



**Trust Deed**

**AMP Investment Trust**

**AMP Wealth Management New Zealand Limited**

**Public Trust**

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**Deed** dated 1 April 2026

## **Parties**

- 1 **AMP Wealth Management New Zealand Limited** at Auckland (**'Manager'**)
- 2 **Public Trust** at Auckland (**'Supervisor'**)

## **Background**

- A The AMP Personal Unit Trust (**'PUT'**), established by a trust deed dated 9 August 2004, as subsequently amended, on 16 June 2016 (**'Existing PUT Deed'**) and the Client Unit Trust (**'CUT'**) established by a trust deed dated 11 September 1996, as subsequently amended, on 16 June 2016 (**'Existing CUT Deed'**) were amalgamated into the AMP Investment Trust (**'AIT'**) established by deed dated 20 July 2016 (**'Existing Deed'**).
- B Under the Existing Deed, The New Zealand Guardian Trust Company Limited (NZGT) was the Supervisor of the Scheme. On 1 August 2024, NZGT retired in accordance with the Existing Deed and was replaced by Public Trust, a licensed supervisor, which was duly appointed as the Supervisor of the Scheme, via the Deed of Retirement and Appointment dated 4 June 2024.
- C The Supervisor is the current supervisor and the Manager is the current manager of AIT.
- D Under clause 29.1 of the Existing Deed, the Manager and the Supervisor wish to amend the Existing Deed by substituting this Deed for the Existing Deed to reflect:
1. the change in Supervisor as described above in B; and
  2. for the purpose of enabling the amalgamation of various funds from time to time, by inserting a new clause 3.10 (**'Consolidation of Funds'**), which empowers the Manager to consolidate funds within the Scheme from time to time subject to the Supervisor's prior written approval.
- E The Supervisor and the Manager have agreed to enter into this Deed. Prior to executing this deed, the Supervisor is satisfied that the amendments contained in this Deed are permitted under clause 29.1 of the Existing Deed and certifies that the amendments do not have a material adverse effect on the Members and that the Existing Deed, once amended, will comply with sections 135 to 137 of the FMCA.

### **By this Trust Deed:**

In accordance with the power of amendment contained in clause 29.1 of the Existing Deed, it is declared that with effect on and from the date of this Trust Deed, the Existing Deed is amended by substituting the provisions of the Existing Deed with all of the provisions of this Trust Deed so that on and from the date of this Trust Deed the Scheme will be operated, administered and governed in accordance with the provisions of this Trust Deed.

# 1 Interpretation

## 1.1 Definitions

In this Deed unless the context otherwise requires:

**'Approved Expenditure'** means certain expenditure incurred by a Scheme Participant being an entity and expenditure of the type referred to in Section DV 5 of the Tax Act and supporting provisions of that Act in respect of which the Scheme Participant has made elections to transfer as required by that Act, which have been accepted by the Manager;

**'Assets'** means, in relation to a Fund, the property, rights and assets of the Fund;

**'Associated Person'** has the meaning given to it by the FMCA;<sup>1</sup>

**'Auditor'** means the person for the time being appointed as auditor of the Scheme pursuant to this Trust Deed;

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

**'Business Day'** means a day other than a Saturday or Sunday on which registered banks are open for business in Auckland and Wellington;

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

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

**'Custodian'** means a person appointed to hold the Scheme Investments under clause 16.2 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Scheme Investments under clause 16.2;

**'Distributable Income'** means in relation to any Fund the net income earned by that Fund, determined in accordance with the provisions of clauses 19.5 and 19.6;

**'Distribution Date'** means in relation to each Fund such periodic date (if any) as the Manager may fix from time to time for the purpose of determining distributions of Distributable Income from that Fund;

**'Effective Date'** means the date that the Manager elects under clause 19(1)(a) of Schedule 4 of the FMCA to be the date the Scheme is treated as a Registered Scheme under the FMCA;

**'Electronic Communication'** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium approved by the Manager subject to such conditions as the Manager considers appropriate as to identification of the person making the communication or verification of the content of the communication;

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<sup>1</sup> Section 12(1) of the FMCA.

**'Entitlement'** in relation to a Unit means the amount to be distributed to a Scheme Participant in respect of that Unit pursuant to clause 19;

**'Exchange'** means any official or formally constituted share, security, unit or other equity ownership interest, futures or options exchange on which a relevant Investment is quoted in any country, and includes a licensed market (as defined in the FMCA);

**'Existing Fund'** means an Existing CUT Fund or Existing PUT Fund, as the context requires;

**'Existing CUT Fund'** means every portfolio within CUT established in accordance with the Existing CUT Deed and existing at the date of this Deed, and now governed by this Deed as a Fund and set out in the SIPO for the Scheme as at the Effective Date;

**'Existing PUT Fund'** means every portfolio within PUT established in accordance with the Existing PUT Deed and existing at the date of this Deed, and now governed by this Deed as a Fund and set out in the SIPO for the Scheme as at the Effective Date;

**'Expense Transfer Units'** means additional units credited to a Scheme Participant pursuant to clause 33;

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

**'Financial Year'** means each period of 12 months ending on 31 March, or such other period ending on such other date as the Manager may determine and notify the Supervisor from time to time, provided that the last Financial Year shall end on the date as at which the Scheme is wound up;

**'FMA'** means the Financial Markets Authority, or any successor entity;

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

**'FMC Regulations'** means the Financial Markets Conduct Regulations 2014;

**'Fund'** means each separate Fund constituted under the provisions of this Deed and includes every Existing Fund;

**'Fund Value'** means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- a the amount of Cash forming part of the assets of the Fund; and
- b the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt all accrued income of the Fund on that Valuation Day);

the aggregate of:

- c the Liabilities of that Fund; and
- d all costs, charges and other outgoings (other than those which in the opinion of the Manager are not material, and for the avoidance of any doubt not including any tax liability of a Scheme Participant calculated in accordance with the rules governing Portfolio Investment Entities under the Tax Act) incurred or accrued in connection with the Liabilities of that Fund or otherwise arising in connection with that Fund which for the time being have not been paid

(including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment),

and for the avoidance of any doubt in calculating the Fund Value of any Fund no allowance shall be made for the Tax Bank Account Balance or the Subscription Bank Account Balance, other than any portion of the Subscription Bank Account Balance that is attributable to Units that have been issued but in respect of which the consideration has not yet been transferred to the Supervisor in accordance with clause 8.10a;

**'Imputation Credit'** has the meaning prescribed by section YA 1 of the Tax Act;

**'Imputation Credit Account'** has the meaning prescribed in section YA 1 of the Tax Act;

**'Imputation Ratio'** has the meaning prescribed in section YA 1 of the Tax Act;

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

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

**'Issue Price'** means in relation to any Fund the price for the issue of Units relating to that Fund determined in accordance with clause 9.1, subject to clause 5.5;

**'Liabilities'** in relation to any Fund means debts and other obligations of the Supervisor and the Manager acting in their respective capacity as supervisor or manager of that Fund payable from the part of the Trust Fund attributable to the Fund (including in particular but without limitation all taxes or duties payable by or in respect of that Fund, having regard to clause 32 of this Deed, other than Portfolio Investment Entity tax liabilities attributable to Scheme Participants) but excludes:

- a contingent liabilities (except to the extent that the Manager with the approval of the Auditor decides that an allowance should be made for such liabilities);
- b any tax liability of a Scheme Participant calculated in accordance with the rules governing Portfolio Investment Entities under the Tax Act; and
- c such debts and other obligations of the Supervisor in respect of which by the terms of this Deed the Supervisor is not entitled to be indemnified out of the part of the Trust Fund attributable to that Fund.

For the avoidance of doubt:

- d irrespective of statutory financial reporting requirements, Liabilities exclude amounts in relation to the value of Units in the Scheme; and
- e in all cases, to the extent that the Manager considers that a Liability relates to more than one Fund, that Liability will be allocated across those Funds on such equitable basis as the Manager determines in accordance with clause 3.9g;

**'Management Agreement'** means the agreement between the Supervisor and the Manager entered into on 18 March 2016 which sets out the Manager's reporting obligations and other agreements in respect of the Scheme from time to time;

**'Management Fee'** means in relation to any Fund the fee for managing that Fund determined in accordance with clause 22.1;

**'Manager'** means AMP Wealth Management New Zealand Limited or such other person for the time being appointed to act as manager of the Scheme pursuant to this Deed;

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

- a in respect of Investments which are listed on an Exchange, by reference to the price quoted for the last sale of that Investment on the relevant Exchange on or before that Valuation Day, or if there has been no such sale, or if the last sale is not considered by the Manager to be an accurate measure, the value determined by the Manager having regard to such information as the Manager considers appropriate, including without limitation the advice of an Independent Expert;
- b in respect of Investments which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, provided that the Manager and the Supervisor may agree upon some other form of appropriate determination as to value in respect of any specific Investment from time to time;
- c in respect of real property Investments, the value of that property fixed by an Independent Expert as at a date not more than twelve months preceding that Valuation Day;
- d in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or failing such agreement according to principles of valuation determined by an Independent Expert;

and where in respect of an investment to which sub-paragraph a or b applies the relevant information as to value is not received within 24 hours of the time fixed on a Valuation Day for determination of the Fund Value, means the value of that Investment which applied on the preceding Valuation Day;

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**'Minimum Value of Units'** means in relation to any Fund \$1,000 or such other aggregate Unit Value of Units of that Fund as may be determined by the Manager from time to time as the minimum aggregate Unit Value which shall be held by a Scheme Participant or which may be the subject of a Transaction;

**'Month'** means calendar month;

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

**'PDS'** means the product disclosure statement or PDS, as defined by the FMCA;

**'Person'** means and includes a natural person, a company, a corporation, a corporation sole, a managed investment scheme (as defined in the FMCA), a government or a body of persons (whether corporate or unincorporated);

**'Portfolio Investment Entity'** means a portfolio investment entity as defined in section YA 1 of the Tax Act;

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

**'Register'** means the register of Scheme Participants maintained for the Scheme pursuant to the FMCA;<sup>2</sup>

**'Registered Scheme'** has the meaning given to it by the FMCA;

**'Related Party'** has the meaning given to it by the FMCA;<sup>3</sup>

**'Related Party Benefit'** has the meaning given to it by the FMCA;<sup>4</sup>

**'Relevant Person'** means a Scheme Participant and the Scheme Participant's personal representatives;

**'Reverse Order Election'** means, in respect of a Unit, the issue by the Manager of the Unit on terms that its redemption is subject to Section CD 22(1) to (3) of the Tax Act;

**'Scheme'** means the managed investment scheme governed by this Deed from the Effective Date;

**'Scheme Participant'** means, in relation to a Fund, the person for the time being entered on a Register as the holder of a Unit in that Fund, and in relation to the Scheme means a person for the time being entered on a Register as the holder of any Unit;

**'SIPO'** has the meaning given to it by the FMC Regulations;<sup>5</sup>

**'Slice Election'** means, in respect of a Unit, the issue by the Manager of the Unit on terms that its redemption is subject to Section CD 22(4) of the Tax Act;

**'Special Resolution'**, in relation to the Scheme, has the meaning given to it in relation to that type of scheme by the FMCA;<sup>6</sup>

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

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

**'Switch Fund'** has the meaning specified in clause 11.1;

**'Subscription Bank Account'** means, in relation to the Scheme, the bank account maintained in the name of the Supervisor or its Custodian in accordance with clause 18.7;

**'Subscription Bank Account Balance'** means, in relation to a Subscription Bank Account, the balance of the Subscription Bank Account at that time;

**'Supervisor'** means Public Trust or such other person who is for the time being appointed as Supervisor under the provisions of this Deed, and, where the context requires or allows, this term includes any Custodian;

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

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

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

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<sup>2</sup> Section 215 of the FMCA.

<sup>3</sup> Section 172(2) of the FMCA.

<sup>4</sup> Section 172(1) of the FMCA.

<sup>5</sup> Regulation 5 of the FMC Regulations.

<sup>6</sup> Section 6 of the FMCA.

- a any tax payable by or on account of that Person or in respect of that Person's Units including any Portfolio Investment Entity tax;
- b any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Scheme Participant; and
- c any tax refund, rebate or other payment received or receivable by the Manager or the Supervisor in respect of any tax paid or payable by or on account of that person or in respect of that person's Units,

and in relation to the Scheme means any tax payable by or on account of the Scheme or any tax refund, rebate or other payment received or receivable in respect of any tax paid or payable or loss incurred by or in respect of the Scheme;

**'Tax Bank Account'** means in relation to the Scheme the bank account established by the Supervisor or its Custodian and managed by the Manager in accordance with clauses 18.8 and 32;

**'Tax Bank Account Balance'** means, at any time, the balance of the Tax Bank Account at that time after making allowance for any costs incurred in operating the Tax Bank Account;

**'Transaction'** means the:

- a Issue of Units; or
  - b Withdrawal of Units; or
  - c Switching of Units between Funds in accordance with clause 11,
- or any one or more of those events, as is applicable in the context;

**'Trust Fund'** has the meaning given to that term in clause 3.8;

~~**'Unit'** means an undivided part or share in the Trust Fund as described in clause 4 and includes parts of a Unit;~~

**'Unitholding'** means at any time in relation to a Scheme Participant and class of Units, the aggregate number of Units and Fractional Units in that class held by the Scheme Participant at that time as recorded in the Register;

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

**'Valuation Day'** means a Business Day whether periodical or otherwise specified by the Manager as a day on which the Market Value of the Investments of a Fund is determined;<sup>7</sup>

**'Winding Up Entitlements'** means, in respect of a Scheme Participant and a Fund being wound up (either individually, pursuant to clause 30.2, or as part of the winding up of the Scheme, pursuant to clause 30.1), assets (including, where relevant, cash) equal in value to a proportion of the Fund's assets after allowing for the deduction of all amounts under clauses 30.9, 30.11, and 32.2 which is equal to the proportion of Units held by the Scheme Participant in that Fund;

<sup>7</sup> Section 135(1)(d) of the FMCA.

**'Withdrawal Amount'** means a monetary amount or number of Units specified by a Scheme Participant in accordance with clause 10.1 or 11.2a;

**'Withdrawal Notice'** means a notice given in accordance with clause 10.1;

**'Withdrawal Fund'** has the meaning specified in clause 11.1;

**'Withdrawal Suspension Notice'** means a notice given in accordance with clause 10.9; and

**'Withdrawal Value'** means the price payable for the redemption or purchase of Units determined in accordance with clause 10.3.

## 1.2 Implied terms

Terms implied in this Deed under the FMCA apply for so long as they are implied in this Deed under the FMCA despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term (while it is so implied) is void to the extent that it is inconsistent with such implied terms.<sup>8</sup>

## 1.3 Frameworks or methodologies

Where any frameworks or methodologies are specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA, apply to the Scheme and relate to any matter which is required by the FMCA to be provided for adequately in this Deed, the provisions of this Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme.

## 1.4 Requirements reflected in Trust Deed

Where:

- a a provision of this Deed replicates a specific compulsory requirement of the FMCA (whether or not in its entirety); but
- b such requirement of the FMCA is subsequently repealed, replaced, or amended, or an exemption or other regulatory relief from that requirement subsequently applies to the Scheme,

the provisions of this Trust Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make the Trust Deed consistent with such amended requirement other than to the extent that doing so would be void under the FMCA (including section 139 of the FMCA).

## 1.5 General construction

- a Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- b References to statutes or regulations include all amendments, re-enactments and replacements of those statutes or regulations and, when the context requires, any regulations made under them.

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<sup>8</sup> Regulation 84 and clauses 1 to 3 of Schedule 13 of the FMC Regulations.

- c Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- d Where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
- e Footnotes used in this Deed do not form part of this Deed, are a guide only and where they refer to legislative provisions, they are not intended to incorporate those provisions in this Deed or affect the interpretation of this Deed. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Deed to comply with a particular Act or legislation generally.
- f If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may reasonably select.
- g Words or phrases appearing in this Deed with capitalised initial letters are defined terms and have the meanings given to them in this Deed.
- h 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.
- i Notwithstanding any provision of this Deed, where a matter is to be or may be interpreted pursuant to any provision of this Deed by reference to generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may, following consultation with the Supervisor, elect not to follow such generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards.
- j The rule of construction known as the contra proferentem rule, does not apply to this Deed.
- k A reference to a party to this Deed or any other document includes that party's personal representatives/successors and permitted assigns.
- l 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.
- m A reference to time is to New Zealand time.
- n Where the term 'Trust Deed' is used in this Deed, it shall be interpreted as consistent with references to 'this Deed' and shall mean this Deed.

## **2 Purpose**

### **2.1 Purpose**

This Deed governs a trust known as the AMP Investment Trust whereby persons may acquire interests in the Trust Fund through holding Units in one or more separate Funds made available from time to time by the Manager.

### **3 The Scheme and Funds**

#### **3.1 Continuation of existing trusts**

The trusts established in accordance with the Existing Deeds continue after the Effective Date as a single trust and a single Scheme on the terms contained in this Deed.

#### **3.2 Continued appointment of Supervisor**

The Supervisor continues as trustee and supervisor of the Scheme and each Fund for the Scheme Participants for the purposes of the FMCA.<sup>9</sup> In that capacity, the Supervisor will hold the Trust Fund in trust for the Scheme Participants, upon and subject to the terms and conditions contained or implied in or established pursuant to this Deed and the FMCA.<sup>10</sup> The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.<sup>11</sup>

#### **3.3 Continued appointment of Manager**

The Manager continues as manager of the Scheme and each Fund for the purposes of the FMCA upon and subject to the terms and conditions contained or implied in or established pursuant to this Deed, the FMCA, and any other applicable legislation, and will observe and perform the manager obligations under this Deed, the FMCA, and any other applicable legislation.<sup>12</sup>

#### **3.4 Name of Scheme**

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

#### **3.5 Funds**

- a The Trust Fund shall be divided into such one or more investment portfolios on such terms and conditions as the Manager may determine **provided that**:
  - i the terms and conditions as set by the Manager must include a written SIPO for the Scheme which covers each Fund and complies with the requirements of the FMCA,<sup>13</sup> which SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA<sup>14</sup> and clause 3.5b. The Manager shall provide a copy of the proposed SIPO (or any alteration to that SIPO) to the Supervisor in accordance with the timeframes specified in the Management Agreement, and must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the FMCA;<sup>15</sup>
  - ii the Manager and Supervisor have agreed that special terms and / or a variation of the Deed applies to certain Existing CUT Funds, as set out in Schedule 1, which such special terms and variations form part of the terms and conditions of those Existing CUT Funds;

<sup>9</sup> Clause 28(4)(b) of Schedule 4 of the FMCA.

