoa and this *clause 5.9*, to the maximum extent permitted by law this *clause 5.9* shall prevail).

5.10 **Reliance on instructions**

If the Manager receives notice in writing that an individual (or a group of no more than three individuals) is authorised to act on behalf of a Unitholder or any joint Unitholders, the Manager is entitled (for all purposes under this deed, including in relation to any notification given under this *clause 5* to the Manager in relation to the relevant Unitholder and any instruction or nomination given for the purposes of *clause 30*) to rely on instructions received from that individual or those individuals unless and until:

- (a) the Manager receives notice that the individual is (or those individuals are) no longer authorised to act on behalf of that Unitholder or those joint Unitholders; or
- (b) the Manager reasonably considers that there is manifest evidence to indicate that such individual is (or such individuals are) no longer authorised to act on behalf of that Unitholder or those joint Unitholders.

6 **ADJUSTMENT TO UNITHOLDINGS**

6.1 **Sale by Manager of small parcels**

The Manager may sell or direct the Trustee to compulsorily redeem the Units of any Unitholder registered with less than the Minimum Parcel prescribed in respect of the Trust from time to time. Any such disposition shall be conducted as follows:

- (a) *Notice:* the Unitholder shall be given not less than 3 months' prior written notice of the intention to dispose of the Units;
- (b) *Transfer or redemption:* if the Unitholder has not, on the expiry of that notice, already redeemed or sold the Units, or increased its holding so it is no longer less than a Minimum Parcel, the Manager may cause the Units to be transferred to applicants for Units or redeemed in accordance with *clause 7*;
- (c) *Proceeds:* promptly after the sale or redemption, the Manager shall transfer to the Unitholder the proceeds of the sale or redemption after deduction of any amount due under this deed, including any reasonable expenses of conducting the sale or effecting redemption.

The Manager and the Trustee shall have no liability for loss on any sale or redemption made pursuant to this *clause 6.1*.

6.2 Consolidation or subdivision of Units

The Manager may at any time, without prior notice to Unitholders or the Trustee cause the Units of the Trust to be consolidated or subdivided. For such purpose, the Manager may specify:

- (a) the Units affected by such consolidation or subdivision;
- (b) the date on which such consolidation or subdivision is to take place (the "*Operative Date*"); and
- (c) the 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 (the "*Ratio*").

6.3 Effect of consolidation or subdivision

As from the Operative Date, each Unitholder shall be deemed to hold a number of Units equivalent to the number held by him or her before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, at the option of the Manager in each case, fractions may be dealt with by rounding upwards or downwards to the nearest whole number. The Manager shall make such arrangements as it deems appropriate, following a consolidation or subdivision, for the cancellation of existing certificates for the Units (if any) and, if the Trust issues certificates in respect of the relevant Units, the issue of new certificates.

SECTION 5: REDEMPTION, REPURCHASE, TRANSFER AND TRANSMISSION OF UNITS

7 REDEMPTION OR REPURCHASE OF UNITS

7.1 Procedure and applicable provisions

The Manager shall repurchase or cause the redemption of Units, in accordance with *clauses 7.2 to 7.19*.

7.2 Number of Units less than a Minimum Parcel

Where the Manager receives a Withdrawal Request, the Manager may in its sole discretion:

- (a) *Refuse to act:* unless the Withdrawal Request relates to all the Units in the Trust held by a requesting Unitholder, refuse to repurchase or cause to be redeemed the Units to which the Withdrawal Request relates in any case where the repurchase or redemption is of Units less than a Minimum Parcel for the Trust ; and
- (b) *Repurchase or redeem all Units:* if the number of Units in the Trust held by the requesting Unitholder (after excluding the number of Units to which the Withdrawal Request relates) is less than a Minimum Parcel for the Trust, repurchase or cause to be redeemed the balance of Units in the Trust held by that Unitholder as if the Withdrawal Request relates to all the Units in the Trust held by that Unitholder.

7.3 Permitted redemptions to be exercised by notice to Manager

Where a Unitholder wishes to withdraw an amount from the Trust, the Unitholder shall give the Manager, or any other person appointed by the Manager for such purpose, a Withdrawal Request (in such form and with such minimum notice period (if any) as may be acceptable to the Manager from time to time,) specifying the number of Units to be redeemed or repurchased or (with the Manager's approval) the amount of the proceeds which the Unitholder wishes to receive from the redemption or repurchase. A Withdrawal Request shall be irrevocable unless the Manager, or any other person appointed by the Manager for such purpose, agrees otherwise. If the Manager has elected that a Redemption Period applies to the Trust then during any particular Redemption Period the Manager shall only be required to cause the redemption or repurchase of Units the subject of any Withdrawal Request received before the Cut-off Date immediately prior to that Redemption Period (unless the Manager decides otherwise).

7.4 Obligation to redeem or repurchase

The Manager may within a reasonable time after the next Valuation Date on or following the Request Time, or (if the Manager has determined a Redemption Period) during the Redemption Period next following the Request Time, at the election of the Manager, either:

- (a) *Redeem:* cause the value (or number of Units held by the Unitholder referred to in the Withdrawal Request to be redeemed by the Trustee out of the Assets of the Trust; or
- (b) *Repurchase:* repurchase the value or number of Units held by the Unitholder referred to in the Withdrawal Request out of its own funds.

7.5 Amount payable

Upon the repurchase or redemption of a Unit, the amount payable to the Unitholder shall be the Withdrawal Price of the Unit less any deductions permitted under this deed.

7.6 Withdrawal Price

The Withdrawal Price of a Unit of the Trust shall be the amount calculated by the Manager in accordance with the following formula at the Request Time or, if the Manager so elects, on the first Business Day of the next Redemption Period following receipt by the Manager of the relevant Withdrawal Request:

$$WP = UP - EF$$

where:

WP = Withdrawal Price;

UP = Unit Price;

EF = Any Exit Fee referred to in *clause 7.7* which is, under that clause, to be included in the calculation of the Withdrawal Price.

7.7 Exit Fee

- (a) The Manager may determine, and deduct and retain for its own benefit, an exit fee from any proceeds of redemption or repurchase paid to the Unitholder either generally or in relation to a particular proposed issue of Units, calculated in such manner and at such level (and subject to such limitations) as the Manager may from time to time determine and specify in the Prospectus. The Manager may, in its discretion, elect to deduct the Withdrawal Fee from the proceeds of redemption or repurchase instead of including the Withdrawal Fee in the calculation of the Withdrawal Price.
- (b) Where the proceeds of redemption or repurchase is satisfied by the transfer of Assets to the Government in accordance with *clause 7.16*, instead of taking the Exit Fee into account in the calculation of the Withdrawal Price the Manager may require the Trust to pay the Manager the Exit Fee in cash (having deducted an amount equal to such Exit Fee from those proceeds).
- (c) Where the proceeds of redemption or repurchase are satisfied in a combination of cash and the transfer of Assets to the Government in accordance with *clause 7.16*, the Manager may elect either of the above methods of payment of the Exit Fee or a combination of them which would result in the same amount being deducted from those proceeds and the same Exit Fee being received by the Manager as would have occurred if the Manager elected either alternative solely from time to time.

7.8 Fractions of cents

If the formula in *clause 7.6* results in the aggregate Withdrawal Price for all the Units being redeemed or repurchased by a Unitholder including a fraction, the aggregate Withdrawal Price for all such Units may be adjusted, at the option of the Manager, to the nearest cent above or below the aggregate Withdrawal Price so calculated.

7.9 Order

Unless the Manager decides otherwise, the first Units issued to a Unitholder are the first redeemed or repurchased.

7.10 Delay if consideration not otherwise received

Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not repurchase or cause redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

7.11 Manager entitled to Units on repurchase

Upon repurchase of any Units by the Manager, the Manager shall be entitled to the benefit of the Units and may at any time thereafter resell or redeem such Units subject to the terms of this deed.

7.12 Manager to effect redemptions

Where the Manager elects to cause the Units specified in a Withdrawal Request to be redeemed, subject to *clause 7.19* the Manager shall on behalf of the Trustee, take all steps necessary to effect the redemption on behalf of the Trustee.

7.13 Cancellation of Units

Where Units are redeemed, upon payment of the Withdrawal Price to the Unitholder, the number of Units so redeemed shall be cancelled as at the date of redemption and such Units shall not thereafter be reissued, but this shall not restrict the rights of the Manager to create additional and/or to issue further Units in the Trust.

7.14 Trustee to redeem Manager's Units

The Manager may at any time, on behalf of the Trustee, request the Trustee to redeem Units which have been or are to be repurchased by the Manager and pay to the Manager the Withdrawal Price of the Units. If the application for redemption is made before the Manager pays the Withdrawal Price to the Unitholder, the Trustee may pay the Withdrawal Price directly to the Unitholder. Any amount that is required to be paid under this clause shall be paid from the Trust's cash and, if there is insufficient cash, then the amount or the balance (as the case may be) shall be paid upon the realisation of the Trust's Assets or at such other time as the Trustee has in respect of the Trust sufficient cash to meet the obligations under this clause.

7.15 Entry on Register

On repurchase or redemption of Units, the Manager shall cause an appropriate entry to be made in the relevant Register in respect of the number of Units which have been repurchased or redeemed and on redemption shall produce to the Trustee such evidence of payment as shall from time to time be required by the Trustee.

