



## **Trust Deed**

relating to

## **AMP Personal Superannuation Scheme**

AMP Wealth Management New Zealand  
Limited (the Manager)

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## TRUST DEED - AMP PERSONAL SUPERANNUATION SCHEME

Date: 8 August 2016

### PARTY

**AMP Wealth Management New Zealand Limited** (the *Manager*)

### BACKGROUND

- A The AMP Personal Superannuation Scheme (*Trust*) was established by a trust deed dated 9 August 2004, which was amended on 8 February 2005, 15 March 2007, 28 August 2007 and 29 May 2008, and amended and consolidated by a deed dated 2 April 2013 which was amended on 1 December 2015 (the *Existing Deed*).
- B The Manager wishes to amend the Existing Deed by substituting this Deed for the Existing Deed in order to comply with the requirements of the Financial Markets Conduct Act 2013 (*FMCA*) and all other relevant legislation, and to:
- (a) reflect that the Scheme is a legacy superannuation scheme, and is closed to new members;
  - (b) provide for the role of a supervisor of the Scheme for the purposes of the FMCA;
  - (c) alter the Manager's role to that of the manager of the Scheme for the purposes of the FMCA; and
  - (d) make a number of other minor amendments to the Existing Deed as a consequence of the introduction of the FMCA and amendments to other applicable legislation or for the more efficient operation of the Scheme.
- C The New Zealand Guardian Trust Company Limited will become the supervisor of the Scheme pursuant to a deed of appointment dated on the Effective Date. Upon such appointment taking effect, The New Zealand Guardian Trust Company Limited will become the Supervisor of the Scheme and become responsible for the functions of the supervisor under this Deed.
- D The Manager is satisfied that the amendments contained in this Deed are permitted under clause 24 of the Existing Deed, and prior to entering into this Deed, the Manager obtained from its solicitors a certificate as required by section 12(1)(b) of the Superannuation Schemes Act.

### BY THIS DEED:

In accordance with the power of amendment contained in clause 24 of the Existing Deed, it is declared that with effect from the Effective Date, the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Deed so that from the Effective Date, the Scheme will be operated, administered, and governed in accordance with the provisions of this Deed.

## 1 INTERPRETATION

### 1.1 Defined Terms

In this Deed unless the context otherwise requires:

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

*Attributed Tax* means Tax payable by the Scheme, the Manager or the Supervisor (whether current or deferred) which is:

- (a) attributed under the Income Tax Act to a Member; or
- (b) determined by the Manager to be attributable to a Member;

*Auditor* means the auditor of the Scheme appointed pursuant to clause 21;

*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;

*Commissioner* means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994;

*Contribution* means an amount paid by or in respect of a Member as a contribution to the Scheme;

*Custodian* means a person appointed to hold the Scheme property under clause 15.3 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold any such Scheme property under clause 15.4;

*Effective Date* means the date that the Manager elects under clause 19(1)(a) of Schedule 4 to 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;

*Entitlement* in relation to a Unit means the amount to be distributed to a Member in respect of that Unit;

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



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

*Existing Deed* has the meaning given to it in Background A;

*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 of the Funds established by the Existing Deed (known as Portfolios under the Existing Deed) and governed by this Deed;

*GST* means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985;

*Income Tax Act* means the Income Tax Act 2007, and where the context requires, includes the Tax Administration Act 1994;

*Liabilities* (where capitalised) means, (subject to clause 6.3) in relation to a Fund, debts and other obligations of the Supervisor acting in its capacity as supervisor of the Scheme payable from the Fund (including in particular but without limitation all taxes or duties payable by or in respect of the Fund, having regard to clause 23.2 of this Deed, other than PIE tax liabilities attributable to Members) but excludes contingent liabilities (except to the extent that the Manager with the approval of the Auditor decides that an allowance should be made for such liabilities) and such debts and other obligations of the Supervisor in respect of which by the terms of this Deed the Supervisor is not entitled to be indemnified out of the Fund, in all cases to be allocated across the Funds on an equitable basis;

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

*Manager* means AMP Wealth Management New Zealand Limited or such other person as may be appointed as the manager for the time being of the Scheme pursuant to clause 13;

*Member* means, in relation to a Fund, a 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 natural person or the trustees of any Retirement Scheme for the time being entered on a Register as the holder of any Unit;

*Minimum Balance* means any minimum balance prescribed from time to time by the Manager in accordance with clause 9.2;

*Minimum Withdrawal Amount* means any minimum withdrawal amount prescribed from time to time by the Manager in accordance with clause 9.2;

*Net Asset Value* means the value of a Fund as calculated under clause 6.1 on a Valuation Day;

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

*PIE* means a portfolio investment entity as defined in the Income Tax Act;

*PIE Legislation* means the provisions of the Income Tax Act and the Tax Administration Act 1994 that relate to a PIE;

*PIE Tax Liability* means the Tax liability for the Scheme as calculated under the PIE Legislation;

*Prescribed Investor Rate* has the meaning given to that term by the Income Tax Act;

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

*Registered Scheme* has the meaning ascribed to it in 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>

*Retirement Date* means in respect of a Member, the later of:

- (a) the date on which the Member attains 55 years of age;
- (b) the date of the fifth anniversary of the Member joining the Scheme and becoming a Member, or where the Member is transferring from another Retirement Scheme approved by the Manager, such earlier date as agreed between the Member and the Manager, at the time the Member joins the Scheme; or
- (c) with the agreement of the Manager, the date the Member otherwise selects as the expiry of his or her lock-in period,

in each case subject to clause 7.4 in respect of Members who are joint holders of a Unit;

*Retirement Scheme* means a KiwiSaver scheme, superannuation scheme or workplace savings scheme as defined in the FMCA, a superannuation scheme registered under the

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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.

Superannuation Schemes Act, or any overseas superannuation scheme in respect of which transfers to or from the Scheme are permissible;<sup>5</sup>

*Scheme* means the AMP Personal Superannuation Scheme governed by this Deed and comprising all of the Funds from time to time;

*SIPO* has the meaning given to it by the FMC Regulations;<sup>6</sup>

*Subscription Bank Account* means the bank account (or part of a combined bank account which relates to subscription money) established for the Scheme in the name of the Supervisor or its Custodian in accordance with clause 18.9;

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

*Superannuation Schemes Act* means the Superannuation Schemes Act 1989;

*Supervisor* means The New Zealand Guardian Trust Company Limited, or such other person as is for the time being appointed to act as supervisor of the Scheme in accordance with clause 16 and, where the context requires or allows, includes any Custodian;

*Switching Notice* means a Withdrawal Notice of the type referred to in clause 9.5;

*Tax* means all kinds of taxes, deductions, duties, imposts and charges imposed by a government or quasi-government authority, together with interest and penalties (including, but not limited to, any tax liability paid or payable by the Supervisor or the Manager on behalf of or in respect of the Scheme or a Member under the Income Tax Act) including Attributed Tax;

*Tax Bank Account* means in relation to the Scheme, the bank account established for the Scheme by the Supervisor or its Custodian and managed by the Manager in accordance with clause 18.10;

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

*Unit* means an undivided part or share in a Fund as described in clause 5 and includes parts of a Unit;

*Unit Price* means the price which is from time to time determined under clause 5.6;

*Valuation Day* means a day on which the Manager values a Fund under clause 6.1;

*Winding Up Entitlements* means, in respect of a Fund being wound up as part of the winding up of a Scheme and a Member, assets (including, where relevant, cash) equal in value to a proportion of the Fund's assets after allowing for the deduction of all

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<sup>5</sup> Section 6 of the FMCA.

<sup>6</sup> FMC Regulation 5.

amounts under clause 27.1(d)(i) which is equal to the proportion of Units held by the Member in the Fund;

*Withdrawal Amount* means an amount to be withdrawn from a Fund in accordance with clause 9.1;

*Withdrawal Notice* means a notice given in accordance with clause 9.1;

*Withdrawal Suspension Notice* means a notice given by the Manager in accordance with clause 9.9 that has the effect of suspending the operation of Withdrawal Notices and/or a Switching Notices in respect of a Fund;

*Withdrawal Value* means, in relation to a Unit, an amount calculated in accordance with clause 9.3.

## 1.2 **General construction**

- (a) Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) References to statutes or regulations includes all amendments, re-enactments and replacements thereof, and, when the context requires, any regulations made under them.
- (c) References to any part of the Scheme, or any cost, expense, fee or other outgoing of any nature relating to the Scheme, being attributed, attributable, or relating to a Fund, mean as such part of the Scheme, or any cost, expense, fee or other outgoing is attributed to that Fund from time to time on a fair and equitable basis by the Manager.
- (d) Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- (e) Where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
- (f) If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may select.
- (g) Notwithstanding any provision of this Deed, Units are not to be treated as Liabilities for any purpose under this Deed.
- (h) Footnotes used in this Deed do not form part of this Deed, are a guide only and where they refer to legislative provisions, 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.

(i) where:

- (i) a provision of this Deed replicates a specific compulsory requirement of the FMCA (whether or not in its entirety); but
- (ii) 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 or a Fund,

the provisions of this Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make this 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).

### 1.3 **Implied terms**

Terms implied into this Deed under the FMCA will 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 will be void to the extent that it is contrary.

### 1.4 **Frameworks or methodologies**

Where any framework or methodologies are specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA, apply to the Scheme or a Fund 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 or the relevant Fund (as the case may be).