<sup>10</sup> Sections 152(1)(c), and 156 to 159 of the FMCA and Regulations 85 to 88 of the FMC Regulations.

<sup>11</sup> Section 152 of the FMCA.

<sup>12</sup> Clause 28(4)(b) of Schedule 4 of the FMCA.

<sup>13</sup> Section 164 of the FMCA.

<sup>14</sup> Section 164 of the FMCA.

<sup>15</sup> Sections 165 and 166 of the FMCA.

- iii the Manager and Supervisor may in the future agree in respect of a Fund or Funds that special terms and / or a variation of the Deed will apply to that Fund or those Funds, such terms or variation to form part of the terms and conditions of such Funds, in which case the Manager and Supervisor will execute a deed amendment under clause 29 to update Schedule 1 accordingly;
  - iv any special terms or variations of the Deed under paragraphs ii or iii may only be amended by way of the Manager and Supervisor executing a deed amendment under clause 29 to update Schedule 1; and
  - v no Fund shall be established unless the Supervisor has agreed to the establishment of that Fund.
- b The SIPO may only be changed:
- i if the Supervisor is satisfied that the terms and conditions for the Fund to be contained in the SIPO are sufficient to enable the Supervisor to determine whether or not any Investment is permitted by the SIPO; and
  - ii if any specific restrictions applying to a particular Fund set out in the SIPO ('Specified Restrictions') are complied with; and
  - iii to the extent that the change to the SIPO constitutes an amendment to the Specified Restrictions, if the change would be permitted if the change were made in accordance with the Specified Restrictions.
- c The Manager may at any time give notice to the Supervisor of its desire to constitute an additional Fund to be governed by this Deed.
- d The Investments and other assets of the Scheme attributable to each Fund shall be held on the trusts of this Deed (in particular, clause 3.9).

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### 3.6 No variation of other Funds

No establishment of a Fund or amendment to Schedule 1 referred to at clause 3.5 shall contain any provision which affects the rights or interests of Scheme Participants of any Fund in existence at the time the document is entered into or schedule amended unless:

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

### 3.7 Existing Funds

The Manager and the Supervisor acknowledge the existence, as at the date of this Deed, of all Existing Funds, each of such Existing Funds having been established in accordance with the relevant Existing Deed.

### 3.8 Trust Fund

As at the Effective Date, the Trust Fund of the Scheme shall consist of the aggregate of all Investments and other assets, Liabilities and obligations for the time being held or owing by the Supervisor upon the trusts of this Deed, including:

- a the proceeds of sale or realisation of any Investments pending distribution or reinvestment; and
- b all additions or accretions thereto; and
- c all income therefrom held pending distribution or reinvestment,

and for the avoidance of doubt all references to the 'Trust Fund' contained in this Deed excludes the Tax Bank Account Balance and Subscription Bank Account Balance.

### 3.9 Separate assets and liabilities

Notwithstanding the division of the Trust Fund into Funds pursuant to clause 3.5, it is intended that the Scheme shall be treated as a single unit trust under the Tax Act and single managed investment scheme under the FMCA, and the statutory and other obligations applicable to it construed accordingly. Accordingly, the Scheme shall comprise a single trust and single trust fund with the value of the various Scheme Participants' interests in the Trust Fund determined by reference to the value of the Units held by the Scheme Participants in the Fund or Funds which they have selected. Notwithstanding the fact that the Funds do not constitute separate and independent trust funds, the assets of each Fund shall be the exclusive property of that Fund, and all Liabilities incurred in relation to a Fund shall be the exclusive Liabilities of that Fund, and the Supervisor and the Manager shall in all respects act so as to give effect to this outcome. Without prejudice to the generality of the foregoing:

- a the assets of the Scheme attributable to a Fund shall not be available to meet the Liabilities of any other Fund;
- b the Supervisor may not mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of one Fund as security for any moneys Borrowed for any other Fund, or take any of the actions contemplated by clause 16.3b in respect of one Fund to give effect to any Borrowing for any other Fund;
- c all Investments of the Scheme attributable to a Fund shall be held by the Supervisor and/or its Custodian as the exclusive property of that Fund and for the exclusive benefit of the Scheme Participants who have an interest in that Fund pursuant to this Deed;
- d the Manager shall maintain or cause separate records and accounts to be maintained in respect of each Fund, and the Manager will ensure that such records and accounts are sufficient to support the outcome required pursuant to paragraph c;
- e all Units issued in relation to a Fund constitute a separate class of Units within the Scheme;
- f the creation of any additional Fund shall not give rise to any resettlement of the Scheme; and
- g without prejudice to the generality of this clause 3.9, the provisions of this Deed relating to indemnities in favour of the Supervisor and the Manager, the fees payable to the

Supervisor and the Manager, and the reimbursement of the Supervisor and the Manager shall be construed in a manner consistent with this clause where separate Funds have been established within the Scheme, meaning that:

- i any amounts payable to the Supervisor or the Manager shall be payable from the Fund or Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Funds) ('**Relevant Fund or Funds**');
- ii where the amount payable to the Supervisor or the Manager relates to more than one Fund, that amount shall be apportioned between those Funds on such fair and equitable basis as the Manager may in its discretion determine, subject to any direction from time to time given by the Supervisor; and
- iii if the amount payable from the Relevant Fund or Funds exceeds the assets of that Fund or Funds, neither the Supervisor nor the Manager shall have any entitlement or claim against the assets of any other Fund in respect of that amount.

### 3.10 Consolidation of Funds

- a Subject to clause 15.5, the Manager may consolidate Funds within a Scheme at any time by:
  - i giving prior written notice of such proposed consolidation to the Supervisor and all Scheme Participants;
  - ii if requested by the Supervisor in writing within 10 Business Days of being notified of the Manager's intention to consolidate the relevant Funds, convening a meeting of Scheme Participants, and passing a special resolution by the required majority of such Scheme Participants in attendance at the meeting, each in accordance with the requirements under clause 27.1; and
  - iii obtaining the prior approval of the Supervisor.

Where Funds are consolidated, the Assets and Liabilities of each Fund shall be combined and Scheme Participants shall have Units in the combined Fund equal to the value of their Unitholding in the Funds being combined at the record date for such consolidation selected by the Manager.

## 4 Units

### 4.1 Beneficial Interest in Scheme

The beneficial interest in the Scheme shall be divided into Units.

### 4.2 Equal but not specific interests

Each Unit shall confer an equal interest in that part of the Trust Fund attributable to the relevant Fund, but shall not confer any interest in any particular part of that Fund, and no Scheme Participant shall be entitled to require the transfer to the Scheme Participant of any of the Investments of the Fund or otherwise give directions in relation to any of the Investments of the Fund.

### 4.3 No interest in other Funds

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

#### **4.4 No interference in management etc**

Subject to the rights of the Scheme Participants created by this Deed, the FMCA or any other applicable legislation, no Scheme Participant shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of the Trust Fund or any part or parts of the Trust Fund, or to exercise any right, power or privilege in respect of any Investment.

#### **4.5 Part Units**

Parts of a Unit may be created and can exist under this Deed and be denoted by figures up to six decimal places or such other denotation as the Manager and the Supervisor may from time to time agree.

#### **4.6 Values binding**

Unit Values, Issue Prices and Withdrawal Values determined pursuant to this Deed are, in the absence of manifest error (and subject to clause 15.4), final and binding on all Scheme Participants and any other Persons claiming a beneficial interest in the Trust Fund.

### **5 Issue of Units**

#### **5.1 Manager may invite offers<sup>16</sup>**

The Manager may at any time and from time to time invite offers, subscriptions or applications for Units in any Fund upon and subject to the terms and conditions contained in or pursuant to this Deed and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine.

#### **5.2 Compliance with legislation**

The Manager shall in inviting offers in terms of clause 5.1 comply with all relevant laws, including the FMCA, and provide any required documents to the Supervisor in accordance with the Management Agreement.<sup>17</sup> The Manager will provide to the Supervisor for review any relevant PDS in accordance with the Management Agreement.

#### **5.3 Issue may be underwritten**

Subject to clause 15.8, any proposed issue of Units may in the Manager's discretion be underwritten by an underwriter and such underwriter and its nominees or any of them may take up the Units not otherwise subscribed for, and charge underwriting commission and all costs and disbursements of the issue as may be agreed with the Manager.

#### **5.4 Manager may issue Units without application**

Subject to relevant law relating to the issue of financial products,<sup>18</sup> the Manager may from time to time issue additional Units to any Scheme Participant without any specific application for those Units, whether pursuant to clause 32.3 or otherwise as the Manager determines.

#### **5.5 Entry fee**

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<sup>16</sup> Section 135(1)(b) of the FMCA.

<sup>17</sup> Including Part 3 of the FMCA.

<sup>18</sup> Part 3 of the FMCA.

In respect of an Existing PUT Fund only, the Manager may deduct an entry fee for purchase of Units of up to 5% of the Cash or other consideration forwarded to meet the Issue Price.

#### **5.6 Other third party fees**

For the avoidance of doubt, where an applicant for Units has agreed with their financial adviser or any other third party to the deduction of any amount from the consideration forwarded to meet the Issue Price of Units, the Manager shall deduct and pay to such adviser or third party the agreed amount.

## **6 Consolidation and split of Units**

### **6.1 Manager may consolidate or subdivide**

The Manager may at any time, by notice in writing to the Scheme Participants of a Fund and the Supervisor, cause the Units of that Fund in existence at the date of that notice to be consolidated or subdivided. Each such notice shall:

- a specify the date on which such consolidation or subdivision is to take place ('**Operative Date**');
- b specify the ratio ('**Ratio**') which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.

### **6.2 Effect of Consolidation or subdivision**

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

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## **7 Cessation of issues of Units**

### **7.1 Manager may determine**

The Manager may at any time or times by notice in writing given to the Supervisor determine that no further Units shall be issued pursuant to this Deed or in respect of a specified Fund or Funds after a date specified in the notice given to the Supervisor either for any specified period or until the relevant Fund or Funds or the Scheme is terminated. In such event:

- a each Standing Application will be deemed to be cancelled; and
- b the Manager agrees with the Supervisor that the Manager will not after the date specified in the notice issue any further Units under this Deed or in respect of such Fund or Funds (as may be applicable) for the specified period or until the relevant Fund or Funds or the Scheme is terminated, whichever situation applies.

## **8 Application for Units<sup>19</sup>**

### **8.1 Application procedure**

Every person wishing to apply for Units shall:

- a complete and lodge with the Manager an application for Units in a specified Fund or Funds in writing or by Electronic Communication in such form or to such specification as is from time to time prescribed by the Manager. An initial application for Units shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the Manager may from time to time prescribe; and
- b forward, credit, or transfer to the Supervisor or Subscription Bank Account (as applicable), or to the Manager for payment or transfer to the Supervisor or Subscription Bank Account (as applicable), the consideration (which may be Cash or non-Cash consideration in a form acceptable to the Manager) in respect of the Units applied for. The Manager may, in its discretion, accept an application for Units that is not accompanied by the required consideration, provided that consideration is received by the Supervisor, or by the Manager for payment to the Supervisor, before the Manager gives effect to the application.

### **8.2 Applications received**

An application pursuant to clause 8.1 received by the Manager prior to 5.00 pm on the Business Day preceding a Valuation Day shall be effective for that Valuation Day. For the purposes of this clause, an application received by the Manager after 5.00 pm on a Business Day or on a day which is not a Business Day shall be deemed to have been received by the Manager at the start of the Business Day immediately following physical receipt of the application by the Manager.

### **8.3 Standing Application**

An application may be designated as a Standing Application for an amount per month (or such other period as the Manager shall determine) and may include an authorisation to the Manager to initiate direct debits to a bank account nominated by the applicant for relevant consideration to be credited to the Supervisor.

### **8.4 Manager's option – issue or purchase of Units**

Applications for Units, which are paid or to be paid in Cash, may at the option of the Manager be treated as:

- a a subscription for Units to be issued from the relevant Fund or Funds at the Issue Price on the relevant Valuation Day determined in accordance with clause 8.2; or
- b a request for the purchase from a Scheme Participant nominated by the Manager of Units in the relevant Fund or Funds at the Issue Price on the relevant Valuation Day determined in accordance with clause 8.2.

### **8.5 Manager's discretion on non-Cash consideration**

Any payment for Units satisfied by non-Cash consideration shall only be accepted at the sole discretion of the Manager. The Manager may refuse to accept any non-Cash consideration as

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<sup>19</sup> Section 135(1)(a), (b), and (c) of the FMCA.

satisfaction of the payment for Units in whole or in part and the Manager shall not be required to give any reason or ground for such refusal. Any application for Units made by non-Cash consideration shall (if accepted by the Manager) at the option of the Manager be treated as:

- a a subscription for Units to be issued from the relevant Fund or Funds; or
- b a request for the purchase from a Scheme Participant nominated by the Manager of Units in the relevant Fund or Funds, who has confirmed to the Manager that the purchase price for those Units may be met by a transfer of the relevant non-Cash consideration.

The Manager shall determine the value of any non-Cash consideration accepted for payment of Units in accordance with the Market Value on the relevant Valuation Day as if that non-Cash consideration was an Investment of the relevant Fund or Funds. The relevant Valuation Day will be determined by the Manager. The Manager shall notify in writing the person wishing to apply for Units of the relevant Valuation Day and the value of the non-Cash consideration, provided that the Manager may do so in any number of separate notifications.

#### **8.6 Acceptance of applications**

The Manager may in its discretion refuse to accept in whole or in part any application and shall not be required to give any reason or ground for such refusal.

#### **8.7 Uncleared funds**

The Manager shall treat any Units issued against application money provided other than in cleared funds that do not subsequently clear as a withdrawal from the relevant Fund or Funds.

#### **8.8 Units issued in error**

Units that the Manager determines have been issued in error will be treated at the time of any such determination as being subject to a Withdrawal Notice, and the Manager shall effect a withdrawal from the relevant Fund or Funds accordingly.

#### **8.9 Refunds**

The Manager shall promptly notify the Supervisor of the acceptance or rejection of each application in such manner as is from time to time agreed between the Supervisor and the Manager, and shall immediately refund or arrange for the Supervisor to refund the consideration received in respect of a rejected application for Units as soon as practicable and in the same form in which it was received. Subject to compliance with relevant law and maintenance of equity as between Scheme Participants, the Manager shall have all powers necessary to restore the Trust Fund to the position it would have been in if the rejected application moneys had never been received.

#### **8.10 Registration and Issue of Units**

The Manager shall:

- a issue the relevant Units and transfer the consideration paid or provided by the Scheme Participant in return for those Units to the Supervisor within five (5) Business Days of the Valuation Day for which the relevant application is effective in accordance with clause 8.2;

- b on acceptance of an application and issue of Units, enter the name of the Scheme Participant on the appropriate Register (or, where the Scheme Participant is already on such Register, cause such Register to be altered accordingly); and
- c provide to the Scheme Participant any confirmations required under clause 14.1.<sup>20</sup>

#### 8.11 **Minimum Value of Units**

The Manager may from time to time determine a Minimum Value of Units in respect of applications for Units in any Fund.

#### 8.12 **Joint Holders of Units**

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

- a the joint holders of any Unit shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- b on the death of a joint holder, the survivor or survivors shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- c any one of such joint holders may give Withdrawal Notices, or Switching Notices, execute a transfer of Units or give effectual receipts for any Withdrawal Amount or distribution payable to such joint holders;
- d a notice from the Supervisor or Manager given to any one of the joint holders shall be deemed notice to all the joint holders; and
- e at any meeting of Scheme Participants only the Person whose name stands first in the Register or their duly authorised nominee shall be entitled to vote either personally or by duly authorised representative or by attorney or proxy in respect of such Unit, to the exclusion of the votes of the other joint holder.

### 9 **Issue Price and Issue of Units<sup>21</sup>**

#### 9.1 **Issue price**

Each Unit of a Fund shall be issued in accordance with clause 8.10 at the Unit Value on the Valuation Day for which the relevant application is effective in accordance with clause 8.2.

#### 9.2 **Number of Units<sup>22</sup>**

The number of Units sold or issued pursuant to an application shall be that number of Units (rounded down if necessary to six decimal places) that have an aggregate Unit Value equal to the value of the consideration given in application for Units.

#### 9.3 **Application moneys and other consideration subject to trusts**

<sup>20</sup> Regulations 65 to 68 of the FMC Regulations.

<sup>21</sup> Section 135(1)(a) and (b) of the FMCA.

<sup>22</sup> Section 135(1)(c) of the FMCA.

All consideration received by the Manager in payment or satisfaction of the Issue Price for Units pursuant to clause 9.1 shall become subject to the trusts created by this Deed immediately upon:

- a in the case of Cash, payment to the bank account of the relevant Fund or the Scheme; or
- b in the case of non-Cash consideration, transfer to the Supervisor on behalf of the relevant Fund,

but, for the avoidance of any doubt, that consideration shall only become an Investment of the Fund upon the issue of the relevant Units.

## **10 Withdrawals<sup>23</sup>**

### **10.1 Withdrawal Notice**

If any Scheme Participant wishes to effect a withdrawal from a Fund, the Scheme Participant shall give notice in writing or by Electronic Communication ('**Withdrawal Notice**') to the Manager to that effect. Such Withdrawal Notice shall:

- a specify the Fund from which the Units are to be withdrawn, and either a monetary amount or the number of Units in respect of which the Scheme Participant desires to effect withdrawal;
- b be in such form or comply with such specification (if any) as may be prescribed by the Manager from time to time; and
- c unless the Manager agrees otherwise in its sole discretion, not be able to be revoked by the Scheme Participant by whom it has been given.

