



Trust Deed

relating to

the AMP Personal Retirement Plans

AMP Wealth Management New Zealand Limited
Manager

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TRUST DEED - PERSONAL RETIREMENT PLAN

Dated 22 SEPTEMBER 2016

PARTY

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

BACKGROUND

- A The AMP Personal Retirement Plan (the *Main PRP*) is currently a superannuation scheme registered under the Superannuation Schemes Act 1989 (the *Superannuation Schemes Act*), and was established by a deed dated 6 September 1996, as subsequently amended on 2 June 1998, 9 October 1998, 20 December 2006, and 16 February 2009, and amended and consolidated on 2 April 2013 (the *Existing Main PRP Deed*).
- B The AMP Passive Personal Retirement Plan – New Zealand Passive Shares Investment Fund (the *Passive PRP – NZ*) is currently a superannuation scheme registered under the Superannuation Schemes Act, and was established by a deed dated 31 March 1998, as subsequently amended on 16 February 1999, 22 March 2002, 20 December 2006 and 29 September 2009, and amended and consolidated on 2 April 2013 (the *Existing Passive PRP – NZ Deed*).
- C The AMP Passive Personal Retirement Plan – International Passive Shares Investment Fund (the *Passive PRP – International*) is currently a superannuation scheme registered under the Superannuation Schemes Act, and was established by a deed dated 31 March 1998, as subsequently amended on 16 February 1999, 22 March 2002, and 20 December 2006, and amended and consolidated on 2 April 2013 (the *Existing Passive PRP – International Deed*).
- D By a Deed of Resignation and Appointment of Trustee dated 1 December 2015, the Manager replaced AMP Services (NZ) Limited as trustee of the Main PRP on 1 December 2015.
- E By a Deed of Resignation and Appointment of Trustee dated 1 December 2015, the Manager replaced AMP Services (NZ) Limited as trustee of each of the Passive PRP – NZ, and the Passive PRP – International on 1 December 2015.
- F By a Deed of Modification dated on or about the date of this Deed, AMP Life Limited confirmed its approval to be removed as a party to the Existing Main PRP Deed.
- G The Manager wishes to amend the Existing Deeds by substituting this Deed for the Existing Deeds in order to comply with the requirements of the Financial Markets Conduct Act 2013 (*FMCA*) and all other relevant legislation, and to:
- (a) combine the Existing Deeds into one Deed and to govern each Scheme as a separate scheme under the FMCA;



- (b) provide for the role of a supervisor of the Schemes for the purposes of the FMCA;
 - (c) alter the Manager's role to that of the manager of the Schemes for the purposes of the FMCA; and
 - (d) make a number of other minor amendments to each 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 relevant Scheme.
- H The New Zealand Guardian Trust Company Limited will become the supervisor of the Schemes pursuant to a deed of appointment dated on or around the date of this Deed and such appointment shall take effect on the Effective Date, and 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.
- I The Manager is satisfied that the amendments contained in this Deed are permitted under clause 14 of each of the Existing Deeds, 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

It is declared that with effect from the Effective Date, the Existing Deeds are amended by substituting the provisions of the Existing Deeds with all of the provisions of this Deed so that from the Effective Date the Schemes will be operated, administered, and governed in accordance with the provisions of this Deed.

OPERATIVE PROVISIONS

1 INTERPRETATION AND DEFINITIONS

1.1 Definitions

In this Deed, unless the context requires otherwise:

Associated Person has the meaning given to it by the FMCA.¹

Auditor means the auditor of the Schemes appointed pursuant to clause 21.

Benefit means any payment arising from membership of a Scheme.

Business Day means a day other than Saturday or Sunday on which registered banks are open for general banking business in Wellington and Auckland.

Commissioner means the Commissioner of the Inland Revenue.

¹ Section 12(1) of the FMCA.



Contribution means the amount payable by or in respect of a Member as a contribution to the relevant Scheme.

Custodian means, in relation to a Scheme, a person appointed to hold property of the relevant Scheme under clause 15.2 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold any such Scheme property under clause 15.3.

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 Schemes are treated as Registered Schemes under the FMCA.

Existing Deeds means the:

- Existing Main PRP Deed
- Existing Passive PRP – NZ Deed; and
- Existing Passive PRP – International Deed,

referred to in Background A to C;

Extra Units means, in relation to a Scheme, loyalty, fee discount and any other additional Units purchased in the name of a Member of that Scheme by the Manager as provided in clause 5.5.

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 a defined pool of assets for the time being forming all or part of the assets of a Scheme, which are managed separately under a single investment mandate and in respect of which Units are issued under this Deed, and where the context so admits, shall include all or any Funds established pursuant to clause 4.1.

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

Indexation means the periodic increase in a Member's regular Contributions under a Scheme by the percentage selected by the Member in his or her application for membership to that Scheme or from time to time. *Index* and *Indexed* shall have corresponding meanings.

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 Schemes 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 Schemes pursuant to clause 13.

Market Value of any asset in a Fund on any Valuation Day means the value determined by or on behalf of the Manager by reference to any formally constituted stock or other exchange or other official quotations where available or by reference to valuers or other appropriately qualified experts or such other reasonable basis determined by the Manager.

Member means, in relation to a Scheme, any natural person (which can include the trustee or trustees or manager of another Retirement Scheme) admitted to membership of the relevant Scheme and who is, or may become, entitled to a Benefit under the Scheme.

Members Account means, in relation to a Scheme, an account established in the name of each Member of that Scheme as provided in clause 7.1.

Plan means, in relation to Main PRP only, the plan established in respect of each Member of that Scheme whereby Benefits are payable to any Member of the relevant plan in the circumstances defined in this Deed.

Net Asset Value means the amount determined in accordance with clause 6 on a Valuation Day.

Register means, in relation to a Scheme, the register of Members maintained for that Scheme pursuant to the FMCA.²

Registered Scheme has the meaning ascribed to it in the FMCA.

Related Company shall have the same meaning as in section 2(3) of the Companies Act 1993.

Related Party has the meaning given to it by the FMCA.³

Related Party Benefit has the meaning given to it by the FMCA.⁴

Reserve Fund means, in relation to a Scheme, the fund established pursuant to clause 11.1 by the Manager.

Retirement Age means the age of 55 years.

Retirement Scheme means a KiwiSaver scheme, superannuation scheme or workplace savings scheme as defined in the FMCA, a superannuation scheme registered under the Superannuation Schemes Act, or any overseas superannuation

² Section 215 of the FMCA.

³ Section 172(2) of the FMCA.

⁴ Section 172(1) of the FMCA.



scheme in respect of which transfers to or from any of the Schemes are permissible.⁵

Scheme means each or any of the Main PRP, the Passive PRP – NZ and the Passive PRP – International established by the corresponding Existing Deed and now governed by this Deed, and *Schemes* means all of them.

Scheme Assets means, in relation to a Scheme, the assets of that Scheme.

Scheme Year means, in relation to a Scheme, the period commencing on 1 January in any year and ending on 31 December in the same year, or such other annual period as may be agreed to by the Manager.

SIPO has the meaning given to it by the FMC Regulations.⁶

Subscription Bank Account means, in relation to a Fund or a Scheme, the bank account established for that Fund or that Scheme (as applicable) in the name of the Supervisor or its Custodian in accordance with clause 20.2.