## 2 **PURPOSE**

### 2.1 **Purpose**

The purpose of the Scheme is to provide retirement benefits directly or indirectly to beneficiaries who are natural persons in accordance with the FMCA.

## 3 **CONTINUATION OF SCHEME**

### 3.1 **Continuation**

The Scheme is continuing now as a legacy superannuation scheme in accordance with the FMCA, effective on and from the Effective Date, on the basis set out in this Deed.

### 3.2 **Name of Scheme**

The Scheme shall be known as the AMP Personal Superannuation Scheme or, subject to compliance with all applicable legislation and any other relevant regulatory requirement, by such other name as the Manager may from time to time determine.

## 4 **FUNDS**

### 4.1 **Fund**

This Deed confirms the continuation of each Fund. The Scheme may be re-divided into one or more Funds, and on such terms and conditions as the Manager may from time to time nominate, such nomination to prescribe such terms for the Fund as the Manager may from time to time determine and notify to the Supervisor. The

investments and other assets of the Scheme attributable to each Fund shall be held on the trusts of this Deed.

#### 4.2 **Scheme is a single scheme**

Notwithstanding the establishment of separate Funds within the Scheme pursuant to clause 4.1, the assets of The Scheme shall comprise a single trust fund, but without prejudice to the generality of the foregoing the value of each Member's interests in a Fund shall be determined by reference to the value of the Units held by the Member in the Fund or Funds, provided:

- (a) all Liabilities attributable to a Fund shall be met at first instance from the assets attributable to that Fund;
- (b) where the assets attributable to a Fund are insufficient to meet the Liabilities attributable to that Fund, those Liabilities shall be met from other Scheme assets in such equitable manner as the Manager thinks fit;
- (c) except to the extent required to meet the Liabilities attributable to any other Funds, all investments attributable to a Fund shall be held by the Supervisor and/or its Custodian on trust for the exclusive benefit of the Members who have an interest in that Fund pursuant to this Deed;<sup>7</sup> and
- (d) the Manager shall maintain or cause separate records and accounts to be maintained in respect of each Fund.

#### 4.3 **Variation of Funds**

Unless doing so would materially prejudice the interests of Members generally, and subject to clause 4.4 and any express provision in this Deed, the Scheme's SIPO, and compliance with the FMCA and any other applicable law, the Manager may:

- (a) by notice in writing to the Supervisor vary all or any of the terms of any Fund prescribed by the Manager under clause 4.1, if the Supervisor and the Manager agree that the variation is not material; and
- (b) in any other cases, following consultation with the Supervisor, by notice in writing to the affected Members vary all or any of the terms of any Fund prescribed or confirmed by the Manager under clause 4.1.

#### 4.4 **Limitation on variation powers**

The Manager's powers of variation under clause 4.3 do not extend to permit any alteration to the Scheme that:

- (a) would be contrary to or have the effect of nullifying or reversing or amending any matter stated in this Deed, or any provision implied in this Deed by any applicable legislation; or
- (b) would have the effect of extending or varying or limiting the scope of this Deed in any material particular.

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<sup>7</sup> Sections 152(1)(c) and 156 of the FMCA.

## 5 UNITS

### 5.1 Beneficial interest in Funds

The beneficial interest in each Fund shall be divided into Units.

### 5.2 Equal but not specific interests

Each Unit of a Fund shall:

- (a) be of one class and shall confer identical rights and interests in that Fund;
- (b) not confer any interest in any particular investment comprised in that Fund, and no Member shall be entitled to require the transfer to the Member of any of the investments of any Fund or otherwise give directions in relation to any of the investments of a Fund.

### 5.3 No interference in management etc.

Subject to the rights of the Members created by this Deed, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon the Manager or the Supervisor (as the case may be) by this Deed or in respect of the Scheme, any Fund, or any part or parts thereof, or to exercise any right, power or privilege in respect of any investment in a Fund.

### 5.4 Part Units

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

### 5.5 Issuance of Units and Unit Prices binding

Each Unit shall be issued in accordance with clause 8.1 at the Unit Price on the Valuation Day for which the relevant Contribution is effective in accordance with clause 8.2. Unit Prices determined pursuant to this Deed are, in the absence of an error (and subject to clauses 12.1(k) and 12.1(l)), final and binding on all Members and any other Persons claiming a beneficial interest in the assets of the Scheme.

### 5.6 Determining Unit Prices

The Manager shall determine for each Fund on each Valuation Day a Unit Price, by dividing the Net Asset Value of the Fund by the number of Units on issue in respect of that Fund and rounding the product in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion. The Manager shall notify the Supervisor in accordance with the Management Agreement when there is a change in the number of decimal places the product is rounded to or the rounding manner to be adopted.

### 5.7 Consolidation and division

Units may at any time and from time to time be consolidated or divided as determined by the Manager.

### 5.8 Cessation of issues

The Manager may at any time or times by written notice to the Supervisor determine that from a date specified by the Manager, no further Units shall be issued pursuant to this Deed or in relation to a Fund or Funds:

- (a) for any specified period, or
- (b) until the relevant Fund or Funds or the Scheme is terminated.

In such event the Manager will not after the date specified in the notice issue any further Units under this Deed or in relation to 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.

## 6 VALUATIONS<sup>8</sup>

### 6.1 Net Asset Value of Fund

Pursuant to clause 12.1, the Manager shall calculate the Net Asset Value of each Fund as frequently as the Manager may consider necessary or desirable from time to time (but at least once every 5 Business Days, or at such longer intervals as the Manager may determine from time to time subject to the Supervisor's prior agreement, which shall not be unreasonably withheld) by deducting the Liabilities attributable to that Fund from the market value of its assets (other than the Tax Bank Account Balance and the Subscription Bank Account Balance to the extent they have been included in the market value of its assets).

### 6.2 Determining Market Value

For the purpose of determining the Net Asset Value of a Fund under clause 6.1, the Manager shall determine the market value of each asset in the Fund on such basis as the Manager considers to be fair and equitable having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and may from time to time engage any valuer or other suitably qualified person for the purpose of fixing the market value of any such asset (but is not under any duty to do so).

### 6.3 Determining Liabilities

For the purpose of determining the Net Asset Value of a Fund under clause 6.1, the Manager shall determine the Liabilities attributable to the Fund on such basis as the Manager considers to be fair and equitable having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and in doing so may (subject to clause 4.2):

- (a) apportion the Liabilities of the Scheme generally among the Funds on such basis as the Manager considers appropriate and fair and equitable for Members; and
- (b) take account of each debt, Liability, provision, cost, charge, expense, outgoing, Tax obligation or other matter as the Manager considers appropriate;

and, for the avoidance of doubt, may exclude certain liabilities from the Liabilities taken into account, (such as Attributed Tax, or any deficit Tax Bank Account Balance) or expenses charged to accounts (whether or not those amounts are required to be treated as liabilities for accounting purposes).

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<sup>8</sup> Section 135(1)(d) of the FMCA.



**6.4 Reliance by Supervisor**

The Supervisor shall be entitled to rely on the Manager's calculations under this clause 6, and will not be required to verify those calculations or the methods and procedures used by the Manager in relation to them, except to the extent that such verification is required in order for the Supervisor to meet its obligations under the FMCA.

**7 MEMBERSHIP**

**7.1 Entry fee**

The Manager may deduct an entry fee for purchase of any Units of up to 4% of the cash or other consideration forwarded to meet the Unit Price for those Units, as agreed by the Member concerned, together with (in the case of a contribution to the Scheme in the form of a transfer from another Retirement Scheme) a fee of up to \$2,000, as prescribed by the Manager from time to time.

**7.2 Cessation of Membership**

A Member's membership of the Scheme shall terminate once that Person no longer holds any Units.

**7.3 Provisions benefit Members**

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

**7.4 Joint Members**

The Manager may, but shall not be bound to, register two persons as holders of any Unit. Where two persons are registered as the holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship as the Member in respect of such Units, 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 shall be the only person 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) either joint holder may give Withdrawal Notices, or Switching Notices, execute a transfer of Units or give effectual receipts for any Withdrawal Amount payable to such joint holders;
- (d) a notice from the Manager given to any one of the joint holders shall be deemed notice to all the joint holders; and
- (e) the Retirement Date of the Person whose name first stands in the Register shall be deemed to be the Retirement Date of both joint holders.

## 8 CONTRIBUTIONS

### 8.1 Unitising Contributions

In respect of:

- (a) each Contribution and other amount accepted into the Scheme under this clause 8;
- (b) any other amount accepted or payable into the Scheme which the Manager considers should give rise to the issue of Units; and
- (c) any amount switched from one Fund to another Fund pursuant to clause 9.5,

the Manager shall issue Units in the relevant Fund or Funds:

- (d) by the next Valuation Day as determined in accordance with clause 8.2; or
- (e) if and to the extent that the Manager determines that (for administrative or other reasons) it is not reasonably practicable to issue Units in a particular Fund or Funds by the next Valuation Day and advises the Supervisor accordingly, by what the Manager considers to be the next reasonably practicable Valuation Day (provided that the Manager may not invoke this clause 8.1(e) for a period exceeding 5 Business Days with respect to any amount accepted or payable or switched without the Supervisor's prior agreement, which shall not be unreasonably withheld).

Units issued pursuant to a Contribution shall be that number of Units (rounded down if necessary to six decimal places) that have an aggregate Unit Price equal to the value of the Contribution or amount switched, adjusted to the extent appropriate to reflect an equitable proportion of the Manager's Fees accrued or otherwise payable at the relevant time, Tax (subject to clause 22 and 23) or other Liabilities, and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the day when the Units are issued.