Where any Unit is to be redeemed under clause 32.2 in relation to any Taxation Amount, the relevant Scheme Participant shall be deemed to have given a Withdrawal Notice to the Manager in relation to that Unit.

### **10.2 Minimum Value of Units**

No Withdrawal Notice shall be given in respect of less than the Minimum Value of Units in the relevant Fund, and except where all Units held by a Scheme Participant in a particular Fund are to be redeemed, no Withdrawal Notice shall be given if the effect of the withdrawal would be that the Scheme Participant who gave the same would hold less than the Minimum Value of Units in the relevant Fund, having regard to the application of clause 32.2. This restriction shall not apply in respect of a redemption of Units under clause 32.2. The Manager may at any time at its discretion waive the requirements of this clause 10.2, either generally or in a particular case or cases.

### **10.3 Effective Withdrawal Notice**

A Withdrawal Notice received by the Manager prior to 5.00 pm on a Business Day shall be effective for either:

- a the Business Day on which it is received, provided it is a Valuation Day; or

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<sup>23</sup> Section 135(1)(a) of the FMCA.

- b if the Manager determines that it is not reasonably practicable for Withdrawal Notices to be effective for that Valuation Day, the Valuation Day following the Business Day on which it is received.

The Withdrawal Value of a Unit shall be the Unit Value on that Valuation Day. For the purposes of this clause, a Withdrawal Notice received by the Manager after 5.00 pm on any Business Day or on a day which is not a Business Day shall be deemed to have been received by the Manager at the start of the next Business Day immediately following receipt of the Withdrawal Notice.

#### 10.4 Redemption or purchase

Subject to clauses 10.6, 10.9, 13.4 and 32.2, the Manager shall upon a Withdrawal Notice becoming effective procure that on or within five (5) Business Days after the Valuation Day for which the Withdrawal Notice is effective under clause 10.3, the number of Units, or Units of aggregate Unit Values, equal to the Withdrawal Amount as specified in that Withdrawal Notice are:

- a redeemed and the holder of those Units is paid the proceeds; or
- b purchased by the Manager and the holder of those Units is paid the proceeds; or
- c purchased from the holder of those Units by some party nominated by the Manager at the Unit Value for such Units and the holder of those Units is paid the proceeds,

as chosen by the Manager in its sole discretion.

#### 10.5 Manager's obligation

Without limiting the generality of clauses 10.4b and 17.1 it is declared that the obligation of the Manager pursuant to clause 10.4 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 17.1. However, any Units repurchased by the Manager shall be acquired for its own benefit, and upon repurchase the Manager shall (subject to the FMCA)<sup>24</sup> have all the rights of an ordinary Scheme Participant under this Deed in respect of those Units, including the right to sell or have redeemed any or all of those Units.

#### 10.6 In specie transfer

Subject to clauses 10.9, 13.4, and 32.2:

- a A Scheme Participant may request that its Withdrawal Notice is met by transferring to the Scheme Participant Investments held by the Fund of an amount equal to the amount the Scheme Participant would otherwise have been paid under clause 10.4. The Manager may refuse such a request in whole or in part and the Manager shall not be required to give any reason or ground for such refusal. Where the Manager agrees to such a request, the Manager shall determine, in its sole discretion, which Investments held by the Fund shall be transferred to the Scheme Participant. In exercising its discretion to determine which Investments shall be transferred to the Scheme Participant, the Manager shall treat all Scheme Participants in an equitable manner by considering the interests of the Scheme Participant requesting the withdrawal and all other remaining Scheme Participants of the Fund. The Manager shall determine the value of any such Investments in accordance with the Market Value of the Investments on the relevant

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<sup>24</sup> Sections 163 and 172 to 175 of the FMCA.

Valuation Day. The relevant Valuation Day will be determined by the Manager. The Manager shall notify in writing the Scheme Participant of the relevant Valuation Day and a statement of the Investments to be transferred and the value of those Investments, provided that the Manager may do so in any number of separate notifications. The Manager will arrange such a transfer, and shall direct the Supervisor to facilitate the transfer, as soon as reasonably practicable.

- b For the avoidance of doubt, and without limiting the generality of clause 17.1 it is declared that the obligation of the Manager pursuant to this clause 10.6 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 17.1.
- c For proceeds of redemption paid by making an in specie transfer of Investments, payment by transferring such Investments in accordance with this clause 10.6 into the name of or to the order of the Scheme Participant, or otherwise in accordance with the Scheme Participant's direction, shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligations.

#### 10.7 **Redemption of Units**

In connection with the redemption of Units under clause 10.4a the Manager shall have the right to:

- a direct the Supervisor or Custodian pursuant to clause 18.3 to realise Investments of the relevant Fund; and/or
- b direct the Supervisor or Custodian (subject to clause 16.4) to Borrow on behalf of the relevant Fund pursuant to clause 16.1 a sufficient amount;

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clause 18.4, the Supervisor or Custodian (as applicable) shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the relevant Fund.

#### 10.8 **Cancellation of Units redeemed**

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

#### 10.9 **Withdrawal Suspension Notice**

If by reason of:

- a a decision to terminate any one or more of the Funds; or
- b the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- c financial, political or economic conditions applying in respect of any financial market; or
- d the nature of any Investment, including without limitation the Manager's ability to realise any Investment; or

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

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interest of Scheme Participants generally, for the Manager to give effect to Withdrawal Notices in respect of the relevant Fund or Funds, then the Manager may give notice ('**Withdrawal Suspension Notice**') to that effect to any holder of Units of the relevant Fund who gives or has given a Withdrawal Notice or a Switching Notice, or to all holders of Units in the relevant Fund. A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Withdrawal Notices and Switching Notices given in respect of that Fund until such time as the Manager gives to the Scheme Participants who gave those Withdrawal Notices or Switching Notices notice that the Withdrawal Suspension Notice is cancelled.

#### 10.10 **Cancellation of Withdrawal Suspension Notice**

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

#### 10.11 **Calculation of Units to be redeemed**

If a Withdrawal Suspension Notice is given and is later cancelled, then where a Withdrawal Notice affected by the Withdrawal Suspension Notice specifies a Withdrawal Amount as a monetary amount the number of Units to be redeemed in respect of the Withdrawal Notice shall be calculated as if the reference in clause 10.3 to the Valuation Day for which the Withdrawal Notice is effective were a reference to the next Valuation Day following the cancellation of that Withdrawal Suspension Notice.

#### 10.12 **Order of Redemption**

Unless the Manager determines to the contrary, either in respect of the Scheme or any particular Fund or Funds or in respect of any particular Withdrawal Notice, if:

- a a Scheme Participant gives a Withdrawal Notice which requires redemption of less than all of the Units held by the Scheme Participant in a particular Fund; and
- b the Scheme Participant does not specify particular Units to be redeemed,

the Units which are first redeemed by that Scheme Participant shall be deemed to be those of the Units held by that Scheme Participant which were earliest allotted, or transferred to the Scheme Participant, subject to clause 33.5.

#### 10.13 **Exit fee**

In respect of an Existing PUT Fund only, the Manager may deduct an exit fee of up to 5% of any Withdrawal Amount.

## 11 Switching

### 11.1 Switching Notice

Any Scheme Participant may at any time give a notice in writing or by Electronic Communication ('**Switching Notice**') to the Manager to the effect that the Scheme Participant wishes to withdraw Units from one Fund ('**Withdrawal Fund**') and invest the proceeds of such withdrawal in another Fund or Funds ('**Switch Fund**' or '**Switch Funds**').

### 11.2 Contents of Switching Notice

A Switching Notice shall:

- a specify either a monetary amount or the number of Units in the Withdrawal Fund in respect of which the Scheme Participant desires to effect withdrawal;
- b specify the Switch Fund or Switch Funds, and, if more than one Switch Fund is specified, specify the proportions in which it is desired to invest in those Switch Funds;
- c unless the Manager determines otherwise in its sole discretion, not be able to be revoked by the Scheme Participant by whom it has been given;
- d not be for less than the Minimum Value of Units or for a number of Units that would reduce the holding of the Scheme Participant in the Withdrawal Fund to less than the Minimum Value of Units having regard (amongst other things) to the application of clause 32.2;
- e provide for investment in a Switch Fund of not less than the Minimum Value of Units applicable to that Fund from time to time; and
- f be in such form or comply with such specification as may be prescribed by the Manager from time to time,

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

### 11.3 Switching

The Manager shall, subject to clauses 10.9, 13.4, and 32.2, after receipt of the Switching Notice, procure that:

- a the number of Units, or Units in the Withdrawal Fund of aggregate Unit Values, equal to the Withdrawal Amount, as specified in that Switching Notice, are dealt with in accordance with clause 10; and
- b the proceeds are applied in the acquisition of Units in the Switch Fund or Switch Funds at a price determined in accordance with clause 9:
  - i if the relevant Scheme Participant requests and the Manager agrees in its sole discretion, as if the Switching Notice were an application in respect of those Units that is effective for the same Valuation Day for which the corresponding withdrawal is effective in accordance with paragraph a; or
  - ii in any other case, as if the Switching Notice were an application in respect of those Units,

and if more than one Switch Fund is involved, in the proportions specified in the Switching Notice.

## **12 Transfer and transmission of Units<sup>25</sup>**

### **12.1 Transfer generally**

All or any of the Units held by any Scheme Participant may be transferred by instrument in writing in accordance with clause 12.2, provided that unless the Manager determines otherwise in its sole discretion:

- a Subject to clauses 12.1b and 32.2, any transfer of Units in a Fund pursuant to this clause 12 will be processed as a withdrawal of the number of Units to be transferred in accordance with clause 10 and a subsequent application for an equal number of Units in the relevant Fund in accordance with clause 8 **provided that:**
  - i the Manager's discretion to reject that subsequent application under clause 8.6 is subject to the provisions of the FMCA;<sup>26</sup> and
  - ii if the Manager rejects the application under clause 8.6 the transfer request will be deemed to be cancelled (such that neither the Manager nor the Supervisor is under any obligation to give effect to the relevant withdrawal or subsequent application).
- b Notwithstanding any other provision of this Deed, in processing any such transfer the Issue Price for each Unit issued pursuant to that transfer will be the Withdrawal Value per Unit of those Units redeemed to facilitate the transfer.

### **12.2 Instrument of Transfer**

A transfer of Units shall be in such form as the Manager may approve from time to time and shall be signed by the transferor.

### **12.3 Minimum Value of Units**

No transfer shall be given in respect of less than the Minimum Value of Units and no transfer shall be given if the effect of giving the same would be that the transferor or the transferee Scheme Participant would hold less than the Minimum Value of Units in the relevant Fund, having regard to the application of clause 32.2.

### **12.4 Registration of transfers**

The instrument of transfer shall be left at the Office for registration, if required by the Manager. On being satisfied that the provisions of this clause 12 and all statutory provisions have been complied with and subject to clause 13.4, the Manager will register the transfer in the Register and provide any confirmations required by clause 14.

### **12.5 Manager to retain transfer**

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

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<sup>25</sup> Section 135(1)(a) of the FMCA.

<sup>26</sup> Section 379 of the FMCA.

## 12.6 **Suspension of registration**

Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine **provided that** the Manager may not suspend registration of transfers for a period exceeding thirty (30) Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably or arbitrarily withheld):

## 12.7 **Transmission of Units**

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

## 12.8 **Transfer by operation of law**

The property manager of a Scheme Participant who is subject to a Court order under the Protection of Personal and Property Rights Act 1998 and any person becoming entitled to any Units in consequence of the death, bankruptcy or liquidation of any Scheme Participant may upon producing such evidence of capacity or of title as the Manager shall think sufficient be registered as the holder of such Units and subject to the provisions as to transfer contained in this clause 12 may transfer such Units. This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

# 13 **Registers**

## 13.1 **Register to be maintained**

The Manager shall keep and maintain or cause to be kept and maintained an up-to-date separate register of Scheme Participants in each Fund, which together shall form the Register of Scheme Participants in the Scheme. Such registers shall:

- a be kept in the manner;
- b contain the content;
- c be audited; and
- d be available for inspection,

as required by the FMCA.<sup>27</sup>

## 13.2 **Changes of name or address**

Any change of name or address (including electronic address) of any Scheme Participant shall be notified by such Scheme Participant in writing to the Manager who shall alter the relevant Register accordingly.

<sup>27</sup> Sections 215 to 223 of the FMCA and Regulations 109 and 110 of the FMC Regulations.

### **13.3 Reliance upon Register**

Each of the Manager and the Supervisor shall be entitled:

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

### **13.4 Evidence of entitlement**

Notwithstanding clause 13.3, the Manager shall be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question. If confirmations have been provided in respect of the Units in question, such-evidence may (but need not) be the production by that person of a confirmation relating to those Units.

### **13.5 No notice of trust etc.**

Except as required by the FMCA and any other applicable legislation neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express, implied, or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Scheme Participant, and accordingly no notice of any trust (expressed, implied, or constructive), charge, pledge or equity shall be entered upon any Register.

## **14 Confirmations**

### **14.1 Provision of required confirmations**

Where required by law, the Manager shall issue confirmations recording the issue, transfer, or redemption of Units in the Scheme, in such form and within such time frames as the Manager shall decide, subject to the FMCA, the FMC Regulations and any applicable legislation.<sup>28</sup>

### **14.2 Manager may provide other confirmations**

The Manager may issue confirmations recording the issue, transfer, or redemption 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.

## **15 Manager's powers, duties, and responsibilities**

### **15.1 Manager's responsibilities**

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<sup>28</sup> Section 100 of the FMCA and Regulations 65 to 68 of the FMC Regulations.

- a The Manager is designated as the manager of the Scheme for the purposes of the FMCA and is responsible for performing the functions for which responsibility is attributed to it as manager under the FMCA.<sup>29</sup>
- b The Trust Fund and each Fund shall be managed by the Manager and the Manager hereby agrees to carry out, comply with, and perform the duties and obligations on its part contained in this Deed the FMCA<sup>30</sup>, and any other applicable legislation, and to observe and perform the manager obligations under this Deed and the FMCA.
- c Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee or supervisor for trusts whether of a nature similar to or different from the trusts of this Deed.

### 15.2 Prime services of the Manager

Without limiting the generality of clause 15.1, the prime services of the Manager in respect of the Scheme shall be the issuing and redeeming or arranging for the purchase of Units, investment of the Trust Fund, and processing related cash flows, as more particularly described in Schedule 2.

### 15.3 Manager's powers

Without prejudice to prime services of the Manager being as described at clause 15.2, the Manager shall in the performance of its functions under clause 15.1 and the FMCA,<sup>31</sup> manage and administer each Fund for the benefit of the holders of Units relating to that Fund with full and complete power of management. In particular, the Manager shall take all steps which in its discretion are necessary or desirable in relation to each Fund, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the assets and liabilities of the Scheme. The Manager shall, without limiting the Manager's discretion and full powers of management and administration but subject to clauses 18.1 and 18.4, have full and absolute power to do the following:

- a acquire and sell Investments upon such terms as it sees fit;
- b attend and vote at meetings relating to any Investment;
- c lend money;
- d instruct solicitors to act in relation to an Investment or proposed acquisition or disposal of an Investment;
- e make and carry out any takeover proposal, offer or invitation;
- f promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- g create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any assets for any purpose whatsoever, subject to clause 16.4 where Borrowings of the Supervisor are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;

<sup>29</sup> Sections 133 and 142 of the FMCA.

<sup>30</sup> Sections 143 to 151 of the FMCA.

<sup>31</sup> Section 142 of the FMCA.

- h initiate or agree to any one or more of the following:
  - i the release, modification or variation of any rights, privileges or liabilities of or in relation to any Investments;
  - ii the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
  - iii the amalgamation or merger of any corporation with any other corporation;
  - iv the sale or other disposition of all or any part of the property or undertaking of any corporation;
- i 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;
- j acquire and accept for the Scheme any equity of redemption;
- k 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 Investments or to act as the operator or one of the operators under any such agreement which relates to Investments;
- l enter into, perform and enforce agreements;
- m institute, prosecute, compromise and defend legal proceedings; and
- n pay all outgoings connected with the Scheme or this Deed which are not otherwise payable by the Manager.

In exercising the above powers, the Manager shall act in accordance with the terms of this Deed and the FMCA.

#### 15.4 **Manager's powers in respect of unit pricing errors or non-compliances**

The Manager has the powers to:

- a alter a Scheme Participant's Unit holding to address partly or entirely the impact of any Unit pricing error<sup>32</sup> provided such alteration does not adversely affect the relevant Scheme Participant's Unit holding or the position of other Scheme Participants, as compared with the position such Scheme Participant or Scheme Participants would have been in had the unit pricing error not occurred; and
- b correct Unit pricing errors or non-compliances with a unit pricing methodology for Units in a Fund to the extent required by the FMCA, provided that where (after all relevant Unit adjustments and set offs have been made under paragraph a or otherwise) the amount of any reimbursement or compensation required is less than any minimum level of reimbursement or compensation which is determined in accordance with the Management Agreement, then no reimbursement or compensation shall be required to be provided.<sup>33</sup>

<sup>32</sup> Section 168(2) of the FMCA.

<sup>33</sup> Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

## 15.5 **Manager's duties**

In exercising its discretion and powers, and performing its duties, as manager of the Scheme, the Manager shall act in accordance with the terms of this Trust Deed, including by complying with its duties under this Trust Deed and the FMCA,<sup>34</sup> and if the rules for Portfolio Investment Entities apply to the Scheme under the Tax Act, in accordance with those rules.