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 with effect from the Effective Date, or such other person as is for the time being appointed to act as supervisor of the Schemes in accordance with clause 16 and, where the context requires or allows, includes any Custodian.

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

Transfer Value means, in respect of any Member who was a member of a Retirement Scheme, any assets received by the Supervisor that represent that Member's interest under another superannuation scheme.

Unit means, in relation to a Fund, an undivided part or share in the Fund of a Scheme and includes a Unit Fraction unless otherwise stated in the context.

Unit Fraction means, in relation to a Fund, that part or share of a Unit in respect of which there is contributed by a Member of that Fund an amount which is less than the price or value of a Unit on the day of purchase. In calculating the total number of Units in a Fund, all Unit Fractions shall be consolidated as far as possible into whole Units.

Unit Price means the price which is from time to time determined under clause 5.2.

⁵ Section 6 of the FMCA.

⁶ FMC Regulation 5.



Valuation Day means a day on which the Manager values a Fund under clause 6.1 or a Unit under clause 5.2.

Winding Up Entitlements means, in respect of a Fund being wound up as part of the winding up of that Fund or a Scheme and a Member of that Scheme, assets (including, where relevant, cash) equal in value to a proportion of that Fund's assets, after allowing for the deduction of all amounts under clause 23.6(c), which is equal to the proportion of Units held by the Member in that Fund.

1.2 Interpretation

In the interpretation of this Deed:

- (a) the headings are for convenience of reference only and shall not affect the interpretation of this Deed;
- (b) words importing the singular number include the plural and vice versa and words importing the masculine, feminine or neuter genders include all genders as the case may require;
- (c) any reference to a statute (or to any particular part or section or definition) shall (subject to any other provisions of this Deed) include a reference to any regulations made under the statute, and to any subsequent modification, consolidation, re-enactments or replacements of the statute or regulations;
- (d) a **person** includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality);
- (e) 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;
- (f) references to clauses or schedules are to clauses of or schedules to this Deed, and any schedules referred to form part of this Deed;
- (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 a 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 a 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 relevant Scheme or Fund (as the case may be).

2 **CONTINUATION OF THE SCHEMES**

2.1 **Continuation of the Schemes**

Each of the Schemes continues as a separate legacy superannuation scheme in accordance with the FMCA, with effect from the Effective Date, on the basis set out in this Deed.

2.2 **Name**

The name of each of the Schemes shall be:

- the AMP Personal Retirement Plan;
- AMP Passive Personal Retirement Plan – New Zealand Passive Shares Investment Plan;
- AMP Passive Personal Retirement Plan – International Passive Shares Investment Plan,

as the case may be, or such other name as may be determined from time to time by the Manager.



2.3 Purpose

The principal purpose of each of the Schemes is to provide retirement benefits directly or indirectly to individuals.

3 MEMBERSHIP

3.1 Members bound by this Deed

A person on becoming a Member of a Scheme shall be deemed to have approved of and shall be bound by the provisions of this Deed. Except where this Deed expressly provides otherwise or the context otherwise requires, the terms and conditions of this Deed are for the benefit of and binding on each Member of a Scheme and legally enforceable as between the Manager, the Supervisor and Members of that Scheme including, for the avoidance of doubt all persons claiming through each Member of a Scheme, as if the Member had been party to and had executed this Deed.⁷

3.2 Additional information

Every Member of a Scheme shall furnish to the Manager such information as the Manager shall require in order to fulfil its duties under this Deed, including but not limited to satisfactory proof of age.

3.3 False information

If any information given by a Member of a Scheme pursuant to this Deed is false or misleading in any material respect, the Manager shall be entitled to make adjustments to any Benefits receivable by any person in respect of the relevant Member and, in the case of the Main PRP only, shall also be entitled to vary the terms of the relevant Member's Plan.

3.4 Termination of membership

- (a) A Member shall cease to be a Member of a Scheme without any requirement of notice from the Manager if:
- (i) the Member withdraws, in terms of clause 9.1, the full value of his or her Member's Account in relation to that Scheme;
 - (ii) the Member, the Member's legal personal representative or any other person or persons has received in terms of clauses 9.2, 10.1, or 10.2 all Benefits payable pursuant to this Deed in relation to that Scheme; or
 - (iii) the Member's Account in relation to that Scheme does not have a credit balance.
- (b) If the credit balance of a Member's Account in relation to a Scheme falls below the minimum credit balance specified for Member's Accounts for that Scheme by the Manager from time to time the Manager in its sole and absolute discretion may by notice in writing to that Member terminate that Member's membership of that Scheme.

⁷ Section 137 of the FMCA.



- (c) The Manager in its sole and absolute discretion may reinstate membership within twelve months of a Member ceasing to be a Member of a Scheme if:
- (i) the Member increases the credit balance in his or her Member's Account in relation to that Scheme to the minimum credit balance specified for Member's Accounts for that Scheme by the Manager from time to time; and
 - (ii) the Member pays any reinstatement fee set by the Manager.

3.5 **Joint membership**

If more than one natural person is admitted to a single membership of a Scheme jointly then they shall be treated as a single Member of that Scheme. In particular:

- (a) if any of those persons dies or becomes bankrupt or incapable in terms of clause 10.1 or 10.2, all rights of membership, including in respect of any death benefit, will pass, notwithstanding clauses 9.2, 10.1, and 10.2, to the remaining person or persons;
- (b) entitlement to a Benefit shall occur when the first of those persons qualifies to receive that Benefit; and
- (c) the Manager may rely on instructions given to it by any of those persons.

4 **FUNDS**

4.1 **Types of Funds**

- (a) Each Scheme shall comprise one or more Funds.
- (b) The Manager may add other Funds to that Scheme, may wind up a Fund or Funds from that Scheme or may, either temporarily or permanently, suspend the purchase of Units in any particular Fund of that Scheme. If the Manager winds up a Fund, Members holding Units in that Fund may elect to switch from Units in that Fund to Units in another Fund. Any such switch will not incur a switching fee. If after such switching any Members continue to hold Units in the Fund then the Fund shall be wound up and the provisions of clause 23 shall apply mutatis mutandis to the winding up.

4.2 **Assets of each Fund**

The assets of each Fund within a Scheme shall include moneys from the allocation of Units, consequential investments and interest, dividends, rents and other income arising from such investments.

4.3 **Deductions from each Fund**

- (a) The following charges and expenses may be deducted from each Fund:
 - (i) any liabilities (actual or contingent) of that Fund (for the avoidance of doubt and irrespective of statutory financial reporting requirements, liabilities exclude amounts in relation to the value of Units in the Fund);



- (ii) expenses and administration charges and deductions (actual or contingent) relating or potentially relating to that Fund as determined by the Manager from time to time in terms of clause 14.1; and
- (iii) any Tax relating or potentially relating to investments of that Fund.

4.4 **Name**

The Manager may change the name of a Fund by notifying the Supervisor.

