



**The New Zealand Guardian Trust Company Limited**  
Supervisor

and

**AMP Wealth Management New Zealand Limited**  
Manager

## **Trust Deed**

relating to

the **Superannuation Master Trust**

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## TRUST DEED – SUPERANNUATION MASTER TRUST

*Date:* 11 October 2016

### PARTIES

**The New Zealand Guardian Trust Company Limited** at Auckland (the *Supervisor*)

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

### BACKGROUND

- A The Superannuation Master Trust (the *Scheme*) is a superannuation scheme registered under the Superannuation Schemes Act 1989 (*Superannuation Act*) which was established by a deed dated 20 March 2000 and is currently governed by a deed dated 13 February 2009 as amended on 21 May 2013 and 15 May 2014 (the *Existing Deed*).
- B By a Deed of Retirement and Appointment of Trustee, the Supervisor replaced New Zealand Permanent Trustees Limited as trustee of the Scheme on the date of this Deed.
- C The Supervisor has become the supervisor of the Scheme on the date of this Deed. From the date of this Deed, the Supervisor will be responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.<sup>1</sup>
- D The Manager is the current administration manager and investment manager of the Scheme and will continue as the Manager of the Scheme for the purposes of the FMCA.
- E The Supervisor and the Manager wish to amend the Existing Deed by substituting this Deed for the Existing Deed on and from the date of this Deed in order to:
- (a) reflect that the Scheme is closed to new members, that there are no longer any “Divisions” or “Plans” within the Scheme, and the Scheme now has only “Personal Members” each as defined in the Existing Deed;
  - (b) comply with the FMCA and the FMC Regulations; and
  - (c) make other amendments for the more efficient operation of the Scheme.
- F The Supervisor and the Manager are satisfied that the amendments contained in this Deed do not require any Member consents under clause 34 of the Existing Deed or section 9 of the Superannuation Act, and prior to entering into this Deed, the Supervisor obtained from a solicitor a certificate as required by section 12(1)(b) of the Superannuation Act.

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<sup>1</sup> Section 152 of the FMCA.

- G The Supervisor has also obtained a certificate to the effect that this Deed complies with sections 135 to 137 of the FMCA.

**BY THIS DEED:**

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

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed unless the context otherwise requires:

*Account* means an account established and maintained by the Manager in accordance with clause 4;

*Additional Fund* means a separate Fund constituted pursuant to clause 6.2;

*Applicable Minimum Contribution Amount* means the “Minimum Regular Contribution Amount” or the “Minimum Lump Sum Contribution Amount” applicable to the particular circumstances;

*Assets* means any money, property or assets whatsoever and such expression includes:

- (a) real and personal property;
- (b) any debts owing; and
- (c) any right or interest or other benefit,

and any interest in any of those things whether in possession or not;

*Associated Person* has the meaning given to it by the FMCA;<sup>2</sup>

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

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

*Auditor* means the auditor of the Scheme appointed pursuant to clause 29;

*Beneficiary* means a natural person entitled to receive all or part of a Benefit;

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<sup>2</sup> Section 12(1) of the FMCA.

*Benefit* means any lump sum, annuity, pension, allowance, refund or other payment payable from the Scheme pursuant to this Deed;

*Benefit Notice* means a notice given or deemed to have been given in accordance with clause 15.6;

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

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

*Cash* includes a cheque and bank cheque;

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

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

*Custodian* means a person appointed to hold the Scheme property under clause 21.3 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold any such Scheme property under clause 21.4;

*Deed* means this Deed as amended from time to time;

*Dependant* means in relation to a Member or Beneficiary any person, whether or not related by blood or marriage to the Member or Beneficiary, whom the Manager in its discretion from time to time determines to be or to have been or in future might have become dependent either wholly or in part on the Member or Beneficiary at the time of the happening of the relevant event;

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

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

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

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

*FMCA* means the Financial Markets Conduct Act 2013;

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

*Fund* means any Original Fund and any Additional Fund;

*Fund Assets* means in relation to any Fund the Investments of that Fund as described in clause 6.4;

*Income* means in relation to any Fund the net income earned by that Fund, determined in accordance with the provisions of clause 22.2;

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

*Insured Benefits* means benefits provided to Members by way of the Supervisor (or the Custodian) entering into a policy of insurance or assurance in respect of those Members;

*Insurer* means a company selected and appointed from time to time by the Manager to provide a policy of insurance or assurance in connection with the provision of Insured Benefits;

*Investment* means in relation to any Fund any investment made or held at any relevant time by that Fund;

*Investment Direction* means a direction made by a Member in accordance with clause 8 of the Existing Deed or clause 7;

*Lender* means a person to whom an obligation is secured by virtue of any mortgage or charge under clause 16.2;

*Loan Value* means at any time in respect of the Benefits payable to or in respect of a Member (other than Insured Benefits) an amount equal to the maximum Withdrawal Benefit that Member would be entitled to request at that time in accordance with clause 15.2(a);

*Locked-in Status* means a membership to which the provisions of clause 15.3(b) apply by virtue of a notice given in accordance with clause 4.18 or clause 4.19 of the Existing Deed;

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

*Management Fee* means any fee determined in accordance with clause 26.1;

*Manager* means the party to this Deed named as the Manager or such other company as may from time to time be carrying out the function of manager of the Scheme pursuant to clause 19;

*Member* means a natural person who for the time being is entered on the Register as a member of the Scheme and *Membership* has a corresponding meaning;

*Member's Account* means in respect of a Member, the Account of that name denominated in Units, and established and maintained in respect of the Member pursuant to clause 4.1 and *Member's Balance* means the balance of that account calculated in accordance with clause 4.2;

*Minimum Regular Contribution Amount, Minimum Lump Sum Contribution Amount, Minimum Withdrawal Amount and Minimum Member's Balance* mean any amounts prescribed for that purpose from time to time by the Manager in accordance with clause 10.3;

*Minimum Value of Units* means an amount prescribed for that purpose from time to time by the Manager in accordance with clause 7.4;