## 15.6 **Delegation by Manager**

The Manager may delegate the performance of all or any of its powers, authorities, functions and discretions under the FMCA or this Deed to its officers and employees or to any other person nominated by the Manager, including any Associated Person of the Manager but the Manager remains liable for the acts and omissions of any such officer, employee or person whether or not the delegate is acting within the terms of the delegated authority.<sup>35</sup>

## 15.7 **Manager may appoint investment managers and administration managers**

The Manager may appoint in respect of the Scheme:

- a one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Scheme;
- b one or more investment managers (including any Associated Person of the Manager) to manage the Investments; and
- c any other experts for the provision of services relevant to the Scheme,

and (subject to clause 15.8 in relation to Related Party Benefits) agree with such party the fees that may be charged and the extent to which expenses will be reimbursed.<sup>36</sup>

## 15.8 **Related Party Benefits**

- a The Manager and any Related Party must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the FMCA.<sup>37</sup>
- b The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit, in accordance with the Management Agreement.
- c Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or any Scheme Participant for any profit arising from any such transaction.
- d A failure to comply with clause 15.8a does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>38</sup>

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

All rights of voting conferred by the Investments of a Fund shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Scheme Participant shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. The Manager shall not be under any liability

<sup>34</sup> Sections 143 to 151 of the FMCA.

<sup>35</sup> Section 146 of the FMCA.

<sup>36</sup> Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

<sup>37</sup> Sections 172 to 175 of the FMCA.

<sup>38</sup> Section 173(6) of the FMCA.

or responsibility in respect of the management of any Fund nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

#### **15.10 Taxation**

- a The Manager may elect that the Scheme will be a Portfolio Investment Entity, or will cease to be a Portfolio Investment Entity, in its complete discretion.
- b During any period in which the Scheme is a Portfolio Investment Entity, the Manager will have the powers and obligations set out in clause 32 that are expressed as being applicable to such periods, and the Manager shall take reasonable steps to ensure that all obligations of the Scheme in relation to the Portfolio Investment Entity tax rules under the Tax Act and the Tax Administration Act 1994 are fully complied with, and put in place reasonable measures to maintain and manage the continuing compliance of each Fund with the Portfolio Investment Entity eligibility criteria under the Tax Act.
- c During any period in which the Scheme is not a Portfolio Investment Entity, the Manager will have the powers and obligations set out in clause 32 that are expressed as being applicable to such periods.

### **16 Supervisor's powers and duties**

#### **16.1 Supervisor's general powers and duties**

The Supervisor shall have the powers conferred on it by the FMCA (including the power to engage advisers or experts), and when exercising its powers and performing its functions and duties as supervisor of the Scheme, it must comply with its duties under the FMCA.<sup>39</sup>

#### **16.2 Supervisor's power to appoint Custodians**

- a The Supervisor may, subject to obtaining the prior written approval of the Manager (which shall not be unreasonably withheld), appoint in writing any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the Investments or property of a Fund are to be vested. The Custodian must meet the requirements for such person under the FMCA.<sup>40</sup> The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this paragraph a and the FMCA<sup>41</sup> in respect of the Scheme.
- b If authorised in writing by the Supervisor (subject to obtaining the prior written approval of the Manager, which shall not be unreasonably withheld), a Custodian appointed under paragraph a may itself appoint one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which shall be vested the Investments or some of the Investments of a Fund. Any sub-custodian appointed under paragraph b must

<sup>39</sup> Sections 152 to 155 and 160 of the FMCA.

<sup>40</sup> Sections 127(1)(f) and 156 of the FMCA.

<sup>41</sup> Sections 157 to 159 of the FMCA.

meet the requirements for such a person under the FMCA.<sup>42</sup> The Supervisor and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the performance by the sub-custodian of the functions (and subject to the same duties and restrictions imposed on it pursuant to paragraph b and the FMCA<sup>43</sup> in respect of the Scheme).

- c The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to this clause 16.2, the fees that may be charged and the extent to which expenses will be reimbursed.

### 16.3 Supervisor's power to Borrow

Subject to clauses 16.4, 16.5, and 15.8, the Supervisor has the power to, and must, if so directed by the Manager:

- a Borrow and raise money from any Person (including a Scheme Participant) for any of the purposes of the Scheme or for the purposes of the Scheme in relation to a particular Fund or Funds, on such terms and conditions as the Manager and the Supervisor think fit;
- b for the purpose of such Borrowing, enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such Borrowing; and
- c mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of the relevant Fund as security for any moneys Borrowed,

and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

### 16.4 Limitations on Borrowings

The following restrictions on the power to Borrow conferred by clause 16.3 apply:

- a the aggregate of the principal moneys Borrowed and outstanding from time to time in respect of the Scheme or secured against the Investments of the Scheme may not exceed 20% of the Market Value of the Investments;
- b the aggregate of the principal moneys Borrowed and outstanding from time to time in relation to any Fund may not exceed 50% of the Fund Value of that Fund;
- c the liability of the Supervisor in respect of any such Borrowing shall be limited to the Investments from time to time held by the relevant Fund;
- d the Supervisor may not mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of one Fund as security for any moneys Borrowed for any other Fund, or take any of the actions contemplated by clause 16.3b in respect of one Fund to give effect to any Borrowing for any other Fund; and

Borrowings shall only be entered into or made where the Manager in good faith determines that the Borrowing is necessary or desirable for the sole purpose of conducting the operation

<sup>42</sup> Section 156 of the FMCA.

<sup>43</sup> Sections 157 to 159 of the FMCA.

of the Fund pursuant to this Deed, including to provide liquidity for the repayment or redemption of any Units from time to time. The Supervisor and any lender may rely upon a certificate given by the Manager as to any determination made under this clause 16.4 without further enquiry.

#### **16.5 Conditions of Borrowing**

There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 16.3 or to complete any loan or security documents unless the Supervisor is satisfied that:

- a the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Fund;
- b the Investments of any Fund shall not be or become liable in respect of Borrowing made by or on behalf of another Fund;
- c any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- d there will be compliance with clause 16.4.

#### **16.6 Third parties need not enquire**

No Person from whom the Supervisor has or intends to Borrow in respect of any Fund needs to enquire as to whether or not the limitation set out in clauses 16.4 and 16.5 have been observed or complied with.

#### **16.7 Exercise of Supervisor's powers**

Subject to the FMCA and to the other provisions of this Deed and to a Court of law deciding otherwise, no decision or exercise of a power by the Supervisor will be invalidated on the ground that the Supervisor (or any director, officer or agent of the Supervisor) had a direct or personal interest in the result of that decision or in the exercise of that power.

### **17 Supervisor's and Manager's indemnities**

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

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

#### **17.2 No personal liability**

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

#### **17.3 Indemnity**

- a If contrary to the provisions of clause 17.1, 17.2, and 17.6 either the Manager or the Supervisor shall be held personally liable to any other person in respect of any debt,

action taken or omitted, or liability or obligation incurred by or on behalf of a Fund ('**Relevant Liability**'), then, subject to the indemnity limitations under the FMCA,<sup>44</sup> the Manager or the Supervisor (as the case may be) shall be entitled to indemnity and reimbursement out of that Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined (together, '**Relevant Costs**').

- b If the Relevant Liability relates to more than one Fund then any Relevant Costs shall be payable from those Funds in accordance with clause 3.9g.

#### 17.4 **Liability for default**

The Manager and the Supervisor shall each be liable for any loss arising out of wilful default or wilful breach of trust but subject thereto and to clause 17.8 neither the Manager nor the Supervisor shall be liable to any Fund or to any Scheme Participant as a result of acting as Manager or Supervisor (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of any Fund.

#### 17.5 **Reimbursement**

Without limiting the generality of the indemnity provided at clause 17.3, but subject to the indemnity limitations under the FMCA,<sup>45</sup> the Manager and the Supervisor shall each be entitled to be reimbursed out of a Fund for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as the case may be) of that Fund under this Deed. Without prejudice to the generality of the foregoing the Manager and the Supervisor shall be entitled to be indemnified against:<sup>46</sup>

- a any expense or liability which may be incurred by the Manager or the Supervisor (as the case may be) in bringing or defending any action or suit in respect of that Fund or the provisions of this Deed as they relate to that Fund;
- b all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an Investment, including commission, bank charges and stamp duty;
- c all income tax, capital gains tax, stamp duties, financial institutions duties and bank account debits, taxes (including, without limitation, Portfolio Investment Entity tax) or any other duty, tax or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other person) in connection with the Fund;
- d costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Scheme Participants;
- e costs of convening and holding any meeting of Scheme Participants;
- f costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with the Fund, pursuant to this Deed or any relevant law;

<sup>44</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

<sup>45</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

<sup>46</sup> Section 135(1)(f) of the FMCA.

- g the costs of the preparation and execution of this Deed and any deeds supplemental thereto including the fees of solicitors and other advisers;
- h fees and expenses of the Auditor or any auditor; any solicitor, barrister, computer expert or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this Trust Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clauses 15.6 or 15.7 but, for the avoidance of doubt, this indemnity shall not extend to the Manager's own internal costs for acting as manager of the Scheme;
- i expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Registers;
- j all costs, charges and expenses incurred in the advertising and promotion of the Fund; and
- k any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of Units.<sup>47</sup>

#### 17.6 Limitation on liability

Without prejudice to the generality of clauses 17.1 to 17.4 but subject to the provisions of the FMCA:

- a the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;
- b the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
- c the Manager and the Supervisor may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted (irrespective of whether the opinion, advice, statement or information in question is obtained by the Manager or the Supervisor or both of them) and neither the Supervisor nor the Manager shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements, or information;
- d a certificate given pursuant to this Deed signed by not less than two directors of the Manager or as otherwise provided in the Management Agreement on behalf of the Manager:
  - i as to any fact or matter prima facie within their knowledge and on which the Supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or

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<sup>47</sup> Section 135(1)(f) of the FMCA.

- 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 Scheme Participants or any of them,

may be relied upon by the Supervisor as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing. The statements contained in any such certificate or certificates or in any report or reports given by or on behalf of the Manager pursuant to the provisions of this Deed shall be regarded as conclusive evidence of the facts stated therein;

- e whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence of the giving of such certificate, notice, direction or other communication a document signed on behalf of the Manager by any director, secretary officer or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager;
- f except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise of those trusts, powers, authorities and discretions whether in relation to the manner or as to the mode of or time for their exercise;
- g nothing in this Deed shall be deemed to prohibit the Supervisor or any Associated Person of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Associated Person of the Manager or any shareholder or officer of the Manager ('**Related Persons**') from being a Scheme Participant or from acting in any representative capacity for a Scheme Participant. In particular and without prejudice to the generality of the foregoing, any Related Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Scheme Participant and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- h the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute; and
- i the Scheme Participants of the Scheme or any relevant Fund may by Special Resolution further release the Supervisor or the Manager or both from any liability incurred in relation to the Scheme and if applicable, the relevant Fund, and indemnify the Supervisor or Manager or both from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or Manager ceasing to act in relation to the Scheme.

Without limiting clause 17.6c, the Supervisor and/or the Manager may also engage an expert in accordance with the requirements of the FMCA.<sup>48</sup>

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<sup>48</sup> Section 155 of the FMCA.

### 17.7 **Apportionment**

If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of several Funds, then that expense, cost or liability shall be apportioned amongst those Funds in accordance with clause 3.9g in such equitable manner as the Manager may in its discretion determine, subject to any direction from time to time given by the Supervisor. The Supervisor or the Manager may at any time elect not to seek reimbursement from any Fund for any expense, cost or liability, without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

### 17.8 **Indemnity limitations**

No provision of clauses 17.1 to 17.7 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, and no provision of this Deed has the effect of indemnifying the Supervisor or Manager or any such director or officer against, any liability to the extent that doing so would be void under the FMCA or any other applicable legislation (including where the expense or liability is caused by the failure of the Manager or the Supervisor (as the case requires) to show the degree of care and diligence required by the FMCA).<sup>49</sup>

### 17.9 **Power to indemnify investment managers and administration managers**

The Manager may agree:

- a to limit the liability (in connection with its services in respect of a Fund or the Scheme) of; and/or
- b to indemnify and reimburse out of the Scheme's or relevant Fund's Investments in accordance with clauses 17.5 and 17.7,

any investment manager or administration manager appointed in respect of the Scheme or Fund, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including, without limitation, legal fees and disbursements).<sup>50</sup>

### 17.10 **Power to indemnify Custodians**

The Supervisor may agree:

- a to limit the liability (in connection with its services in respect of a Fund or the Scheme) of; and/or
- b to indemnify and reimburse out of the Scheme's or relevant Fund's Investments in accordance with clauses 17.5 and 17.7,

any Custodian appointed in respect of the Scheme or Fund, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including without limitation, legal fees and disbursements).<sup>51</sup>

<sup>49</sup> Sections 136, 143, 144, 153, and 154 of the FMCA (as applicable).

<sup>50</sup> Section 135(1)(f) and 136(2) of the FMCA.

<sup>51</sup> Sections 135(1)(f) of the FMCA.

### **17.11 Manager to provide information**

The Manager shall report and provide information to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, unit pricing errors and non-compliances with the applicable unit pricing methodology for Units in a Fund) to the extent required by the FMCA and complying in all respects with the Manager's obligations under the Management Agreement as to the frequency and content of such reports.<sup>52</sup>

## **18 Investments**

### **18.1 Investments**

Each Fund shall be invested only in accordance with the SIPO for the Scheme which covers that Fund.

### **18.2 Contrary intent**

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

### **18.3 Manager directs Supervisor**

The Manager will manage the Scheme and each Fund and as and when required may, from time to time, in relation to any Fund and having regard to the relevant SIPO but subject to clause 18.4, direct the Supervisor, or a Custodian on behalf of the Supervisor, to:

- a invest in, purchase, acquire, realise, sell or dispose of the Investments of any Fund;
- b enter into any commitments or liabilities in respect of such Investments;
- c execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing; and
- d take any other action which may be required in respect of the Investments,

and the Supervisor will (and, when a Custodian has been appointed, will procure that the Custodian will) from time to time, to the extent of the Fund available at the time, act as directed in writing by the Manager.

### **18.4 Supervisor's limited duty to refuse to act**

- a The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on any direction of the Manager in the circumstances for such refusal described in the FMCA<sup>53</sup> and any Custodian must comply with any such direction given to it by the Supervisor.
- b If the Supervisor refuses, or directs any Custodian to refuse, pursuant to paragraph a to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or direction.

<sup>52</sup> Sections 135(1)(j), 147 to 151, 167 and 168 of the FMCA and Regulations 83, 94 to 98 and 100 of the FMC Regulations.

<sup>53</sup> Section 160 of the FMCA.

- c The Supervisor, and any Custodian, is not liable to the Scheme Participants or the Manager for refusing, or (in the case of the Supervisor) directing any Custodian to refuse, to act on a direction of the Manager in accordance with this clause.

#### **18.5 Vesting and custody of Investments**

The Manager shall cause Investments and property to be:

- a vested in the Supervisor or a Custodian; and
- b registered in the name of the Supervisor (or, if applicable, such Custodian),

in each case as soon as reasonably practicable after receipt of the necessary documents.

#### **18.6 Bank accounts**

A bank account or accounts must be maintained in the name of the Supervisor or a Custodian for each Fund or, if the Manager and the Supervisor agree, for the Scheme. All moneys held for the relevant Fund, or the Scheme, shall be paid to the credit of such bank account or bank accounts. The Supervisor shall determine the persons authorised to operate such bank accounts.

#### **18.7 Subscription Bank Account**

- a A bank account must be maintained outside the Scheme, in the name of the Supervisor (or a Custodian appointed in accordance with clause 16.2), in accordance with the FMCA.<sup>54</sup>
- b All cash consideration for Units that is paid, prior to the issue or purchase of those Units in accordance with clause 8.4, must be paid to the credit of the Subscription Bank Account in accordance with the FMCA<sup>55</sup> until Units for those amounts are issued, at which point such cash consideration shall be credited to a bank account of the relevant Fund or the Scheme.
- c Amounts payable when the relevant Units are cancelled must be paid to the credit of the Subscription Bank Account.
- d The Supervisor shall determine the persons authorised to operate such bank accounts.

#### **18.8 Tax Bank Account**

The Supervisor or Custodian must maintain a bank account outside of the Scheme for the purpose of the Manager managing taxation obligations in relation to the Scheme.

### **19 Distributions**

#### **19.1 Income Distribution or Retention**

The Distributable Income of the Scheme attributable to each Fund shall on each Distribution Date at the discretion of the Manager be:

- a retained by the Supervisor and invested in accordance with the provisions of clause 18;
- or

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<sup>54</sup> Regulation 49 of the FMC Regulations.

<sup>55</sup> Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

b distributed by the Supervisor to such Scheme Participants of the Fund as the Manager determines, in accordance with the provisions of clause 19.3; or

c partly retained and invested and partly distributed to such one or more of the Scheme Participants of the Fund as the Manager determines, in accordance with clause 19.3,

in each case in accordance with such protocols (if any) as the Manager and the Supervisor may agree from time to time, and provided that the Supervisor shall, at the direction of the Manager, have power on any Distribution Date, to resort to the whole or any part of the Distributable Income of the Scheme attributable to any Fund that had been retained by the Supervisor on any previous Distribution Date and to distribute that Distributable Income as if it were current Distributable Income as at the relevant Distribution Date.

#### **19.2 Directions to Supervisor**

Subject to clause 19.1, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor in respect of any Fund:

a to wholly or partly reinvest or distribute the Distributable Income of the Scheme attributable to that Fund;

b to distribute all or any part of the capital of the Scheme attributable to that Fund, and if necessary to realise Investments in order to produce Cash to make such distribution;

and the Supervisor shall (subject to clause 18.4 in respect of any direction to realise Investments) act in accordance with any such direction.

#### **19.3 Distribution**

a All Entitlements to be distributed pursuant to clause 19.1 or 19.2, together with any imputation credits the Manager determines to attribute to that distribution, shall be distributed to the Scheme Participants in question at such time or times and in such manner as may be nominated by the Manager from time to time.

b Unless the Manager determines in accordance with paragraph c that some other manner of distribution is appropriate from time to time in respect of the Scheme or any particular Fund or Funds and notifies affected Scheme Participants accordingly, such Entitlements shall be distributed amongst Scheme Participants of the relevant Fund in proportion to the number of such Units held by them, irrespective of the number of days the Units have been on issue.

c In exercising its discretion to determine another manner of distribution to be appropriate pursuant to paragraph b, the Manager must treat Scheme Participants in each affected Fund equitably.