7.16 Transfer of Assets

If the Manager determines in good faith and in its sole discretion that, having regard to the Trust's liquidity and such other matters as the Manager considers relevant, it is not desirable, or would be prejudicial to the interests of Unitholders as a whole, for a Withdrawal Request received from the Government to be satisfied in cash (either by way of a repurchase by the Manager or a redemption by the Trust), the Manager may request the Trustee to transfer Assets of the Trust to the Government, or with the Trustee's consent to hold such Assets on trust solely for the Government on such terms as the Trustee requires, rather than pay cash on the redemption of Units.

These Assets must be of equal value to the Withdrawal Price less any deductions permitted by this deed. This *clause 7.16* does not permit any Withdrawal Request received from a Unitholder other than the Government to be satisfied other than by payment of cash in accordance with *clause 7.17*.

7.17 Payment in cash

For any proceeds of redemption or repurchase paid in cash to the Unitholder or as directed by the Unitholder or any person authorised by the Unitholder for that purpose (subject to any deductions permitted under the provisions of this deed), any form of payment, including by cheque posted to the address of the Unitholder specified in the relevant Register shall constitute valid payment and shall discharge the Manager and the Trustee from any further payment obligation.

7.18 Payment other than in cash

For proceeds of redemption or repurchase paid by transferring Assets to the Government in accordance with *clause 7.16* (subject to any deductions permitted under the provisions of this deed), payment by transferring such Assets into the name of or to the order of the Unitholder shall constitute valid payment and shall discharge the Manager and the Trustee from any further payment obligation.

7.19 Suspension of repayment

- (a) Notwithstanding the foregoing provisions of this clause 7, if the Manager determines in good faith and in its sole discretion that, having regard to the Trust's liquidity and such other matters as the Manager considers relevant, it is not desirable, or would be prejudicial to the interests of Unitholders as a whole, for the Manager to repurchase or the Trustee to redeem Units of Unitholders, then the Manager may give notice to Unitholders in the Trust whose Withdrawal Requests have not been processed, suspending such Unitholders' redemptions and repurchases. A Suspension Notice shall have the effect of suspending the processing of all Withdrawal Requests from all such Unitholders effective from the time the decision to suspend is made until the Manager gives to the affected Unitholders notice to the effect that the Suspension Notice is cancelled.
- (b) Where a Suspension Notice has been given to Unitholders pursuant to this *clause 7.19* and has not been cancelled within 14 days of such Suspension Notice, the Manager shall notify all Unitholders of the giving of such Suspension Notice. Where a Suspension Notice has not been cancelled within 12 months after the last notice to Unitholders has been given pursuant to this *clause 7.19*, the Manager shall promptly notify all Unitholders of the continuance of such Suspension Notice's effect and convene a meeting of Unitholders to consider the termination of the Trust.
- (c) Where the operation of Withdrawal Requests are suspended pursuant to this *clause 7.19*, the Withdrawal Price payable to the Unitholders, in respect of any Request Time within the period of suspension, shall be determined as if the Request Time were the last day of the period of suspension.

8 TRANSFER OF UNITS

8.1 Instrument of transfer

Subject to any contrary provisions of this deed as may be applicable and payment of a fee (by the transferor, transferee or both) determined by the Manager, any Unitholder may transfer all or any of the Units held by him or her by providing an instrument of transfer to the Manager. An instrument of transfer shall be in writing in

such form and execution satisfactory to the Manager, and shall comply with any applicable law and any other reasonable requirements as the Trustee or the Manager may from time to time prescribe.

8.2 Registration of transfer

The instrument of transfer shall be delivered to the Manager or, if the Manager has appointed a registrar, the Registrar for registration. Subject to *clause 8.3*, the Manager will promptly cause the transfer to be registered in the relevant Register.

8.3 Manager may decline to register transfers

The Manager may decline to register any transfer in the following circumstances:

- (a) *Non-compliance*: where the provisions of *clause 8.2* or any applicable statutory provisions have not been complied with; or
- (b) *Minimum parcel*: if registration of the transfer would result in less than a Minimum Parcel of Units standing in the name of the transferee or transferor; or
- (c) *Unpaid amounts*: if there are unpaid amounts owing from the vendor of the Units to the Trustee or the Manager; or
- (d) *Non-payment of fee*: if the transferor or transferee (or both) have not paid any applicable fee payable in respect of the relevant transfer of Units; or
- (e) *Failure to deliver certificates*: if the certificates (if any) for the Units being transferred have not been delivered to the Manager or the Registrar.

8.4 Manager to return unregistered transfers

All instruments of transfer which are registered may be retained by the Manager but any instrument of transfer which the Manager declines to register shall be returned promptly to the person lodging the same.

8.5 Suspension of registration

Subject to any relevant legal requirements, registration of transfers may be suspended at such times and for such period or periods (not exceeding in the whole 30 days in any year) as the Manager may from time to time determine.

9 TRANSMISSION OF UNITS

9.1 Persons recognised by the Manager

The executors or administrators of a deceased Unitholder (not being one of several joint Unitholders) and in the case of the death of one or more of several joint Unitholders the survivor or survivors of such joint Unitholders shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unitholder or Unitholders. For the purposes of this clause 9.1, the meaning of the term joint tenant shall be interpreted in the manner set out in clause 5.9(h).

9.2 Claimants to prove entitlement

Any person becoming entitled to any Units in consequence of the death or bankruptcy of any Unitholder may, upon producing such evidence as the Manager shall think sufficient to establish that person's entitlement to such Units, be registered as the

Unitholder of such Units or, subject to the provisions as to transfer contained in *clauses 8.1 to 8.5*, may transfer such Units.

9.3 Entitlement on transfer or transmission of Units

Upon the registration of any transfer or transmission of Units from any person, the benefit of the Units (including the rights to any bonus units or income) shall be deemed to be transferred to the Unitholder into whose name the Units shall be registered.

SECTION 6: INVESTMENTS AND VALUATIONS

10 INVESTMENT

10.1 Investment procedure

The Assets of the Trust shall from time to time be invested by the Manager in Authorised Investments, provided that the investments satisfy the Investment Policies of the Trust. The Investment Policies and this *clause 10.1* constitute a "contrary intention" for the purposes of section 2(3) of the Trustee Act 1975.

10.2 Investment Policy

The Investment Policies of the Trust shall be the investment policies described in the then current Prospectus for the Trust. The Manager may vary those policies from time to time, with the Trustee's consent.

10.3 Trustee's role

Subject to its duties as trustee (including, without limitation, the duties prescribed in section 13(1)(c) of the Act), the Trustee must give effect to the Manager's directions in relation to the investment of the Assets. The Trustee must not acquire or dispose of any Asset except as directed by the Manager until the Trust terminates.

10.4 Manager's power of investment

Subject to section 13(1)(c) of the Act and to this *clause 10*, the Manager shall have absolute and uncontrolled discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets from time to time.

10.5 Interested party transactions

Notwithstanding any other provision of this deed:

- (a) *Sale to Related Person:* no sale or disposal of any material Assets shall be made by the Manager to the Manager or any Related Person of the Manager unless the Trustee is satisfied the sale or disposal is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Investment Policies; and
- (b) *Purchase from Related Person:* no purchase or acquisition of any material Assets shall be made by the Manager from the Manager or any Related Person of the Manager unless the Trustee is satisfied the purchase or acquisition is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Investment Policies; and
- (c) *Manager's certificate:* the Trustee shall not be required to consider any transaction described in *clauses 10.5(a) and (b)* until such time as the Manager has certified to the Trustee that in the Manager's opinion the transaction is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Investment Policies. It shall be the responsibility of the Manager to advise the Trustee before such transaction that any such sale, disposal, purchase or acquisition involves the Manager or any Related Person of the Manager.

10.6 Costs

All costs, Taxes, legal fees and other fees, disbursements and expenses incurred by the Trustee or the Manager in connection with the investigation of, negotiation for and acquisition of any Asset by the Trust, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Asset of the Trust shall be payable (as determined by the Manager) by the Trust.

10.7 Investment record

The Manager shall keep a record of all investments of the Trust, and any other information that the Trustee and the Manager regard as desirable in respect of the investments comprising the Trust. The record shall be available for inspection by the Trustee without charge at any time on any Business Day. The Manager will provide a copy of the investment record to the Trustee on request.

10.8 Voting rights of investment

- (a) *Manager to decide:* subject to the provisions of this deed, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Trustee shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.
- (b) *No liability:* subject to the provisions of this deed, neither the Manager, the Trustee, nor any holder of any proxy or power of attorney referred to in *clause 10.8(a)* shall be liable or responsible for any vote cast or not cast.

11 VALUATIONS

11.1 Valuation Register

The Manager may maintain a Valuation Register for the Trust in which the Manager shall record the Value determined in accordance with this *clause 11* of all Assets which are for the time being included in the Trust.

11.2 Periodic valuations of Assets

- (a) *Manager may value:* the Manager may value all or any of the Assets at any time or times on any day, including at the end of any day.
- (b) *Trustee may require valuation:* if the Trustee so requires, the Manager will have any Asset valued in accordance with *clause 11.3*.
- (c) *Manager shall value on particular days:* the Manager shall value each Asset (other than a real property) on any Business Day on which the Withdrawal Price is calculated pursuant to *clause 7.6*, or on which the Issue Price is determined under *clause 4.2*, or at such times or within such other period as the Trustee and the Manager shall from time to time agree in respect of that Asset.
- (d) *Valuations of real property:* the Manager shall value each real property held by the Trust or by a company, and all of the shares of which are held by the Trust, as often as is required by international financial reporting standards (as adopted by the Samoa Institute of Accountants) or, if the Manager so elects, at such intervals as the Manager reasonably determines having regard to the characteristics of that real property.