### 8.2 Contributions received

A Contribution received by the Manager prior to 5.00 pm on the Business Day preceding a Valuation Day shall (subject to clause 8.1(e)) be effective for that Valuation Day. For the purposes of this clause, a Contribution 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 Contribution by the Manager.

### 8.3 Contributions that may be accepted

The Manager may accept, but shall not be required to accept, Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 8.1.

### 8.4 Conditions for acceptance

Without limiting clause 8.3, the Manager may require that any amount contributed or transferred to the Scheme by or in respect of a Member other than in terms of clauses 8.1(a) to 8.1(c):

- (a) must be no less than such minimum amount as the Manager may set from time to time; and
- (b) must be made in New Zealand currency;

and may impose, with respect to the acceptance of the relevant amount, such other terms and conditions (including, without limitation, as to the mode of payment) as the Manager may set from time to time.

#### 8.5 **Receipt of Contributions**

Contributions received by (or on behalf of) the Manager shall be paid into a bank account established under clause 18.9 and shall be held on trust in accordance with the terms of this Deed and all applicable legislation.

#### 8.6 **Uncleared funds**

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

#### 8.7 **Units issued in error**

Subject to clause 12.1(k) and 12.1(l), 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.

#### 8.8 **Refunds and void allotments**

The Manager shall refund the value of any application moneys received in respect of a rejected application or voided Units as soon as practicable. Subject to compliance with relevant law and maintenance of equity as between Members, the Manager shall have all powers necessary to restore the Scheme to the position it would have been in if Units determined to be void had never been issued.

### 9 **BENEFITS**

#### 9.1 **Withdrawal Notice**

If any Member wishes to effect a withdrawal from a Fund, the Member shall give notice in writing or by Electronic Communication to the Manager to that effect subject to clause 9.12. Such Withdrawal Notice shall:

- (a) specify the Fund to which the Units to be withdrawn relate, and either a monetary amount or the number of such Units in respect of which the Member 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.

#### 9.2 **Minimum Withdrawal Amount and Minimum Balance**

No Withdrawal Notice shall be given in respect of less than the Minimum Withdrawal Amount of the relevant Fund, and except where all Units held by a Member in relation to a particular Fund are to be redeemed, no Withdrawal Notice shall be given if the effect of the withdrawal would be that the Member who gave the same would hold less than the Minimum Balance (where applicable) of the relevant Fund. The Manager may

from time to time determine the Minimum Withdrawal Amount and any Minimum Balance applicable to the Scheme, a particular Fund, a Member or group of Members. The Manager may at any time at its discretion waive the requirements of this clause 9.2, either generally or in a particular case or cases.

### 9.3 **Withdrawal Values**

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

- (a) the Business Day on which it is received, provided it is a Valuation Day; or
- (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 Price on that Valuation Day adjusted to the extent appropriate to reflect an equitable proportion of any fees accrued pursuant to clause 19 or otherwise payable at the relevant time that have not otherwise been incorporated in the relevant Unit Price, and adjusted for any Tax of a Member that is payable or is anticipated to become payable by the Manager from the assets of that Fund. 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.

### 9.4 **Benefit Payment**

Subject to clauses 9.9 and 9.12, the Manager shall upon a Withdrawal Notice becoming effective procure that the number of Units or Units of aggregate Withdrawal Values equal to the Withdrawal Amount as specified in that Withdrawal Notice are redeemed and the Member concerned is paid the aggregate Withdrawal Values of those Units from the relevant Fund, less any Tax which the Manager determines is applicable to the Withdrawal Amount.

### 9.5 **Switching**

Where a Withdrawal Notice specifies that the Member wishes to apply the Withdrawal Amount by acquiring Units in another Fund, the Manager may treat the Withdrawal Notice as if it were also an application for Units relating to the relevant Fund or Funds in accordance with clause 8.1(c) and apply the Withdrawal Amount accordingly, subject to such terms and conditions as the Manager may from time to time prescribe.

### 9.6 **Redemption of Units**

In connection with the redemption of Units under clause 9.4 the Manager shall have the right to:

- (a) direct the Supervisor pursuant to clause 18.2 to realise investments of the relevant Fund; and/or
- (b) direct the Supervisor pursuant to clause 14.1 (subject to clause 14.2), to Borrow on behalf of the relevant Fund 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 18.3, the Supervisor shall forthwith realise

Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the relevant Fund.

**9.7 Cancellation of Units redeemed**

Units redeemed pursuant to this clause 9 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.

**9.8 Order of redemption**

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

- (a) a Member gives a Withdrawal Notice which requires redemption of less than all of the Units held by the Member in relation to a Fund; and
- (b) the Member does not specify particular Units to be redeemed,
- (c) the Units which are first redeemed by that Member shall be deemed to be those of the Units held by that Member which were earliest allotted, or transferred to the Member.

**9.9 Withdrawal Suspension Notice**

If by reason of:

- (a) a decision to terminate any one or more of the Fund(s);
- (b) the suspension of trading on any Exchange (whether generally or in respect of any specific investment in a Fund);
- (c) financial, political or economic conditions applying in respect of any financial market;
- (d) the nature of any investment, including without limitation the Supervisor's ability to realise any investment in a Fund; or
- (e) the occurrence or existence of any other circumstance or event relating to the Scheme 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 Members generally, for the Manager to give effect to Withdrawal Notices and Switching Notices in respect of a Fund or Funds, then the Manager may give notice to that effect to the Supervisor and to any holder of Units relating to the relevant Fund who gives or has given a Withdrawal Notice, or to all holders of Units relating to the relevant Fund. A Withdrawal Suspension Notice in respect of a Fund shall have the effect of suspending the operation of all Withdrawal Notices and Switching Notices given in respect of Units relating to that Fund until such time as the Manager gives to the Supervisor and to the Members who gave those Withdrawal Notices or Switching Notices notice that the Withdrawal Suspension Notice is cancelled.

**9.10 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 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 either the ninety (90) day period or upon the expiry of the withdrawal or transaction suspension period affecting the underlying investment of the relevant Fund, as applicable.

**9.11 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 the number of Units to be redeemed in respect of the Withdrawal Notice shall be calculated as if the reference in clause 9.3 to the next Valuation Day were a reference to the next Valuation Day following the cancellation of that Withdrawal Suspension Notice.

**9.12 Restrictions on Withdrawals**

- (a) A Member who has not attained his or her Retirement Date may give one Withdrawal Notice in any calendar year for a Withdrawal Amount that is no greater than 20% of the aggregate Withdrawal Values of all Units held by that Member at the time.
  
- (b) A Member may give a Withdrawal Notice prior to his or her Retirement Date only in such circumstances as the Manager may prescribe from time to time, subject to the FMCA and having regard to the purpose of the Scheme and the terms of any relevant disclosure documents for the Scheme, that special circumstances exist justifying payment of a Withdrawal Amount prior to the Member's Retirement Date. Such special circumstances include where the Manager is satisfied that the Member (or in the case of Members who are joint holders of any Unit, either Member):
  - (i) has died or become totally and permanently disabled;
  - (ii) is permanently emigrating from New Zealand;
  - (iii) has joined or agreed to join another Retirement Scheme and the Withdrawal Amount will be applied as a contribution to that Retirement Scheme; or
  - (iv) is in severe financial hardship,

in each case based on such criteria as the Manager in its discretion considers appropriate. However, in no circumstances shall the Manager be required to give effect to a Withdrawal Notice:

- (c) given by a Member where the Manager determines that payment of a benefit pursuant to that Withdrawal Notice may contribute to the Scheme being de-registered as a legacy superannuation scheme under the FMCA.<sup>9</sup>; or
- (d) where the payment of a benefit pursuant to that Withdrawal Notice would be contrary to any conditions or limitations agreed to by the Member prior to giving the Withdrawal Notice.

#### 9.13 **Exit fee**

The Manager may charge an exit fee of up to 5% of the Withdrawal Amount.

### 10 **ASSIGNMENT OF BENEFIT, TRANSMISSION OF UNITS, TRANSFER**

#### 10.1 **Transfer generally**

All or any of the Units held by any Member may be transferred by instrument in writing in accordance with clause 10.2, provided that the transferee under any such instrument must be a Member.

#### 10.2 **Instrument of transfer**

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

#### 10.3 **Minimum Value of Units**

No transfer shall be given in respect of less than the Minimum Withdrawal Amount and no transfer shall be given if the effect of giving the same would be that the transferor or the transferee Member would hold less than the Minimum Withdrawal Amount.

#### 10.4 **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.

#### 10.5 **Transmission of Units**

The executors or administrators of a deceased Member (not being one of several joint Members) shall be the only persons recognised by the Manager as having any beneficial interest in the Units held by such Member or Members. However, if that Member 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 Member, the Manager may register that transfer notwithstanding that the Manager at the time of such registration has notice of that Member's death.

#### 10.6 **Transfer by operation of law**

Any person having authority to administer the estate of a person who is subject to a court order under the Protection of Personal and Property Rights Act 1988 and any person becoming entitled to any Units in consequence of the death, bankruptcy or liquidation of any Member 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 10 may transfer such Units.