4.5 **SIPO**

- (a) The Manager must prepare a written SIPO for each Scheme which covers each Fund within that Scheme and complies with the requirements of the FMCA,⁸ which SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA,⁹ and all moneys available for investment in a Fund shall be invested in accordance with the SIPO for that Scheme which covers that Fund.
- (b) The Manager shall provide a copy of the proposed SIPO in relation to a Scheme (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.¹⁰

4.6 **Investment**

The investment obligations of the Manager or the Supervisor in relation to each 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 clause 5.4 will not exempt the Manager from its responsibilities under the FMCA.¹¹

4.7 **Supervisor's 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 FMCA¹² 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 4.7(a) 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.¹³

⁸ Section 164 of the FMCA.

⁹ Section 164 of the FMCA.

¹⁰ Sections 165 and 166 of the FMCA.

¹¹ Section 144 of the FMCA.

¹² Section 160 of the FMCA.

¹³ Section 160 of the FMCA.



- (c) Subject to clause 18.4, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of a Fund arising as a result of the relevant Scheme or Fund being invested in accordance with the SIPO for that Scheme.

4.8 **Investment Directions by the Manager**

Subject to this clause 4 and to compliance with the SIPO of the relevant Scheme which covers the relevant Fund (if applicable), the Manager shall manage the investments of a Scheme and each Fund and may, in order to perform its function under clause 12.1 and the FMCA,¹⁴ direct the Supervisor, or a Custodian on behalf of the Supervisor, in writing to:

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

4.9 **Investments in Supervisor's or Custodian's name**

The Manager shall cause investments and property of a Scheme to be:

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

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

4.10 **Restriction on disposal of investments in a Fund**

In relation to the Passive PRP – NZ and the Passive PRP – International only, [and subject to the SIPO for the relevant Scheme,] the Manager must not sell investments in the relevant Scheme to make profits or to minimise losses and will dispose of such investments only in the following circumstances:

- (a) where it is necessary to dispose the investments of the relevant Scheme to redeem Units/pay a Benefit;

¹⁴ Section 142 of the FMCA.



- (b) if the relevant Scheme is wound up;
- (c) if the investments of the relevant Scheme are liquidated or wound up; or
- (d) if it is necessary to dispose of the investments to pay any fees, charges or expenses of the relevant Scheme, including any legal claim against the Manager or the relevant Scheme for any amount properly payable by the relevant Scheme to a third party.

4.11 **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 a 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 such Scheme or such Fund.

4.12 **Derivative financial instruments**

For the avoidance of doubt, the Manager may undertake the Supervisor's entry into derivative financial instruments (including without limitation forward exchange contracts, swap agreements, futures contracts, options and any form of agreement creating a contingent liability) for the purpose of investment or for the purpose of risk management.

5 **UNITS**

5.1 **Establishment of Units**

The Manager will establish Units for each Fund. A Unit shall not confer any interest in any particular part of the Fund or any particular Fund or any asset comprising a part thereof and no Member of a Scheme shall be entitled to require the transfer to that Member of any of the assets comprising part of the Fund nor (subject to the rights of the Members created by this Deed or by law) shall any Member be entitled to interfere with or question the exercise or non-exercise by the Manager of any of the trusts, powers, authorities or discretions conferred upon the Manager by this Deed or in respect of a Scheme, any Fund or the part or parts of any Fund.

5.2 **Determining Unit Prices**

- (a) 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.
- (b) The price of a Unit Fraction shall be its proportion of the Unit Price and.
- (c) In the absence of an error (and subject to clauses 12.1(k) and 12.1(l)), the Unit Price determined pursuant to this Deed shall be final and binding on all Members of a Scheme and all other persons claiming beneficial interests in the assets of that Scheme.



5.3 **Creation of additional Units**

On each occasion that moneys are applied by the Manager to purchase Units in a particular Fund, additional Units in that Fund shall be created to satisfy the purchase.

5.4 **Direction by Member**

In relation to the Main PRP only, subject to any restrictions from time to time specified by the Manager, a Member of the Main PRP may from time to time in such manner as is acceptable to the Manager, direct the Manager to apply regular and additional Contributions towards the purchase of Units in one or more Funds in that Scheme and to vary any previous direction.

5.5 **Extra Units**

The Manager shall at its own cost, or pursuant to clause 11 purchase in the name of a Member of a Scheme and shall from time to time credit to his or her Member's Account in relation to the relevant Scheme such number of loyalty, fee discount and any other additional Units in that Scheme as may be required from time to time to satisfy that Member's entitlement to Extra Units under the terms and conditions applying to his or her membership of that Scheme. Any Extra Units so purchased shall become the sole property of the Member in whose name they are purchased and shall be governed by the terms of this Deed as if the Units had been purchased from Contributions made by that Member.

5.6 **Switching**

- (a) The Manager may from time to time in its sole and absolute discretion but subject always to any suspension or restriction imposed under this Deed, allow a Member, by prior notice to the Manager in such manner as is acceptable to the Manager, to switch from Units in one Fund to Units in another Fund.
- (b) On any switch the value of the original Units less any switching fee payable will be applied in the purchase of Units in the substituted Fund at the then current price for the replacement Units.

5.7 **Register to be maintained**

The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of each 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.¹⁵

¹⁵ Sections 215 to 223 of the FMCA and FMC Regulations 109 and 110.



6 VALUATIONS¹⁶

6.1 Net Asset Value

Pursuant to clause 12.1, the Manager shall calculate, in relation to a Scheme, the Net Asset Value of a Fund as frequently as the Manager may consider necessary or desirable from time to time (but at least once every five 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 Subscription Bank Account Balance to the extent it has 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:

- (a) apportion the liabilities of the relevant 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 or expenses charged to the relevant accounts (whether or not those amounts are required to be treated as liabilities for accounting purposes).

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

¹⁶ Section 135(1)(d) of the FMCA.



verification is required in order for the Supervisor to meet its obligations under the FMCA.

7 MEMBER'S ACCOUNTS

7.1 Member's Account

There shall be an account known as the Member's Account for each Member of a Scheme which shall be denominated in Units of the Funds in that Scheme. The balance in a Member's Account in respect of a Member of a Scheme at any time is the sum of the products of the Unit Price of the relevant Fund multiplied by the number of Units of that Fund held in that Member's Account as at the immediately preceding Valuation Day.

7.2 Member's Account credits

A Member's Account in relation to a Scheme shall be credited with Units from time to time to reflect:

- (a) Contributions by the Member;
- (b) the value of any Extra Units purchased in the name of the Member by the Manager as provided in clause 5.5;
- (c) any amount transferred by the Member from any other Retirement Scheme; and
- (d) any payments by the Manager from the Reserve Fund in terms of clause 11.1(b)(ii).

7.3 Member's Account debits

A Member's Account in relation to a Scheme shall be debited with Units from time to time to reflect:

- (a) the Member's share of any fees, costs, charges and expenses (actual or contingent) determined in accordance with clause 14.1;
- (b) any early withdrawal fee charged in terms of clause 9.1(b);
- (c) any Tax payable or potentially payable by the Manager or the Supervisor relating to Contributions; and
- (d) any Benefit paid to or in respect of the Member.