*Month* means calendar month;

*Net Asset Value* means the value of a Fund as calculated under clause 9.1 on a Valuation Day;

*Office* means the registered office from time to time of the Manager or the Supervisor (as the case may be);

*Original Fund* means each of the Funds established by the Existing Deed (known as Investment Portfolios under the Existing Deed) and governed by this Deed;

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

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

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

*Policy* means a policy of insurance or assurance entered into between an Insurer and the Supervisor (or the Custodian) in connection with the provision of Insured Benefits;

*Register* means the register of Members maintained for the Scheme pursuant to the FMCA;<sup>3</sup>

*Registered Scheme* has the meaning ascribed to it in the FMCA;

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

*Related Party Benefit* has the meaning given to it by the FMCA;<sup>5</sup>

*Retirement Age* means the latest of:

- (a) in respect of a Member the age that was specified by the Member when the Member applied for membership, or such greater age as the Member may nominate at such other time as the Manager may from time to time permit;
- (b) 55 years of age; and
- (c) such age as is determined from time to time by the Manager as being necessary to ensure that the Scheme is a legacy superannuation scheme as defined under the FMCA;

*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 1989, or any overseas superannuation scheme in respect of which transfers to or from the Scheme are permissible<sup>6</sup>;

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

*Scheme Assets* means the Assets of the Scheme;

*SIPO* has the meaning given to it by the FMC Regulations;<sup>7</sup>

*Subscription Bank Account* means, in relation to the Scheme, the bank account (or part of a combined bank account which relates to subscription money) established for the Scheme in the name of the Supervisor or its Custodian in accordance with clause 5.7;

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

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<sup>3</sup> Section 215 of the FMCA.

<sup>4</sup> Section 172(2) of the FMCA.

<sup>5</sup> Section 172(1) of the FMCA.

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

<sup>7</sup> FMC Regulation 5.

*Supervisor* means the supervisor for the time being appointed under the provisions of this Deed and, where the context requires or allows, includes any Custodian;

*Suspension Notice* means a notice given in accordance with clause 15.7;

*Switching Notice* means a notice given in accordance with clause 12.1;

*Switch Fund* has the meaning specified in clause 12.1;

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

*Tax Bank Account* means in relation to the Scheme, the bank account (or part of a combined bank account which relates to tax payments) established for the Scheme by the Supervisor or its Custodian and managed by the Manager in accordance with clause 5.8;

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

*Terminal Illness* means any illness which, in the opinion of the Manager after consideration of unequivocal medical evidence provided to the Manager by the Member's own doctor and such other evidence as the Manager may require, will result in the death of the Member within 12 months regardless of treatment that might be undertaken;

*Totally and Permanently Disabled* means, in respect of a Member, the Member:

- (a) having been wholly prevented by injury or illness for six consecutive months from following the business, occupation or regular duties in which the Member engaged immediately prior to the onset of the injury or illness; and
- (b) in the opinion of the Manager after consideration of medical evidence, having become incapacitated to such an extent as to render the Member unlikely ever to engage in or work for reward in any occupation or work for which the Member is reasonably qualified by education, training or experience; and

**provided that** a Member shall be deemed to have become Totally and Permanently Disabled if the Member has suffered the loss of two limbs or the sight of both eyes or the loss of one limb and the sight of one eye, where "limb" means the whole hand or the whole foot,

**and provided further that** in any event a Member who becomes Totally and Permanently Disabled shall be deemed to have become so disabled from:

- (i) the date on which the said six consecutive months commenced; or

- (ii) the date on which the Member was deemed to have become Totally and Permanently Disabled pursuant to the preceding proviso to this definition,

whichever is the earlier, and in each case *Total and Permanent Disablement* has a corresponding meaning;

*Transaction* means the:

- (a) allocation of Units;
- (b) redemption of Units;
- (c) switching of Units; or
- (d) payment of Benefits;

as may be appropriate in accordance with the context;

*Transaction Fee* means in relation to any Transaction the fee for arranging that Transaction determined in accordance with clauses 26.2;

*Unit* means an undivided part or share in a Fund as described in clause 8.1 and includes a part of a Unit;

*Unit Price* means the price which is from time to time determined under clause 8.3;

*Valuation Day* means a day whether periodical or otherwise specified by the Manager as a day in respect of which the Net Asset Value of the Investments of a Fund is determined in accordance with clause 9.1;

*Winding Up Entitlements* means, in respect of a Fund being wound up as part of the winding up of a Scheme and a Member, Assets (including, where relevant, Cash) equal in value to a proportion of the Fund's Assets after allowing for the deduction of all amounts under clause 33.1(d), which is equal to the proportion of Units held by the Member in the Fund;

*Withdrawal Amount* means the amount required to pay a Benefit or an amount to otherwise be debited from an Account, plus any applicable Transaction Fees;

*Withdrawal Benefit* means a Benefit payable in accordance with clause 15.2;

*Withdrawal Fund* has the meaning specified in clause 12.1; and

*Withdrawal Request* means a notice given or deemed to have been given in accordance with clause 15.2.



## 1.2 Construction of certain references

In this Deed, unless the context otherwise requires, any reference to:

a *consent* also includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration (and references to obtaining consents are to be construed accordingly);

a *law* includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, by-law or other legislative measure, in each case of any relevant jurisdiction (and *lawful* and *unlawful* shall be construed accordingly);

a *person* includes any individual natural person, company, corporation, corporation sole, partnership, joint venture, association (whether corporate or unincorporated), trust, organisation, Government department, Minister of the Crown, state or agency of a state (in each case, whether or not having separate legal personality), and includes a person's executors, administrators, successors and assigns;

*writing* includes:

- (a) the recording of words in a permanent and legible form; and
- (b) the display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in a permanent form and, with or without the aid of any equipment, to be retrieved and read;

and *written* has a corresponding meaning.