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<sup>9</sup> Section 129 of the FMCA

This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

**10.7 Transfers made under the FMCA:**

Any transfers to or from the Scheme shall be in accordance with the relevant requirements of the FMCA.<sup>10</sup>

**10.8 Bulk transfers pursuant to the FMCA**

The Manager may effect transfers to or from the Scheme or between Funds in accordance with the requirements of the FMCA.<sup>11</sup>

**11 REGISTER**

**11.1 Register to be maintained**

The Manager shall keep and maintain or cause to be kept and maintained in respect of the Scheme an up-to-date register of Members in each Fund. 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>12</sup>

**11.2 Reliance upon Register**

Each of the Manager and the Supervisor shall be entitled:

- (a) to rely absolutely on the Register as being correct;
- (b) for all purposes to treat a person whom it believes to be the person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units without further enquiry; and
- (c) to 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 confirmation or other evidence of ownership that may have been issued from time to time in respect of those Units.

**11.3 Evidence of entitlement**

Notwithstanding clause 11.2, 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

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<sup>10</sup> Section 135(1)(f) of the FMCA.

<sup>11</sup> Sections 178 to 182 of the FMCA.

<sup>12</sup> Sections 215 to 223 of the FMCA and FMC Regulations 109 and 110.



that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question.

**11.4 No notice of trust etc.**

Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor shall be bound to accept or record notice of, or 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 in the Scheme is or may be subject, or to recognise any Person as having any interest in the Scheme except for the person recorded in a Register as the Member.

**12 MANAGEMENT OF THE SCHEME**

**12.1 Manager's responsibilities**

The Manager is designated as the manager of the Scheme and is responsible for performing the functions for which responsibility is attributed to it as manager under the FMCA.<sup>13</sup>

Without limiting the generality of the foregoing, the Manager shall perform the following specific functions:

- (a) maintaining the Register, and maintaining records for all accounts, in accordance with the requirements of the FMCA;<sup>14</sup>
- (b) arranging for the receipt and acceptance of Contributions and other monies payable to the Scheme in accordance with clause 8;
- (c) providing Members with information, notices and disclosures required to be given to them under the FMCA;<sup>15</sup>
- (d) keeping complete and accurate records of all investments of the Scheme and each Fund;
- (e) effecting switches between Funds pursuant to clause 9.5;
- (f) discharging its obligations under clauses 5, 6 and 9 with respect to unitisation, valuations and benefit calculations;
- (g) determining the terms of all contracts to be entered into in respect of the Scheme provided that the Manager must ensure that at all times, to the extent possible having regard to the FMCA and the law relating to trusts and trustees, the liability of the Supervisor in relation to any contract is limited to the assets of the Scheme or the relevant Fund or Funds (as applicable);

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<sup>13</sup> Sections 133 and 142 of the FMCA.

<sup>14</sup> Subpart 4 of Part 4 of the FMCA.

<sup>15</sup> Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.

- (h) subject to the requirements of the FMCA, determining whether benefits are payable and arranging for the payment of benefits to or in respect of Members, and for transfers to other Retirement Schemes;
- (i) appointing and engaging solicitors and other consultants, advisers, investment managers, and administration managers on such terms as the Manager determines, and the Auditor, subject to the terms in clause 21;
- (j) reporting and providing information to the Supervisor<sup>16</sup> (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>17</sup>
- (k) altering a Member's Unit holding to address partly or entirely the impact of any unit pricing error<sup>18</sup> provided such alteration does not adversely affect the Member's Unit holding or the position of other Members, as compared with the position such Member or Members would have been in had the unit pricing error not occurred;
- (l) correcting 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 clause 12.1(l) 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>19</sup>
- (m) ensuring compliance by the Scheme with the requirements of the FMCA, the Financial Reporting Act 2013 and other applicable legislation;
- (n) ensuring compliance by the Scheme with all Tax obligations;
- (o) maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA<sup>20</sup>;
- (p) arranging for the preparation, audit and lodgement of the financial statements for the Scheme, and the preparation of the Scheme's annual reports in accordance with the requirements of the FMCA; and<sup>21</sup>

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<sup>16</sup> FMCA Regulation 94.

<sup>17</sup> Sections 147 to 151, 167 and 168 of the FMCA and Regulations 83, 94 to 98 and 100 of the FMC Regulations.

<sup>18</sup> Section 168(2) of the FMCA.

<sup>19</sup> Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

<sup>20</sup> Section 459 of the FMCA.

<sup>21</sup> Sections 461A, 461D and 461H of the FMCA, and Regulations 62 and 63 of the FMC Regulations.

- (q) exercising such other powers, authorities, functions and discretions as are granted or imposed by the FMCA or incidental to the above functions.

In performing the above functions, the Manager shall act in accordance with the terms of this Deed and the FMCA.<sup>22</sup>

## 12.2 **Manager's powers**

The Manager shall manage and administer each Fund for the benefit of the Members holding Units relating to that Fund with full and complete power of management. The Manager shall, without limiting the Manager's discretion and full powers of management and administration, but subject to clause 18.3, 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) make and carry out any takeover proposal, offer or invitation;
- (e) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- (f) create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any assets for any purpose whatsoever, subject to clause 14.2 where Borrowings of the Manager are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (g) 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; or
  - (v) the sale or other disposition of all or any part of the property or undertaking of any corporation;
- (h) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any

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<sup>22</sup> Sections 143 and 144 of the FMCA.

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;

- (i) acquire and accept for a Fund any equity of redemption;
- (j) 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;
- (k) enter into, perform and enforce agreements;
- (l) institute, prosecute, compromise and defend legal proceedings;
- (m) pay all outgoings connected with the Scheme or this Deed which are not otherwise payable by the Supervisor.

In exercising its discretion and powers under this clause 12.2, the Manager shall act in accordance with the terms of this Deed, the FMCA and the PIE Legislation (if applicable).

### 12.3 **Delegation by Manager**

Without in any way affecting the generality of clause 12.2 the Manager may in carrying out and performing the duties and obligations which are contained under the FMCA or this Deed and subject to the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:

- (a) delegate all or any of its powers, authorities, functions and discretions exercisable under the FMCA<sup>23</sup> or this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager; and
- (b) by Power of Attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers, authorities, and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities, or discretions.

### 12.4 **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 no Member shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. The Manager shall not be under any liability or responsibility in respect of the management of any 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

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<sup>23</sup> Section 146 of the FMCA.

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.

#### 12.5 **Manager's Additional Powers**

In addition to any other powers granted under this Deed, the FMCA, or by law, but subject to FMCA, the Manager may do anything the Manager considers necessary or expedient to enable it to discharge the Manager's duties under this Deed.<sup>24</sup>

#### 12.6 **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 Scheme's property; and
- (c) any other experts for the provision of services relevant to the Scheme;

and (subject to clause 18.5 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>25</sup>

### 13 **APPOINTMENT AND REMOVAL OF MANAGER**

#### 13.1 **Appointment**

The Manager is appointed and accepts appointment as manager of the Scheme upon and subject to the terms and conditions contained or implied in or prescribed pursuant to this Deed, the FMCA and any applicable legislation, and will observe and perform the manager obligations under this Deed, the FMCA and any applicable legislation. The Scheme shall have a manager, who:

- (a) must not be an Associated Person of the Supervisor; and
- (b) must otherwise be a person entitled in accordance with the FMCA<sup>26</sup> and otherwise by law to act as the manager of the Scheme.

#### 13.2 **Removal**

The Manager shall be removed from office in the circumstances set out in the FMCA.<sup>27</sup>

#### 13.3 **Retirement**

Subject to all applicable legislation, the Manager may retire at any time upon giving not less than three months' notice in writing to the Supervisor of its intention to do so

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<sup>24</sup> Section 135(1)(k)(iii)

<sup>25</sup> Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

<sup>26</sup> Sections 127(1)(c) and 135(1)(h) of the FMCA.

<sup>27</sup> Sections 185, 209 and 210 of the FMCA.

(or upon giving not less than one month's notice in writing to the Supervisor where the new manager is an Associated Person of the Manager).

#### 13.4 **Restrictions on retirement**

No removal or retirement under clause 13.2 or clause 13.3 will take effect until a new manager that is qualified for appointment under clause 13.1 has been appointed pursuant to clause 13.5.

#### 13.5 **New Manager appointment**

- (a) The power to appoint a temporary manager under the FMCA<sup>28</sup> shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
- (b) Subject to all applicable legislation, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, but no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).
- (c) Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

#### 13.6 **Release of Manager**

Subject to all applicable legislation,<sup>29</sup> from the date of appointment of a new permanent manager, the retiring Manager is absolved and released from all such covenants under this Deed. For the avoidance of doubt, the retiring Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date on which it ceases to hold office under this Deed.

#### 13.7 **Appointment not exclusive**

Nothing contained in this Deed shall be construed to prevent the Manager from establishing, or acting as manager, administration manager or investment manager in relation to, another Retirement Scheme or similar scheme.

#### 13.8 **Former Managers 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>30</sup>

### 14 **BORROWING POWERS**

#### 14.1 **Power to Borrow**

Subject to the relevant SIPO and clause 14.2, the Supervisor has the power to, and must, if so directed by the Manager, Borrow and raise money for any of the purposes of the Scheme or in relation to a Fund or Funds on such terms and conditions as the Manager thinks fit and to mortgage, charge, pledge or otherwise create a security interest over all or any of the assets of the Scheme or a Fund, provided that nothing in

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<sup>28</sup> Sections 186, 187, 189 and 191 of the FMCA.

<sup>29</sup> Section 191 of the FMCA.

<sup>30</sup> Section 190 of the FMCA.

this clause 14.1 shall require the Supervisor to take any action which it reasonably believes would cause it to breach its obligations under any rule of law or under this Deed.