7.4 Purchase of Units

All Contributions by a Member of a Scheme and any payments by the Manager from the Reserve Fund of that Scheme in terms of clause 11.1(b)(ii), less any fees, costs, charges and expenses permitted to be deducted in terms of clause 14.1, shall be applied promptly by the Manager in the purchase of Units in a Fund selected by the Member at the price(s) and in the manner set out in clauses 5.2, 5.3, and 5.4 (as applicable).



8 CONTRIBUTIONS

8.1 Regular Contributions

- (a) Each Member shall make the regular Contributions to a Scheme as detailed in that Member's application for membership into the relevant Scheme. A Member may vary regular Contributions with respect to a Scheme by notice to the Manager in such form as the Manager may require from time to time. The amount and regularity of such Contributions and any variation to these shall be within the levels and limits specified for the relevant Scheme from time to time by the Manager.
- (b) Regular Contributions with respect to a Scheme shall be paid by direct debit payment or such other manner as the Manager may from time to time require.

8.2 Lump sum Contributions

Lump sum Contributions with respect to a Scheme may be paid by a Member of a Scheme at any time and in such manner as is acceptable to the Manager provided they are not less than the minimum specified from time to time by the Manager.

8.3 Indexation of regular Contributions

In relation to a Scheme, a Member may elect, in his or her application for membership into that Scheme or from time to time as permitted by the Manager, to Index regular Contributions for such period as the Manager may determine from time to time. In that case Indexation will apply to regular Contributions with respect to the relevant Scheme unless the Member advises the Manager at such time and in such manner as is acceptable to the Manager that regular Contributions for the relevant period are not to be Indexed.

8.4 Period during which Member shall make Contributions

Except as otherwise provided by this Deed, a Member shall continue to pay Contributions under a Scheme as specified in his or her application for membership into that Scheme or otherwise as agreed between the Member and the Manager until that Member ceases to be a Member of the relevant Scheme as provided in clause 3.4.

9 PAYMENT OF BENEFITS

9.1 Benefits (other than death and early withdrawal Benefits)

- (a) Subject to any suspension or restriction with respect to a Scheme imposed under this Deed, a Member of the relevant Scheme shall be entitled by notice to the Manager, in such manner as is acceptable to the Manager, to withdraw all or part of the credit balance in the Member's Account with respect to that Scheme if:
- (i) the Member has attained the Member's Retirement Age;
 - (ii) the Manager, in the Manager's sole and absolute discretion, considers the Member has suffered or is suffering financial hardship;
 - (iii) the Member, in the opinion of the Manager, has or is about to permanently emigrate from New Zealand;



- (iv) in the sole and absolute discretion of the Manager, the Manager allows the Member to transfer to another Retirement Scheme;
 - (v) the Member, in the opinion of the Manager, has become permanently incapacitated; or
 - (vi) the Manager, in the Manager's sole and absolute discretion, after considering the particular circumstances, so allows.
- (b) Without limiting the generality of clause 14, the Manager shall be entitled in its sole and absolute discretion to charge a Member, who withdraws or transfers all or part of the credit balance in his or her Member's Account in any of the circumstances referred to in clauses 9.1(a)(ii) to 9.1(a)(vi), an early withdrawal fee and to deduct that fee from that Member's Account.

9.2 **Death Benefits**

Subject to any suspension with respect to a Scheme imposed under this Deed, if a Member dies, the Manager will pay or apply the credit balance in the Member's Account to the legal representative of the deceased Member.

9.3 **Early withdrawal Benefits**

- (a) Subject to any suspension or restriction with respect to a Scheme imposed under this Deed, a Member shall be entitled by notice to the Manager in such manner as is acceptable to the Manager to make one withdrawal in any Scheme Year of up to 20% of the credit balance in the Member's Account for a Scheme at the time of the withdrawal.
- (b) If, in the opinion of the Manager, the availability of this Benefit would jeopardise the compliance of the relevant Scheme with the requirements of the FMCA, the Manager may suspend this Benefit.

9.4 **Minimum amounts**

The Manager may from time to time in its sole and absolute discretion specify minimum balance levels (for both Member's Accounts and Member's investments in a Fund), minimum switch and partial withdrawal amounts, a maximum number of partial withdrawals which a Member can make in any Scheme Year relating to that Scheme and the intervals at which regular periodic withdrawals can be made by a Member.

9.5 **Variation of withdrawal terms**

Notwithstanding anything to the contrary contained in this Deed, at the time a Member joins a Scheme or at any time thereafter, the Manager and the Member may agree in writing to vary the terms on which the Member may withdraw all or part of the credit balance in his or her Member's Account in respect to that Scheme, which agreement may include:

- (a) a prohibition on access before a specified date to Units purchased with funds transferred into the relevant Scheme from another Retirement Scheme; and/or



- (b) a requirement that the Benefit payable from Units purchased with the Member's transferred funds on or after the specified date be in the form of a non-commutable annuity,

provided that any varied term of withdrawal so agreed shall be no more favourable to the Member than those which would otherwise apply in relation to the relevant Scheme.

9.6 **Suspension rights – Main PRP**

- (a) This clause 9.6 applies to the Main PRP only, and any reference to a Scheme or a Fund in this clause means the Main PRP or a Fund in the Main PRP respectively.

- (b) If, in relation to the Main PRP, by reason of:

- (i) a decision to wind up that Scheme or a Fund;
- (ii) financial, political or economic conditions applying in respect of any financial market in which assets of the Fund or of any particular Fund may be sold;
- (iii) the nature of any assets of the Fund or of any particular Fund;
- (iv) the occurrence or existence of any other circumstances or event,

the Manager in good faith forms the opinion that it would not be practicable, or would be materially prejudicial to the interests of Members in that Scheme or that Fund, for the Manager to permit switches from Units in one Fund to Units in another Fund or to realise assets of the Fund or of any particular Fund or borrow in accordance with this Deed in order to permit payment of Benefits with respect to the Scheme, then the Manager may give notice (a *Suspension Notice*) to that effect to the Supervisor and to Members of the Scheme. A Suspension Notice shall have the effect of suspending the operation of all existing and future withdrawal and switching requests relating to the Fund or to any particular Fund until the earlier of the Manager giving notice to the effect that the relevant Suspension Notice is cancelled or the expiration of six months or such other period (which may, with the consent of the Supervisor, exceed six months) that the Manager considers reasonable in the interests of all Members of the Scheme (the *Cancellation Date*).

- (c) Where withdrawal and switching requests are suspended pursuant to this clause 9.6, the price and value of Units in any affected Fund shall be determined in accordance with clause 5 as at the close of business on the Business Day immediately after the Cancellation Date.

9.7 **Suspension rights – Passive PRP – NZ or Passive PRP – International**

- (a) This clause 9.7 applies to Passive PRP – NZ and Passive PRP – International only.