## 1.3 General construction

In interpreting this Deed, the following rules shall be applied unless the context otherwise requires:

- (a) words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa;
- (b) references to statutes or regulations include all amendments, consolidations, re-enactments and replacements thereof and any statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions and, where the context requires, any regulations made under them;
- (c) headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed;
- (d) where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing shall be done on the following Business Day;

- (e) 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) all periods of time include the day on which the period commences and also the day on which the period ends;
- (h) notwithstanding any provision of this Deed, Units are not to be treated as liabilities for any purpose under this Deed;
- (i) 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;
- (j) where:
  - (i) a provision of this Deed replicates a specific compulsory requirement of the FMCA (whether or not in its entirety); but
  - (ii) such requirement of the FMCA is subsequently repealed, replaced, or amended, or an exemption or other regulatory relief from that requirement subsequently applies to the Scheme or a Fund,the provisions of this Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make this Deed consistent with such amended requirement other than to the extent that doing so would be void under the FMCA (including section 139 of the FMCA); and
- (k) where any framework or methodologies are specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA, apply to the Scheme or a Fund and relate to any matter which is required by the FMCA to be provided for adequately in this Deed, the provisions of this Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme or the relevant Fund (as the case may be).

#### 1.4 Implied terms

Terms implied into the Deed under the FMCA will apply for so long as they are implied in the Deed under the FMCA despite anything to the contrary in the Deed, and any provision in the Deed that is contrary to any such implied term will be void to the extent that it is contrary.

## 2 CONTINUATION OF THE SCHEME

### 2.1 Continuation

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

### 2.2 Purpose of the Scheme

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

### 2.3 Name of the Scheme

The Scheme shall be known as Superannuation Master Trust or such other name as the Manager shall decide from time to time.

### 2.4 Appointment of Supervisor

The Supervisor is appointed as the supervisor of the Scheme for the purposes of the FMCA. The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.<sup>8</sup> The Supervisor agrees to hold the Scheme Assets in trust for the Members upon and subject to the terms and conditions contained or implied in this Deed.<sup>9</sup>

### 2.5 Continued appointment of Manager

The Manager is the manager of the Scheme and is responsible for managing the Scheme and performing the functions set out in the FMCA<sup>10</sup> and agrees to act and continue to act as Manager of the Scheme for the benefit of the Members upon and subject to the terms and conditions contained or implied in or pursuant to this Deed, the FMCA and any other applicable legislation.

### 2.6 Provisions benefit Members

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all of the Benefits and provisions (including but not limited to those Benefits and provisions which are expressed to enure for the benefit of and bind Members) contained in this Deed enure for the benefit of and bind each Member and are legally enforceable as between the Manager, the Supervisor and Members (and all persons claiming through them) as if they were a party to this Deed.

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<sup>8</sup> Section 152 of the FMCA

<sup>9</sup> Section 152 of the FMCA

<sup>10</sup> Sections 142(1) of the FMCA.

## 2.7 **Scheme is a single scheme**

The Scheme shall comprise a single scheme and all Scheme Assets shall be held on trust for all Members and Beneficiaries upon and subject to the terms and conditions contained or implied in this Deed.<sup>11</sup>

## 3 **MEMBERSHIP**<sup>12</sup>

### 3.1 **Cessation of Membership**

A Member shall cease to be a Member if:

- (a) the Scheme is wound up in accordance with clause 32 and the Member is paid the Member's entitlement in accordance with clause 32.7; or
- (b) the Member's Balance becomes less than or equal to zero and no Insured Benefits are provided in respect of that Member; or
- (c) a Benefit is paid to the Member other than an Insured Benefit or a Withdrawal Benefit; or
- (d) the Member transfers to another Retirement Scheme and the Manager pays the transfer amount to the supervisor of that Retirement Scheme or in accordance with clause 17.2.

### 3.2 **Compulsory Termination of Membership**

If the Manager is satisfied that reasonable grounds exist whereby the continued Membership of a Member may contribute to the Scheme being de-registered as a legacy superannuation scheme under the FMCA<sup>13</sup>, the Manager may give notice to the Member terminating the Member's Membership whereupon the Member shall be deemed to have given a Withdrawal Request for the whole of the Member's Balance in accordance with clause 15.2.

## 4 **SCHEME ACCOUNTS**

### 4.1 **Maintenance of Scheme Accounts**

The Manager shall maintain within the Scheme the following records for each Member, a Member's Account and such other accounts as the Manager wishes to establish and maintain for the administration of the Scheme.

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<sup>11</sup> Sections 152(1)(c) and 156(2) of the FMCA.

<sup>12</sup> Section 129(3) of the FMCA.

<sup>13</sup> Section 129 of the FMCA

#### 4.2 **Member's Account**

A Member's Account shall be debited or credited from time to time by allocating or redeeming Units in accordance with clauses 11 to 13 to reflect:

- (a) Contributions to the Scheme made by or in respect of the Member;
- (b) any funds transferred from another scheme in accordance with clause 17.1 which have not yet been converted into Units in the Member's Account;
- (c) any funds transferred to another scheme in accordance with clause 17.2;
- (d) any transfers to or from the Subscription Bank Account in accordance with clause 5.7;
- (e) any Benefit payable to or in respect of the Member;
- (f) any fees, Taxes, charges, costs, liabilities, and expenses (including the Manager's remuneration and any premiums payable to an Insurer for provision of Insured Benefits) attributable to the Member in accordance with clause 4.4, and any Attributed Tax;
- (g) any tax rebates attributable to the Member; and
- (h) any other amounts required to be debited or credited to the Account under this Deed.

The Member's Balance in respect of a Member at any time is the product of the Unit Price multiplied by the number of Units held in the Account as at the immediately preceding Valuation Day.

#### 4.3 **Redemption of Units**

Where the Manager is required to debit any amount from an Account, it shall, redeem the number of Units it believes are necessary to provide for payment of that amount in accordance with clause 13.1 **provided that** where the deduction is to be made to pay fees or other expenses of the Scheme, the Manager may at its discretion defer payment and deduct those amounts from the Contributions received from or on behalf of Members, prior to allocation of Units in accordance with clause 11.1. The Units to be redeemed shall, subject to any direction given by the Member in accordance with clause 15.6 or otherwise, be redeemed from such Fund as the Manager shall determine in its discretion (for which purpose the Manager may establish a standing policy to be applied in all cases unless it determines otherwise).