#### 14.2 **Limitations on Borrowings**

The following restrictions on the power to Borrow conferred by clause 14.1 apply:

- (a) the aggregate of the principal moneys Borrowed and outstanding from time to time in respect of the Scheme may not exceed 20% of the aggregate of the Net Asset Value of all the Funds;
- (b) the aggregate of the principal moneys Borrowed and outstanding from time to time in relation to a Fund may not exceed 50% of the Net Asset Value of that Fund, and the liability of the Supervisor in respect of any such Borrowing shall be limited to the investments in the Scheme from time to time attributable to the Fund; and
- (c) Borrowings shall only be entered into or made where the Manager in good faith determines that the Borrowing is necessary or desirable for the sole purpose of conducting the operation of the Scheme pursuant to this Deed, including to provide liquidity for the repayment or redemption of any Units from time to time. Any lender may rely upon a certificate given by the Manager as to any determination made under this clause 14.2 without further enquiry.

#### 14.3 **Third parties need not enquire**

No Person lending or advancing moneys to the Supervisor or completing documents or securities in respect of any such Borrowing need to enquire as to whether or not the limitations set out at clause 14.2 have been observed or complied with.

### 15 **POWERS OF THE SUPERVISOR**

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

- (a) The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions and duties as the supervisor of the Scheme, it must comply at all times with its duties under the FMCA.<sup>31</sup>
- (b) In addition to any other powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Supervisor may do anything the Supervisor considers necessary or expedient to enable it to discharge the Supervisor's statutory duties in relation to the Scheme.

#### 15.2 **Delegation by Supervisor**

In addition to any other powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Supervisor may:

- (a) delegate the performance of all or any of its powers, authorities, functions and discretions under this Deed to its officers and employees; and

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<sup>31</sup> Section 152 to 155 and section 160 of the FMCA.

- (b) subject to the written approval of the Manager to the appointment or removal (such approval not to be unreasonably withheld), appoint and remove any person (including the Manager or an Associated Person of the Manager) as an advisory trustee or agent on terms and conditions and with such powers, duties, discretions, indemnities and remuneration as are agreed by the Supervisor and the other person.

The Supervisor may also engage an expert in accordance with the requirements of the FMCA.<sup>32</sup>

### 15.3 **Appointment of Custodian**

The Supervisor may, subject to obtaining the prior written approval of the Manager (which shall not be unreasonably withheld), nominate, in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any investment in a Fund or any property of the Scheme are to be vested. The Custodian must meet the requirements for such person under the FMCA.<sup>33</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 clause 15.3 and the FMCA<sup>34</sup> with respect to the Scheme.

### 15.4 **Appointment of Sub-custodians**

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 clause 15.3 may itself appoint one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which any investment in a Fund or any property of the Scheme are to be vested. Any sub-custodian appointed under this clause 15.4 must meet the requirements for such a person under the FMCA.<sup>35</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 this clause 15.4 and the FMCA<sup>36</sup> with respect to the Scheme.

### 15.5 **Fees and reimbursement for Custodians and Sub-custodians**

The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to clauses 15.3 and 15.4 (subject to obtaining the prior written approval of the Manager, which shall not be unreasonably withheld), the fees that may be charged and the extent to which expenses will be reimbursed.

## 16 **APPOINTMENT AND REMOVAL OF SUPERVISOR**

### 16.1 **Appointment**

The Supervisor's appointment and acceptance of its appointment as supervisor of the Scheme is upon and subject to the terms and conditions contained or implied in or

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<sup>32</sup> Section 155 of the FMCA.

<sup>33</sup> Sections 127(1)(f) , 156 and 158 of the FMCA.

<sup>34</sup> Sections 156 to 159 of the FMCA and FMC Regulations 86 to 88.

<sup>35</sup> Section 156 of the FMCA.

<sup>36</sup> Sections 156 to 159 of the FMCA.



prescribed by this Deed, the FMCA and any applicable legislation, and by accepting such appointment, the Supervisor will be responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA. The Scheme shall have a single supervisor who:

- (a) must not be an Associated Person of the Manager;<sup>37</sup> and
- (b) must otherwise be a person entitled by law to act as the supervisor of the Scheme.

## 16.2 **Removal**

- (a) Subject to clause 16.4, the Manager may remove the Supervisor from office with the FMA's prior consent:
  - (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 six months' written notice of such removal.
- (b) Subject to clause 16.4, the Supervisor may be removed from office otherwise in the circumstances prescribed in the FMCA.<sup>38</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.

## 16.3 **Retirement**

Subject to clause 16.4, and to all applicable legislation, the Supervisor may retire at any time upon giving the Manager not less than three months' written notice of its intention to do so.

## 16.4 **Restrictions on retirement or removal**

No removal or retirement under clause 16.2 or 16.3 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>39</sup>
- (b) any new supervisor has executed the deed referred to in clause 16.6; and

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<sup>37</sup> Section 127(1)(e) of the FMCA.

<sup>38</sup> Section 193(1) of the FMCA.

<sup>39</sup> Section 193(2) of the FMCA.

- (c) all of the investments of the Scheme have been transferred to the new supervisor, or a custodian(s) who holds all of the investments of the Scheme has acknowledged in its capacity as custodian for the Scheme, that it is acting for the new supervisor.

**16.5 New appointment**

The power of appointing a new supervisor of the Scheme (in place of a supervisor which has been removed from office or retired) is vested in the Manager.

**16.6 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 Members to be bound by all the covenants on the part of the former supervisor under this Deed from the date of such appointment.

**16.7 Retiring Supervisor released**

From the date of execution by the new supervisor of a deed in accordance with clause 16.6, the retiring supervisor is absolved and released from all liabilities and obligations under this Deed (except in respect of 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.

**16.8 Appointment not exclusive**

Nothing contained in this Deed shall be construed as preventing the Supervisor from establishing, or acting as supervisor in relation to, another Retirement Scheme or similar scheme.

**17 INDEMNITIES AND LIABILITIES**

**17.1 Supervisor and Manager in representative capacities**

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 Scheme, are, and shall be deemed to be, each acting for and on behalf of the Scheme and not in their own respective capacities.

**17.2 No personal liability**

Neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation or claim arising out of or in connection with the Scheme, and only the assets of the Scheme shall be liable or subject to execution.

**17.3 Indemnity**

Subject to the indemnity limitations under the FMCA,<sup>40</sup> if contrary to the provisions of clause 17.1 and 17.2 either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability, Tax or obligation incurred by or on behalf of the Scheme, or any action taken or omitted, for or in connection with the Scheme, including in respect of its establishment, then the Supervisor or the Manager (as applicable) shall be entitled to indemnity and reimbursement out of the assets of

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<sup>40</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

the Scheme, and to the extent applicable from the assets of the relevant Fund or Funds, to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined (including, without limitation, legal fees and disbursements).

#### 17.4 **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 the Scheme) of; and/or
- (b) to indemnify and reimburse out of the Scheme's property,

any investment manager or administration manager appointed in respect of the Scheme, 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 any action taken or omitted to be taken in connection with the Scheme (including, without limitation, legal fees and disbursements).<sup>41</sup>

#### 17.5 **Power to indemnify custodians**

The Supervisor may agree:

- (a) to limit the liability (in connection with its services in respect of the Scheme), of; and/or
- (b) to indemnify and reimburse out of the Scheme's property,

any Custodian appointed in respect of the Scheme, 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 any action taken or omitted to be taken in connection with the Scheme (including without limitation, legal fees and disbursements).<sup>42</sup>

#### 17.6 **Liability for default**

Either the Supervisor and the Manager may be liable for any loss arising out of their wilful default or wilful breach of trust but subject thereto and to clause 17.14 the Supervisor or the Manager (as the case may be) shall not be liable to the Scheme or to any Member as a result of acting as Supervisor or Manager (as applicable) 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 Scheme.

#### 17.7 **Reimbursement**

Without limiting the generality of the indemnity provided at clause 17.3, the Supervisor and the Manager are entitled to be reimbursed out of the assets of the Scheme, and to the extent applicable from particular Funds for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Supervisor or

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<sup>41</sup> Section 135(1)(f) and 136(2) of the FMCA.

<sup>42</sup> Sections 135(1)(f) and 136(2) of the FMCA.

Manager (as applicable) under this Deed. Without prejudice to the generality of the foregoing the Supervisor and the Manager shall be entitled (subject to the indemnity limitations applying under the FMCA) to be indemnified against:

- (a) any expense or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme, a Fund or the provisions of this Deed;
- (b) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with any investment in a Fund, including commission, bank charges and stamp duty, financial institutions duties and bank account debits, or any other Tax properly charged to or payable by the Supervisor (whether by the Commissioner or any other taxing authority) in connection with the assets of the Scheme or a Fund (as applicable);
- (c) costs of postage in respect of all cheques, accounts, notices, reports and other documents posted to all or any Members; costs of convening and holding any meeting of Members; costs of preparing and printing accounts, cheques and all other documents required to be prepared in connection with the Scheme or a Fund, pursuant to this Deed or any relevant law;
- (d) fees and expenses of the Auditor or any auditor, any solicitor, actuary, barrister, expert or other Person from time to time engaged by the Supervisor or the Manager in the discharge of its duties and exercise of powers under this Deed including (without limitation) any custodian appointed under clause 15.3 or 15.4 or any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 12.3;
- (e) expenses in connection with maintaining accounting systems and the keeping of accounting records and the Registers;
- (f) all costs, charges and expenses incurred in the advertising and promotion of the Scheme or a Fund;
- (g) any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of Units.