11.3 Basis for valuation

Subject to *clause 11.5*, the Value of each Asset shall be:

- (a) *Unlisted debt securities*: in the case of debt securities, other than listed debt securities or cash, at any of (at the Manager's discretion) the principal amount (subject to any bad debt provision made against it by the Manager), a value determined using a net present value calculation incorporating the current interest rate on debt securities of the same or a similar issuer and maturity, market value, or such other valuation methodology as the Manager and the Trustee shall agree;
- (b) *Cash*: in the case of cash, its face value;
- (c) *Listed securities*: in the case of securities listed on any stock exchange, the last sale price of the securities on that stock exchange at the time of valuation;
- (d) *Real property*: in the case of real property, the value last determined by a Valuer;
- (e) *Derivative contract*: in the case of a derivative contract, the fair value of such contract; or
- (f) *Other Authorised Investments*: in the case of any other Authorised Investment, the amount reasonably determined by the Manager as the estimated market value after taking account of the most recent material sales, valuations, and other information that the Manager considers to be appropriate or, failing such agreement, the fair market value determined by a Valuer.

11.4 Value to be ascertained of Units

The Manager may ascertain the Unit Price of the Trust at any time on any day it chooses, and shall ascertain the Unit Price for the Trust at least once every 12 months.

11.5 Manager's decision is final

Subject to *clause 11.6*, the Unit Price for the Trust ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Trustee and any applicant or subscriber for, or purchaser of Units, and all Unitholders.

11.6 Valuation on a consistent basis

The Manager shall ascertain the Unit Price of the Trust and the Value of the Assets on a consistently applied basis accepted as being appropriate by the Trustee. The Manager shall however be entitled at any time or times to alter that basis and the application, provided the Manager first obtains the consent of the Trustee to the alterations proposed by the Manager.

SECTION 7: FINANCIAL STATEMENTS AND THE AUDITOR

12 RECORDS AND FINANCIAL STATEMENTS

12.1 Records

The Manager shall keep such accounting records as correctly record and explain the transactions and the financial position of the Trust. The Trustee shall from time to time upon request furnish the Manager with any information necessary for this purpose. The Manager shall keep at its registered office or such other place approved by the Trustee, proper books of account that will enable the Financial Statements of the Trust to be prepared following the end of each Finance Year and conveniently and properly audited in accordance with this deed.

12.2 Annual Report to Trustee and Unitholders

When the Financial Statements have been prepared and audited, the Manager shall forward a copy of the Annual Report including such Financial Statements promptly to the Trustee and every Unitholder for the time being.

12.3 Manager's report

The Manager shall, in respect of each month during the currency of the Trust, furnish to the Trustee a report in respect of the Trust by the last Business Day of the following month, in a form to be agreed between the Manager and the Trustee, which sets out in detail the performance of the Trust for that month in meeting its objectives as set out in this deed and the Investment Policies.

12.4 Audit

The Manager shall ensure that the Financial Statements prepared for the Trust are audited and reported on by the Auditor, and that a copy of the Auditor's report is forwarded with the relevant Financial Statements when they are forwarded to the Trustee and every Unitholder for the time being pursuant to *clause 12.2*.

13 THE AUDITOR

13.1 Appointment

As soon as practicable after the date of execution of this deed, the Manager shall, after consultation with the Trustee, appoint an auditor or auditors for the Trust, who shall be a chartered accountant or firm of chartered accountants.

13.2 Auditor may act for others

The Auditor may also be auditor of the Trustee, the Manager, or any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or employee (or the partner of an officer or employee) of the Manager or of the Trustee.

13.3 Auditor's remuneration

The remuneration of the Auditor shall be fixed by the Manager, and shall be paid out of the Trust.

13.4 Retirement or removal of auditor

The Auditor may at any time be removed from office by the Manager or by an Extraordinary Resolution of Unitholders. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.

13.5 Vacancy in office of Auditor

Any vacancy in the office of Auditor occurring under *clause 13.4* shall be filled by the Manager (after consultation with the Trustee) appointing an auditor qualified for appointment in terms of *clause 13.1*.

13.6 Information to Auditor

The Trustee and the Manager shall give to the Auditor of the Trust such information as the Auditor reasonably requires for the performance of its duties with respect to the Trust.

SECTION 8: DISTRIBUTIONS TO UNITHOLDERS AND TAX

14 DISTRIBUTIONS TO UNITHOLDERS AND TAX

14.1 Distributable Amount

The Manager shall specify its policy relating to distributions to Unitholders in the first Prospectus for the Trust, but may vary that policy from time to time. The Distributable Amount for the Trust and for each Unitholder shall be determined in accordance with the Manager's policy specified for the time being under this clause.

14.2 Entitlement to Distributable Amount

Unless otherwise agreed by the Manager and the Trustee, and subject to the rights, terms of issue, restrictions and obligations attaching to any particular Units:

- (a) *Payment to Distribution Account:* the Distributable Amount for the Trust is to be transferred to a Distribution Account for the Trust as soon as practicable after the Trust's Record Date and ceases to be an Asset when it is transferred into the Distribution Account;
- (b) *Registered holders entitled:* Unitholders registered in the Register of the Trust at the relevant Record Date are presently entitled to their respective proportions of the Distributable Amount for the Trust;
- (c) *Payment from Distribution Account:* payments must be made out of the Distribution Account as soon as practicable after the relevant Record Date;
- (d) *Pro rata distributions:* the Distributable Amount must be distributed to Unitholders according to the number of Units they hold in the Trust as at the relevant Record Date;
- (e) *Non-pro rata distributions:* the Manager may elect to pay non-pro rata distributions to Unitholders provided that Units held by each Unitholder receiving such distributions having an aggregate Withdrawal Price equivalent to the amount of any such distribution paid to that Unitholder are cancelled.

14.3 In specie distributions

Subject to the rights, terms of issue, obligations and restrictions attaching to any Units, the Manager may at any time direct the Trustee to satisfy the payment of all or any part of any Distributable Amount payable to the Government by way of an in specie distribution of Assets of the Trust to the Government, or by way of bonus Units to the Government (and any such bonus Units are to rank equally with existing Units in the Trust for the purposes of distributions of income and capital as determined by the Manager). This *clause 14.3* does not permit the payment of all or any part of any Distributable Amount payable to a Unitholder other than the Government to be satisfied by way of an in specie distribution of Assets of the Trust or an issue of bonus Units.

14.4 Distribution reinvestment

A Unitholder may elect to reinvest some or all of any distribution by acquiring Units in the Trust selected by the Unitholder, if the Manager approves. In those cases, the Manager is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at the then applicable Issue Price (plus the Entry Fee, if the Manager does not waive it). If the Manager approves distribution

reinvestment, the procedure for reinvestment of distributions is to be determined by the Manager and notified to Unitholders from time to time.

14.5 Bonus issues in lieu of distributions

The Manager may resolve to apply any amount available for distribution to Unitholders by paying up Units to be allotted and distributed, credited as fully paid up, to and amongst the Unitholders entitled to the distribution and in the same proportions. Such Units shall, when issued, rank equally in all respects with all other Units with full participation rights when on issue, and all amounts so capitalised shall be treated as funds subscribed by Unitholders.

14.6 Payment

The Manager must prepare or arrange for the preparation and distribution of cheques (where cheques are used as a means of payment), or arrange for distributions to be paid in accordance with this deed.

14.7 Transfers

Entitlements to distributions in a Distribution Account when a transfer or transmission of Units is registered remain credited to the transferor.

14.8 Rights subject to terms of Units

The rights of a Unitholder under this *clause 14* are subject to the rights, terms of issue, obligations and restrictions attaching to the Units which they hold.

14.9 Deduction of Tax

The Manager shall comply with all Tax requirements which are imposed from time to time including, without limitation, any obligation to deduct any Tax from any amounts due or payable to a Unitholder from the proceeds of any redemption, repurchase or distribution to or on behalf of that Unitholder. All amounts deducted shall be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Trustee or the Manager for the payment thereof or in the payment of the Tax to the person or authority entitled thereto (as the circumstances may require).

14.10 Indemnity for Tax

Every Unitholder shall indemnify the Trustee and the Manager in respect of any Tax paid or payable by the Trustee or the Manager on behalf of or in respect of the Unitholder.