#### 4.4 **Apportionment of expenses**

The Manager may apportion any fees, Taxes, charges, costs, liabilities and expenses (including the Manager's remuneration and premiums payable to an Insurer for provision of Insured Benefits) of the Scheme between the Members and between the Accounts in respect of Members in such manner and amounts as the Manager determines in its

discretion. Where those amounts payable from the Assets of the Scheme related to more than one Fund, that amount shall be apportioned between those Funds on such fair and equitable basis as the Manager determines.

## 5 INVESTMENT

### 5.1 Investments of Accounts

The Scheme Assets shall be invested by way of the Funds in accordance with Investment Directions given (or deemed to have been given) from time to time by Members in accordance with clause 7.1. Upon receipt of any money, Units shall be allocated in accordance with clause 11.1 and upon any money being required to be debited from an account, Units shall be redeemed in accordance with section 13.1.

### 5.2 Investments

Each Fund shall be invested only in accordance with the SIPO for the Scheme and as determined by the Manager under clause 6.3. The Manager will comply with the SIPO for the Scheme, in respect of each Fund.

### 5.3 Supervisor's limited duty to refuse to act

- (a) The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on a direction of the Manager in the circumstances where such a refusal is required by the FMCA<sup>14</sup> and the Supervisor shall not be liable to Members or the Manager for so refusing to act (or for directing any Custodian to so refuse to act).
- (b) If the Supervisor refuses pursuant to clause 5.3(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.<sup>15</sup>
- (c) Subject to clause 21.14, neither the Manager nor the Supervisor shall be responsible to any Member for the investment performance of the Scheme or a Fund arising as a result of the Scheme or a Fund being invested in accordance with the SIPO for the Scheme.

### 5.4 Manager directs Supervisor

Subject to this clause 5 and to compliance with the Scheme's SIPO, the Manager shall manage the Scheme and each Fund for the benefit of the Members, and as and when required the Manager may, in order to perform its functions under clauses 19.1, 19.2, 19.3 and the FMCA (subject to the provisions of this Deed) direct the Supervisor, or a Custodian on behalf of the Supervisor, in writing, to:

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<sup>14</sup> Section 160 of the FMCA.

<sup>15</sup> Section 160 of the FMCA.

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

and (subject to the provisions of clause 5.3) the Supervisor shall (and, when a Custodian has been appointed, must procure that the Custodian shall) from time to time, to the extent of the Assets of each Fund in its possession or control, act as directed by notice to the Supervisor from the Manager except to the extent to which it forms the opinion on reasonable grounds that any such act is contrary to the provisions of this Deed or SIPO, or would result in a breach by the Supervisor of any obligations imposed on the Supervisor by the FMCA or by the Trustee Act 1956, and such opinion is conveyed by notice to the Manager.

#### 5.5 **Investments in Supervisor's or Custodian's name**

Any Investments shall as soon as reasonably practicable after receipt of the necessary documents by the Supervisor or a Custodian be vested in the Supervisor or a Custodian, and registered in the name of the Supervisor (or, if applicable, a Custodian pursuant to clause 21.3), in each case as soon as reasonably practicable after receipt of the necessary documents.

#### 5.6 **Bank Accounts<sup>16</sup>**

A bank account or accounts in the name of the Supervisor or a Custodian appointed in accordance with clause 21.3 may be opened and maintained for each Fund or, if the Manager and the Supervisor agree, for the Scheme. All moneys held for the relevant Fund, or the Scheme, shall be paid to the credit of such bank account or bank accounts. The Supervisor shall determine the persons authorised to operate such bank accounts. The Manager may combine the bank account for the Scheme or a Fund with a Subscription Bank Account or a Tax Bank Account provided it has adequate procedures for identifying the separate amounts held for the purpose of each such account.

#### 5.7 **Subscription Bank Account**

A bank account or accounts outside the Scheme, in the name of the Supervisor or a Custodian appointed in accordance with clause 21.3, may be opened and maintained in respect of the Scheme. 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

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<sup>16</sup> Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

credited to a bank account for the relevant Fund or the Scheme. Amounts payable when the relevant Units are cancelled must be paid to the credit of the Subscription Bank Account. The Supervisor shall determine the persons authorised to operate such bank accounts.

#### 5.8 Tax Bank Account

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

- (a) The following payments will be made into the Tax Bank Account as and when directed by the Manager:
  - (i) any amounts deducted on account of the PIE Tax Liability;
  - (ii) any rebates received from the Commissioner that are allocated to Members pending or following payment to the relevant Member (including by way of application toward the issue of Units of the Member entitled to the rebate); and
  - (iii) any payments to address any deficit Tax Bank Account Balance (arising only from Bank fees, and/or bank debit interest). There shall be at least one payment to address any deficit (arising only from Bank fees; and/or bank debit interest) within three months after 31 March each year.
- (b) Payments will be made by the Supervisor from the Tax Bank Account, as and when directed by the Manager, for the following purposes:
  - (i) to the Commissioner, in respect of the Scheme's PIE Tax Liability;
  - (ii) to the extent that a particular Member is entitled to a rebate or refund of Tax, to or for the benefit of that Member; and
  - (iii) to the Scheme, to the extent of any surplus Tax Bank Account Balance (arising from any Bank credit interest or otherwise) after making adequate provision for the purposes of paragraphs (i) and (ii) above. The amount shall be apportioned between the Funds as the Manager thinks fit. There shall be at least one payment of any surplus within three months after 31 March each year.
- (c) The Manager will maintain, or cause to be maintained, records for the Tax Bank Account for the purpose of being able to determine if required, for each Member, any Attributed Tax, or any rebate or refund attributable to them.
- (d) The Tax Bank Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Member shall



have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent expressly provided for at clause 5.8(b)(ii).