#### **19.4 Reinvestment of Entitlements**

a Scheme Participants may elect to reinvest their Entitlements (less any Tax which the Manager deducts) by purchasing further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.

- b The Manager will treat such a request as though it were an application to purchase further Units in the relevant Fund with the relevant Entitlement (less any Tax) and accordingly the provisions of clause 9, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- c Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

#### 19.5 Determination of Distributable Income

Except where the Manager determines otherwise from time to time, in determining Distributable Income of the Scheme attributable to any Fund for any period there shall be taken into account all income due and receivable and all costs charges and expenses due or accrued charged or chargeable against Distributable Income including without limiting the generality of the foregoing:

- a all costs and disbursements incurred in connection with the relevant Fund or the administration of the relevant Fund and chargeable against income including fees payable to the Supervisor and the Manager;
- b the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the relevant Fund including (without limitation) an equitable proportion of the costs involved in the convening of meetings of Scheme Participants;
- c any taxes or duties paid or payable by or in respect of the relevant Fund or as a consequence of redeeming a Unit purchased by the Manager pursuant to a Withdrawal Notice;
- d such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net Distributable Income for the particular period may fairly represent the results of the Scheme attributable to the relevant Fund for that period; and
- e the fees and expenses of the Auditor in connection with the audit of the relevant Fund, and an equitable proportion of the fees and expenses of the Auditor in connection with the audit of the Scheme.

For the avoidance of doubt the Distributable Income of the Scheme attributable to a Fund may be a negative amount, and may include current or retained earnings of the Scheme.

#### 19.6 Determination by Manager

If any question shall arise as to whether any money or property constitutes Distributable Income or not or whether any expense is chargeable against Distributable Income or not such questions shall be determined by the Manager having regard to commercial practice or generally accepted accounting practice current from time to time. However, nothing in this Deed nor in generally accepted accounting practice shall require realised or unrealised gains in the value of Investments to be classified as Distributable Income unless the Manager in its sole discretion determines. In addition, distributions made in accordance with this clause 19 are not considered to be expenses of the Scheme and are not taken into account in determining net income irrespective of any statutory reporting requirements.

## **20 Remuneration of the Supervisor**

### **20.1 Supervisor's annual fee<sup>56</sup>**

The Supervisor shall be paid out of each Fund a fee not exceeding 0.075% per annum of the relevant Fund Value, as agreed upon with the Manager from time to time, in respect of each Fund, for its services as supervisor of the Scheme.

### **20.2 Changes to Supervisor's annual fee**

If the Manager and the Supervisor are unable from time to time to agree on the Supervisor's fee, the matter shall be referred to the arbitration of a single arbitrator if one can be agreed on, otherwise to two arbitrators and their umpire, such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.

### **20.3 Reimbursement of taxes**

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

### **20.4 Fee calculated on a daily basis**

The fee referred to in clause 20.1 shall be calculated and accrued daily on the basis of the relevant Fund Value from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of the Fund in question from time to time) and paid quarterly in arrears.

### **20.5 Supervisor's expenses<sup>57</sup>**

Notwithstanding clauses 20.1 and 20.3, in consideration of the Supervisor agreeing to act as supervisor of the Scheme, but except to the extent such expenses are reimbursed to the Supervisor directly by the Manager, the Supervisor shall be entitled to deduct from each Fund on an equitable basis in accordance with clause 3.9g the Supervisor's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor reasonably contemplated by this Deed, including, without limitation, convening meetings, attendances at meetings, modification of this Deed, waiver of breaches, and winding up of any of the Funds.

## **21 Appointment, removal, and retirement of Supervisor<sup>58</sup>**

### **21.1 Appointment of Supervisor**

The Scheme shall have a single supervisor who must be a person entitled by law to act as the supervisor of the Scheme.<sup>59</sup>

### **21.2 Removal of Supervisor**

- a Subject to clause 21.4, the Manager may remove the Supervisor from office with the FMA's prior consent:

<sup>56</sup> Section 135(1)(f) of the FMCA.

<sup>57</sup> Section 135(1)(f) of the FMCA.

<sup>58</sup> Section 135(1)(g) of the FMCA.

<sup>59</sup> Section 127(1)(d) and (e) of the FMCA.

- i with immediate effect, by giving the Supervisor written notice of such removal, if the Manager reasonably believes that the Scheme will be adversely affected if the Supervisor continues to hold office (such notice to specify the grounds on which the Manager has formed this belief); and
  - ii otherwise upon giving the Supervisor not less than 6 Months written notice of such removal.
- b Subject to clause 21.4, the Supervisor may be removed from office otherwise in the circumstances prescribed in the FMCA.<sup>60</sup>
- c The Manager must not discharge or remove the Supervisor from office unless the Manager does so:
  - i with the approval of the High Court; or
  - ii under Part 2 of the Financial Markets Supervisors Act 2011.

### 21.3 Retirement

Subject to clause 21.4, the Supervisor may retire at any time without assigning any reason upon giving ninety (90) days' notice in writing to the Manager of its intention so to do. The Supervisor shall not be entitled to retire as supervisor of only some of the Funds, and if it elects to retire, shall do so in respect of all of the Funds.

### 21.4 Restrictions on removal and retirement

No removal or retirement under clauses 21.2 or 21.3 will take effect unless:

- a the requirements for such removal or retirement, and for any new supervisor under the FMCA or any other applicable legislation, have been met;<sup>61</sup>
- b any new supervisor has executed the deed referred to in clause 21.6; and
- c all of the Investments and all other property or assets of any nature of the Scheme have been transferred to the new supervisor, or a custodian(s) which holds all such Investments, property, or assets has acknowledged in its capacity as custodian for the Scheme that it is acting for the new supervisor.

### 21.5 Appointment of new Supervisor

The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has retired pursuant to clause 21.3 or been removed from office pursuant to clause 21.2) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless that person holds a licence under the Financial Markets Supervisors Act 2011 that covers the Scheme.<sup>62</sup> If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution at a meeting of Scheme Participants of the Scheme.

### 21.6 Restrictions on new appointment

Any new supervisor must forthwith upon appointment execute a deed in such form as the Manager may require whereby the new supervisor undertakes to the Manager and the

<sup>60</sup> Section 193(1) of the FMCA.

<sup>61</sup> Section 193(2) of the FMCA.

<sup>62</sup> Section 135(1)(g) of the FMCA.

Scheme Participants to be bound by all the covenants on the part of the former supervisor under the Deed from the date of such appointment.

### **21.7 Release of supervisor**

From the date of execution by the new supervisor of a deed in accordance with clause 21.6, the retiring supervisor is absolved and released from all such covenants under this Deed (except in respect of a prior breach) and the new supervisor must thereafter exercise all powers and enjoy and exercise all the rights, and is subject to all the duties and obligations, of the supervisor under this Deed in all respects as if such supervisor had been originally named as a party to this Deed.

## **22 Remuneration of the Manager**

### **22.1 Management Fees<sup>63</sup>**

The Manager shall be paid out of each Fund (to the extent not paid in whole or part directly by the Scheme Participants) a fee not exceeding 2% per annum of the relevant Fund Value, as determined by the Manager from time to time in respect of each Fund, for the prime services of the Manager under clause 15.2 and as more particularly described in Schedule 2. Such fees shall be recorded in any relevant disclosure document issued by the Manager (which may be the PDS) or recorded in the relevant SIPO or otherwise notified in writing to the Supervisor.

### **22.2 Manager's entitlements**

Subject to the maximum fee specified in clause 22.1, the Manager shall be entitled:

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

### **22.3 Fees calculated on a daily basis**

The Management Fees referred to in clauses 22.1 and 22.2 shall be calculated and accrued daily on the basis of the relevant Fund Value from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of the Fund in question from time to time) and paid monthly in arrears.

## **23 Appointment, removal and retirement of Manager<sup>64</sup>**

### **23.1 Appointment of Manager**

<sup>63</sup> Section 135(1)(f) of the FMCA.

<sup>64</sup> Section 135(1)(h) of the FMCA.

The Scheme shall have a manager, who must be entitled in accordance with the FMCA<sup>65</sup> and otherwise by law to act as the manager of the Scheme.

### **23.2 Removal**

- a The Manager shall cease to hold office as manager of the Scheme in the circumstances set out in the FMCA.<sup>66</sup>
- b If the Manager ceases to hold office pursuant to paragraph b, the Manager and any delegate of the Manager shall immediately desist from all activities related to the Scheme unless the Supervisor agrees to the contrary.<sup>67</sup>

### **23.3 Retirement**

The Manager may retire without giving any reason upon giving ninety (90) days' notice in writing to the Supervisor of its intention to do so.

### **23.4 Restrictions on removal or retirement**

No removal under clause 23.2 or retirement under clause 23.3 shall take effect until a new Manager that is qualified for appointment under clause 23.1 has been appointed.

### **23.5 Temporary Manager**

The power to appoint a temporary manager under the FMCA<sup>68</sup> shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.

### **23.6 Replacement Manager**

The Supervisor shall upon a vacancy in the office of Manager occurring use its best endeavours to appoint a replacement permanent manager. If no such appointment is made within 60 days after the vacancy occurs, the Supervisor shall summon a meeting of Scheme Participants and shall take such steps as that meeting or any subsequent meeting of Scheme Participants may require to secure the appointment of a new permanent manager of the Scheme.

### **23.7 Retiring Manager released**

A new Manager appointed pursuant to clause 23.6 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Scheme Participants to be bound by all the covenants on the part of the Manager hereunder from the date of appointment of a new manager. Subject to all applicable laws<sup>69</sup> from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

### **23.8 New manager to lodge notice of change**

<sup>65</sup> Sections 127(1)(c) and (e) and 135(1)(h) of the FMCA.

<sup>66</sup> Sections 185, 209 and 210 of the FMCA.

<sup>67</sup> Section 185(4) of the FMCA.

<sup>68</sup> Sections 186, 187, 189, and 191 of the FMCA.

<sup>69</sup> Section 191 of the FMCA.

The new Manager must lodge a notice of change of Manager with the Registrar of Financial Service Providers in accordance with the FMCA.<sup>70</sup>

### **23.9 Former manager must hand over records and give reasonable assistance**

A former manager must hand over records and give reasonable assistance to the new manager in accordance with the requirements of the FMCA.<sup>71</sup>

### **23.10 Former manager's entitlements**

Subject to any order of the Court, nothing in this clause 23 shall prevent the former Manager from receiving payment or a benefit which has reasonably and properly accrued to the former Manager pursuant to the terms of this Deed or by applicable legislation prior to the date of or arising on the former Manager's retirement or removal from office.<sup>72</sup>

## **24 Limitation of liability**

### **24.1 Limitation**

Subject to clause 32.4 but notwithstanding anything else contained in this Deed or any rule of law:

- a no Scheme Participant shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Scheme or any Fund;
- b nothing in this Deed or in the relationship between the Scheme Participants shall be deemed to create a partnership amongst Scheme Participants; and
- c subject to clauses 3.9, 30.4, 32, and 33.5, neither the Supervisor nor the Manager shall be or act as agent for the Scheme Participants in respect of Units in any Fund, and neither shall have power to incur liabilities on behalf of any Scheme Participant or pledge the credit of any Scheme Participant beyond the extent of their investment in the Scheme.

## **25 Accounts and reporting**

### **25.1 Accounting Records**

The Manager shall keep or cause to be kept:

- a proper accounting records for the Scheme and each Fund that comply with the FMCA, and allow for inspection of those records to the extent required by the FMCA;<sup>73</sup> and
- b true accounts of all sums of money received and expended by or on behalf of the Scheme and each Fund and the matters in respect of which such receipt and expenditure takes place and of all the sales, purchases and other transactions relating to the Investments and the Liabilities of the Scheme and each Fund (as applicable), the issue or transfer of Units and of all other matters for which accounting records should properly be kept.

<sup>70</sup> Section 192 of the FMCA.

<sup>71</sup> Section 190 of the FMCA.

<sup>72</sup> Section 191 of the FMCA.

<sup>73</sup> Sections 455 to 459 of the FMCA.

The Supervisor shall provide from time to time to the Manager any information necessary for this purpose.

#### **25.2 Preparation, audit and lodgement of Financial Statements**

The Manager shall arrange for the preparation, audit, and lodgement of the Financial Statements for the Scheme in accordance with the requirements of the FMCA.<sup>74</sup>

#### **25.3 Annual Reports**

The Manager shall prepare and lodge the Scheme's annual reports in accordance with the requirements of the FMCA.<sup>75</sup>

#### **25.4 Reporting and information to Scheme Participants**

The Manager shall provide Scheme Participants with such information, notices, and disclosures as are required to be given to them under the FMCA.<sup>76</sup>

#### **25.5 Regulatory compliance**

The Manager shall at all relevant times:

- a file or lodge all reports, returns, statements, information or other material required by law to be filed or lodged with any public registry or regulatory authority; and
- b keep copies of documents in accordance with the FMCA.<sup>77</sup>

### **26 Auditor**

#### **26.1 Appointment**

A licensed auditor or registered audit firm, selected by the Manager after consultation with the Supervisor and entitled by law to act as such,<sup>78</sup> must be appointed as auditor of the Scheme. The Manager and the Supervisor must agree upon the services to be performed and reports to be provided by the Auditor, and their scope having regard to requirements under the FMCA<sup>79</sup> and in accordance with the Management Agreement. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

#### **26.2 Removal / retirement**

The Auditor may at any time and from time from time be removed by the Manager with notice to the Supervisor or by a Special Resolution. The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Scheme Participants and instructs the Manager to remove the Auditor. The Auditor may retire upon the expiration of not less than thirty (30) days' notice in writing.

#### **26.3 New appointment**

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<sup>74</sup> Sections 461D to 461H of the FMCA.

<sup>75</sup> Regulations 62 and 63 of the FMC Regulations.

<sup>76</sup> Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.

<sup>77</sup> Subpart 4 of Part 4 of the FMCA.

<sup>78</sup> Section 461E of the FMCA.

<sup>79</sup> Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

Any vacancy in the office of the Auditor must be filled by the Manager, after consultation with the Supervisor, appointing as Auditor a licensed auditor or registered audit firm entitled by law to act as such.

#### **26.4 Restrictions on Auditor**

The Auditor may be the Auditor of the Manager, or of the Supervisor, or of an Associated Person of either the Manager or the Supervisor or of any other scheme whether of a similar nature to the Scheme or otherwise.

#### **26.5 Compliance with FMCA auditor requirements**

The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.<sup>80</sup>

### **27 Meetings**

#### **27.1 Manager must call meetings**

When required by the FMCA, the Manager must call a meeting of Scheme Participants in the manner and on the basis set out in the FMCA and the FMC Regulations.<sup>81</sup>

#### **27.2 Manager may convene**

The Manager may at any time after prior consultation with the Supervisor, convene a meeting of the Scheme Participants of the Scheme, or of any particular Fund or Funds.

#### **27.3 Proceedings**

A meeting of Scheme Participants shall be conducted in accordance with the requirements of the FMCA.

#### **27.4 Powers of Scheme Participants**

- a Subject to the FMCA, a meeting of Scheme Participants of the Scheme shall have the following powers exercisable by Special Resolution:
  - i power to sanction the exchange of Units in the Scheme for, or the conversion of such Units into shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed;
  - ii power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Scheme Participants of the Scheme howsoever such rights shall arise;
  - iii power to assent to any alteration, modification, variation, or addition to the provisions contained in the Trust Deed or any Deed supplemental thereto or the conditions attaching to the Units of the Scheme and to authorise the Manager and Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;

<sup>80</sup> Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

<sup>81</sup> Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

- iv power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
  - v power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;
  - vi power to sanction the exchange of Units of the Scheme for, or the conversion of Units of the Scheme into, units or interests in any other managed fund (within the meaning of the FMCA) or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution; and
  - vii the powers conferred by clauses 17.6i, 21.5, 27.6, 30.1b, and 30.3c of this Deed, and any other power given to Scheme Participants and exercisable by Special Resolution under the FMCA.
- b Subject to the FMCA, a meeting of holders of Units relating to a Fund shall have the following powers in respect of that Fund exercisable by Special Resolution:
- i power to sanction the exchange of Units relating to the Fund for, or the conversion of such Units into shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed;
  - ii power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the holders of Units relating to that Fund howsoever such rights shall arise;
  - iii power to assent to any alteration, modification, variation or addition to the terms of that Fund, and to authorise the Manager and Supervisor to concur in and execute or issue any supplemental or replacement terms or any other document embodying any such change, notwithstanding that such change might be inconsistent with or not contemplated under any disclosure material previously issued that relates to that Fund;
  - iv power to give any sanction, assent, release or waiver of any breach or default in relation to that Fund by the Manager or the Supervisor under any of the provisions of this Deed;
  - v power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission in relation to that Fund for which the Manager or the Supervisor has or may become responsible under this Deed;
  - vi power to sanction the exchange of Units relating to the Fund for, or the conversion of Units relating to the Fund into, units or interests in any other managed fund (within the meaning of the FMCA) or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution; and
  - vii the powers conferred by clauses 3.6a, 17.6i, 27.6, and 30.3c of this Deed, and any other power given to Scheme Participants in the Fund and exercisable by Special Resolution under the FMCA,

provided that no such sanction, assent, release or waiver shall be effective if it materially and adversely affects:

- viii the interests of Scheme Participants generally, without the approval of a separate Special Resolution of the Scheme Participants of the Scheme; or
- ix the interests of certain Scheme Participants generally (being holders of Units relating to another particular Fund or Funds), without the approval of a separate Special Resolution passed in relation to every Fund so affected.

#### **27.5 Special Resolution binds all Scheme Participants**

Subject to the proviso to clause 27.4b, a Special Resolution passed at a meeting duly convened and held in accordance with this Deed shall be binding upon all Scheme Participants whether present or not present at the meeting and each of those Scheme Participants, the Supervisor and the Manager shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Manager, the Supervisor and those Scheme Participants be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution provided that a resolution which adversely affects the interests of a particular Scheme Participant or a class of Scheme Participants only as opposed to the interests of the Scheme Participants of the Scheme or a Fund generally shall not be binding on such Scheme Participant or class of Scheme Participants unless such Scheme Participant agrees or such Scheme Participants agree to be bound by the terms of such resolution.