SECTION 9: THE MANAGER**15 MANAGER'S POWERS****15.1 General powers**

Subject to the provisions of the Act and this deed, the Manager shall manage and administer the Trust or cause the Trust to be managed or administered for the benefit of Unitholders generally with full and complete power of management. In particular, the Manager shall, subject to the provisions of this deed, take all steps which in its discretion it considers are necessary or desirable in relation to the Trust, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Assets. Subject to the provisions of this deed and the power vested in the Trustee to settle all transactions of the Trust set out in *clause 18*, the Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full and absolute power to do the following in relation to the Trust:

- (a) *Decide investments:* make all investment decisions in relation to the Trust;
- (b) *Manage:* manage the Assets on a day to day basis;
- (c) *Fix terms:* determine the terms of all sales, purchases or other dealings with Assets, and all contracts, rights and other matters relating to such Assets or Liabilities;
- (d) *Buy and sell:* subject to compliance with the Investment Policies, acquire and sell Assets for cash or upon terms;
- (e) *Lease:* subject to compliance with the Investment Policies, lease all or any part of any Assets on such terms as it thinks fit;
- (f) *Vote:* attend and vote at meetings of companies or unit trusts in which the Trust holds shares or units;
- (g) *Lend:* subject to compliance with Investment Policies, lend money;
- (h) *Borrow:* subject to compliance with the Investment Policies, borrow money unsecured or secured subject to the conditions contained in *clause 18.4*;
- (i) *Instruct:* subject to compliance with the Investment Policies, instruct persons to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- (j) *Takeover:* make and carry out any takeover proposal, offer or invitation;
- (k) *Guarantee:* subject to compliance with the Investment Policies, guarantee the performance of any person in relation to any agreement, contract, undertaking or promise, provided such guarantee is in the reasonable opinion of the Manager in the interests of the Trust;
- (l) *Charge Assets:* subject to compliance with the Investment Policies, create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over

all or any Assets for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;

- (m) *Vary rights:* initiate or agree to the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
- (n) *Reconstruction/amalgamation or merger/ disposal of undertakings:* initiate or agree to any one or more of the following:
 - (i) *Variation of rights:* the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
 - (ii) *Reconstruction:* the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - (iii) *Amalgamation or merger:* the amalgamation or merger of any corporation with any other corporation;
 - (iv) *Disposal of undertakings:* the sale or other disposition of all or any part of the property or undertaking of any corporation;
- (o) *Acquire rights from authorities:* 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;
- (p) *Equity of redemption:* acquire and accept for the Trust any equity of redemption;
- (q) *Partnerships or joint ventures:* participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- (r) *Make agreements:* subject to compliance with the Investment Policies, enter into, perform and enforce agreements;
- (s) *Underwrite:* underwrite offers of securities out of the Assets of the Trust;
- (t) *Joint ventures:* participate in joint ventures in relation to real properties and real property developments.

15.2 **Bank all cash**

Cash received by the Manager or the Trustee for the account of the Trust shall be banked to the credit of, and held in, the appropriate bank account of the Trust, pending the investment or other application of the money standing to the credit of that bank account in accordance with and subject to the provisions of this deed. The bank account shall be at all times held in the name of the Trustee or its nominee and

operated only by such authorised persons, and in accordance with such directions, as the Trustee and the Manager may agree from time to time.

15.3 **Power to delegate**

The Manager may delegate to its officers and employees or any of them or to any Related Person of the Manager or any of the officers and employees of such Related Person or, with the prior approval of the Trustee (such approval not to be unreasonably withheld), delegate to any other person or persons all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this deed and any things required by this deed to be done by the Manager may be done by its delegate on its behalf. Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing the duties and obligations on its part contained in this deed:

- (a) by power of attorney or other authorisation appoint any person to be attorney or agent or sub-delegate of the Manager for such purposes and with such powers, authorities and discretions as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Manager of documents bearing facsimile signatures of the Manager or of the attorney or agent either with or without proper manuscript signatures of its officers thereon provided that the Manager in any such power of attorney or other authorisation and the attorney or agent or sub-delegate by the terms of any such sub-delegation may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as they may think fit;
- (b) appoint or employ by writing or otherwise any person to be sub-agent for the Manager as the Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit,

provided that the Manager shall at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

15.4 **Appoint agents**

The Manager may appoint and engage any investment and/or property manager, valuer, barrister, solicitor, accountant, stock and share broker, and any such other person or persons as may be necessary, usual or desirable for the purpose of exercising its powers and performing its obligations under this deed (which person or persons may be a Related Person of the Manager) and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Manager, subject to its right of reimbursement pursuant to *clause 16.2*.

15.5 **Covenants by Manager**

The Manager covenants with the Trustee in relation to the Trust and with the intent that the benefit of these covenants shall, and shall continue to, be for the benefit of not only the Trustee but the Unitholders, as follows:

- (a) The Manager will use reasonable endeavours to ensure that the operation of the Trust is carried on and conducted in a proper and efficient manner.

- (b) Except with the approval of the Trustee, the Manager shall not issue any Unit otherwise than at the Issue Price of that Unit.
- (c) As the Trustee may from time to time require, the Manager will:
 - (i) make available to the Trustee for inspection all the accounting and other records of the Manager relating to the Trust held by the Manager;
 - (ii) provide the Trustee with copies of the Trust's Financial Statements in accordance with *clause 12.2*;
 - (iii) give to the Trustee such information as the Trustee may reasonably require with respect to the Trust and its Assets.
- (d) The Manager shall provide the Trustee with (or procure the provision of) such reports, records and certificates in such form and at such times as the Manager and the Trustee agree in writing from time to time (such agreement not to be unreasonably withheld).
- (e) The Manager will convene meetings of Unitholders in accordance with the provisions of Section 13 of this deed.
- (f) The Manager will promptly (and in any case within seven days of receipt) pay all money belonging to the Trust, received by the Manager, into the Trust's bank account.
- (g) The Manager will use its reasonable endeavours to ensure that the Assets of the Trust are properly managed and supervised.

15.6 **Limit on Manager's responsibility**

The Manager shall not be responsible for any loss or damage resulting from any act, omission, neglect, mistake or default in relation to the Trust save to the extent that the loss or damage is caused by the Manager's failure to show the degree of care and diligence required by section 26 of the Act.

16 **FEES AND EXPENSES - MANAGER**

16.1 **Manager's fees**

- (a) *Fee:* the Manager shall be entitled to receive from the Trust a management fee for a Financial Year of an amount set by the Manager, such fee being calculated in the manner described in the Trust's current Prospectus.
- (b) *Fee payable monthly:* the Manager's fee shall be paid monthly in arrears in each year during which the Manager is managing the Trust.
- (c) *Employment of Related Persons of Manager:* the Manager may, with the Trustee's approval (such approval not to be unreasonably withheld or delayed), employ Related Persons of the Manager in accordance with this deed to provide services, including the services described in paragraph (d) below. These providers will be paid a reasonable fee for their services by the Trust. Such services shall be on normal commercial terms, or terms as favourable to the Trust as normal commercial terms.

- (d) *Manager may provide services:* instead of contracting other parties to do so, the Manager may, with the Trustee's approval (such approval not to be unreasonably withheld or delayed), itself provide services in relation to registry management, custody and accounting. The Manager is entitled to reasonable fees for these services, if it provides them itself, in addition to its fees for managing the Trust. Such services shall be on normal commercial terms, or terms as favourable to the Trust as normal commercial terms.
- (e) *Entry Fee:* the Manager shall be entitled to receive an Entry Fee in respect of any application amount received in respect of Units issued by the Trust and may deduct such amount from such application amount and apply it for the Manager's own purposes.
- (f) *Exit Fee:* the Manager shall be entitled to receive an Exit Fee from any proceeds of redemption or repurchase paid to Unitholder and may deduct such amount from such proceeds and apply it for the Manager's own purposes.
- (g) *Transfer Fee:* the Manager shall be entitled to receive a fee determined by the Manager on the transfer by any Unitholder of all or any of the Units held by him or her (payable by the transferor, the transferee, or both) and may apply it for the Manager's own purposes.
- (h) *No amendment without Manager's agreement:* this clause 16.1 shall not be amended without the agreement of the Manager.

16.2 Expenses

- (a) The Manager may pay all reasonable expenses incurred in relation to the management or operation of the Trust from, or be reimbursed for any such expenses out of, the Assets of the Trust.

16.3 Trustee to assist management

Subject to this deed, the Trustee is empowered to advance or otherwise make available to the Manager out of the Trust or to authorise the Manager to retain out of the Trust such amount as the Trustee from time to time considers to be reasonable and proper in order to enable the Manager to perform and carry out its powers and obligations with regard to the management of the Trust but any such amount shall be on account only of costs, charges and expenses that are or would become or are anticipated by the Trustee to be the subject of reimbursement to the Manager or are or would become or are anticipated by the Trustee to become owing in respect of Assets comprised in the Trust. The Manager shall, whenever so required by the Trustee, furnish to the Trustee such evidence as the Trustee may require as to the utilisation of any such amounts and the purpose for which the same have been or are intended to be applied by the Manager.

16.4 Waiver of fees

The Manager may at any time and from time to time, in its absolute discretion, waive payment of fees or expenses or reimbursement due to it generally or in relation to any particular Unitholder or potential Unitholder.

17 REMOVAL AND RETIREMENT OF MANAGER

17.1 Criteria for removal

The Manager shall cease to hold office as Manager of the Trust if:

- (a) *Removal:* the Manager is removed from office by the Supreme Court pursuant to section 20(1) of the Act on the application of the Trustee, any Unitholder, or the Minister (as defined in the Act); or
- (b) *Trustee's certificate:* the Trustee certifies pursuant to section 20(2) of the Act that it is in the interests of Unitholders that the Manager should cease to hold office; or
- (c) *Meeting of Unitholders:* pursuant to section 20(2)(b) of the Act, Unitholders who hold not less than three-quarters of the Units, at a meeting held pursuant to section 19 of the Act, so direct; or
- (d) *Receivership or liquidation:* the Manager shall have a receiver appointed or if an order is made or a resolution passed for the appointment of a liquidator of the Manager; or
- (e) *Ceases to hold a Business Licence:* the Manager ceases to hold any business licence which it is required by law to hold in order to act as manager of the Trust.