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

#### 5.9 **Investment in other schemes**

The Manager may from time to time become a member of and invest all or any part of any Fund available for investment in any other Retirement Scheme in which such investments are permitted under the Scheme's SIPO.

#### 5.10 **Manager's Power**

The Manager may invest the Scheme Assets in accordance with the SIPO. The investment obligations of the Manager and the Supervisor under this Deed shall constitute a contrary intention with respect to investment of the Scheme Assets, all Contributions made to the Scheme and all other amounts credited to any Account for the purposes of sections 2(5) and 2(5A) and an Investment Direction shall constitute a binding direction for the purposes of section 13G of the Trustee Act 1956.

### 6 **CREATION OF THE FUND**

#### 6.1 **Original Funds**

This Deed confirms the continuation of each Original Fund.

#### 6.2 **Additional Funds**

The Manager may at any time constitute a new Fund to be governed by this Deed by notifying the Supervisor of the details of the new Fund.

#### 6.3 **SIPO**

(a) The details as set by the Manager must include a written SIPO for the Scheme which covers each Fund and complies with the requirements of the FMCA.<sup>17</sup> The SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA,<sup>18</sup> and all moneys available for investment in a Fund shall be invested in accordance with the SIPO for the Scheme which covers that Fund. The Manager shall provide a copy of the proposed SIPO (or any alteration to that SIPO) to the Supervisor in accordance with the timeframes specified in the Management Agreement, and must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the FMCA.<sup>19</sup>

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<sup>17</sup> Section 164 of the FMCA.

<sup>18</sup> Section 164 of the FMCA.

<sup>19</sup> Sections 165 and 166 of the FMCA.

- (b) Clause 6.4 and this clause 6.3 shall not be construed so as to prohibit the Manager from transferring amounts between Funds to accommodate the Scheme being a single taxpayer.

#### 6.4 **Fund Assets**

The Fund Assets of each Fund shall consist of all Investments for the time being held by the Supervisor (or the Custodian) in respect of that Fund upon the trusts of this Deed including:

- (a) the proceeds of sale or realisation of any Investments of that Fund pending reinvestment; and
- (b) all additions or accretions thereto; and
- (c) all Income therefrom held pending reinvestment;
- (d) Contributions to the Fund that have been received but not yet invested.

### 7 **INVESTMENT DIRECTIONS**

#### 7.1 **Investment Direction**

Each Member's direction to the Manager in respect of investment of the Member's Account shall remain operative from the date of this Deed.

#### 7.2 **Variation of Investment Direction**

An Investment Direction may, subject to such limitations or conditions as the Manager may impose in the case of every Member, be varied from time to time by the relevant Member by notice to the Manager in such form as the Manager may prescribe. The variation of the Investment Direction shall become operative on or after the expiration of 1 Business Day following the delivery of the Investment Direction to the Manager (or such earlier date as the Manager may determine or if it is not practicable for the Manager to process the variation at that time, such later date as it becomes practicable for the variation to be processed).

#### 7.3 **Default Direction**

If a Contribution or other amount of money is received from or in respect of a Member at any time in respect of which there is no operative Investment Direction, the Member shall be deemed to have made an Investment Direction in favour of such Funds as the Manager may determine in its discretion (for which purpose the Manager may establish a standing policy that applies in all cases unless it determines otherwise).

#### 7.4 **Minimum Values**

The Manager shall not at any time be required to give effect to an Investment Direction in respect of a particular Contribution or amount of money if its effect would be for the Member to receive less than the Minimum Value of Units in any Fund. In those circumstances the Member shall be deemed to have made an Investment Direction in

respect of that particular Contribution or amount of money in favour of such Funds as the Manager may determine in its discretion (for which purpose the Manager may establish a standing policy that applies in all cases unless it determines otherwise).

**7.5 Supervisor’s right to limit liability**

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

**8 UNITS**

**8.1 Beneficial interest in Funds**

Each Fund shall be divided into Units.

**8.2 Equal but not specific interests**

Units shall be used for the calculation of each Member’s entitlement under the Scheme only and shall not confer an interest in the Fund Assets or, in any particular Fund Assets (or part thereof) and no Member shall be entitled to require the transfer to the Member of any of the Investments of any Fund.

**8.3 Determining Unit Prices**

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

**8.4 Unit Prices binding**

In the absence of an error (and subject to clauses 19.2(k) and 19.2(l)), Unit Prices determined pursuant to this Deed shall be final and binding on all Members and all other persons claiming beneficial interests in the Assets of the Scheme.

**8.5 No interference in management etc**

Subject to the rights of the Members created by this Deed, or by law, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of the Scheme, any Fund or any part or parts thereof or to exercise any right, power or privilege in respect of any Investment.

**8.6 Part Units**

Parts of a Unit may be created and can exist under this Deed and be denoted by figures up to five decimal places.

**8.7 Manager may consolidate or subdivide**

The Manager may at any time, by notice to the Supervisor, cause the Units of a Fund to be consolidated or subdivided. Each such notice shall:

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

**8.8 Effect of consolidation or subdivision**

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

**9 VALUATIONS<sup>20</sup>**

**9.1 Net Asset Value of Fund**

Pursuant to clause 19.2, the Manager shall calculate the Net Asset Value of each Fund as frequently as the Manager may consider necessary or desirable from time to time (but at least once every 5 Business Days, or at such longer intervals as the Manager may determine from time to time subject to the Supervisor's prior agreement, which shall not be unreasonably withheld) by deducting the liabilities attributable to that Fund from the market value of its Assets (other than the Tax Bank Account Balance, and the Subscription Bank Account Balance, to the extent they have been included in the market value of its Assets).

**9.2 Determining Market Value**

For the purpose of determining the Net Asset Value of a Fund under clause 9.1, 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).

**9.3 Determining liabilities**

For the purpose of determining the Net Asset Value of a Fund under clause 9.1, the Manager shall determine the liabilities attributable to the Fund on such basis as the

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<sup>20</sup> Section 135(1)(d) of the FMCA.