#### **17.8 Reliance on Manager by Supervisor**

Subject to the provisions of the FMCA and the Trustee Act 1956, the Supervisor will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it).

#### **17.9 Other limitations on liability**

Without prejudice to the generality of clauses 17.1 to 17.8:

- (a) the Supervisor and the Manager may each accept and act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor,

banker, accountant, broker or other person appointed by the Supervisor or the Manager and believed by the Supervisor of the Manager to be expert in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall not be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;

- (b) except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
- (c) nothing in this Deed shall be deemed to prohibit the Manager or the Supervisor or any Associated Person of the Supervisor or of the Manager, or any shareholder or officer of the Manager (*Relevant Persons*) from being a Member or from acting in any representative capacity for a Member. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Member and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- (d) the Supervisor shall be at liberty to deposit all documents evidencing any investments in a Fund, or evidencing title to any investments, with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by the Trust as a result of any such documents being held by any such person; and
- (e) subject to requirements of the FMCA, the Members of the Scheme or the Members holding Units relating to a Fund may by majority consent further release the Supervisor or the Manager (as applicable) from any liability incurred in relation to the Scheme and if applicable, the relevant Fund, and indemnify the Supervisor or the Manager (as applicable) from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or the Manager ceasing to act in relation to the Scheme.

#### 17.10 **Reliance upon documents**

Whenever pursuant to any provision of this Deed, any certificate, notice, instruction, direction or other communication shall be given:

- (a) by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any one of its directors or by any other person or persons duly authorised by the Manager; and
- (b) by the Supervisor to the Manager, the Manager may accept as sufficient evidence thereof a document signed on behalf of the Supervisor by any one of its directors or by any other person or persons duly authorised by the Supervisor.

#### 17.11 **Apportionment**

Any expense, cost or Liability of the Scheme shall be apportioned amongst any one or more of the Funds in such equitable manner as the Manager may in its discretion determine. The Manager may at any time elect not to seek reimbursement from the assets of the Scheme attributable to a Fund for any expense, cost or liability, without prejudicing the right of the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

#### 17.12 **Indemnity Limits**

No provision of clauses 17.1 to 17.10 or any other provision of this Deed shall have the effect of relieving, exempting or excusing the Supervisor or Manager, or any of their respective directors or officers, from, or indemnifying the Supervisor or the Manager or any of their respective director or officer to the extent that doing so would be void under the FMCA<sup>43</sup> or any other applicable legislation.

#### 17.13 **Best endeavours**

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

#### 17.14 **Existing rights preserved**

The amendment of the Existing Deed by this Deed does not affect the on-going availability of the indemnities and reimbursement powers contained in clause 14 of the Existing Deed, subject to the limitations contained in clause 14 of the Existing Deed, and the provisions of this Deed are to be construed accordingly.

### 18 **INVESTMENTS**

#### 18.1 **SIPO**

- (a) The Manager must prepare a written SIPO for the Scheme which covers each Fund and complies with the requirements of the FMCA,<sup>44</sup> which SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA,<sup>45</sup> and all moneys available for investment in a Fund shall be invested in accordance with the SIPO for the Scheme which covers that Fund. 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>46</sup>
- (b) This clause 18.1 shall not be construed so as to prohibit the Manager from transferring amounts between Funds to accommodate the Scheme being a single taxpayer.

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<sup>43</sup> Section 136 of the FMCA.

<sup>44</sup> Section 164 of the FMCA.

<sup>45</sup> Section 164 of the FMCA.

<sup>46</sup> Sections 165 and 166 of the FMCA.

### 18.2 **Investment directions by the Manager**

Subject to this clause 18 and to compliance with the Scheme's SIPO which covers the relevant Fund, the Manager shall manage the investments of the Scheme and each Fund and may, in order to perform its function under clause 12.1 and the FMCA,<sup>47</sup> direct the Supervisor, or a Custodian on behalf of the Supervisor, in writing to:

- (a) purchase, acquire, sell, transfer, replace and dispose of investments and property;
- (b) manage any investments;
- (c) amend or modify any investments;
- (d) enter into any commitments or liabilities in respect of investments and property;
- (e) execute and deliver such contracts or other instruments as may be necessary in respect of the foregoing; and
- (f) take any other action which may be required in respect of investments and property;

and the Supervisor shall (and, when a Custodian has been appointed, procure that the Custodian shall) from time to time, to the extent of the respective funds in its hands or control, do all things necessary on its part to act as directed in writing by the Manager.

### 18.3 **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 a direction of the Manager in the circumstances where such a refusal is required by the FMCA<sup>48</sup> and the Supervisor shall not be liable to Members or the Manager for so refusing to act (or for directing any Custodian to so refuse to act).
- (b) If the Supervisor refuses pursuant to clause 18.3 to act (or directs any Custodian to refuse to act) on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for refusal or direction.<sup>49</sup>
- (c) Subject to clause 17.11, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of the Scheme or a Fund arising as a result of the Scheme or a Fund being invested in accordance with the SIPO for the Scheme.

### 18.4 **Advisers**

In relation to the purchase or sale of, or any other dealing with, any investment, the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisors (if any) for, the purchase, sale or other dealing. The

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<sup>47</sup> Section 142 of the FMCA.

<sup>48</sup> Section 160 of the FMCA.

<sup>49</sup> Section 160 of the FMCA.

Manager may agree to pay out of the assets of the Scheme all reasonable expenses of such advisers.

#### 18.5 **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>50</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 Member for any profit arising from any such transaction.
- (d) A failure to comply with clause 18.5(a) does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>51</sup>

#### 18.6 **Vesting and custody of investments**

The Manager shall cause any investments and property to be:

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

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

#### 18.7 **Contrary intention**

The investment obligations of the Manager or the Supervisor in relation to any Fund under this Deed shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956. However, any direction by a Member in terms of this clause 18.7 will not exempt the Manager from its responsibilities under the FMCA.<sup>52</sup>

#### 18.8 **Bank accounts**

A bank account or accounts in the name of the Supervisor or a Custodian appointed in accordance with clause 15.3 or 15.4 must be opened and maintained 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.

#### 18.9 **Subscription Bank Account**

A bank account or accounts outside the Scheme, in the name of the Supervisor or a Custodian appointed in accordance with clause 15.3 or 15.4, must be opened and maintained. All subscriptions for Units that are paid, prior to the allotment of those

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<sup>50</sup> Sections 172 to 175 of the FMCA.

<sup>51</sup> Section 173(6) of the FMCA.

<sup>52</sup> Section 144 of the FMCA.



Units, must be paid to the credit of the Subscription Bank Account until Units for those subscription amounts are issued, at which point such subscription monies shall be credited to a bank account for the relevant Fund or the Scheme. Amounts payable when the relevant Units are cancelled must be paid to the credit of the Subscription Bank Account. The Supervisor shall determine the persons authorised to operate such bank accounts.

#### 18.10 Tax Bank Account

The Supervisor or its Custodian shall establish a bank account outside of the Scheme for the purpose of the Manager managing Tax obligations in relation to the Scheme. While the Scheme is a PIE, the Tax Bank Account will be operated as follows:

- (a) The following payments will be made into the Tax Bank Account as and when directed by the Manager:
  - (i) any amounts deducted on account of the PIE Tax Liability;
  - (ii) any rebates or refunds of Tax received from the Commissioner that are allocated to Members pending or following payment to the relevant Member, (including by way of application toward the issue of Units of the Member entitled to the rebate); and
  - (iii) 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.
- (b) Payments will be made by the Supervisor from the Tax Bank Account, as and when directed by the Manager, for the following purposes:
  - (i) to the Commissioner, in respect of the Scheme's PIE Tax Liability;
  - (ii) to the extent that a particular Member is entitled to a rebate or refund of Tax, to or for the benefit of that Member; and
  - (iii) 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 as the Manager thinks fit. There shall be at least one payment of any surplus within three months after 31 March each year.
- (c) 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 Member any Attributed Tax, or any rebate or refund of Tax attributable to them;
- (d) the Tax Bank Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Member 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 18.10(b)(ii); and

- (e) any costs incurred in operating the Tax Bank Account will be met by the Scheme.

#### 18.11 **Supervisor's right to limit liability**

Before the Manager undertakes the Supervisor's entry into any transaction, security or liability of or in connection with the Scheme or a Fund, the Supervisor may require that its liability is restricted or limited to its satisfaction to the investments for the time being or the Scheme or such Fund.

### 19 **REMUNERATION OF THE MANAGER AND SUPERVISOR**

#### 19.1 **Manager's fees**

The Manager shall be paid out of the assets of a Fund, in respect of its services as manager of the Scheme and of the relevant Fund, a fee (when combined with the Supervisor's fee) not exceeding 4% per annum of the Net Asset Value of the relevant Fund as determined by the Manager from time to time in respect of each Fund.

#### 19.2 **Alteration or Waiver of fees**

The Manager may:

- (a) at any time and from time to time increase the amount of its fee payable pursuant to clause 19.1 in respect of any Fund by giving at least one (1) month's prior notice to that effect to all Members holding Units relating to that Fund;
- (b) at its sole discretion at any time and from time to time waive or reduce its fee payable pursuant to clause 19.1 either generally or in relation to a particular Fund or Funds or Member or category of Members or transaction relating to a Fund.

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

The fee referred to in clause 19.1 shall be calculated and accrued daily on the basis of the Net Asset Value of the relevant Fund from day to day (or on such other basis as the Manager may determine in respect of the relevant Fund from time to time) and paid daily.