#### **27.6 Directions**

The Scheme Participants of the Scheme or of any Fund shall, by means of a Special Resolution, have the power to give such directions to the Supervisor as they think proper concerning the Scheme or that Fund (as applicable), being directions that are not inconsistent with any enactment, rule of law, or the provisions of this Deed.

#### **27.7 Discretion**

Where any direction is given to the Supervisor pursuant to clause 27.6 in respect of any matter the Supervisor may (but shall not be obliged to) comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Supervisor may at its discretion apply to the High Court for directions in respect of the matter.

### **28 Notices and information to Scheme Participants, Supervisor, and Manager**

#### **28.1 To Scheme Participants**

A notice under this Trust Deed, and (without limiting any enabling provision in applicable legislation) any other Scheme-related communication intended for a Scheme Participant, may be given to the Scheme Participant personally by:

- a leaving it at the Scheme Participant's registered address;
- b sending it addressed to the Scheme Participant at the Scheme Participant's registered address (as shown in the relevant Register) by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post or advertisement; or

- c subject to the Scheme Participant having given his or her electronic address to the Manager (as contemplated by the FMCA) or having otherwise consented to accept Scheme-related information in an electronic form, by means of an Electronic Communication.

A notice may be given to the joint holders of a Unit by giving the notice to any joint holder. A Scheme Participant must notify the Manager of any change to the Scheme Participant's registered or electronic address and the relevant Register shall be altered accordingly. Any notice given to Scheme Participants by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Scheme Participants in substantially the same form but with personalised details in respect of each Scheme Participants, it shall be sufficient to provide the Supervisor with a sample of such a notice.

#### **28.2 Manner of notice**

Any notice sent by post will be deemed to have been given at the expiration of 2 Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Without limiting section 11(a) of the Electronic Transactions Act 2002, a notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5.00 pm on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of confirmation of transmission).

#### **28.3 Signature of notice**

The signature to any notice to be given by the Manager or the Supervisor may be written or printed or otherwise provided in accordance with the Electronic Transactions Act 2002.

#### **28.4 Receipt of notice**

Any notice or document delivered or sent by post or electronic communication to or left at the registered address for service of any Scheme Participant in pursuance of the provisions of this Trust Deed will (notwithstanding that the Scheme Participant is then deceased, bankrupt, or mentally disordered and whether or not the Manager has notice of such death, bankruptcy, or mental disorder) be deemed to have been duly given until some other person is registered in the place of the Scheme Participant.

#### **28.5 Notice where no address**

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

#### **28.6 Calculation of notice periods**

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

#### **28.7 Notices between Manager and Supervisor**

Any certificate or information required by this Trust Deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager must be given in writing or by facsimile communication or Electronic Communication acceptable to the recipient and addressed to an appropriate person within the party to whom it is intended to be given at its registered office or other usual place of business (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this Trust Deed) and must be signed by a duly authorised officer on behalf of the party giving it.

## **29 Amendments to Deed**

### **29.1 Power to amend**

The Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager) to the extent permitted by the FMCA.<sup>82</sup>

### **29.2 Procedure for amendments**

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

## **30 Winding up<sup>83</sup>**

### **30.1 Winding up generally**

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

- ~~a if the winding up is authorised pursuant to clause 30.3;~~
- b if a Special Resolution of the Scheme Participants of the Scheme is passed resolving to wind up the Scheme;
- c if the Scheme's registration under the FMCA is cancelled;
- d if the Scheme is required to be wound up under the FMCA;<sup>84</sup> or
- e the expiration of a period of eighty (80) years from 11 September 1996, or such greater period as may be permitted by law from time to time for the operation of trusts similar in nature to the Scheme.

### **30.2 Winding up of Fund**

A particular Fund may be wound up in accordance with the provisions of clauses 30.3 to 30.14, provided that in the context of a winding up of a particular Fund:

- a every reference in those clauses to 'Scheme' or 'Trust Fund' shall be read as a reference to the relevant Fund, or assets of the Trust Fund attributable to that Fund (as applicable),

<sup>82</sup> Sections 139 and 141 of the FMCA.

<sup>83</sup> Section 135(1)(i) of the FMCA.

<sup>84</sup> Sections 195 and 211 of the FMCA.

and every reference to Scheme Participants shall be construed as a reference to Scheme Participants of that Fund only; and

- b the prohibition on acceptance of Switching Notices under clause 30.4 will not apply to Scheme Participants in the Fund, unless all Funds are being wound up.

### 30.3 Power to commence winding up

- a Where the Manager believes that it is in the best interests of Scheme Participants in the Scheme to wind up the Scheme the Manager may give notice to the Scheme Participants of the Scheme:
  - i setting out details of the reasons for the winding up of the Scheme; and
  - ii stating that if Scheme Participants of the Scheme holding 10% or more of the units in the Scheme on the date of that notice give notice to the Manager within thirty (30) days of the date of the notice that they disapprove of the proposed winding up then the Manager will call a meeting of Scheme Participants in the Scheme to consider the proposed winding up.
- b If Scheme Participants of the Scheme holding 10% or more of the Units in the Scheme give notice requiring a meeting the Manager shall forthwith in accordance with its power under clause 27.2 convene a meeting of Scheme Participants to consider the proposed winding up (and, for the purposes of clause 27, such meeting will be deemed to have been called by the Manager and not by Scheme Participants).
- c If:
  - i at a meeting under clause 30.3b, duly convened and held in accordance with the meeting provisions set out in the FMCA,<sup>85</sup> the Scheme Participants by Special Resolution approve the proposed winding up; or
  - ii no Scheme Participants, or Scheme Participants holding less than 10% of the Units in the Scheme, give notice requiring a meeting within thirty (30) days of the date of the notice,then the winding up shall be authorised for the purposes of clause 30.1a and shall take effect from the date specified for that purpose in the notice given to Scheme Participants under clause 30.4.

### 30.4 Notice from Manager

The Manager shall within fourteen (14) days after the occurrence of any event referred to in clause 30.1 in respect of the Scheme, give to each Scheme Participant and the Supervisor notice of:

- a the occurrence of that event;
- b the effective date of the wind up;
- c the suspension of Withdrawal Notices and Switching Notices; and
- d the intention of the Supervisor to distribute the Trust Fund.

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<sup>85</sup> Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

Except as provided in clause 30.5, from the date of the giving of such notice no further Withdrawal Notices, Switching Notices, or applications for Units shall be accepted.

**30.5 Winding up proceeds may be satisfied through the distribution of units in another scheme**

Where the Manager believes it is in the best interests of Scheme Participants in a Fund generally to do so (subject to clause 30.6), the Manager may provide those Scheme Participants with the choice of having their Winding Up Entitlements paid in cash or through the distribution (in specie) of units in another Registered Scheme or a fund of another Registered Scheme (or in the case of the winding up of a Fund under clause 30.2, another Fund) in accordance with this clause ('**Default Option**'). If the Manager makes such an election, the notice given by the Manager pursuant to clause 30.4 shall invite the relevant Scheme Participants to elect, within such reasonable period as the Manager may prescribe:

- a to receive payment in cash; or
- b to have the Scheme Participant's Winding Up Entitlements satisfied by the distribution (in specie) of units in a particular Registered Scheme or a fund of another Registered Scheme (or in the case of the winding up of a Fund under clause 30.2, another Fund) specified in the notice given by the Manager pursuant to clause 30.4 in respect of the Scheme Participant's Units, which scheme, fund or Fund ('**Default Fund**') must:
  - i allow units to be redeemed at any time (subject, if at all, only to the relevant manager's right to suspend redemptions in specified circumstances);
  - ii either:
    - A have a similar investment objective to the relevant Fund; or
    - B where the Default Fund is another Fund within the Scheme, be the Fund the Manager reasonably considers to have the most similar investment objective to the relevant Fund,  
  
and be able to invest in similar asset categories (as prescribed by clause 1(4) of Schedule 4 to the FMC Regulations), and in similar proportions, to those in which the relevant Fund is permitted to invest under its statement of investment policy and objectives or investment guidelines;
  - iii have the Manager or a person related to the Manager (within the meaning of the FMCA) as the manager;
  - iv be continuously offered and redeemed on a basis calculated wholly or mainly on the value of the Registered Scheme's, fund's or Fund's property;
  - v not be a retirement scheme or fund in a retirement scheme as defined in the FMCA;
  - vi not require affected Scheme Participants to pay withdrawal or contribution fees upon the Manager's distribution (in specie) of units in the Default Fund in accordance with clause 30.7; and
  - vii not have higher overall fees or individual withdrawal fees than are being paid at that time by the Scheme Participant in respect of the Fund or Scheme unless:
    - A the Default Fund is another Fund within the Scheme; and

- B the Manager gives affected Scheme Participants at least one (1) month's prior notice to the effect that increased fees will be charged in respect of units held in the Default Fund.

### 30.6 Supervisor review

- a Where the Manager proposes to utilise the Default Option in respect of the winding up of a Fund the Manager must, before giving notice to the Scheme Participants in accordance with clause 30.4, provide to the Supervisor for review:
  - i a statement of the grounds upon which the Manager has determined that offering the Default Option is in the best interests of Scheme Participants in the relevant Fund generally to utilise the Default Option;
  - ii details of each Default Fund, including details as to its satisfaction of the conditions set out in clause 30.5bi to vii; and
  - iii an engagement plan ('**Engagement Plan**') setting out the steps the Manager will take to ensure that it has used all reasonable endeavours in the circumstances to make contact with the relevant Scheme Participants and encouraged them to make an election under clause 30.5 in respect of their Winding Up Entitlements.
- b The Supervisor must review the Manager's decision to utilise the Default Option and the proposed process for doing so to determine whether, in doing so, the Manager has complied with its obligations under this Deed, and the FMCA and, in particular, has acted reasonably and fairly in determining that offering the Default Option is in the best interests of Scheme Participants in the relevant Fund.
- c If the Supervisor does not notify the Manager within 15 Business Days of receipt of the above information ('**Default Period**'), or such other period of time that the Supervisor reasonably requires to carry out its review under paragraph b as agreed between the Supervisor and the Manager prior to the end of the Default Period ('**Alternative Period**'), that it believes the Manager has not or may not comply with its obligations under this Deed or the FMCA, or has not acted reasonably and fairly in determining that offering the Default Option is in the best interests of the Scheme Participants in the relevant Fund, the Manager may give notice to the Scheme Participants in accordance with clause 30.5.
- d If the Supervisor does notify the Manager within the Default Period or Alternative Period (as applicable) that it believes the Manager has not or may not comply with its obligations under this Deed or the FMCA, or has not acted reasonably and fairly in determining that offering the Default Option is in the best interests of the Scheme Participants in the relevant Fund, then the Manager will consider the reasons provided by the Supervisor for giving that notification, and will notify the Supervisor of the actions the Manager intends to take as a result, which may be to do any of the following:
  - i proceed with the wind up of the relevant Fund, in which case, unless paragraphs ii or iii apply, the Manager must pay each Scheme Participant's Winding Up Entitlements in cash only;
  - ii submit replacement information under paragraph a, in which case the process set out in this clause 30.6 shall be followed in respect of that replacement information; or

- iii subject to compliance with this Deed and the FMCA and the Supervisor's rights under the FMCA and the Financial Markets Supervisors Act 2011, take any other action it considers appropriate in the circumstances.

### 30.7 Default Scheme Option

Where:

- a the notice given by the Manager pursuant to clause 30.4 specifies a Default Fund in respect of the Scheme; and
- b after implementation of the Engagement Plan, no election is received from a Scheme Participant in respect of Units in the Scheme by the end of the prescribed notice period,

the Manager shall cause the Scheme Participant's Winding Up Entitlements in respect of Units in the Scheme to be satisfied by the distribution (in specie) of units in the relevant Default Fund.

### 30.8 Procedure

The Supervisor shall from the date specified in the notice given by the Manager under clause 30.4:

- a sell, call in and convert into cash the whole of the Trust Fund of the Scheme and pay out, discharge or otherwise make proper provision for the Liabilities of the Scheme, other than units in a Default Fund to be distributed to Scheme Participants in satisfaction of their Winding Up Entitlements; and
- b acquire such units in a Default Fund to be distributed (in specie) to Scheme Participants in satisfaction of their Winding Up Entitlements,

as soon as is practicable.

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### 30.9 Supervisor may retain amounts

The Supervisor shall be entitled to retain out of the Scheme such amount that the Supervisor considers necessary or appropriate to meet all claims, liabilities, and Tax (including contingent liabilities) in connection with the Scheme or arising out of the liquidation of the Scheme, such fee for time in attendance as the Manager and the Supervisor shall agree pursuant to the provisions of this Deed, and the fees of any agents, solicitors, bankers, accountants, auditors or other persons (including the Manager) whom the Supervisor may employ in connection with the winding up of the Scheme. The Supervisor shall be entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Supervisor.

### 30.10 Scheme Participant's entitlements

A Scheme Participant shall be entitled in satisfaction of the Scheme Participant's entitlements on a winding up of the Scheme to the distribution of either cash or units in a Default Fund equal in value to the Scheme Participant's Winding Up Entitlements.

### 30.11 Wind up process

On a winding up of the Scheme, the Supervisor shall:

- a first, pay or retain all costs, charges, expenses, Tax, and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Scheme and of all remuneration payable to the Supervisor and the Manager as herein provided; and
  - b secondly:
    - i pay an amount equal to the Winding Up Entitlements of the Scheme Participants whose Winding Up Entitlements are to be paid in cash to those Scheme Participants; and
    - ii distribute to any Scheme Participant who:
      - A has elected to receive units in a Default Fund pursuant to clause 30.5; or
      - B not made an election in respect of Units in the Scheme and whose Winding Up Entitlements are to be satisfied by the distribution of units in a Default Fund pursuant to clause 30.7,
- units in the relevant Default Fund equal in value to the Scheme Participant's Winding Up Entitlements for the Scheme Participant's Units in the Scheme, in satisfaction of those entitlements.

### **30.12 Supervisor may make interim payments**

If in the opinion of the Supervisor it shall be expedient to do so the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 30.11.

### **30.13 Receipts**

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

### **30.14 Compliance with relevant requirements**

The Supervisor must provide all the reports and comply with all of the requirements set out in the FMCA and any other applicable legislation when the Scheme is wound up.<sup>66</sup>

## **31 Governing law**

### **31.1 New Zealand Law**

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

## **32 Taxation liability**

### **32.1 Principles of interpretation**

The Supervisor and the Manager acknowledge that the appropriate treatment of Taxation Amounts will vary in respect of the Scheme or the Units of a Relevant Person depending on whether or not the Scheme is a Portfolio Investment Entity. Accordingly, when considering the impact of tax in applying the provisions of this Deed, the following principles shall apply:

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<sup>66</sup> Sections 212 and 213 of the FMCA.

- a income in relation to the Scheme, where it is a Portfolio Investment Entity is, in economic substance, the income of the Scheme Participants in the Scheme. Tax is therefore levied at the Scheme level on behalf of those Scheme Participants, and not on behalf of the Scheme itself;
- b a Taxation Amount is only payable in relation to the Trust Fund of the Scheme when it is a Portfolio Investment Entity when the Scheme is required or it is anticipated it will be required under the Tax Act to make an adjustment from or to the Units of a Relevant Person to reflect the effect of the Relevant Person's portfolio investor rate (as defined in the Tax Act) on the Scheme's tax obligations, and should not therefore be recognised as tax payable in relation to the Scheme's income until that time; and
- c income and losses in relation to the Scheme, when it is not a Portfolio Investment Entity, is, in economic substance, the income of the Scheme itself, and any tax payable or tax credit available in relation to any such income or loss must be accounted for by the Scheme accordingly.

### 32.2 Allocation to Scheme Participants

The Supervisor or the Manager may deduct or credit, or require to be deducted from or credited to any amount otherwise payable to or to be applied in respect of a Relevant Person, or from the relevant Fund, or may cause some or all of the Units in any Fund of a Relevant Person to be redeemed to enable payment of, an amount equal to the Taxation Amount of that Relevant Person or the relevant Fund where such amount is payable or anticipated to become payable by the Supervisor or the Manager, or from the Trust Fund or (if applicable) from any relevant Fund. For that purpose the Manager may from time to time, if it reasonably considers that doing so is appropriate in the circumstances, make provision from the Trust Fund for any Taxation Amount that is or is expected to become payable from the Trust Fund, allocated against a Relevant Person and/or a relevant Fund. Where any Tax rebate or other refund is received by or payable to the Trust Fund, the Manager shall ensure that any such amount is allocated to the appropriate Fund and that the benefit of any such amount is allocated to the Relevant Person (to the extent that the amount is able to be attributed to a particular Person under Portfolio Investment Entity tax rules, if applicable) and may for that purpose:

- a make payments between any Funds; or
- b advance funds to any Fund from outside the Trust Fund in anticipation of an amount being received; or
- c issue such additional Units as it sees fit.

### 32.3 Application of Allocation

Amounts deducted (whether by way of redemption of Units or otherwise) or credited under clause 32.2 in relation to a Relevant Person shall be held by the Manager and applied:

- a when and to the extent required under the Tax Act, in payment of the Taxation Amount in relation to that Relevant Person to the Tax Bank Account to enable payment to the Person or authority entitled thereto, or
- b subject to paragraph a, in reimbursement of the Supervisor or the Manager for any corresponding Taxation Amount paid from their own funds in relation to that Relevant

Person in circumstances where the Supervisor or the Manager (as applicable) would properly be entitled to an indemnity from the Trust Fund in respect of that Taxation Amount;

- c any amount received by the Supervisor or the Manager not applied under the foregoing provisions shall be credited to the Relevant Person, whether by way of issue of additional Units or otherwise, on such basis as the Supervisor and the Manager agree is appropriate; and
- d any balance shall be refunded to the Relevant Person.