Manager considers to be fair and equitable having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and in doing so may (subject to clause 2.7):

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

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

#### 9.4 **Reliance by Supervisor**

The Supervisor shall be entitled to rely on the Manager's calculations under this clause 9, and will not be required to verify those calculations or the methods and procedures used by the Manager in relation to them, except to the extent that such verification is required in order for the Supervisor to meet its obligations under the FMCA.

## 10 **CONTRIBUTIONS AND ALLOCATION OF UNITS**<sup>21</sup>

### 10.1 **Member Contributions**

Each Member may, or any other person with the consent of the Manager may in respect of a Member, contribute to the Scheme such amounts at such times as may be agreed with the Manager.

### 10.2 **Voluntary Contributions**

Any Member may make additional voluntary Contributions in such amounts and at such times as the Member may elect.

### 10.3 **Minimum Amounts**

The Manager may from time to time determine:

- (a) Minimum Lump Sum Contribution Amounts;
- (b) Minimum Regular Contribution Amounts;
- (c) Minimum Withdrawal Amounts; and
- (d) Minimum Member's Balances;

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<sup>21</sup> Section 135(1)(c) of the FMCA.

applicable to the Scheme, Member or group of Members.

#### 10.4 **Minimum Contributions**

The Manager shall not be obliged to accept any Contribution that, is less than the Applicable Minimum Contribution Amount.

#### 10.5 **Minimum Balance**

The Manager may by notice to any Member require that Member to make additional Contributions to bring the Member's Balance to greater than or equal to the relevant Minimum Member's Balance. If such a Member fails to make those additional Contributions within 30 days, the Member shall be deemed to have given a Withdrawal Request for all of the Member's Balance in accordance with clause 15.2. If a Withdrawal Request is given by any Member which would result in that Member having a Member's Balance of less than the Minimum Member's Balance, the Manager may deem that Withdrawal Request to be a Withdrawal Request in respect of all of the Member's Balance.

#### 10.6 **Collection of Contributions**

The Manager shall make such arrangements for collection and payment of Contributions to the Manager as it considers appropriate.

#### 10.7 **Allocation of Units**

Upon receipt of a Contribution, the Manager shall allocate Units to the appropriate Account in accordance with clause 11.1 and all applicable law<sup>22</sup> in respect of all Contributions received from or on behalf of a Member, after deduction of any moneys required to be deducted therefrom.

### 11 **ALLOCATION OF UNITS**

#### 11.1 **Allocation**

All Contributions or other money shall be expressed as Units. Upon receipt of moneys to an Account the number of Units to be allocated shall be calculated at the Unit Price calculated on the next Valuation Day following receipt of the moneys. The number of Units allocated to the Account shall be the moneys received divided by the Unit Price (rounded in the manner and to the number of decimal places that the Manager may decide in its absolute discretion).

### 12 **SWITCHING**

#### 12.1 **Switching of accumulations**

Any Member may at any time, subject to such restrictions and conditions as the Manager may impose, give a notice ("Switching Notice") to the Manager to the effect that the

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<sup>22</sup> Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

Member wishes to redeem Units having a certain total value from one Fund (“Withdrawal Fund”) and have allocated, to the extent of the proceeds of such withdrawal, Units in another Fund or Funds (“Switch Fund” or “Switch Funds”).

## 12.2 Contents of Switching Notice

A Switching Notice shall:

- (a) specify a monetary amount in the Withdrawal Fund in respect of which the Member desires to effect withdrawal;
- (b) specify the Switch Fund or Switch Funds, and, if more than one Switch Fund is specified, specify the proportions in which the proceeds are to be allocated between those Switch Funds;
- (c) unless otherwise agreed by the Manager, not be able to be revoked by the Member by whom the Switching Notice has been given;
- (d) unless otherwise agreed by the Manager, not be for less than the Minimum Value of Units or for an amount that would reduce the number of Units in the Withdrawal Fund allocated to all Accounts maintained in respect of that Member to less than the Minimum Value of Units unless the Switching Notice relates to all of the Units in the Withdrawal Fund that are allocated to all the Accounts maintained in respect of the Member;
- (e) provide for allocation of Units in a Switch Fund of not less than the Minimum Value of Units applicable to that Fund from time to time;
- (f) be in such form or comply with such specification as may be prescribed by the Manager from time to time;

and the provisions of clause 15.2 shall apply to a Switching Notice as if it were a Withdrawal Request specifying Units in the Withdrawal Fund.

## 12.3 Switching

The Manager shall (subject to such restrictions and conditions as the Manager may impose and subject to clause 15.7), upon receipt of a Switching Notice, procure that Units in the Withdrawal Fund representing the product of the Unit Price multiplied by the number of Units held in the Account equal to the amount specified in that Switching Notice, less any applicable Transaction Fees and Tax, are redeemed on the next Valuation Day (or if it is not practicable for the Manager to process the Switching Notice on the next Valuation Day, the first Valuation Day thereafter upon which it becomes practicable for the Switching Notice to be processed) in accordance with clause 13.1 and that Units in the Switch Fund or Switch Funds are allocated equal to the proceeds (after deduction of any applicable Transaction Fees and Tax) at a price determined in accordance with clause 11.1 (as if the proceeds were a Contribution to the Scheme) and (if more than one Switch Fund is involved) in the proportions specified in the Switching Notice.