- (b) The Manager may at any time give notice (a *Passive PRP Suspension Notice*) to the Supervisor and to Members of the Passive PRP – NZ or the Passive PRP – International, suspending the operation of all existing and future withdrawal requests relating to the relevant Scheme until the Manager gives notice to the effect



that the relevant Passive PRP Suspension Notice is cancelled (the *Passive PRP Cancellation Date*), where the Manager in good faith determines that:

- (i) it is not practicable to pay a Benefit due to insufficient cash in that Scheme, and an inability to convert sufficient assets into cash, to enable the Manager to meet the Benefit payment; or
- (ii) the Market Value of the Units at that time is not a true reflection of the actual value of the Units, due to:
 - (A) a suspension in trading on any exchange of the investments of that Scheme; or
 - (B) the closure of an exchange on which are traded investments of that Scheme, for a period which in the Manager's opinion is likely to involve a material change in the market price of those investments; or
 - (C) the suspension of the redemption of the units in the investments of that Scheme,

provided that the period of suspension is no longer than three business days, except if an extraordinary event occurs beyond the control of the Manager, in which case the suspension shall only be for such period as is strictly necessary, according to the Manager's good faith determination, to accommodate the events referred to in clause 9.7(b)(i) and 9.7(b)(ii). To the extent that the Manager requires the deferral to exceed 90 days, it must obtain the prior written approval of the Supervisor.

- (c) Where withdrawal and switching requests are suspended pursuant to this clause 9.7, the price and value of Units shall be determined in accordance with clause 5 as at the close of business on the Business Day immediately after the Passive PRP Cancellation Date.
- (d) Where withdrawal and switching requests are suspended pursuant to this clause 9.7, a Member of the relevant Scheme may revoke a withdrawal request at any time prior to the Passive PRP Cancellation Date.

9.8 **Withdrawal request**

- (a) In relation to a Scheme, where a Member is entitled in terms of this Deed to withdraw all or part of the credit balance in his or her Member's Account with respect to a Scheme, the Member may request the Manager to realise all or any of the Units held by the Member in that Scheme to pay the withdrawal.
- (b) Any such withdrawal request with respect to a Scheme shall be made in such manner as is acceptable to the Manager, shall be effective only on the Business Day on which it is received by the Manager and shall at the sole and absolute discretion of the Manager:
 - (i) be irrevocable once given, subject to clause 9.6 or 9.7 (as applicable);



- (ii) be subject to any suspension or restriction with respect to the relevant Scheme imposed under this Deed;
 - (iii) specify the number of Units to be realised or the amount of money to be withdrawn; and
 - (iv) specify the Member's Account and the Fund(s) from which the withdrawal is to be made. If a withdrawal request fails to specify the Fund(s) from which the withdrawal is to be made, the withdrawal shall be made on a pro rata basis from all of the Funds in which the Member holds Units or in such other manner as the Manager in its sole and absolute discretion determines.
- (c) Subject to clauses 9.6 and 9.7 (as applicable), the withdrawal request shall take effect and the Manager shall realise the Units which the withdrawal request relates to at the Unit Price.

10 GENERAL PROVISIONS RELATING TO BENEFITS

10.1 Forfeiture of Benefits

Any Member of a Scheme who becomes bankrupt shall to the maximum extent permitted by law forfeit entitlement to all his or her Benefits provided that the Manager shall hold upon trust the Benefits which would have been payable had they not been forfeited pursuant to this clause 10.1 as and when they would otherwise have become payable, and may pay or apply those Benefits for the benefit of the former Member and/or any other person or persons in such proportions between them and on such terms as the Manager may from time to time in its sole and absolute discretion determine.

10.2 Payment to others on behalf of a Member

When any Member is in the opinion of the Manager physically, mentally or otherwise incapable of managing his or her personal financial affairs, the Manager in its sole and absolute discretion may pay all or part of that Member's Benefits to any other person for application for the benefit of the Member and/or any other person and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Manager for the payment in respect of the Member, nor shall the Manager be bound or concerned to see to the application of the Benefit so paid.

10.3 Deductions from Benefits

The Manager may deduct from any payment due to a Member of a Scheme under this Deed any amount in respect of:

- (a) any Tax payable or potentially payable from or in respect of that payment by the Manager or the Supervisor or that Member (and shall pay the Tax so deducted to the Commissioner or other taxing authority); and
- (b) any fees, costs, charges or expenses which the Manager or the Supervisor is permitted by this Deed to deduct from the payment.



10.4 **Payment of Benefit to person other than Member**

Where a Benefit is payable in terms of clause 10.1 or 10.2 to any person other than a Member, the Manager shall pay or apply such Benefits in such manner, at such times, by such instalments and subject to such terms and conditions and in such proportions between such persons (if more than one) with the power to vary any of the aforesaid, as the Manager may from time to time in its sole and absolute discretion determine.

10.5 **Receipt of Benefits**

Any person to whom a Benefit is payable shall if required furnish the Manager with a receipt and release in the form from time to time required by the Manager.

10.6 **Alienation of Benefits**

No Member shall be entitled to charge his or her Units or interest in the Scheme as security for any liability.

10.7 **Locating Members**

The Manager shall exercise reasonable diligence in locating Members entitled to Benefits from a Scheme.

11 **RESERVE FUND**

11.1 **Reserve Fund**

(a) In relation to a Scheme, there may be a Reserve Fund into which shall be credited any unclaimed Benefits of that Scheme forfeited in terms of clause 11.2.

(b) All or any part of the Reserve Fund may be applied at the sole and absolute discretion of the Manager or the Supervisor in:

- (i) the payment of costs, expenses or charges incurred in the administration of the relevant Scheme;
- (ii) increasing Member's Accounts of the relevant Scheme on an equitable basis; and/or
- (iii) the purchase of Extra Units in accordance with clause 5.5.

11.2 **Forfeiture**

If the Manager has been unsuccessful in locating a Member any moneys payable out of a Scheme which are not claimed within six years after the date on which they became due shall (unless the Manager otherwise directs) be forfeited and the proceeds shall be paid into the Reserve Fund for that Scheme.



12 MANAGER'S DUTIES AND RESPONSIBILITIES

12.1 Manager's responsibilities

The Manager is designated as the manager of the Schemes for the purposes of the FMCA and is responsible for performing the functions for which responsibility is attributed to it as manager under the FMCA.¹⁷

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

- (a) maintaining the Register of each Scheme, and maintaining records for all Members' holdings, in accordance with the requirements of the FMCA;¹⁸
- (b) arranging for the receipt and acceptance of Contributions and other monies payable to a Scheme in accordance with clause 8;
- (c) providing Members of a Scheme with information, notices and disclosures required to be given to them under the FMCA;¹⁹
- (d) keeping complete and accurate records of all investments of a Scheme and each Fund;
- (e) effecting switches between Funds pursuant to clause 5.6;
- (f) discharging its obligations under clauses 5, 6, 9 and 10 with respect to unitisation, valuations and Benefit calculations in relation to each Scheme;
- (g) determining the terms of all contracts to be entered into in respect of a 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 relevant Scheme or Schemes, or of the relevant Fund or Funds (as applicable);
- (h) subject to the requirements of the FMCA, determining whether Benefits of a Scheme are payable and arranging for the payment of Benefits to or in respect of Members of a Scheme, and for transfers to another Scheme or to other Retirement Schemes;
- (i) appointing and engaging solicitors and other consultants, advisers, investment managers, administration managers and the Auditor with respect to a Scheme on such terms as the Manager determines, subject, in the case of the Auditor, to the terms of clause 21;

¹⁷ Sections 133 and 142 of the FMCA.

¹⁸ Subpart 4 of Part 4 of the FMCA.

¹⁹ Sections 96, 97 and 100 of the FMCA and FMC Regulations.