#### **32.4 Indemnity**

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

#### **32.5 Interest**

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

#### **32.6 Withholding Tax from payments**

If the Supervisor or the Manager is obliged by law to make, or may make and determines to make, any deduction or withholding on account of Taxes from any payment to be made to a Scheme Participant, the Manager shall make such deduction or withholding and pay such amount to the Commissioner of Inland Revenue or other taxing authority. On payment of the net amount to the relevant Scheme Participant, the full amount payable to the relevant Scheme Participant shall be deemed to have been duly paid and satisfied.

#### **32.7 Where the Scheme is a Portfolio Investment Entity**

Where the Scheme is a Portfolio Investment Entity, the following powers and obligations shall apply in addition to those otherwise applying under this Deed and at law:

##### **a Manager's powers**

Without prejudice to any other provision of this clause 32, the Manager shall have the power and discretion (having regard, in each case, to the best interests of Scheme Participants generally and to the requirements of the Tax Act) to determine for the purposes of the Tax Act and Tax Administration Act 1994 (and on such basis as the Manager considers appropriate in its complete discretion):

- i the classes of Scheme Participants;
- ii the attribution period for the Scheme;
- iii the assessable income (for Tax purposes) of the Scheme for an attribution period and to allocate such income to each investor class for that attribution period;
- iv the deductions incurred in deriving the assessable income allocated to an investor class of Scheme Participants for an attribution period;

- v the class net income or the class net loss or other loss used, as the case may be, for each investor class for an attribution period;
  - vi the attributed Portfolio Investment Entity income or attributed Portfolio Investment Entity loss, as the case may be, for each investor class for an attribution period and for a tax year;
  - vii each Scheme Participant's investor fraction or percentage for any period, based on what that Scheme Participant's proportionate interest in any distribution from the Scheme to Scheme Participants would be in that period, if such a distribution were to be made;
  - viii the Scheme's Tax liability or rebate, as the case may be, for the applicable calculation period, and whether (and to what extent) to take into account any Tax liability of the Scheme for the purposes of determining the liabilities of the Scheme for any period;
  - ix from the available options under the Tax Act and Tax Administration Act 1994 (taking into account such factors as the Manager considers relevant in its complete discretion) the method for paying the Scheme's PIE Tax Liability and to make any elections provided for in the Tax Act and Tax Administration Act 1994 required to give effect to that selection;
  - x to retain any amount to which a Scheme Participant otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to the Tax Act and Tax Administration Act 1994;
  - xi to make any other elections as to the method of calculation, allocation or attribution of Tax as the Manager thinks fit having regard to the interests of Scheme Participants generally and the requirements of the Tax Act and Tax Administration Act 1994;
- 
- xii the amounts of any rebates of Tax available to the Scheme by virtue of any relevant provision in the Tax Act and Tax Administration Act 1994;
  - xiii the amount of any rebate of Tax referred to in paragraph xii that is attributable to a Scheme Participant (and to make available to the Scheme Participant the benefit of that rebate of Tax in such manner as the Manager considers appropriate in its complete discretion);
  - xiv the amount of any credits against income Tax payable by the Scheme that is available to the Scheme;
  - xv the amount of any Tax credit that is available to be allocated to an attribution period (and to allocate, in such manner and on such basis as the Manager considers appropriate in its complete discretion, such Tax credit to that attribution period);
  - xvi the amount of Tax attributed to a Scheme Participant;
  - xvii to carry out any other Tax calculations, allocations or attributions required by the Tax Act;
  - xviii to adjust a Scheme Participant's Units in such manner as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the

Tax Act and Tax Administration Act 1994 or otherwise to the extent permitted by law, at any time (including immediately prior to paying any benefit or accepting a request to switch some or all of a Scheme Participant's Units from one Fund to another), having regard to the effect of:

- A the Scheme Participant's prescribed investor rate; and
- B the income (and the losses and associated tax credits) allocated to the Scheme Participant under the Tax Act and Tax Administration Act 1994, as adjusted for any expenses which the Manager considers it appropriate to charge to the particular Scheme Participant;

on the Scheme's Portfolio Investment Entity Tax liability, and the amount of any rebate, under the Tax Act and Tax Administration Act 1994;

- xix to allocate Tax rebates received by the Scheme, or anticipated to be received by the Scheme, to Scheme Participants;
- xx to elect to offset Tax liabilities and refunds in respect of more than one Fund or more than one Scheme Participant to the extent permissible by the Tax Act, and to make such adjustments as the Manager thinks fit;
- xxi to allocate the costs associated with the Scheme being a Portfolio Investment Entity among Scheme Participants and Funds on such basis as the Manager considers appropriate (to the extent practical);
- xxii to take all steps as the Manager considers necessary or desirable to ensure the Scheme is eligible or continues to be eligible as a Portfolio Investment Entity, or otherwise to comply with the requirements of the Tax Act relating to Portfolio Investment Entities, including (in the Manager's complete discretion) declining contributions or switching some or all of a Scheme Participant's Units from one Fund to another as if the Manager had received a request to that effect from the relevant Scheme Participant;
- xxiii to require that before a Scheme Participant is accepted into the Scheme he or she provides their tax file number, prescribed investor rate and any other information required by the Tax Act and Tax Administration Act 1994, and that at any time a Scheme Participant must confirm such details on request from the Manager;
- xxiv to disclose any information, including issuing any statements and providing any information to Scheme Participants, required by the Tax Act and Tax Administration Act 1994 in respect of Scheme Participants' Tax positions in relation to the Scheme, and to provide any information (including personal information) to the Commissioner of Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme's Tax obligations;
- xxv to value Tax losses of the Scheme for the purpose of determining the Fund Value of a Fund in such manner as the Manager thinks fit having regard to the Tax Act and Tax Administration Act 1994, generally accepted accounting practice as defined by the Financial Reporting Act 2013 and the Scheme's stated policies (if any) from time to time;

xxvi to pay any Scheme Participant's tax rebate before receipt of the tax rebate amount from the Commissioner of Inland Revenue; and

xxvii to issue Units in a Fund to a Scheme Participant to reflect a tax rebate receivable that is attributable to that Scheme Participant in respect of the Fund, on the basis that no further Units in that Fund would be issued when the relevant tax rebate is received from the Commissioner of Inland Revenue and credited to the Fund,

and to take all steps and to do all things that the Manager considers necessary or desirable in its complete discretion to convert the Scheme to or from being a Portfolio Investment Entity or to administer the Scheme as a Portfolio Investment Entity.

**b Tax Bank Account**

The Tax Bank Account will be operated as follows:

- i The following payments will be made into the Tax Bank Account as and when directed by the Manager:
  - A any amounts deducted in accordance with this clause 32 in respect of Taxation Amounts;
  - B any rebates received from the Commissioner of Inland Revenue that are allocated to Scheme Participants pending or following payment to the relevant Scheme Participant (including by way of application toward the issue of Units of the Scheme Participant entitled to the rebate); and
  - C any payments to address any deficit Tax Bank Account Balance (arising only from bank fees, and/or bank debit interest). There shall be at least one payment to address any deficit (arising only from bank fees, and/or bank debit interest) within three months after 31 March each year.
- ii Payments will be made by the Supervisor from the Tax Bank Account, as and when directed by the Manager, for the following purposes only:
  - A to the Inland Revenue Department, in respect of the Scheme's Portfolio Investment Entity tax liability;
  - B to the extent that a particular Scheme Participant is entitled to a rebate or refund of Portfolio Investment Entity tax, to or for the benefit of that Scheme Participant; and
  - C to the Scheme, to the extent of any surplus Tax Bank Account Balance (arising from any bank credit interest or otherwise) after making adequate provision for the purposes of paragraphs i and ii above. The amount shall be apportioned between the Funds in accordance with clause 3.9g. There shall be at least one payment of any surplus within three months after 31 March each year.
- iii The Manager will maintain, or cause to be maintained, records for the Tax Bank Account for the purpose of being able to determine if required, for each Scheme Participant any Taxation Amount, or any rebate or refund attributable to them.
- iv The Tax Bank Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Scheme Participant

shall have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent expressly provided for at clause 32.7biiB.

v Any costs incurred in operating the Tax Bank Account will be met by the Scheme.

**c Portfolio Investment Entity Eligibility**

If the Manager identifies that the Scheme is in breach of the Portfolio Investment Entity eligibility criteria contained in the Tax Act, or the Manager reasonably determines that the continued holding of Units by any Scheme Participant may contribute to the Scheme ceasing to be eligible for Portfolio Investment Entity status, the Manager may give a Withdrawal Notice on behalf of the relevant Scheme Participant or Scheme Participants or Scheme Participants generally in respect of some or all of their respective Units as the Manager determines is reasonably required to enable the Scheme to maintain its Portfolio Investment Entity status.

**d Changes in Tax legislation**

Without limiting clause 1.5b, following any amendment to or re-enactment of the Tax Act (a 'Revision'):

- i all of the discretions and powers available to the Manager where the Scheme is a Portfolio Investment Entity, whether under this clause 32 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
- ii the Manager shall have the discretion to apply all of the requirements of the Revision to the Scheme and its Scheme Participants on such basis as the Manager considers appropriate and taking into account such factors as the Manager considers relevant; and
- iii to the extent reasonably possible taking into account the nature of the Revision, any references in this Deed to terms defined in the Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

**32.8 Where the Scheme is not a Portfolio Investment Entity**

Where the Scheme is not a Portfolio Investment Entity, to the extent that legislation does not require otherwise, the following powers and obligations shall apply in addition to those otherwise applying under this Deed and at law:

**a Attribution of taxation**

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

- i make payment from the assets of the Scheme attributable to one Fund to another Fund, so that, by way of example, if one Fund (the 'first Fund') is in a tax loss position and another Fund (the 'second Fund') is required to pay a greater amount of tax than the first Fund, the Manager may make a payment from the assets of the Scheme attributable to the second Fund to the first Fund as if the first Fund had such assets available to it. Any such payment of assets between Funds shall be

made on such terms so that the holders of Units relating to the affected Funds, considered generally, are not disadvantaged;

- ii from time to time make provisions (which shall include making any withholding or deduction) in relation to the Trust Fund, or any Fund, or any asset of the Trust Fund for any tax (including deferred tax or any withholding tax) which is or is expected to be a liability of, or to become payable:

A out of the Trust Fund; or

B by the Supervisor in respect of any asset of the Scheme attributable to a Fund.

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

**b Tax elections**

The Manager must:

- i make the appropriate Slice Election or Reverse Order Election (as the case may be) in respect of all Units, although the Manager may only make a Reverse Order Election after appropriate consultation has taken place with the Supervisor; and
- ii ensure that all Units issued to a Scheme Participant subject to a Slice Election are to be treated as shares of the same class for income tax purposes and not shares of the same class as Units issued to another particular Scheme Participant.

**c Imputation Credit Account**

The Manager may exercise such powers or discretions as may be necessary or desirable to manage the Imputation Credit Account and the attachment of Imputation Credits to payments to Scheme Participants, for the benefit of Scheme Participants generally. Without limiting the generality of this power, the Manager may:

- i quantify the amount (if any) of any payment made to a Scheme Participant (including the Manager) on redemption of a Unit that is deemed to be a dividend for the purposes of the Tax Act;
- ii attach Imputation Credits to any payment made to a Scheme Participant (including the Manager) on redemption of a Unit which is deemed to be a dividend for the purposes of the Tax Act, with the Imputation Ratio determined as the Manager may consider appropriate;
- iii alter the Imputation Ratio in accordance with section OB 61 of the Tax Act if the Manager considers this action to be appropriate;
- iv pay income tax in advance of a liability crystallising to enable the Manager to attach Imputation Credits to a payment to a Scheme Participant; and
- v take account (without being under any obligation to do so) of the incidence of tax and its effect on Scheme Participants.

### **33 Passing up expenses**

#### **33.1 Approved expenditure election**

A Scheme Participant who qualifies may elect by notice in writing to the Manager (the 'Election Notice') to have proposed Approved Expenditure treated as expenditure of the Scheme in respect of a particular Fund or Funds, or in any period in which the Scheme is a Portfolio Investment Entity, to have that expenditure included in the calculation of the Scheme Participant's Tax liability.

#### **33.2 Election Notice**

The Election Notice shall contain such particulars as the Manager may specify from time to time and the Manager may in its absolute discretion accept or refuse proposed expenditure transfers in whole or in part.

#### **33.3 Scheme Participant's credit**

The taxation savings arising from Approved Expenditure shall be credited to the electing Scheme Participant as Expense Transfer Units at the relevant time. The calculation of the taxation savings shall be made by the Manager and determined in its absolute discretion.

#### **33.4 Notice of Expense Transfer Units**

The Manager shall give a notice to each Scheme Participant to whom Expense Transfer Units are credited stating the number and value of any such Expense Transfer Units credited.

#### **33.5 Withholding on Redemption**

Where a Withdrawal Notice has been given by a Scheme Participant that involves the redemption or purchase of Expense Transfer Units, the Manager may withhold from the redemption or purchase proceeds all or some of the Expense Transfer Units plus a sum which it believes in its absolute discretion is sufficient to cover any interest, additional tax, incremental tax, or penal tax until such time as it has received an income or Portfolio Investment Entity tax assessment for the income year to which the Expense Transfer Units relate allowing the Approved Expenditure as a deduction.

#### **33.6 Recovery on disallowed election**

If a tax assessment is made disallowing the treatment of any Approved Expenditure that is subject to an election, the Manager may in its absolute discretion redeem the Scheme Participant's Expense Transfer Units or retain any amount withheld under clause 33.5 to reimburse the Scheme or any particular Fund or Funds for all costs incurred, including without limitation tax, interest, additional tax, incremental tax, or penal tax, and direct costs including reasonable professional expenses incurred in challenging any assessment.

#### **33.7 Liability of Scheme Participant**

If a Scheme Participant or former Scheme Participant holds insufficient or no Units to cover the monies sought by the Manager under clause 33.6 or to satisfy the indemnity provided under clause 33.8, the balance shall constitute a debt owing to the Manager and payable on demand, and pending repayment accruing interest on a daily basis at an interest rate of 3% per annum above the Index Lending Rate of any bank operating in New Zealand as selected from time to time by the Manager.

### **33.8 Indemnity by Scheme Participant**

The Manager shall be indemnified and protected by each Scheme Participant who has made an operative election pursuant to clause 33.1 in respect of any costs, claims or demands made by the Commissioner of Inland Revenue or any other person or flowing from such claims or demand, in respect of or resulting from the treatment of the relevant Approved Expenditure.

## **34 Scheme Participants bound by Deed**

### **34.1 Provisions benefit Scheme Participants**

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind Scheme Participants) contained in this Deed, enure for the benefit of and bind each Scheme Participant and are legally enforceable as between the Manager, the Supervisor and Scheme Participants.<sup>87</sup>

## **35 Counterparts**

### **35.1 Execution by counterparts**

This Deed may be executed in two or more counterpart copies each of which will be deemed an original and all of which when together will constitute one and the same instrument. A party may enter into this Deed by signing a counterpart copy and sending it to the other party (including by facsimile or email).

## **36 Delivery**

### **36.1 Delivery of Deed**

For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Trust Deed will be delivered by each party on the earlier of:

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


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<sup>87</sup> Section 137 of the FMCA.

**Execution**

**Executed and delivered as a deed**

**Signed** for and on behalf of  
**AMP Wealth Management  
New Zealand Limited** by:

  
\_\_\_\_\_  
Director's signature

**Jeffrey Luscoe**  
\_\_\_\_\_  
Director's name

  
\_\_\_\_\_  
Director's signature

**Melinda Howes**  
\_\_\_\_\_  
Director's name

**Signed** for and on behalf of **Public Trust**  
by:



\_\_\_\_\_  
Attorney / Authorised Signatory's signature


**Ramona van Melle**

\_\_\_\_\_  
Attorney / Authorised Signatory's name

\_\_\_\_\_  
~~Authorised Signatory's signature~~

\_\_\_\_\_  
~~Authorised Signatory's name~~

in the presence of:

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

**Brian Cheow Hin See**  
\_\_\_\_\_  
Name                      **Senior Manager Client Services  
Public Trust, Auckland**

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

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**Schedule 1      Specific clauses applicable to certain Funds (Clause 3.5)**

**Name of Fund:** NZ Cash

**Special terms / variation of Deed applying to Fund:**

## **1 Definitions**

1.1 The following definition will also apply in respect of the Fund and is inserted at clause 1.1:

**'Interest Income'** means:

- a in relation to any Investment the Fund holds directly, the interest income earned by the Fund on its non-derivative interest bearing assets; and
- b in relation to any Investment the Fund holds in a collective investment vehicle, the Manager may in its sole discretion, include in the calculation of the Fund's Interest Income the Fund's share of interest income earned by that collective investment vehicle. Where the Manager does exercise this discretion it shall calculate the Fund's interest income from that collective investment vehicle by:
  - i calculating the interest income earned by that collective investment vehicle on its non-derivative interest bearing assets;

less:

- ii all costs charges and expenses due or accrued, charged or chargeable against income but excluding any fees payable to the Manager and/or the Supervisor where the Manager and/or the Supervisor are the same as for the Fund.

The Fund's share shall be calculated by reference to the proportion of the units or interest held by the Fund in the collective investment vehicle on the relevant Valuation Day.

1.2 The following definition shall apply to the Fund in place of the definition of 'Distributable Income' at clause 1.1 of the Trust Deed:

**'Distributable Income'** means in relation to the Fund the net income earned by the Fund, determined in accordance with the provisions of clauses 19.6 and 19.7

1.3 The following definition shall apply to the Fund in place of the definition of 'Fund Value' at clause 1.1 of the Trust Deed:

**'Fund Value'** means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- a the amount of Cash forming part of the assets of the Fund; and
- b the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt all accrued income of the Fund on that Valuation Day);

the aggregate of:

- c the Liabilities of that Fund;
- d all costs, charges and other outgoings (other than those which in the opinion of the Manager are not material, and for the avoidance of any doubt not including any tax liability of a Scheme Participant calculated in accordance with the rules governing Portfolio Investment Entities under the Tax Act) incurred or accrued in connection with the Liabilities of that Fund or otherwise in connection with that Fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment); and
- e any Entitlements,

and for the avoidance of any doubt in calculating the Fund Value of any Fund no allowance shall be made for the Tax Bank Account Balance or the Subscription Bank Account Balance, other than any portion of the Subscription Bank Account Balance that is attributable to Units that have been issued but in respect of which the consideration has not yet been transferred to the Supervisor in accordance with clause 8.10a.