## 13 REDEMPTION OF UNITS<sup>23</sup>

### 13.1 Redemption

Subject to clause 15.7, as and when necessary to allow payment of any Benefit or to enable any amount to be debited from an Account, the Manager shall procure on the next Valuation Day (or if it is not practicable for the Manager to process the redemption on the next Valuation Day, the first Valuation Day thereafter upon which it becomes practicable for the redemption to be processed) the number of Units that reflect the product of the Unit Price multiplied by the number of Units allocated to the Account equal to the Withdrawal Amount are redeemed and the Withdrawal Amount, less any applicable Transaction Fees and Tax to the extent not already debited to the Member's Account is paid to the Member or at its direction. Where a redemption of Units pursuant to this clause 13.1 would result in less than the Minimum Value of Units in any Fund being allocated to all Accounts maintained in respect of that Member, the Manager may redeem all the Units in the relevant Fund allocated to Accounts maintained in respect of that Member, and the Withdrawal Amount shall be increased accordingly, subject to adjustments for Tax. Where a Withdrawal Amount is less than the Member's Balance, and the Member's Account is invested in more than one Fund, Units will be redeemed from each Fund in proportions such that the remaining Member's Balance continues to be invested in accordance with the Member's current investment mix. For the avoidance of doubt and without limiting the generality of clause 21.6, it is declared that the obligation of the Manager pursuant to this clause 13 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 21.6.

### 13.2 Redemption Funds

In connection with the redemption of Units under clause 13.1, the Manager shall have the right to:

- (a) direct the Supervisor pursuant to clause 5.4 to realise Investments of the relevant Fund; and/or
- (b) direct the Supervisor pursuant to clause 20.1 (subject to clauses 20.2 and 20.3) to Borrow on behalf of the relevant Fund a sufficient amount,

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clause 5.3, the Supervisor shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the Scheme.

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



### 13.3 **In specie redemptions**

Notwithstanding clause 13.2, in connection with the redemption of Units under clause 13.1 the Manager may direct the Supervisor pursuant to clause 5.4 to release from the relevant Fund such Investments as are proposed by the Manager in accordance with this Deed and are determined to be of equal value to the aggregate Unit Prices of the Units to be redeemed, provided that:

- (a) the Member whose Units are being redeemed accepts such Investments; and
- (b) in the Manager's reasonable opinion the selection of Investments is not prejudicial to Members generally.

### 13.4 **Cancellation of Units redeemed**

Units redeemed pursuant to this clause 13 shall cease to exist and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the relevant register in respect of such cancellation.

## 14 **CESSATION OF ISSUES OF UNITS**

### 14.1 **Manager may determine**

The Manager may at any time or times by notice given to the Supervisor determine that after a date specified in the notice given to the Supervisor:

- (a) no further Contributions be accepted from; or
- (b) no further Units be allocated from a specified Fund or Funds to;

all Members, a group of Members or any particular Member, either for any specified period (which period may subsequently be varied by the Manager by further notice to the Supervisor) or until the Scheme is terminated.

### 14.2 **Procedure on closure of a Fund**

Where any determination is made by the Manager in accordance with clause 14.1(b), the Manager shall forthwith give notice to all Members with Investment Directions specifying any Fund affected ("Closed Fund") inviting those Members to vary their Investment Direction in accordance with clause 7.2. If agreed by the Supervisor and subject to all relevant law relating to the disclosure of information, any such notice may specify a Fund or Funds which shall replace the Closed Fund or Closed Funds for the purposes of any Investment Direction pending a variation to that Investment Direction by the Member in accordance with clause 7.2.

## 15 **BENEFITS**<sup>24</sup>

### 15.1 **Members' Benefits**

A Member becomes entitled to the following Benefits in the following circumstances:

- (a) *Retirement Benefit*: Upon making a request to the Manager at any time on or after attaining Retirement Age, a benefit equal to the Member's Balance;
- (b) *Death or Disablement Benefit*: On death or Total and Permanent Disablement, a benefit equal to the Member's Balance;
- (c) *Withdrawal Benefit*: Subject to clause 15.3, upon making a request to the Manager at any time, a Withdrawal Benefit in accordance with clause 15.2.

### 15.2 **Withdrawal Benefit**

Subject to clause 15.3, if a Member wishes to receive a Withdrawal Benefit the Member may (subject to such restrictions and conditions as the Manager may impose) give notice to the Manager to that effect and the Member shall be entitled to receive a Benefit of the amount specified in the Withdrawal Request. Each Withdrawal Request shall:

- (a) specify the monetary amount of the Withdrawal Benefit the Member wishes to receive, which shall not exceed the Member's Balance;
- (b) be in such form or comply with such specification (if any) as may be prescribed by the Manager from time to time; and
- (c) not be able to be revoked by the Member by whom it has been given, unless the Manager in its absolute discretion permits the Withdrawal Request to be revoked at the request of the Member made prior to payment of the Withdrawal Benefit.

### 15.3 **Limitation on Withdrawal Request**

The following limitations shall apply to the giving of Withdrawal Requests:

- (a) a Member may only give a Withdrawal Request prior to Retirement Age at such times and in such circumstances as the Manager may from time to time prescribe, subject to the FMCA and having regard to the purpose of the Scheme and **provided that** in no circumstances shall a Member be eligible to give a Withdrawal Request prior to attaining Retirement Age where the Manager considers that payment of a Benefit pursuant to a Withdrawal Request given by that Member may contribute to the Scheme being de-registered as a legacy superannuation scheme under the FMCA;<sup>25</sup> and

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<sup>24</sup> Section 135(1)(e) of the FMCA.

<sup>25</sup> Section 129 of the FMCA

- (b) a Member whose membership has Locked-in Status may only make a Withdrawal Request prior to attaining Retirement Age where the Manager is satisfied in its absolute discretion that the Member desires to receive a Withdrawal Benefit as a result of:
- (i) the permanent emigration of the Member from New Zealand, approved as such by the Manager; or
  - (ii) such circumstances involving financial hardship to the Member as the Manager determines justify the need for payment of a Withdrawal Benefit; or
  - (iii) the Terminal Illness of the Member; or
  - (iv) a change to the operation of the Scheme, which change is considered by the Manager in its absolute discretion to be material to the relevant Member's decision to invest in the Scheme; or
  - (v) exceptional circumstances that the Manager considers in its absolute discretion make it inequitable not to permit payment of a Withdrawal Benefit,

**provided that** in no circumstances shall a Member with Locked-in Status be eligible to give a Withdrawal Request prior to attaining Retirement Age where the Manager considers that payment of a Benefit pursuant to a Withdrawal Request given by that Member may be prejudicial to the status or treatment of the Scheme, any Member or any Contribution made by or in respect of a Member under the Scheme under any law (including without limitation Tax status or treatment).