17.2 Manager to cease activities

If the Manager ceases to hold office in relation to the Trust pursuant to *clause 17.1*, the Manager shall immediately desist from all activities related to the Trust.

17.3 Manager may retire

The Manager may retire at any time, without assigning any reason, upon giving 90 days' notice in writing to the Trustee of its intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the Trust pursuant to *clause 17.4* and has executed the deed referred to in *clause 17.5*.

17.4 Trustee to appoint a temporary Manager

Where there is a vacancy in the office of manager or the Manager has retired, a temporary manager shall be appointed by the Trustee, and the Trustee shall comply with section 24(2) of the Act.

17.5 Provisions in relation to new manager

A new or temporary manager appointed pursuant to section 24 of the Act shall forthwith upon such appointment execute a deed in such form as the Trustee may require whereby the new or temporary manager undertakes to the Trustee and the Unitholders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new or temporary manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new or temporary manager had been originally named as a party hereto.

17.6 Manager's entitlements preserved

Nothing in this *clause 17* shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this deed prior to the date of or arising on the Manager's retirement or removal from office.

17.7 Settlement of amounts owing

The Trustee may settle with the Manager the amount of any sums payable by the Manager to the Trustee or by the Trustee to the Manager and may give to or accept from the Manager a discharge in respect thereof and any such settlement or discharge shall be conclusive and binding.

SECTION 10 THE TRUSTEE**18 TRUSTEE'S POWERS****18.1 General powers**

Subject to the provisions of this deed and the Act and the powers, rights and discretions given to the Manager by the Act and this deed, the Trustee shall have the rights and powers in respect of the Trust and over and in respect of the Assets which it could exercise if it were the absolute and beneficial owner of such Assets.

Notwithstanding the preceding references to the provisions of this deed, the Trustee shall have the power to settle and complete all transactions in respect of the Trust.

18.2 Limited Investment Policy

The Trustee acknowledges and relies upon the intention of this deed that, unless the Manager in its absolute discretion decides otherwise, the only transactions intended to be entered into on behalf of the Trust are those which are consistent with the Investment Policies, and the Trustee is directed to act in accordance with this intention.

18.3 Limitation on investment duty

To the extent that any provisions in this deed expressly or impliedly impose any obligation on the Trustee in respect of investments, the Trustee is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets of the Trust irrespective of any belief or opinion or advice that the Manager or the Trustee may hold or receive as to the prospects for the relevant Assets and the possibility of appreciation or depreciation on the value of the Units, to the intent that the benefit to be derived or derivable by Unitholders and the investment risks they bear shall continue to reflect the limited investment policy set out in *clause 18.2*.

18.4 Power to borrow and give guarantees

- (a) *Power to borrow and guarantee:* subject to *clauses 18.4(b) to 18.4(d)*, the Trustee shall have the power to, and at the direction of the Manager if the Investment Policies so allow shall, raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of the Trust, and may give any guarantee or undertaking or security in relation to the repayment of money and interest, costs and other charges and expenses upon such terms and conditions in all respects as the Trustee and the Manager may think fit and in particular but without limiting the generality of the terms of this clause by becoming a party to a bill of exchange or by charging or mortgaging all or any of the Assets from time to time constituting the Trust, provided the aggregate total borrowings made by the Trustee together with any amounts guaranteed shall not exceed 25% of the value of the Assets of the Trust.
- (b) *Manager to determine if necessary or desirable:* all borrowings, raising of money, charging of Assets, guarantees or other similar transactions entered into or undertaken pursuant to this *clause 18.4 (Security Transactions)* shall be entered into or made only where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Unitholders or for the purposes of conducting the investment or management or other operation of the Trust pursuant to this deed including the repayment or redemption of any Units in the Trust from time to time and the Trustee or any lender may rely upon a certificate

given by the Manager as to any determination made by the Manager in respect of any Security Transaction.

- (c) *Notice to Trustee:* the Manager shall determine and give notice to the Trustee of the amounts, name of the lender, and other terms and conditions of all borrowing, credit accommodation, or finance to be undertaken by the Trust and all securities to be entered into. The Trustee shall subject to *clause 18.4(d)* enter into and execute all loan documents, guarantees and securities and will take all other steps necessary to give effect to any such borrowing, credit accommodation, or finance or the giving of such guarantees and securities.
- (d) *Trustee's liability limited:* there shall be no obligation upon the Trustee to comply with any direction given pursuant to *clause 18.4(a)* or *clause 18.4(c)* or to complete any documents, guarantees or securities unless the Trustee is satisfied that the Trustee's liability is restricted to the Assets from time to time constituting the relevant Trust.

18.5 **Appointment of advisors**

Without in any way affecting the generality of the foregoing, the Trustee in carrying out and performing the duties on its part as owner of the Assets may appoint, engage, employ and contract any Valuer, barrister, solicitor, accountant, stockbroker, and such other person or persons as may be necessary usual or desirable for the purpose of assisting it in exercising its powers and performing its obligations under this deed and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Trustee from the Trust. Any person appointed by the Trustee pursuant to this clause shall be appointed subject to prior consultation with the Manager.

18.6 **Nominee**

The Trustee shall be entitled in accordance with section 7 of the Act to nominate another person in which shall be vested the Assets of the Trust. The Trustee shall (without prejudice to its liability under section 7(2) of the Act) cause any such nominee to comply with all of the covenants and obligations on the part of the Trustee expressed or implied in this deed.

18.7 **Covenants by Trustee**

The Trustee covenants with the Manager and with the intent that the benefit of this covenant shall, and shall continue to, be for the benefit of not only the Manager but also the Unitholders:

- (a) *To act continuously:* the Trustee will act continuously as Trustee until the Trust is terminated as herein provided or it has retired or been removed as Trustee in the manner herein provided.
- (b) *To keep Assets safely:* subject to the terms of this deed, the Trustee shall use all reasonable endeavours to ensure the Assets are kept safely and shall hold them as trustee for the Unitholders upon the terms of this deed.
- (c) *Not to dispose of Assets except as directed:* except as directed by the Manager, the Trustee shall not sell, mortgage, charge or part with possession of (or permit any nominee of the Trustee so to do) any of the Assets.

- (d) *To forward notices to Manager:* the Trustee shall without delay forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets.
- (e) *To take legal proceedings as directed:* the Trustee will institute, prosecute, defend and compromise all such legal and arbitral proceedings related to its duties and obligations as Trustee, and refer all such matters to arbitration and submit to arbitration, as the Manager may request in writing and in such places and jurisdictions as the Manager may so request.
- (f) *To enable Manager to manage:* subject to the terms of this deed, the Trustee shall execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Trustee under this deed, to enable the Manager or any person nominated by the Manager to exercise the powers of management or other rights of the Manager in relation to this deed.

Provided that the Trustee shall be entitled to require, prior to acting in any circumstances where in the Trustee's view it is reasonable to do so, evidence satisfactory to it that it will be indemnified for any costs or expenses incurred as a consequence of so acting and shall not be liable or responsible for any losses arising from its failure to act in such circumstances.

18.8 **Trustee's indemnity**

Should the Trustee purchase or otherwise acquire or sell or otherwise dispose of any Asset in relation to which there is a liability, the Trustee will have a right of indemnity out of the Trust in respect of the liability except to the extent that such liability may be attributable to the Trustee's own gross negligence or wilful act or default.

19 **FEES AND EXPENSES - TRUSTEE**

19.1 **Trustee's fees**

The Trustee shall be entitled to receive and retain for its own use and benefit, by way of remuneration for its services as Trustee, such fees as may be agreed upon in writing between the Trustee and the Manager (such fee to be paid by the Manager or, failing such payment, paid out of the Assets of the Trust).

19.2 **Reimbursement of expenses**

In addition to its fee referred to in *clause 19.1*, the Trustee is authorised to pay out of the Trust or reimburse itself from the Trust for the following items of expenditure incurred in respect of the Trust that may from time to time be met by the Trustee from its own funds:

- (a) *Auditor's fees and expenses:* the remuneration of the Auditor and any reasonable expenses from the Auditor sustained in the course of the performance of the duties of the Auditor of the Trust;
- (b) *Postage costs and cheque duty:* all mailing and postage costs from time to time incurred in sending documents to Unitholders in conformity with any requirement of this deed and the Act and all cheque duty from time to time properly payable upon cheques in relation to the Trust;

- (c) *Costs related to Assets:* all disbursements properly incurred in connection with the acquisition, registration, custody, ownership, disposal of or other dealing with an Asset of the Trust including legal costs, valuation fees, search and enquiry fees, brokerage, commission, registration fees and other outgoings of and in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Asset of the Trust;
- (d) *Taxes:* all Taxes or any amount in bona fide reimbursement of any such Taxes properly charged to the Trustee or Manager (whether by any taxing authority or any other person) in connection with the operation of the Trust on account of the Manager, the Trustee, any Unitholder or otherwise (excluding any Taxes levied on the Manager or the Trustee in its personal capacity);
- (e) *Valuations:* fees paid or becoming payable for valuations of the Assets of the Trust carried out in conformity with any provision of this deed;
- (f) *Fees and costs of appointees:* such other fees, charges and amounts as have been paid or as are payable to any person appointed or engaged by the Trustee pursuant to a provision of this deed authorising such appointment or engagement to the extent that such fees, charges and amounts would be payable or reimbursable to the Trustee from the Trust under any other provision of this clause or under any other provision of this deed if the services performed by the person so appointed or engaged had been carried out directly by the Trustee;
- (g) *Meetings:* all costs and disbursements incurred in relation to the convening and holding of meetings of Unitholders;
- (h) *Establishment costs:* all costs associated with the negotiation, preparation, execution and amendment of this deed;
- (i) *Proper expenditure:* any other expenditure properly and reasonably incurred by the Trustee in connection with its acting as Trustee in respect of the Trust under this deed; and
- (j) *Other expenditure:* such other amounts for which, pursuant to any other provision of this deed, the Trustee is properly entitled to be reimbursed by the Trust.