- (j) in relation to a Scheme, reporting and providing information to the Supervisor²⁰ (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;²¹
- (k) altering a Member's Unit holding with respect to a Scheme to address partly or entirely the impact of any unit pricing error²² provided such alteration does not adversely affect the balance in the relevant Member's Account with respect to that Scheme or the position of other Members of that Scheme, 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(k) 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;²³
- (m) ensuring compliance by the Schemes with the requirements of the FMCA, the Financial Reporting Act 2013 and other applicable legislation;
- (n) ensuring compliance by the Schemes with all Tax obligations;
- (o) maintaining all accounting records for the Schemes and allowing for inspection of those records to the extent required by the FMCA;²⁴
- (p) arranging for the preparation, audit and lodgement of the financial statements for the Schemes, and the preparation of annual reports for each Scheme in accordance with the requirements of the FMCA;²⁵ and
- (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.

²⁰ FMC Regulation 94.

²¹ Sections 147 to 151, 167 and 168 of the FMCA and FMC Regulations 83, 94 to 98 and 100.

²² Section 168(2) of the FMCA.

²³ Section 168 of the FMCA and FMC Regulation 99.

²⁴ Section 459 of the FMCA.

²⁵ Sections 461A, 461D and 461H of the FMCA, and FMC Regulations 62 and 63.



12.2 **Manager's 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.²⁶

12.3 **Manager's duties**

The Manager, in exercising its powers and performing its duties as the manager of the Schemes, must comply at all times with its duties under the FMCA.²⁷

12.4 **Delegation by Manager**

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

12.5 **Manager may appoint Investment Managers and Administration Managers**

The Manager may appoint in respect of a Scheme:

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

and (subject to clause 19 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.²⁸

13 **APPOINTMENT AND REMOVAL OF MANAGER**

13.1 **Appointment**

The Manager is appointed and accepts appointment as manager of the Schemes 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 Schemes shall have a manager, who:

- (a) must not be an Associated Person of the Supervisor;²⁹ and

²⁶ Section 135(1)(k)(iii).

²⁷ Sections 143 to 151 of the FMCA.

²⁸ Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

²⁹ Section 127(1)(e) of the FMCA.



- (b) must otherwise be a person entitled in accordance with the FMCA³⁰ and otherwise by law to act as the manager of the Schemes.

13.2 **Removal**

The Manager shall be removed from office in the circumstances set out in the FMCA.³¹

13.3 **Retirement**

Subject to all applicable laws, 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 (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 FMCA³² shall apply upon the occurrence of a vacancy in the office of manager of the Schemes.
- (b) Subject to all applicable laws, the power of appointing a new permanent manager of the Schemes 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 Schemes occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Schemes.

13.6 **Release of Manager**

Subject to all applicable laws,³³ from the date of appointment of a new manager, the retiring Manager is absolved and released from all obligations and liabilities 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.

³⁰ Sections 127(1)(c) and 135(1)(h) of the FMCA.

³¹ Sections 185, 209 and 210 of the FMCA.

³² Sections 186, 187, 189 and 191 of the FMCA.

³³ Section 191 of the FMCA.



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.³⁴

14 COSTS AND EXPENSES

14.1 Expenses, administrative charges and deductions

- (a) The Manager may charge fees for its services with respect to a Scheme.
- (b) All fees, costs, charges and expenses (including, without limitation, Tax, stamp duty, brokers' and other fees, commissions, bank charges, legal expenses and other expenses) incurred in the management, administration, investment or operation of the Schemes shall be paid by the Manager and may be deducted by the Manager from or charged to any one or more of the Fund, Contributions, Member's Accounts and payments due to Members under this Deed in the manner provided in this Deed. The Manager shall in its sole and absolute discretion determine the amount and frequency of administrative and other charges payable to the Manager, and may change such charges from time to time without notice.
- (c) The Manager shall deduct the fees, costs, charges and expenses referred to in this clause 14.1 from each Member's Account or from the investment earnings of a Fund or Contributions or payments due to the Member under this Deed, on the basis determined by the Manager from time to time.
- (d) The Manager is entitled to receive, in addition to the fees and costs, charges and expenses referred to in this clause 14, any GST or similar Tax payable in respect of such fees.

15 POWER OF THE SUPERVISOR

15.1 Supervisor's Powers

The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions as supervisor of the Schemes, it must comply with its duties under the FMCA.³⁵ 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 (including power to sub-delegate such powers, duties and discretions) to its officers and employees;
- (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 agent on terms and conditions and with such powers, duties, discretions,

³⁴ Section 190 of the FMCA.

³⁵ Section 152 to 155 of the FMCA.



indemnities and remuneration as are agreed by the Supervisor and the other person;

- (c) at the direction of the Manager, borrow and raise money for any of the purposes of a Scheme on such terms and conditions as the Manager thinks fit and secure the repayment of moneys so borrowed, and interest on those moneys, by mortgage over all or any of the assets of the relevant Scheme provided that nothing in this clause 15.1(c) 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; and
- (d) do anything the Supervisor considers necessary or expedient to enable it to discharge the Supervisor's statutory duties in relation to the Schemes.

15.2 **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 of the investments or property of any of the Schemes are to be vested. The Custodian must meet the requirements for such person under the FMCA.³⁶ 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 15.2 and the FMCA³⁷ with respect to the relevant Scheme.

15.3 **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 15.2 may itself appoint one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which any of the investments or property of any of the Schemes are to be vested. Any sub-custodian appointed under this clause 15.3 must meet the requirements for such a person under the FMCA.³⁸ 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 15.3 and the FMCA³⁹ with respect to the relevant Scheme.

15.4 **Fees and reimbursement for Custodians and Sub-custodians**

The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to clauses 15.2 and 15.3 (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.

³⁶ Sections 127(1)(f) , 156 and 158 of the FMCA.

³⁷ Sections 157 to 159 of the FMCA.

³⁸ Section 156 of the FMCA.

³⁹ Sections 157 to 159 of the FMCA.



16 APPOINTMENT AND REMOVAL OF SUPERVISOR

16.1 Appointment

The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Schemes under the FMCA. The Schemes shall have a single supervisor who:

- (a) must not be an Associated Person of the Manager;⁴⁰ and
- (b) must otherwise be a person entitled by law to act as the supervisor of the Schemes.

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 Schemes 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.⁴¹

(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 laws, 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;⁴²

⁴⁰ Section 127(1)(e) of the FMCA.

⁴¹ Section 193(1) of the FMCA.

⁴² Section 193(2) of the FMCA.



- (b) any new supervisor has executed the deed referred to in clause 16.5; and
- (c) all of the investments of the Schemes have been transferred to the new supervisor, or a custodian(s) who holds all of the investments of the Schemes has acknowledged in its capacity as custodian for the relevant Schemes, that it is acting for the new supervisor.

16.5 **New appointment**

The power of appointing a new supervisor of the Schemes (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 **REMUNERATION OF SUPERVISOR**

17.1 **Supervisor's annual fee⁴³**

In relation to a Scheme, the Supervisor will be paid an annual fee, calculated in such manner and of such amount as the Supervisor and the Manager may agree in writing 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 a Fund or paid by cancelling Units in the Members' Accounts with respect to the relevant Scheme, or may be paid by the Manager if it so agrees.