#### 19.4 **Supervisor's annual fee**<sup>53</sup>

The Supervisor will be paid an annual fee, calculated in such a manner and of such amount, as the Supervisor and the Manager may agree from time to time. That fee shall, subject to any agreed minimum annual fee, be determined and expressed as a percentage of the Net Asset Value comprised in each respective Fund (which percentage may differ between Funds). The fee may be deducted from the assets of that Fund or paid by cancelling Units held by Members, or may be paid by the Manager if it so agrees.

#### 19.5 **Special fees**

In addition to the fee payable to the Supervisor under clause 19.4, the Supervisor is entitled to charge in respect of the Scheme such special fees, on a time cost and

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<sup>53</sup> Section 135(1)(f) of the FMCA.

reasonable disbursements basis, as the Manager may agree to from time to time (which agreement shall not be unreasonably withheld).

#### 19.6 **GST etc**

The Supervisor and the Manager are entitled to receive, in addition to the fees referred to in this clause 19, any GST or similar Tax payable in respect of such fees.

#### 19.7 **Alteration of Supervisor's 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 **LIMITATION OF LIABILITY**

#### 20.1 **Limitation**

Subject to clause 23.4, but notwithstanding anything else contained in this Deed or any rule of law:

- (a) no Member shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Scheme or any Fund;
- (b) nothing in this Deed or in the relationship between the Members shall be deemed to create a partnership amongst Members;
- (c) subject to clause 4.2, neither the Supervisor nor the Manager shall be or act as agent for the Members in respect of Units in any Fund, and neither the Supervisor nor the Manager shall have power to incur liabilities on behalf of any Member or pledge the credit of any Member beyond the extent of their investment in the Funds.

### 21 **AUDITOR**

#### 21.1 **Appointment and remuneration**

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>54</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>55</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.

#### 21.2 **Removal/Retirement**

The Auditor may at any time and from time to time be removed by the Manager with notice to the Supervisor. The Manager must remove the Auditor if the Supervisor

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<sup>54</sup> Section 461E of the FMCA.

<sup>55</sup> Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

believes it to be in the best interests of the Scheme and/or Members and instructs the Manager to remove the Auditor.

The Auditor may retire upon giving the Manager 30 days' notice in writing.

### 21.3 **New appointment**

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

### 21.4 **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.

### 21.5 **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 obligation to report to the Supervisor.<sup>56</sup>

## 22 **TAXATION**

### 22.1 **PIE Tax compliance**

Pursuant to clause 12.1, the Manager may elect that the Scheme will be a PIE, or will cease to be a PIE, in its complete discretion. Where the Scheme is a PIE, the Manager shall have the additional powers and discretions (having regard, in each case, to the best interests of Members generally and to the requirements of the Income Tax Act) to determine for the purposes of the PIE Legislation (and on such basis as the Manager considers appropriate in its complete discretion):

- (a) the classes of Members;
- (b) the attribution period for the Scheme;
- (c) 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;
- (d) the deductions incurred in deriving the assessable income allocated to an investor class of Members for an attribution period;
- (e) 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;
- (f) the attributed PIE income or attributed PIE loss, as the case may be, for each investor class for an attribution period and for a tax year;
- (g) each Member's investor fraction or percentage for any period, based on what that Member's proportionate interest in any distribution from the Scheme to Members would be in that period, if such a distribution were to be made;

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<sup>56</sup> Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

- (h) the Scheme Tax liability or rebate of Tax, 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;
- (i) from the available options under the PIE Legislation (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 PIE Legislation required to give effect to that selection;
- (j) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner pursuant to the PIE Legislation;
- (k) 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 Members generally and the requirements of the PIE Legislation;
- (l) the amounts of any rebates of Tax available to the Scheme by virtue of any relevant provision in the PIE Legislation;
- (m) the amount of any rebate of Tax referred to in paragraph (l) that is attributable to a Member (and to make available to the Member the benefit of that rebate of Tax in such manner as the Manager considers appropriate in its complete discretion);
- (n) the amount of any credits against income Tax payable by the Scheme that is available to the Scheme;
- (o) the amount of any rebate or refund of Tax 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 rebate or refund of Tax to that attribution period);
- (p) the amount of Attributed Tax; and
- (q) to carry out any other Tax calculations, allocations or attributions required by the Income Tax Act;
- (r) to adjust a Member's Unit holding in such manner as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the PIE Legislation 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 Member's Benefit from one Fund to another), having regard to the effect of:
  - (i) the Member's Prescribed Investor Rate; and
  - (ii) the income (and the losses and associated rebates of Tax) allocated to the Member under the PIE Legislation, as adjusted for any expenses which the Manager considers it appropriate to charge to the particular Member;

on the Scheme's PIE Tax Liability, and the amount of any rebate of Tax, under the PIE Legislation;

- (s) to allocate rebates of Tax received by the Scheme, or anticipated to be received by the Scheme, to Members;
- (t) to elect to offset Tax liabilities and refunds in respect of more than one Fund or more than one Member to the extent permitted by the Income Tax Act, and to make such adjustments as the Manager thinks fit;
- (u) to allocate the costs associated with the Scheme being a PIE among Members and Funds on such basis as the Manager considers appropriate (to the extent practical);
- (v) to take all steps as the Manager considers necessary or desirable to ensure the Scheme is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Income Tax Act relating to PIEs, including (in the Manager's complete discretion) declining Contributions or switching some or all of a Member's Benefit from one Fund to another as if the Manager had received a request to that effect from the relevant Member;
- (w) to disclose any information, including issuing any statements and providing any information to Members, required by the PIE Legislation in respect of Members' Tax positions in relation to the Scheme, and to provide any information (including personal information) to the Commissioner 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;
- (x) to value Tax losses of the Scheme for the purpose of determining the Net Asset Value of a Fund in such manner as the Manager thinks fit having regard to the PIE Legislation, generally accepted accounting practice as defined by the Financial Reporting Act 2013 and the Scheme's stated policies (if any) from time to time;
- (y) to pay any Member's rebate of Tax before receipt of the amount of the rebate of Tax from the Commissioner;
- (z) to issue Units in a Fund to a Member to reflect a rebate of Tax receivable that is attributable to that Member in respect of the Fund, on the basis that no further Units in that Fund would be issued when the relevant rebate of Tax is received from the Commissioner 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 PIE or to administer the Scheme as a PIE.

## 22.2 **Changes in Tax legislation**

Without limiting clause 1.2(b) following any amendment to or re-enactment of the Income Tax Act (a *Revision*):

- (a) all of the discretions and powers available to the Manager where the Scheme is a PIE, whether under this clause 22 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Manager shall have the discretion to apply all of the requirements of the Revision to the Scheme and its Members on such basis as the Manager considers appropriate and taking into account such factors as the Manager considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Deed to terms defined in the Income 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.

## 23 **TAXATION LIABILITY**

### 23.1 **Definitions**

In this clause 23:

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

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

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

### 23.2 **Withholding from Benefits**

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 Member, the Manager shall make such deduction or withholding and pay such amount to the Commissioner or any other taxing authority. On payment of the net amount to the relevant Member, the full amount payable to the relevant Member shall be deemed to have been duly paid and satisfied.

### 23.3 **Application of allocation**

Amounts deducted (including by way of redemption of Units) or allocated under clause 23 shall be held by the Trustee and applied in:

- (a) payment of the Taxation Amount to the Person entitled thereto; or
- (b) reimbursement of the Trustee for any corresponding Taxation Amount or other amount paid from its own funds in circumstances where, by virtue of clause 17.3, the Trustee is entitled to an indemnity in respect of that Taxation Amount or other amount; and

- (c) any balance shall be refunded or, if applicable, credited by way of issuing additional Units, to the Relevant Person.

#### 23.4 **Indemnity**

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

#### 23.5 **Interest**

Any Taxation Amounts paid on behalf of a Relevant Person shall, to the extent that the Manager and the Supervisor (as the case may be) is unable to deduct Taxes in accordance with clause 23.2 carry interest calculated on a daily basis at such rate as the Manager or the Supervisor (as the case may be) for the period from which the Supervisor or Manager is required to make payment of Tax to the date of reimbursement of Taxes in full to the Supervisor or Manager may determine, and such interest shall be paid on demand by the Relevant Person to the Manager or the Supervisor (as the case may be).

### 24 **NOTICES**

#### 24.1 **To Member**

Any notice under this Deed, and any other Scheme-related communication intended for a Member may be given to the Member personally by:

- (a) leaving it at the Member's registered address; or
- (b) sending it addressed to the Member at the Member's registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post or advertisement; or
- (c) subject to the member having given his or her electronic address to the Manager or having otherwise consented to accept Scheme-related information in an electronic form, by means of an Electronic Communication.

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

#### 24.2 **Notice between Manager and Supervisor**

Any certificate, notice, communication or information required by this 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 Deed) and must be signed by a duly authorised officer on behalf of the party giving it.



**24.3 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 p.m. 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).

**24.4 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.

**24.5 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 Member in pursuance of the provisions of this Deed will (notwithstanding that the Member is then deceased and whether or not the Manager has notice of such deceased Member's death) be deemed to have been duly given until some other person is registered in the place of the Member.

**24.6 Calculation of notice period**

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

**25 AMENDMENTS TO DEED**

**25.1 Power to amend**

Subject to the provisions of the FMCA<sup>57</sup> and any other applicable legislation, the Supervisor and the Manager may by deed at any time make any alteration, modification, variation or addition to the provisions of this Deed.