20 REMOVAL AND RETIREMENT OF TRUSTEE

20.1 Removal of Trustee

The Trustee may be removed from office as trustee pursuant to section 11 of the Act.

20.2 Retirement of Trustee

The Trustee may retire as trustee of the Trust at any time without assigning any reason upon giving 30 days' notice in writing to the Manager of its intention so to do subject to the due appointment of a new trustee and the transfer to such new trustee of all of the Assets of the Trust in accordance with section 11(3) of the Unit Trusts Act 2008.

20.3 Appointment of a new trustee

The power of appointing a new trustee of the Trust (in place of a Trustee which has retired pursuant to *clause 20.2* or been removed from office pursuant to *clause 20.1*) shall be vested in the Manager. No person shall be appointed as a new trustee unless qualified to act as such pursuant to section 6 of the Act.

SECTION 11: PROVISIONS RELATING TO TRUSTEE AND MANAGER

21 INDEMNITY AND RESPONSIBILITIES

21.1 Indemnity

The Trustee and the Manager shall each be indemnified out of the Trust from and against any and all losses, costs, and expenses incurred by the Trustee or Manager in performing any of their respective duties or exercising any of their respective powers in relation to the Trust pursuant to this deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing relating to the Trust, including all actions in relation to the offer and issue of Units, with the exception of any loss, costs and expenses arising from a breach of trust where the Trustee or Manager, as the case may be, fails to show the degree of care and diligence required of a trustee or manager having regard to the provisions of this deed and the powers, authorities and discretions conferred on the Trustee or Manager thereby, provided that the Unitholders may by Extraordinary Resolution release the Trustee or Manager or both, from any such liability and indemnify (out of the Trust or otherwise) the Trustee or Manager or both from and against any such liability either with respect to specific acts or omissions or on the Trustee or Manager ceasing to act.

21.2 Lien

The Trustee and the Manager shall have a lien on and may use any, or any part of, any Asset of the Trust for the time being in the hands or coming into the hands of the Trustee or the Manager for the indemnity referred to in *clause 21.1* and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets of the Trust under this deed.

21.3 Reliance of Manager and Trustee

Neither the Trustee nor the Manager shall incur any liability in respect of any action taken or thing suffered by the Trustee or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Trustee or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

21.4 Prohibited performance

Neither the Trustee nor the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law or ordinance rule regulation or bylaw made pursuant thereto or of any decree, order or judgment of any competent court, the Trustee or the Manager shall be hindered, prevented or forbidden from so doing or performing.

21.5 Tax payments in good faith

Neither the Trustee nor the Manager shall be liable to account to any Unitholder or otherwise for any payments made by the Trustee or the Manager in good faith to any fiscal authority for Taxes upon the Trust or in respect of Unitholders or upon any Unit certificates or with respect to any transaction under this deed notwithstanding that any such payment need not have been made.

21.6 Trustee relying on advice

The Trustee, in relation to this deed, may rely on:

- (a) the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in Samoa or elsewhere (which may be a Related Person of the Manager or the Trustee) (whether obtained by the Manager or the Trustee) and the Trustee shall not be responsible for any loss occasioned by so acting so long as the Trustee has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Trustee shall not be liable for acting thereon although the same may contain some error or may not be authentic.
- (b) a certificate signed by not less than two directors of the Manager on behalf of the Manager,
 - (i) as to any fact or matter prima facie within their knowledge and which the Trustee may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or
 - (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Unitholders or any of them,

as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;
- (c) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed, as conclusive evidence of the facts stated therein,

and any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Trustee shall not be liable for acting thereon although the same may contain some error or may not be authentic.

21.7 Manager relying on advice

The Manager may act on the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in Samoa or elsewhere (which may be a Related Person of the Manager or the Trustee) (whether obtained by the Manager or the Trustee) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Manager shall not be liable for acting thereon although the same may contain some error or may not be authentic.

21.8 Communication between Manager and Trustee

Whenever pursuant to any provision of this deed any certificate, notice, instruction or other communication is to be given by the Manager to the Trustee, or the Trustee to the Manager, the Trustee or the Manager, as the case may be, may accept as sufficient evidence thereof a document signed on behalf of the Manager or Trustee by any one of their directors or by any other person or persons duly authorised by the Manager or Trustee or any other form of communication as agreed.

21.9 Discretion of Trustee

The Trustee shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or with gross negligence, by act or omission, the Trustee shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

21.10 Discretion of Manager

The Manager shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or negligently by act or omission, the Manager shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

21.11 No conflicts of interest for Trustee or Manager

Subject to *clause 10.5*, nothing in this deed or any rule of law shall prevent the Trustee, or any Related Person of the Trustee or any shareholder, director, officer, or employee of the Trustee or its Related Person, or the Manager, or any Related Person of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Person, from:

- (a) subscribing for, purchasing, holding, dealing in, or disposing of Units; or
- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Trustee or Manager (whether in respect of the Trust or otherwise) or with any Unitholder or any person whatsoever; or
- (c) being interested in any such contract, transaction or otherwise; or
- (d) acting as trustee or manager of any other unit trust; or
- (e) holding any Asset jointly with the Trust;

and none of them shall be in any way liable to account either to any other of them, the Trust, or to the Unitholders or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees) made or derived thereby or in connection therewith.

For the avoidance of doubt, it shall not be a conflict of interest if any person (including without limitation the Trustee and the Manager) receives payment from another person in relation to its duties under this deed.

21.12 Limitation on payments to Unitholders

Except in respect of any fraud or wilful default on the part of the Trustee or the Manager, in no event shall the Trustee or the Manager, as the case may be, be bound to make any payment to Unitholders except out of funds held by it for that purpose under the provisions of this deed.

21.13 Failure to carry out agreement

Subject to the provisions of this deed neither the Trustee nor the Manager will be liable for the failure of any person to carry out any agreement with the Trust.

21.14 Validity of signatures

The Trustee shall be entitled to rely on the Manager as to the validity of any signature (including electronic signatures) on any transfer, form of application or other instrument so long as the Trustee has no reason to believe that such signature is not genuine.

21.15 No dealings with instruments where unpaid charges

The Manager and the Trustee shall not be required to effect any transaction or dealing with any certificate, transfer or other instrument on behalf of or for the benefit or at the request of any Unitholder unless such Unitholder shall first have paid in cash or otherwise provided to the Manager's and the Trustee's satisfaction for all duties, Taxes, governmental charges, brokerage, transfer fees registration fees and other charges (whether similar to the foregoing or not) whether in respect of the certificate, transfer or other instrument or otherwise (in this clause called collectively "duties and charges") which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Trustee shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unitholder and to retain the amount so paid out of any money or Property to which such Unitholder may be or become entitled hereunder. This clause shall not affect the obligations of the Trustee or the Manager elsewhere contained in this deed relating to duties and other expenses in respect of the Assets.

21.16 Legal proceedings by Trustee

The Trustee may bring legal proceedings:

- (a) *To recover money:* to obtain or recover any money that is payable to the Trustee or any Assets that are to be vested in the Trustee in accordance with the provisions of this deed;
- (b) *For damages:* for damages against any person arising out of any loss suffered by any Unitholder or Unitholders which the Trustee or the Manager considers is recoverable; or
- (c) *To secure compliance:* to secure compliance with the provisions of this deed and the terms of any Prospectus relating to the Trust.

21.17 Resolutions of Unitholders

Neither the Trustee nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Unitholders in respect whereof minutes have been made and signed even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Unitholders.

21.18 Forged certificates

The Trustee and the Manager shall not be liable to each other or any Unitholder by reason of having accepted as valid or not having rejected any certificate purporting to be such and subsequently found to be forged or not authentic.

21.19 Reliance by Manager and Trustee

- (a) *No liability for other's fault:* the Manager shall not be responsible for any loss arising as a result of any act or omission of the Trustee except to the extent that such loss is caused by the negligence or default of the Manager and the Trustee shall not be responsible for any loss arising as a result of any act or omission of the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Trustee.
- (b) *No liability for failure to check:* the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Trustee except to the extent that such loss is caused by the negligence or default of the Manager and the Trustee shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Trustee.

21.20 Disclosure of Information

Subject to the terms of this deed, neither the Manager nor the Trustee shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Unitholder confidential, financial or other information made available to it by the other in connection with this deed. Notwithstanding any provision of this deed, the Unitholders authorise the Manager and the Trustee to provide information relevant to a Unitholder to any fiscal authority in connection with Tax as may be deemed necessary by the Manager or the Trustee.