17.2 **Alteration of fee**

If the Manager and the Supervisor are unable to agree on the Supervisor's fee, the matter should 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.

⁴³ Section 135(1)(f) of the FMCA.



17.3 Special fees

In addition to the fee payable to the Supervisor under clause 17.1, the Supervisor is entitled to charge, in respect of a Scheme, such special fees, on a time cost and reasonable disbursements basis, as the Manager may agree to from time to time (which agreement shall not be unreasonably withheld).

17.4 GST

The Supervisor is entitled to receive, in addition to the fees referred to in this clause 17, any GST or similar Tax payable in respect of such fees.

18 LIABILITIES AND INDEMNITIES

18.1 Indemnity

- (a) Subject to the indemnity limitation under the FMCA⁴⁴, the Supervisor and the Manager, and each of their respective directors and officers and any person to whom those persons have delegated all or any of their powers shall be indemnified out of a Fund against all liabilities incurred in the exercise or attempted exercise of the trusts, powers, authorities and discretions contained in this Deed and shall have a lien on and may use moneys forming part of that Fund in pursuance of this indemnity.
- (b) This indemnity shall extend to any payments made to any person whom the Manager or the Supervisor bona fide believes to be entitled to them although it may be subsequently found that such person was not in fact so entitled.
- (c) The Manager and the Supervisor, and each of their respective directors and officers and any person to whom those persons have delegated all or any of their powers shall not be liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on the part of the Manager, the Supervisor or those persons (as the case may be).
- (d) Any administration manager, investment manager or other manager or agent acting for or on behalf of the Manager or the Supervisor, and their respective directors, officers and all persons to whom they have delegated all or any of their powers shall have the benefit of any exclusions or indemnities given to the Manager or the Supervisor (as the case may be) whether in terms of this Deed, any application for membership of the Schemes or otherwise.

18.2 Power to indemnify investment managers and administration managers

The Manager may agree:

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

⁴⁴ Sections 135(1)(F) and 136(1)(b) of the FMCA.



any investment manager or administration manager appointed in respect of that Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability, Tax, or obligation incurred by or on behalf of the investment manager or administration manager in respect of that Scheme or any action taken or omitted to be taken in connection with that Scheme (including, without limitation, legal fees and disbursements).⁴⁵

18.3 Power to indemnify custodians

The Supervisor may agree:

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

any Custodian appointed in respect of that Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability, Tax, or obligation incurred by or on behalf of the Custodian in respect of that Scheme or any action taken or omitted to be taken in connection with that Scheme (including without limitation, legal fees and disbursements).⁴⁶

18.4 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).

18.5 Indemnity Limitations

No provision of clauses 18.1 to 18.4 has the effect of exempting the Supervisor or the Manager or any director or officer of the Supervisor or the Manager, and no provision of this Deed has the effect of indemnifying the Supervisor or the Manager or any such director or officer, to the extent that doing so would be void under the FMCA⁴⁷ or any other statute.

18.6 Other limitation on liability

Without prejudice to the generality of the foregoing provisions, and subject to the requirements of the FMCA:

- (a) the Supervisor and the Manager may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager

⁴⁵ Section 135(1)(f) and 136(2) of the FMCA.

⁴⁶ Sections 135(1)(f) and 136(2) of the FMCA.

⁴⁷ Section 136 of the FMCA.



to be expert⁴⁸ in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;

- (b) whenever pursuant to any provision hereof, any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director or officer of the Manager or by any other person or persons, authorised by the Manager; and
- (c) whenever pursuant to any provision hereof, any certificate, notice, direction or other communication is to be given by the Supervisor to the Manager, the Manager may accept as sufficient evidence thereof a document signed on behalf of the Supervisor by any director or officer of the Supervisor or by any other person or persons, authorised by the Supervisor; and
- (d) the Supervisor is entitled to rely on the Manager's assessment of the validity of any signature on any transfer or other instrument if such reliance is based on a reasonable belief that the signature is genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement from any other person, be borne by the relevant Fund except that such loss may be attributable to the Supervisor's own negligence or wilful default.

18.7 **Limitation relating to Members**

Notwithstanding anything contained in this Deed or any rule of law:

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

⁴⁸ Section 155 of the FMCA.



19 RELATED PARTY TRANSACTIONS

19.1 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.⁴⁹
- (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 19.1(a) does not affect the validity of a transaction (subject to any Court order to the contrary).⁵⁰

20 ACCOUNTS

20.1 Bank Accounts

In relation to each Scheme, a separate bank account or accounts in the name of the Supervisor or a Custodian appointed in accordance with clause 15.2 must be opened and maintained for each Fund or, if the Manager and the Supervisor agree, for that Scheme. All moneys held for the relevant Fund or the relevant Scheme (as the case may be), 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.

20.2 Subscription Bank Account⁵¹

A bank account or accounts outside the Schemes, in the name of the Supervisor or a Custodian appointed in accordance with clause 15.2 must be maintained. All subscriptions for Units that are paid, prior to the allotment of those 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 relevant Scheme. Amounts payable when the relevant Units are cancelled, must be paid to the credit of either the Subscription Bank Account or another bank account specified by the Manager. The Supervisor shall determine the persons authorised to operate such bank accounts.

21 AUDITOR

21.1 Appointment and remuneration

A licensed auditor or registered audit firm selected by the Manager, approved by the Supervisor and entitled by law to act as such⁵² must be appointed as Auditor of the Schemes. The Manager and the Supervisor must agree upon the services to be

⁴⁹ Sections 172 to 176 of the FMCA.

⁵⁰ Section 173(6) of the FMCA.

⁵¹ Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

⁵² Section 461E of the FMCA.



performed and reports to be provided by the Auditor, and their scope having regard to requirements under the FMCA⁵³ 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 believes it to be in the best interests of the Schemes 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 Auditor 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 Schemes 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.⁵⁴

22 **AMENDMENT OF THIS DEED**

22.1 **Amendment**

Subject to the provisions of the FMCA and any other applicable legislation, the Supervisor and the Manager may at any time by deed amend all or any of the provisions of this Deed.

23 **WINDING UP**

23.1 **Supervisor notification of a Scheme wind-up**

A 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 a Scheme is to be wound up, a Scheme's registration is cancelled or if a Scheme is required to be wound up under the FMCA.⁵⁵ If the Manager notifies the Supervisor that a Scheme is to be wound up, the wind-up shall take effect on the date specified

⁵³ Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

⁵⁴ Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

⁵⁵ Sections 195 and 211 of the FMCA.



for that purpose in a notice. The provisions of the FMCA, relating to the winding up of a Scheme, shall apply to the winding up of that Scheme.⁵⁶

23.2 Member notification

Where a Scheme is being wound up, within 14 days of giving notice to wind up that Scheme (or such longer period as the Supervisor shall agree with the Manager) under clause 23.1, the Manager must give to each Member who has an interest in the relevant Scheme, notice of the winding up and of the intention of the Supervisor to distribute to the Members the assets of that Scheme.