## 2 Distributions

2.1 Clause 19 of the Trust Deed is deleted and replaced by the following:

### 19 DISTRIBUTIONS

19.1 **Income Distribution or Retention:** The Distributable Income of the Fund shall at the discretion of the Manager be:

- a retained by the Supervisor and invested in accordance with the provisions of clause 18; or
- b distributed by the Supervisor to Scheme Participants in accordance with the provisions of clause 19.3; or
- c partly retained and invested and partly distributed to Scheme Participants.

19.2 **Directions to Supervisor:** Subject to clause 19.1, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor:

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

and the Supervisor shall (subject to clause 18.4 in respect of any direction to realise Investments) act in accordance with any such direction.

**19.3 Accrual of Distributable Income:**

- a A Scheme Participant shall commence accruing a share of Distributable Income on the Valuation Day following the issue of Units in the Fund to the Scheme Participant and shall continue accruing Distributable Income up to and including the day upon which the Scheme Participant's Units are redeemed or purchased pursuant to clause 10 of this Deed.
- b In determining the Distributable Income in accordance with clause 19.6 where the Distributable Income of a Fund is negative on a Valuation Day, the Distributable Income for that Valuation Day shall be deemed nil and shall be taken into account by the Manager when determining the Unit Value for that Valuation Day.

A Scheme Participant shall accrue Distributable Income on a proportionate basis to the Units held by the Scheme Participant.

**19.4 Distribution:** All Entitlements to be distributed pursuant to clause 19.1 or 19.2 and 19.3 shall be distributed to Scheme Participants at such time or times as may be nominated by the Manager in a notice given to the Supervisor pursuant to clause 19.2.

**19.5 Reinvestment of Entitlements:**

- a Scheme Participants may elect to reinvest their Entitlements (less any Tax) by purchasing further Units in the Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.
- b The Manager will treat such a request as though it were an application to purchase further Units in the Fund with the relevant Entitlement (less any Tax) and accordingly the provisions of clause 9, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- c Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

**19.6 Determination of Distributable Income:** The Distributable Income of the Fund shall be determined at the Manager's discretion by calculating the aggregate of the Interest Income of the Fund less all costs charges and expenses due or accrued charged or chargeable against income including without limiting the generality of the foregoing:

- a all costs and disbursements incurred in connection with the Fund or the administration thereof and chargeable against income including fees payable to the Supervisor and the Manager; and

- b the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the Fund including (without limitation) the convening of meetings of Scheme Participants; and
- c any taxes or duties paid or payable by or in respect of the Fund or as a consequence of redeeming a Unit or a Unit being purchased by the Manager pursuant to a Withdrawal Notice to the extent that the Manager determines such taxes or duties will not be accounted for under clause 32, but excluding any taxes or duties that the Supervisor and the Manager agree ought not to be taken into account for the purposes of this calculation; and
- d such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Fund for that period; and
- e the fees and expenses of the Auditor in connection with the audit of the Fund.

19.7 **Determination by Manager:** If any question shall arise as to whether any money or property constitutes Distributable Income or not or whether any expense is chargeable against Distributable Income or not such question shall be determined by the Manager.

Name of Fund:

NZ Bond

Special terms / variation of Deed applying to Fund:

## 1 Definitions

1.1 The following definition will also apply in respect of the Fund and is inserted at clause 1.1:

**'Interest Income'** means:

- a in relation to any Investment the Fund holds directly, the interest income earned by the Fund on its non-derivative interest bearing assets; and
  - b in relation to any Investment the Fund holds in a collective investment vehicle, the Manager may in its sole discretion, include in the calculation of the Fund's Interest Income the Fund's share of interest income earned by that collective investment vehicle. Where the Manager does exercise this discretion it shall calculate the Fund's interest income from that collective investment vehicle by:
    - i calculating the interest income earned by that collective investment vehicle on its non-derivative interest bearing assets;
- less:
- ii all costs charges and expenses due or accrued, charged or chargeable against income, but excluding any fees payable to the Manager and/or the Supervisor where the Manager and/or the Supervisor are the same as for the Fund.

The Fund's share shall be calculated by reference to the proportion of the units or interest held by the Fund in the collective investment vehicle on the relevant Valuation Day.

1.2 The following definition shall apply to the Fund in place of the definition of 'Distributable Income' at clause 1.1 of the Trust Deed:

**'Distributable Income'** means in relation to the Fund the net income earned by the Fund, determined in accordance with the provisions of clauses 19.6 and 19.7

1.3 The following definition shall apply to the Fund in place of the definition of 'Fund Value' at clause 1.1 of the Trust Deed:

**'Fund Value'** means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- a the amount of Cash forming part of the assets of the Fund; and
- b the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt all accrued income of the Fund on that Valuation Day)

the aggregate of:

- c the Liabilities of that Fund;
- d all costs, charges and other outgoings (other than those which in the opinion of the Manager are not material, and for the avoidance of any doubt not including any tax liability of a Scheme Participant calculated in accordance with the rules governing Portfolio Investment Entities under the Tax Act) incurred or accrued in connection with the Liabilities of that Fund or otherwise in connection with that Fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment); and
- e any Entitlements,

and for the avoidance of any doubt in calculating the Fund Value of any Fund no allowance shall be made for the Tax Bank Account Balance or the Subscription Bank Account Balance, other than any portion of the Subscription Bank Account Balance that is attributable to Units that have been issued but in respect of which the consideration has not yet been transferred to the Supervisor in accordance with clause 8.10a.

## 2 Distributions

2.1 Clause 19 of the Trust Deed is deleted and replaced by the following:

### 19 DISTRIBUTIONS

19.1 **Income Distribution or Retention:** The Distributable Income of the Fund shall at the discretion of the Manager be:

- a retained by the Supervisor and invested in accordance with the provisions of clause 18; or
- b distributed by the Supervisor to Scheme Participants in accordance with the provisions of clause 19.3; or
- c partly retained and invested and partly distributed to Scheme Participants.

19.2 **Directions to Supervisor:** Subject to clause 19.1, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor:

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

and the Supervisor shall (subject to clause 18.3 in respect of any direction to realise Investments) act in accordance with any such direction.

**19.3 Accrual of Distributable Income:**

- (a) A Scheme Participant shall commence accruing a share of Distributable Income on the Valuation Day following the issue of Units in the Fund to the Scheme Participant and shall continue accruing Distributable Income up to and including the day upon which the Scheme Participant's Units are redeemed or purchased pursuant to clause 10 of this Deed.
- (b) In determining the Distribution Income in accordance with clause 19.6 where the Distributable Income of a Fund is negative on a Valuation Day, the Distributable Income for that Valuation Day shall be deemed nil and shall be taken into account by the Manager when determining the Unit Value for that Valuation Day.

A Scheme Participant shall accrue Distributable Income on a proportionate basis to the Units held by the Scheme Participant.

**19.4 Distribution:** All Entitlements to be distributed pursuant to clause 19.1 or 19.2 and 19.3 shall be distributed to Scheme Participants at such time or times as may be nominated by the Manager in a notice given to the Supervisor pursuant to clause 19.2.

**19.5 Reinvestment of Entitlements:**

- (a) Scheme Participants may elect to reinvest their Entitlements (less any Tax) by purchasing further Units in the Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.
- (b) The Manager will treat such a request as though it were an application to purchase further Units in the Fund with the relevant Entitlement (less any Tax) and accordingly the provisions of clause 9, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- (c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

**19.6 Determination of Distributable Income:** The Distributable Income of the Fund shall be determined at the Manager's discretion by calculating the aggregate of the Interest Income of the Fund less all costs charges and expenses due or accrued charged or chargeable against income including without limiting the generality of the foregoing:

- (a) all costs and disbursements incurred in connection with the Fund or the administration thereof and chargeable against income including fees payable to the Supervisor and the Manager; and

- (b) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the Fund including (without limitation) the convening of meetings of Scheme Participants; and
- (c) any taxes or duties paid or payable by or in respect of the Fund or as a consequence of redeeming a Unit or a Unit being purchased by the Manager pursuant to a Withdrawal Notice to the extent that the Manager determines such taxes or duties will not be accounted for under clause 32, but excluding any taxes or duties that the Supervisor and the Manager agree ought not to be taken into account for the purposes of this calculation; and
- (d) such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Fund for that period; and
- (e) the fees and expenses of the Auditor in connection with the audit of the Fund.

19.7 **Determination by Manager:** If any question shall arise as to whether any money or property constitutes Distributable Income or not or whether any expense is chargeable against Distributable Income or not such question shall be determined by the Manager.

Name of Fund: Fixed Interest Income

Special terms / variation of Deed applying to Fund:

## 1 Definitions

1.1 The following definitions will also apply in respect of the Fund and are inserted at clause 1.1:

'Interest Income' means:

- a in relation to any Investment the Fund holds directly, the interest income earned by the Fund on its non-derivative interest bearing assets; and
  - b in relation to any Investment the Fund holds in a collective investment vehicle, the Manager may in its sole discretion, include in the calculation of the Fund's Interest Income the Fund's share of interest income earned by that collective investment vehicle. Where the Manager does exercise this discretion it shall calculate the Fund's interest income from that collective investment vehicle by:
    - i calculating the interest income earned by that collective investment vehicle on its non-derivative interest bearing assets;
- less:
- ii all costs charges and expenses due or accrued, charged or chargeable against income but excluding any fees payable to the Manager and/or the Supervisor where the Manager and/or the Supervisor are the same as for the Fund.

The Fund's share shall be calculated by reference to the proportion of the units or interest held by the Fund in the collective investment vehicle on the relevant Valuation Day.

1.2 The following definition shall apply to the Fund in place of the definition of 'Distributable Income' at clause 1.1 of the Trust Deed:

'Distributable Income' means in relation to the Fund the net income earned by the Fund, determined in accordance with the provisions of clauses 19.6 and 19.7

1.3 The following definition shall apply to the Fund in place of the definition of 'Fund Value' at clause 1.1 of the Trust Deed:

'Fund Value' means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- a the amount of Cash forming part of the assets of the Fund; and
- b the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt all accrued income of the Fund on that Valuation Day)

the aggregate of:

- c the Liabilities of that Fund;
- d all costs, charges and other outgoings (other than those which in the opinion of the Manager are not material, and for the avoidance of any doubt not including any tax liability of a Scheme Participant calculated in accordance with the rules governing Portfolio Investment Entities under the Tax Act) incurred or accrued in connection with the Liabilities of that Fund or otherwise in connection with that Fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment); and
- e any Entitlements,

and for the avoidance of any doubt in calculating the Fund Value of any Fund no allowance shall be made for the Tax Bank Account Balance or the Subscription Bank Account Balance, other than any portion of the Subscription Bank Account Balance that is attributable to Units that have been issued but in respect of which the consideration has not yet been transferred to the Supervisor in accordance with clause 8.10a.

## 2 Distributions

2.1 Clause 19 of the Trust Deed is deleted and replaced by the following:

### 19 DISTRIBUTIONS

19.1 **Income Distribution or Retention:** The Distributable Income of the Fund shall at the discretion of the Manager be:

- a retained by the Supervisor and invested in accordance with the provisions of clause 18; or
- b distributed by the Supervisor to Scheme Participants in accordance with the provisions of clause 19.3; or
- c partly retained and invested and partly distributed to Scheme Participants.

19.2 **Directions to Supervisor:** Subject to clause 19.1, the Manager may from time to time by notice in writing to the Supervisor direct the Supervisor:

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

and the Supervisor shall (subject to clause 18.3 in respect of any direction to realise Investments) act in accordance with any such direction.

**19.3 Accrual of Distributable Income:**

- a A Scheme Participant shall commence accruing a share of Distributable Income on the Valuation Day following the issue of Units in the Fund to the Scheme Participant and shall continue accruing Distributable Income up to and including the day upon which the Scheme Participant's Units are redeemed or purchased pursuant to clause 10 of this Deed.
- b In determining the Distributable Income in accordance with clause 19.6 where the Distributable Income of a Fund is negative on a Valuation Day, the Distributable Income for that Valuation Day shall be deemed nil and shall be taken into account by the Manager when determining the Unit Value for that Valuation Day.

A Scheme Participant shall accrue Distributable Income on a proportionate basis to the Units held by the Scheme Participant.

**19.4 Distribution:** All Entitlements to be distributed pursuant to clause 19.1 or 19.2 and 19.3 shall be distributed to Scheme Participants at such time or times as may be nominated by the Manager in a notice given to the Supervisor pursuant to clause 19.2.

**19.5 Reinvestment of Entitlements:**

- a Scheme Participants may elect to reinvest their Entitlements (less any Tax) by purchasing further Units in the Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.
- b The Manager will treat such a request as though it were an application to purchase further Units in the Fund with the relevant Entitlement (less any Tax) and accordingly the provisions of clause 9, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- c Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

**19.6 Determination of Distributable Income:** The Distributable Income of the Fund shall be determined at the Manager's discretion by calculating the aggregate of the Interest Income of the Fund less all costs charges and expenses due or accrued charged or chargeable against income including without limiting the generality of the foregoing:

- (a) all costs and disbursements incurred in connection with the Fund or the administration thereof and chargeable against income including fees payable to the Supervisor and the Manager; and
- (b) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the

attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the Fund including (without limitation) the convening of meetings of Scheme Participants; and

- (c) any taxes or duties paid or payable by or in respect of the Fund or as a consequence of redeeming a Unit or a Unit being purchased by the Manager pursuant to a Withdrawal Notice to the extent that the Manager determines such taxes or duties will not be accounted for under clause 32, but excluding any taxes or duties that the Supervisor and the Manager agree ought not to be taken into account for the purposes of this calculation; and
- (d) such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust Fund for that period; and
- (e) the fees and expenses of the Auditor in connection with the audit of the Fund.

19.7 **Determination by Manager:** If any question shall arise as to whether any money or property constitutes Distributable Income or not or whether any expense is chargeable against Distributable Income or not such question shall be determined by the Manager.

## **Schedule 2 Services of the Manager**

### **1 Prime duties**

- 1.1 In consideration for the fees charged in accordance with this Deed the Manager shall perform three prime duties, namely issuing and redeeming Units, investing the Funds, and processing related cash flows. Whilst these services are found throughout the Deed and the FMCA, this Schedule is designed to clarify and focus the nature of the services.

### **2 Issue and Redemption of Units**

- 2.1 The Manager shall issue, redeem, transfer and repurchase Units as required.
- 2.2 As a legal prerequisite to the issue of Units the Manager will prepare, review, maintain and update appropriate PDSs and information on the register of offers of financial products kept under the FMCA.
- 2.3 As a necessary incident of those activities the Manager shall:
- a ensure that an appropriate PDS and information on the register of offers of financial products kept under the FMCA meeting the requirements of relevant legislation is available for prospective and existing Scheme Participants;
  - b receive and accept or reject applications for Units;
  - c calculate pricing for the issue, redemption or repurchase of Units, including calculation of any amounts required to determine Withdrawal Amounts or Issue Prices;
  - d transfer and switch Units as required;
  - e consolidate or subdivide Units;
  - f maintain and arrange the audit of a Register of Scheme Participants in accordance with this Deed;
  - g send confirmations to the Scheme Participants confirming the nature and the ownership of Units held;
  - h send a summary of amendments to the Trust Deed to Scheme Participants from time to time;
  - i calculation of the dividend component and appropriate imputation credits on redemption;
  - j furnish a certificate to the Supervisor in accordance with the Management Agreement, in relation to the above;

### **3 Investing the Funds' assets**

- 3.1 The Manager shall direct the Supervisor to invest any Fund's funds in Investments;
- 3.2 As a necessary incident of that the Manager shall either directly or by way of delegated authority, power of attorney, agency, or as otherwise prescribed:
- a instruct and liaise with brokers, custodians, fund and investment managers, and investment product providers;

- b confer with the Supervisor as required;
- c maintain a register of investments including cost, market value and a summary of purchase and sales;
- d meet the fiduciary requirements of the Trustee Act 1956 and FMCA required of a professional manager making investments by:
  - i reviewing the investments from time to time in order to make purchase and sale decisions and establish guidelines and procedures for those decisions; and
  - ii reviewing investment managers and product providers with the objective of retaining those making the best buy and sell investment decisions are always retained.
- e furnish a certificate to the Supervisor in accordance with the Management Agreement, in relation to the above;
- f carry out any other attendant administrative/clerical duties that arise as a direct consequence of acquisition and disposition of investments.

#### **4 Processing Cash Flows**

- 4.1 The Manager shall process or shall cause to be processed the cashflows associated with the Funds including without limitation: collecting monies on the issue of Units, paying monies on redemption or purchase of Units, collecting income from investments, processing the sale and purchase of investments, paying distributions to Scheme Participants, and reinvesting distributions.
- 4.2 As a necessary incident of this payment and collection service the Manager shall:
  - a maintain such bank accounts as is necessary;
  - b ~~keep accounts of all monies received and expended;~~
  - c ensure that audited Financial Statements and annual reports are prepared and lodged in accordance with this Deed;
  - d fulfil all consequential requirements under the Tax Act, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985;
  - e calculate Entitlements for Scheme Participants including any calculations required to establish Income;
  - f prepare and forward tax statements to Scheme Participants and annual distributions;
  - g report to the Supervisor on these matters as required;
  - h pay any Fund expenses including without limitation the Supervisor's fee, Manager's fee, and Supervisor expenses in respect of the interests of the Fund;
  - i furnish a certificate to the Supervisor in accordance with the Management Agreement, in relation to the above;

## **5 Accounting and Record Package Services**

The Manager shall maintain a computer and administration system capable of delivering the general accounting and record package services that are reasonably incidental and necessary to the prime services set out above.