21.21 Priority for remuneration

The Trustee and the Manager may retain and pay in priority to any claim by Unitholders their respective fees and reimbursement of expenditure out of any money for the time being held in the Trust whether in the nature of income or in the nature of capital.

21.22 Limit on Trustee's responsibility

The Trustee shall not be responsible for any loss or damage resulting from any act, omission, neglect, mistake or default in relation to the Trust save to the extent that the loss or damage is caused by the Trustee's failure to show the degree of care and diligence required by section 25 of the Act.

SECTION 12: MEETINGS

22 MEETINGS OF UNITHOLDERS

22.1 Manager may convene meetings

The Manager may at any time convene a meeting of Unitholders.

22.2 Unitholders or Trustee may request convening meetings

On request in writing of the Trustee, or of either one-tenth in number of the Unitholders, or of a Unitholder or Unitholders holding (at the date of the receipt by the Manager of the request) not less than one-tenth of the value of the Units of the Trust then on issue, the Manager shall convene a meeting of Unitholders. Any such request shall state the nature of the business to be conducted, and the terms of any resolution to be proposed, at the meeting.

22.3 Content and period of notice

At least fourteen (14) days' written notice specifying the time, date and place of the meeting and the general nature of the business to be transacted and containing such information as the person convening the meeting may think fit shall be given to all Unitholders at their last known address and to the Trustee, the Manager, and the Auditor as appropriate, although it shall not be necessary in any such case to specify in the notice the terms of any resolution to be proposed.

22.4 Omission to give notice

The accidental omission to give such notice to or the non-receipt of a notice of meeting by a Unitholder shall not invalidate the meeting.

22.5 Notice of right to appoint proxies

In each notice of meeting there shall appear with reasonable prominence a statement that a Unitholder is entitled to appoint a proxy and that a proxy need not also be a Unitholder.

22.6 Attendance at meetings

The Trustee, the Manager and the Auditor and their duly appointed representatives may attend and address any meeting of Unitholders (including any adjourned meeting).

22.7 Quorum required

No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business.

22.8 Quorum for Ordinary Resolution

The quorum necessary for a meeting at which an Ordinary Resolution only is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least ten per cent of the number of Units in the Trust on issue at the date of the meeting carrying the right to vote at that meeting.

22.9 Quorum for Extraordinary Resolution

The quorum necessary for a meeting at which an Extraordinary Resolution is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least twenty five per cent of the number of Units in the Trust on issue at the date of the meeting carrying the right to vote at that meeting.

22.10 No quorum

If within fifteen minutes from the time appointed for any meeting a quorum is not present the meeting shall:

- (a) *Adjournment for Ordinary Resolution:* if called for the purpose of passing an Ordinary Resolution, otherwise than pursuant to a request of Unitholders, stand adjourned to the same day in the next week at the same time and the same place;
- (b) *Adjournment for Extraordinary Resolution:* if called for the purpose of passing an Extraordinary Resolution, otherwise than pursuant to a request of Unitholders, stand adjourned for such period as the chairman shall direct provided that not less than 10 days' notice of the proposed Extraordinary Resolution and of the fact that those present in person or by proxy or by attorney will constitute a quorum at an adjourned meeting and the place day and hour of such adjourned meeting shall be given to the Unitholders by the Manager.
- (c) *Lapse if called by Unitholders:* if called pursuant to a request of Unitholders, lapse.

At such an adjourned meeting the Unitholders present in person or by proxy or by attorney (whatever their number and whatever the number of Units held by them) shall form a quorum.

22.11 Chairman's discretion

The chairman of a meeting at which a quorum is present may, with the consent of the Unitholders present and entitled to be at that meeting, adjourn the meeting from time to time and from place to place.

22.12 Chairman

At every meeting of Unitholders a person nominated by the Trustee (who may or may not be a Unitholder) shall preside as chairman.

22.13 By voice or show of hands

Every question submitted to a meeting shall be decided by voice or, if the Chairman thinks necessary or desirable, by a show of hands unless a poll is properly demanded pursuant to *clause 22.22*.

22.14 No Chairman's casting vote

In the case of an equality of votes the chairman of the meeting shall both on a show of hands and on a poll not have a casting vote in addition to the vote or votes (if any) to which he may be entitled as a Unitholder or as a proxy.

22.15 Voting entitlements

On a vote by voice or show of hands every Unitholder who is present in person or any person who is present and representing a Unitholder as his or her proxy, attorney or representative shall have one vote and on a poll every such Unitholder, proxy, attorney or representative shall have one vote for each Unit carrying the right to vote at that meeting of which he or she is the registered Unitholder or in respect of which he or she has the authority to vote for the registered Unitholder.

22.16 Votes of joint Unitholders

In the case of joint Unitholders of a Unit, the vote of the senior who tenders a vote whether in person or by proxy or by attorney shall be accepted to the exclusion of the vote of other joint Unitholders and for this purpose seniority shall be determined by the order in which their names stand in the register.

22.17 Votes by authorised persons

Where an individual or group of individuals is authorised to act on behalf of a Unitholder or any joint Unitholders in accordance with *clause 5.10*, the authorised person or persons shall be entitled to speak, demand a poll, vote and in all other respects exercise the rights of a Unitholder at a meeting of Unitholders. In the case of a group of individuals, the vote of the senior who tenders a vote whether in person or by proxy or by attorney shall be accepted to the exclusion of the vote of other authorised persons and for this purpose seniority shall be determined by the order in which their names stand in the Manager's records.

22.18 Votes of corporations

A corporation being a Unitholder may vote by any officer or representative duly authorised in writing who shall be entitled to speak, demand a poll, vote, act as proxy or attorney and in all other respects exercise the rights of a Unitholder and shall be reckoned as a Unitholder for all purposes.

22.19 All votes valid if not challenged at the meeting

No objection shall be raised to the qualification of any voter or vote except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his or her decision shall be final and conclusive.

22.20 Votes by proxy, representative or attorney

On a vote by voice or a show of hands and on a poll, votes may be given either personally or by proxy or by attorney and a proxy, representative or an attorney shall have the same right of audience and to demand a poll as a Unitholder appointing them.

22.21 Chairman's declaration final

At any meeting of Unitholders, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

22.22 Polls

- (a) *Who may demand poll:* A poll may be demanded by the chairman of the meeting or by at least five Unitholders entitled to vote on the proposed resolution or the holders of five per cent of the Units on issue present in person or by proxy or by attorney entitled to vote on the proposed resolution;
- (b) *Timing of demand:* A poll may be demanded either before or after any question is put to a show of hands;
- (c) *Manner of poll:* If at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the chairman of the

meeting directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded;

- (d) *Withdrawal of demand:* The demand for a poll may be withdrawn;
- (e) *Adjournment:* Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment. 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.

22.23 Instrument of proxy

The instrument appointing a proxy or an attorney shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a corporation under the hand of an officer or attorney so authorised.

22.24 Proxy need not be a Unitholder

Any person may act as a proxy or as an attorney whether or not he or she is a Unitholder.

22.25 Time for Manager to receive instrument

The instrument appointing a proxy or an attorney and the power of attorney or other authority (if any) under which it is signed or a certified copy of such power or authority shall be deposited with the Manager not less than two (2) clear days before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy or attorney (as the case may be) shall not be treated as valid without the approval of the Manager.

22.26 Content of instrument

An instrument appointing a proxy may be in the following form or in any other form which the Manager shall approve:

"I [] of [] being a Unitholder in the [], hereby appoint [] of [] as my proxy to vote for me and on my behalf at the Meeting of Unitholders of the Trust to be held on the [] day of [] and at any adjournment thereof.

I direct this form is to be used *in favour of/against the resolution

Signed at [] by me this [] day of []

*Strike out whichever is not desired."

22.27 Validity of proxy's vote

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 insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation has been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

22.28 Unitholders bound by resolutions

A resolution (whether an Ordinary Resolution or an Extraordinary Resolution) passed by the Required Majority at a meeting of Unitholders duly convened and held in accordance with this deed shall be binding upon all the Unitholders whether present or not present at such meeting and each of the Unitholders and the Trustee and the Manager shall be bound to give effect thereto accordingly.

22.29 Powers exercisable by Extraordinary Resolution of Unitholders

A meeting of Unitholders shall have the following powers exercisable by Extraordinary Resolution:

- (a) *To sanction alterations of rights:* power to sanction a Manager's proposal to alter, release, modify, waive, vary or compromise or approve any arrangement in respect of the rights of Unitholders;
- (b) *To amend deed:* subject to the proviso to *clause 24.1*, power to assent to any amendment to the provisions contained in this deed or any deed supplemental thereto in relation to the Trust or the conditions attaching to the Units and to authorise the Manager and the Trustee to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
- (c) *To sanction default:* subject to the Act, power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Trustee under any of the provisions of this deed;
- (d) *To exonerate Manager or Trustee:* subject to the Act, power to discharge, release or exonerate the Manager or the Trustee from all liability in respect of any act of commission or omission for which the Manager or the Trustee has or may become responsible under this deed in relation to the Trust;
- (e) *To appoint Trustee:* power to appoint a new trustee in relation to the Trust if a vacancy arises in the office of Trustee and the Manager fails to appoint a new trustee pursuant to *clause 20.3*;
- (f) *To appoint Manager:* power to appoint a new Manager in relation to the Trust if a vacancy arises in the office of Manager and the Trustee fails to appoint a new Manager pursuant to *clause 17.4*;
- (g) *To sanction exchange or conversion of Units:* power to sanction the exchange of Units for, or the conversion of Units in the Trust into, units or notes or interests in any other unit trust or similar entity (whether established in Samoa or elsewhere) on such basis as may be approved by the Extraordinary Resolution;
- (h) *To remove Auditor:* power to remove the Auditor in respect of the Trust pursuant to *clause 13.4*;
- (i) *To terminate the Trust:* power to terminate the Trust with effect from a date identified in the Extraordinary Resolution; and
- (j) *Other powers:* any other powers expressly provided for in this deed.