23.3 Winding Up Entitlements may be satisfied through the distribution of units in another scheme or fund

Where the Manager believes it is in the best interests of Members in a Fund generally to do so, the Manager may (subject to clause 23.4) 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 (or in the case of the winding up of a Fund, another Fund in the same Scheme) in accordance with this clause (“**Default Option**”). If the Manager makes such an election, the notice given by the Manager pursuant to clause 23.2 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 (or in the case of the winding up of a Fund, another Fund in the same Scheme) specified in respect of the Member in the notice given by the Manager pursuant to clause 23.2 in respect of the Member’s Units, which Registered Scheme, fund 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) either:
 - (A) have a similar investment objective to the relevant Fund or Scheme (as the case may be); or
 - (B) where the Default Fund is another Fund within the relevant Scheme, be the Fund the Manager reasonably considers to have the most similar investment objective to the relevant Fund;

and be able to invest in similar asset categories (as prescribed by clause 1(4) of Schedule 4 to the FMC Regulations), and in similar

⁵⁶ Sections 171, 212 and 213 of the FMCA.



proportions, to those in which the relevant Fund is permitted to invest under its 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 (except in the case of the winding up of a Fund, when the Default Fund is another Fund in the same Scheme and the requirement in clause 23.3(b)(i) is met in respect of the relevant Member);
- (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 23.5;
- (vii) not have higher overall fees than the relevant 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 23.

23.4 **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 of the relevant Scheme in accordance with clause 23.2, 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 23.3(b)(i) to (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 23.3 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 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 23.2.
- (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 the 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 23.4 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.

23.5 **Default Fund Option:**

Where:

- (a) the notice given by the Manager pursuant to clause 23.2 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.



23.6 Procedure on Winding Up

- (a) From and after the date of termination of a Scheme, the Supervisor shall:
- (i) sell and realise the assets of that 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 of the relevant Scheme in satisfaction of their Winding Up Entitlements; and
 - (ii) acquire such units in a Default Fund to be distributed (in specie) to Members of the relevant Scheme in satisfaction of their Winding Up Entitlements,
- as soon as reasonably practicable.
- (b) A Member shall be entitled in satisfaction of the Member's entitlements on a winding up of a Scheme to the distribution of either cash or units in the relevant Default Fund equal in value to the Member's Winding Up Entitlements.
- (c) On a winding up of a Scheme, the Supervisor shall:
- (i) First, pay or retain all costs, charges, expenses, Tax and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from that Scheme and of all remuneration payable to the Supervisor and the Manager as herein provided;
 - (ii) Secondly, 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 23.3; or
 - (B) 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 23.5,units in the relevant Default Fund equal in value to the Member's Winding Up Entitlements for the Member's Units in the relevant Fund, in satisfaction of those entitlements.
- (d) 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 23.6(c).
- (e) Each distribution shall be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.
- (f) 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 a Scheme is wound up.



- (g) If a Scheme is to be wound up then the Manager shall after deducting costs and expenses of winding up distribute any moneys remaining in proportion to the amounts standing to the credit of the Members' Accounts to the Members of that Scheme. Each Member of the Scheme being wound up shall be advised in writing by the Manager of the amount standing to the credit of the Member's Account with respect to that Scheme.

23.7 Restriction on winding up of Passive PRP – NZ or Passive PRP – International

This provision applies to the Passive PRP – NZ and the Passive PRP – International only. Neither of these Schemes shall be wound up with a view to enhancing the performance of that Scheme or to minimise losses of that Scheme in any way. This provision will not be breached if:

- (a) the Manager decides to wind up the relevant Scheme for reasons unrelated to the performance of the investments of that Scheme (including if the Manager considers that its return from managing the Fund is not sufficient); or
- (b) the Members of the relevant Scheme independently resolve to wind up that Scheme.

24 GENERAL PROVISIONS AS TO TRANSFERS

24.1 Transfers made under the FMCA

Any transfers to or from a Scheme shall be in accordance with the relevant requirements of the FMCA and all other applicable legislation.⁵⁷

24.2 Consent of Member required to transfer out

Notwithstanding any of the other provisions contained in this Deed, a Member of the Scheme may be transferred to another Retirement Scheme only at the sole and absolute discretion of the Manager and with the written consent of the Member concerned (or in accordance with the FMCA⁵⁸). Without in any way limiting the Manager's discretion, the Manager may from time to time require a minimum period of membership before a Member can be transferred to another Retirement Scheme.

24.3 Transfers in

The Manager may in its sole and absolute discretion and subject to all applicable legislation and to any agreement entered into between the Manager and the Member under clause 9.5, accept an amount arising from another Retirement Scheme in which the Member has participated and such amount shall be treated as Contributions from the Member and credited to the Member's Account.

24.4 Transfers within Funds

In relation to the Main PRP only, for the purpose of clauses 24.1 to 24.3, references to the transfer of Members from one scheme to another shall include references to transfers of Members from one Fund to another Fund (if at any time that Scheme is

⁵⁷ Section 135(1)(a) of the FMCA.

⁵⁸ Sections 178 to 182 of the FMCA.



deemed for the purposes of the FMCA to be divided into different Funds at any time).

25 **DISPUTES**

25.1 **Determination by the Manager**

If there shall arise any difference, dispute or doubt as to the interpretation of any of the provisions of this Deed or the rights between a Member and the Manager or the Supervisor, the decision and determination of such difference, dispute or doubt shall rest solely and absolutely with the Manager, provided that, in relation to any difference, dispute or doubt as to the interpretation of any of the provisions of this Deed or the rights between a Member and the Supervisor, the Manager must first consult with the Supervisor.

26 **MISCELLANEOUS**

26.1 **Perpetuities**

In the event that the Schemes 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 trusts of the Schemes and the payment over of the assets of the Schemes 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 any of the trusts of the Schemes or any disposition made under it or for its purposes.

26.2 **Currency of Scheme**

All payments to be made in terms of the Scheme shall be paid in New Zealand in New Zealand currency.

27 **NOTICES AND INFORMATION TO MEMBERS**

27.1 **Notices 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 may 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.

27.2 **Notices to Member**

Any notice under this Deed, and any other Scheme-related communication intended for a Member of a Scheme, 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) electronic communication acceptable to the recipient.

A Member must notify the Manager of any change to the Member's registered or electronic address and the Register of the relevant Scheme 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 of a Scheme 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.

27.3 **Manner of notice**

Any notice sent by post will be deemed to have been given at the expiration of three 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 5pm 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).

27.4 **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.

27.5 **Calculation of notice period**

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

27.6 **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 of a Scheme pursuant to 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.

28 **GOVERNING LAW**

28.1 **New Zealand law**

This Deed shall in all respects be governed by and interpreted according to the laws of New Zealand.

29 **MEETINGS**

When required by the FMCA, the Manager must call a meeting of Members of a Scheme in the manner and on the basis set out in the FMCA and the FMC



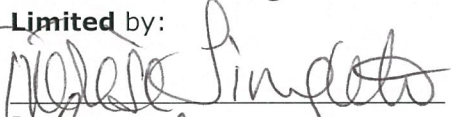
Regulations.⁵⁹ A meeting of Members of a Scheme shall be conducted in accordance with the requirements of the FMCA.

⁵⁹ Sections 161 to 163 of the FMCA and FMC Regulation 83.



EXECUTION

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



Director



Director