**26 WINDING UP**

**26.1 Winding up of a Fund**

A Fund shall terminate and be wound up upon the occurrence of the earliest of the following events:

- (a) following consultation with the Supervisor, if the Manager resolves to wind up that Fund or to wind up every Fund and gives notice to the Supervisor accordingly; or
- (b) if the Scheme is wound up in accordance with clause 26.5.

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<sup>57</sup> Sections 139 and 140 of the FMCA.

#### 26.2 **Procedure for winding up Fund**

Within 14 days of winding up a Fund under clause 26.1, the Manager must give to each Member holding Units in the Scheme relating to the relevant Fund or Funds notice of the winding up and of the intention of the Manager to reinvest the assets of the Scheme attributable to that Fund or those Funds. From the date of the giving of such notice no Withdrawal Requests shall be given in respect of Units relating to that Fund or those Funds. A notice given by the Manager pursuant to this clause will contain such requirements and be in such form as the Manager may prescribe from time to time. The Manager may at its discretion regard the winding up of a Fund as a special circumstance for the purposes of clause 9.12 and waive any withdrawal restrictions contained in this Deed in relation to the winding up of a Fund. A notice given by the Manager pursuant to this clause may also specify a particular Fund in favour of which the relevant Member shall be deemed to have given a Switching Notice in accordance with clause 9.4 on expiration of the prescribed period if no Switching Notice is received from the Member prior to that time.

#### 26.3 **Cashing up of Fund**

Following the expiration of the notice period prescribed in clause 26.2, the Manager shall as soon as is practicable and in respect of each Fund in question:

- (a) sell, call in and convert into cash the whole of the investments of the Scheme attributable to that Fund; and
- (b) pay out, discharge or otherwise make proper provision for the Liabilities of the Scheme attributable to that Fund.

#### 26.4 **Reinvestment of Fund**

The cash held in respect of each relevant Member, following the cashing up of a Fund in accordance with clause 26.3 shall be reinvested by the Manager:

- (a) in accordance with any Switching Notice given by that Member; or
- (b) in the absence of a Switching Notice, in the Fund as specified by the Manager pursuant to clause 26.2.

#### 26.5 **Supervisor notification of the Scheme wind up:**

The Scheme shall be wound up if the Manager gives 60 days' written notice (or such other notice as the Supervisor shall agree with the Manager) to the Supervisor that the Scheme is to be wound up, the Scheme's registration is cancelled or if the Scheme is required to be wound up under the FMCA<sup>58</sup>. If the Manager notifies the Supervisor that the Scheme is to be wound up, the wind-up shall take effect on the date specified for that purpose in a notice. The provisions of the FMCA, relating to the winding up of the Scheme, shall apply to the winding up of the Scheme.<sup>59</sup>

#### 26.6 **Member notification:**

Where the Scheme is being wound up, within 14 days of giving notice to wind up the Scheme (or such longer period as the Supervisor shall agree with the Manager), under

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<sup>58</sup> Sections 195 and 211 of the FMCA.

<sup>59</sup> Sections 171, 212 and 213 of the FMCA.

clause 26.5, the Manager must give to each Member who has an interest in the Scheme, notice of the winding up and of the intention of the Supervisor to distribute to Members the assets of that Scheme.

**26.7 Winding Up Entitlements may be satisfied through the distribution of units in another scheme:**

Where the Manager believes it is in the best interests of Members in the Scheme generally to do so, the Manager may (subject to clause 26.8) provide those Members 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 in accordance with this clause (*Default Option*). If the Manager makes such an election, the notice given by the Manager pursuant to clause 26.6 shall invite the relevant Members to elect, within such reasonable period as the Manager may prescribe:

- (a) to receive payment in cash; or
- (b) to have the Member's Winding Up Entitlements satisfied by the distribution (in specie) of units in a Registered Scheme or a fund of another Registered Scheme specified in respect of the Member in the notice given by the Manager pursuant to clause 26.6 in respect of the Member's Units, which Registered Scheme or fund (*Default Fund*) must:
  - (i) allow units to be redeemed at any time (subject, if at all, only to the Manager's right to suspend redemptions in specified circumstances) in respect of the relevant Member;
  - (ii) have a 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 the Scheme's SIPO;
  - (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 Default Fund's property;
  - (v) not be a superannuation scheme or fund in a superannuation scheme as defined in the FMCA;
  - (vi) not require affected Members to pay withdrawal fees upon the Manager's distribution (in specie) of units in the Default Fund in accordance with clause 26.9;
  - (vii) not have higher overall fees than the relevant Scheme or Fund or have individual withdrawal fees which would apply to the Members; and
  - (viii) would not have (under its terms, due to waiver or otherwise) individual contribution fees on the Units to be issued for the purpose of the distribution in specie pursuant to this clause 26.

## 26.8 **Supervisor Review**

- (a) Where the Manager proposes to utilise the Default Option in respect of a Fund, the Manager must, before giving notice to the Members in accordance with clause 26.6, 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 Members in the relevant Fund generally;
  - (ii) details of each Default Fund, including details as to its satisfaction of the conditions set out in clause 26.7(b)(i) to 26.7(b)(viii); 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 Members and encourage them to make an election under clause 26.7 in respect of their Winding Up Entitlements,
- (together, the *Default Option Plan*).
- (b) Upon receipt of the Default Option Plan, the Supervisor shall 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:
- (i) complied with its obligations under this Deed and the FMCA; and
  - (ii) acted reasonably and fairly in determining that offering the Default Option is in the best interests of Members 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 Members in the relevant Fund, the Manager may give notice to the Members in accordance with clause 26.6.
- (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 Members 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 Scheme or relevant Fund, in which case, unless paragraphs (ii) or (iii) below apply, the Manager must pay each Member's Winding Up Entitlements in cash only;

- (ii) submit replacement information under paragraph (a), in which case the process set out in this clause 26.8 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.

#### 26.9 **Default Fund Option:**

Where:

- (a) the notice given by the Manager pursuant to clause 26.6 specifies a Default Fund for a Member in respect of a Fund; and
- (b) after implementation of the Engagement Plan, no election is received from the Member in respect of Units in that Fund by the end of the prescribed notice period,

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

#### 26.10 **Perpetuities**

In the event that the Scheme shall cease to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit including the re-establishment of the trust of the Scheme and the payment over of the assets of the Scheme to new supervisor so as to prevent the operation of any rule of law relating to perpetuities which might otherwise invalidate or might be taken to invalidate the trust of the Scheme or any disposition made under it or for its purposes.

### 27 **PROCEDURE ON WINDING UP**

#### 27.1 Upon winding up of the Scheme:

- (a) no Withdrawal Notices or Switching Notices shall be accepted by the Manager;
- (b) the Supervisor shall
  - (i) sell and realise the assets of the Scheme maintained under this Deed and make provision for any debts and benefits due but unpaid and the costs of winding up other than units in a Default Fund to be distributed to Members in satisfaction of their Winding Up Entitlements; and
  - (ii) acquire such units in a Default Fund to be distributed (in specie) to Members in satisfaction of their Winding Up Entitlements,

as soon as reasonably practicable.

- (c) a Member shall be entitled in satisfaction of the Member's entitlements on a winding up of the Scheme to the distribution of either cash or units in the relevant Default Fund equal in value to the Member's Winding Up Entitlements;

- (d) the Supervisor shall apply the net proceeds of the realisation determined by the Supervisor as representing the interests of Members in the Scheme in accordance with the following priority:
- (i) firstly, in providing for the payment of the costs of winding up and in discharging all liabilities of the Scheme and any fees payable to the Manager and the Supervisor;
  - (ii) secondly, in providing for Withdrawal Amounts payable in terms of this Deed which have become payable prior to the date of winding up and remain unpaid at that date;
  - (iii) thirdly, in providing for the payment to each remaining Member the Supervisor will pay an amount equal to the Winding Up Entitlements of Members whose Winding Up Entitlements are to be paid in cash, and distribute to any Member who:
    - (A) has elected to receive Units in a Default Fund pursuant to clause 26.7; or
    - (B) has not made an election in respect of Units in a Fund and whose Member's Winding Up Entitlements are to be satisfied by the distribution of Units in a Default Fund pursuant to clause 26.9, units in the relevant Default Fund equal to the Member's Winding Up Entitlements for the Member's Units in the relevant Fund, in satisfaction of those entitlements, provided that if the amount available is insufficient for the appropriate provision in respect of all Members then all Withdrawal Amounts payable shall be reduced pro rata; and
  - (iv) fourthly, (if there is any money remaining) in augmenting the Withdrawal Amounts payable under clause 27.1(d)(ii) and 27.1(d)(iii) on a pro rata basis.

27.2 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 27.

27.3 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.

## 28 MEETINGS

When required by the FMCA, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and the FMC Regulations.<sup>60</sup> A meeting of Members shall be conducted in accordance with the requirements of the FMCA.

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<sup>60</sup> Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

29 **GOVERNING LAW**

29.1 **New Zealand law**

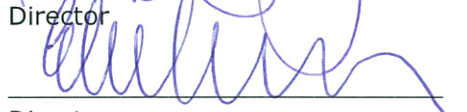
This Deed shall be governed by and construed in accordance with the law of New Zealand.

**EXECUTION**

**AMP Wealth Management New Zealand  
Limited** by:



\_\_\_\_\_  
Director



\_\_\_\_\_  
Director