22.30 Directions to Trustee

A meeting of Unitholders shall have the power to give directions to the Trustee in relation to the interests of those Unitholders so long as:

- (a) *Consistent with deed and Act:* such directions are consistent with the provisions of this deed and the Act; and
- (b) *Sufficient majority:* the directions are given by a resolution passed by Unitholders present in person or by proxy or by attorney representing 75% of the value of the Units in the Trust represented at that meeting and representing 25% of the value of the Units in the Trust then on issue; and
- (c) *No Trustee's certificate:* the directions do not require the Trustee to give a certificate pursuant to section 20(2) of the Act.

Sections 19(3) and (4) of the Act shall apply in respect of any such direction.

22.31 Minutes of meetings

Minutes for all resolutions passed and proceedings held at every meeting of Unitholders shall be made by the Manager and duly entered in a book for the Trust to be provided for that purpose by the Manager and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting (if any) of Unitholders shall be conclusive evidence of the matters therein stated and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings to have been duly passed and held.

SECTION 13: MISCELLANEOUS

23 TERMINATION

23.1 Term

The Trust terminates on the earlier of:

- (a) the date appointed by the Manager by giving not less than three months' written notice to the Unitholders and the Trustee; or
- (b) the date set by a resolution of Unitholders pursuant to *clause 22.29*; or
- (c) the date on which the Trust is otherwise terminated under this deed or by operation of law.

23.2 Procedure

On termination of the Trust, the Trustee must realise the Assets if the Manager does not propose to distribute them in specie. This must be completed as soon as practicable after termination. The Trustee may, however, postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unitholders to do so, and will not be responsible for any consequent Unitholder's loss.

23.3 Final distribution

Subject to the rights, terms of issue, obligations and restrictions attaching to any particular Units, any net proceeds of realisation and any remaining Assets, after:

- (a) discharging or providing for any unpaid fees due to the Manager and the Trustee and all Liabilities of the Trust; and
- (b) meeting the expenses (including anticipated expenses) of termination,

must be distributed pro rata in cash or in specie to Unitholders according to the number of Units held by them.

24 AMENDMENTS

24.1 Amendments by supplemental deed

Subject to any requirements of law, the Trustee may, with the concurrence of the Manager, by deed supplemental to this deed amend, add to or revoke (in whole or in part) any provision of this deed or any such supplemental deed if the amendment, addition or revocation:

- (a) *To comply with or reflect changes to law:* is in the opinion of the Trustee and the Manager necessary, desirable or expedient to comply with the provisions of, or to reflect any changes to, any statute, ordinance, regulation or by-law or any law made under the authority of any statute, regulation, by-law or ordinance or is the requirement of any competent statutory authority; or
- (b) *To correct error or technical amendment:* is in the opinion of the Trustee made to correct a manifest error or is of a formal, technical or administrative nature only; or

- (c) *Not prejudicial:* is in the opinion of the Trustee not materially prejudicial to Unitholders; or
- (d) *To better administration:* will in the opinion of the Trustee enable the provisions of this deed to be more conveniently or advantageously administered; or
- (e) *Approved by Unitholders:* is approved by an Extraordinary Resolution of Unitholders; or
- (f) *Authorised by deed:* is otherwise expressly authorised by this deed;

provided that no amendment to any clause (including this proviso to *clause 24.1*) conferring the rights, powers and privileges of the Manager, including *clause 16.1*, shall be made without the agreement of the Manager.

25 NOTICES TO UNITHOLDERS

25.1 Notice may be given to registered address

A notice may be given by the Manager or the Trustee to any Unitholder personally, by leaving it at his or her address recorded in the relevant Register, or by sending it addressed to such Unitholder at his or her recorded address by ordinary prepaid post or if such address is outside Samoa by airmail prepaid post, or by sending it by email to such Unitholder at the last email address provided by such Unitholder.

25.2 Deemed service

Any notice sent by post shall be deemed to have been served at the expiration of twenty-four (24) hours after the envelope or wrapper containing the same is posted and in proving such service, it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Any notice sent by email shall be deemed to have been served provided no non-delivery answer back is received by the sender within 1 hour of sending.

25.3 Signature on notices

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

25.4 Period of notice

Subject to the Act, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

25.5 Transferees bound by notices sent to the transferor

Every person who, by operation of law, transfer, or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which, prior to his or her name and address being entered in the register in respect of such Units, has been duly given to the person from whom he or she derives his or her title to such Units.

25.6 Notice to deceased persons

Any notice or document delivered or sent by post or left at the address recorded in the register or address for service of any Unitholder in pursuance of the provisions of

this deed (notwithstanding that such Unitholder is deceased and whether or not the Manager has notice of his or her death) shall be deemed to have been duly served in respect of any Units, whether held solely or jointly with any other person by such Unitholder, until some other person shall be registered in his or her stead as the Unitholder or joint Unitholder thereof, and such service shall for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators and all persons (if any) jointly interested with him or her in such Units.

26 NOTICE TO MANAGER AND TRUSTEE

Any notice, communication or information required by this deed to be given by the Manager to the Trustee or by the Trustee to the Manager shall be given in writing or such other manner as agreed to from time to time and addressed to the secretary or a director or other officer of the party to whom it is intended to be given at its current address (or such other address as may from time to time be notified by such party to the other as the address for service of notices pursuant to this deed) and shall be signed by a duly authorised officer on behalf of the party giving the same.

27 UNITHOLDERS BOUND

This deed shall be binding on and be for the benefit of the Unitholders as if each such Unitholder were a party hereto.

28 LIMITATION OF LIABILITY OF UNITHOLDERS

Notwithstanding any provision of this deed (other than *clause 14.9* and *clause 14.10*) or any provision deemed to be included in this deed no Unitholder shall by reason alone of being a Unitholder or by reason alone of the relationship hereby created with the Trustee or with the Manager be under any obligation personally to indemnify the Trustee or the Manager or any creditor of them or of either of them in the event of there being any deficiency of Assets of the Trust as compared with the liabilities of the Trustee and the Manager in relation thereto, and the rights (if any) of the Trustee or Manager or of such creditor in respect of the Trust to seek indemnity shall be limited to having recourse to the Trust and shall not extend personally to the Unitholders or any of them by reason of their capacity as such under this deed.

29 INSPECTION OF DEED

A copy of this deed together with copies of all deeds supplemental hereto (if any) shall at all times during usual business hours be made available by the Manager at the office of the Manager for inspection by Unitholders.

30 MONEY PAYABLE TO UNITHOLDERS

Any money payable by the Trustee or by the Manager to a Unitholder under the provisions of this deed may be paid:

30.1 in cash; or

30.2 by cheque that is crossed "not transferable" and:

- (a) is made payable to the Unitholder and sent through the post to the address of the Unitholder recorded (or last recorded) in the Register; or
- (b) in the case of joint Unitholders, is made payable to the joint Unitholders and sent to their common recorded address or to the recorded address of that one of the joint Unitholders who is first named on the Register; or

30.3 to an account (of a bank or financial institution) nominated by the Unitholder or joint Unitholders; or

30.4 in any other manner in accordance with a Unitholder's instructions.

Any payment made in accordance with this *clause 30* shall be a full satisfaction of the money payable and will be a good discharge to the Trustee and to the Manager.

31 UNCLAIMED PAYMENTS

If any payment made to any Unitholder at his or her address recorded in the Register or in accordance with his or her payment instructions is returned or otherwise unclaimed, the amount thereof shall be retained by the Trustee for such Unitholder without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of this deed be part of the Trust, but such amount may be invested in the Trust and any proceeds from such amount shall become property of the Trust. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager. After forfeiture of any amount pursuant to this clause the person who would have been entitled to payment of such amount had it not been forfeited shall be entitled to payment from the Manager of any amount equal to such forfeited amount upon adducing sufficient evidence to satisfy the Manager that he or she would have been entitled to such amount had it not been forfeited.

32 MINIMUM ECONOMIC AMOUNT

Neither the Trustee nor the Manager shall be obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

33 SEVERANCE

33.1 Ability to read down clauses

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.

33.2 Severance of invalid clause

Notwithstanding *clause 33.1* 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.

34 **GOVERNING LAW**

This deed shall be governed by and construed in accordance with Samoan law.

35 **COUNTERPARTS**

This deed may be executed in two counterpart copies both of which, when taken together, shall constitute one and the same instrument. The parties may execute this deed by signing either such counterpart copy.

EXECUTED and delivered as a deed.

Unit Trust of Samoa (Management) Limited

by:

Director

Director

Betham & Company Trustee Limited

by:

Director

Director