#### 15.4 **Regular Benefit Payments**

A Member that has attained Retirement Age may by notice to the Manager give to the Manager a Withdrawal Request and provide a letter requesting payment for a Withdrawal Benefit to be paid to the Member per month (or such other period as the Manager shall determine) ("**Regular Benefit Payment**"). The Manager may from time to time prescribe the minimum periodic amounts and/or the maximum proportions of a Member's Balance for which Regular Benefit Payments may be accepted. All the provisions of this Deed applicable to Withdrawal Requests shall be applicable to Regular Benefit Payments. Any Regular Benefit Payment may be varied from time to time by the relevant Member by completing and lodging with the Manager a replacement Withdrawal Request in accordance with clause 15.2.

#### 15.5 **Minimum Value of Units**

No Withdrawal Request shall be given in respect of less than the Minimum Withdrawal Amount and except where the total Member's Balance is to be withdrawn, no Withdrawal Request shall be given if the effect of the withdrawal would be that the Member who gave the same would hold less than the Minimum Member's Balance. The Manager may at any

time at its discretion waive the requirements of this clause 15.5, either generally or in a particular case or cases.

#### 15.6 **Payment of Benefits**

A Member who has become entitled to receive a Benefit (other than a Withdrawal Benefit) may by notice to the Manager request payment of that Benefit at any time. A Benefit Notice or Withdrawal Request shall specify the Beneficiary's place of residence, full postal address and the bank account to which the Benefit is to be paid. If a Member has become entitled to receive a Benefit and that Member has not given a Benefit Notice or Withdrawal Request within 90 days of becoming entitled to receive that Benefit, the Manager may at any time thereafter deem that Member to have given a Benefit Notice on a date determined by the Manager. Upon receipt (or deemed receipt) of a Benefit Notice or Withdrawal Request, the Manager shall (subject to clauses 15.3, 15.7 and 15.11) pay the Benefit in accordance with clause 15.12 within 15 Business Days after the receipt (or deemed receipt) of the Benefit Notice or Withdrawal Request by the Manager or receipt by the Manager of all Contributions paid by or in respect of the Member for the period up to date upon which the Member became entitled to the Benefit, whichever is the later.

#### 15.7 **Benefit Suspension Notice**

If by reason of:

- (a) the suspension of trading on any Exchange (whether generally or in respect of any specific Investment); or
- (b) financial, political or economic conditions applying in respect of any financial market; or
- (c) the nature of any Investment; or
- (d) the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally,

the Units in a Fund or Funds cannot be redeemed or the Manager in good faith forms the opinion that it is not practicable, or would be materially prejudicial to the interests of any Members for the Units to be redeemed, then the Manager may give notice ("Suspension Notice") to that effect to the Supervisor and to any Member whose Accounts are expressed in Units of the relevant Fund and who is entitled to payment of a Benefit or gives or has given a Switching Notice or a Withdrawal Request. A Suspension Notice in respect of any Fund shall have the effect of suspending the obligation to pay that portion of the Benefit referable to that Fund or Funds and the operation of all Switching Notices or Withdrawal Requests given in respect of that Fund or Funds until such time as the Manager gives to the Members who are entitled to Benefits or who gave those Switching Notices notice to the effect that the Suspension Notice is cancelled.

**15.8 Cancellation of Suspension Notice**

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

**15.9 Calculation of Units to be redeemed**

If a Suspension Notice is given and is later cancelled, the number of Units to be redeemed shall be calculated as if the reference in clause 13.1 to the next Valuation Day were a reference to the next Valuation Day following the cancellation of that Suspension Notice.

**15.10 Continuation of Insured Benefits**

Insured Benefits shall only continue to be offered if:

- (a) the Policy entered into in respect of provision of those Insured Benefits remains in full force and effect;
- (b) the relevant Member has provided to the relevant Insurer all information required by that Insurer from time to time to enable the Member to be included or remain included within the relevant Policy;
- (c) sufficient amounts are available from the relevant Accounts to enable payment of all premiums payable in respect of the relevant Policy.

**15.11 Amount of Insured Benefit**

The amount of any Insured Benefit payable to or in respect of a Member on occurrence of any event shall in no circumstances exceed the amount actually received (if any) by the Supervisor in respect of that Member on occurrence of that event under the relevant Policy. The Supervisor shall not be required to pay any Insured Benefit to or in respect of any Member at any time prior to actual receipt of any moneys (if any) payable to the Supervisor in respect of that Member under the relevant Policy. The premiums payable by the Supervisor to each Insurer in respect of provision of Insured Benefits to any Member shall be an expense of the Scheme and shall, be payable from the Member's Account maintained in respect of that Member.

**15.12 Place of payment of Benefits**

Benefits are payable at the Office for the time being of the Manager or otherwise as may be agreed by the Manager and the Supervisor. The Manager may at its discretion forward the Benefit to the postal address or bank account notified by the Beneficiary in the Benefit Notice and where the Benefit Notice does not specify a postal address or bank account to which the Benefit may be paid or where the Beneficiary is deemed to have given a Benefit Notice, the Manager may forward the Benefit to the address of the Member last shown in the Register.

### 15.13 Payment of Benefits to personal representatives

The Manager shall pay or apply any Benefit payable in respect of:

- (a) a deceased Member or Beneficiary who was a Member or Beneficiary before 1 April 2007 at the Manager's discretion to either:
  - (i) the benefit of the Dependants of that Member or Beneficiary or one or more of them to the exclusion of the other or others of them; or
  - (ii) the executor or administrator of the deceased Member or Beneficiary, upon production of probate or letters of administration, to be held by them upon the trusts which affect the Member's estate;
- (b) a deceased Member or Beneficiary who became a Member or Beneficiary on or after 1 April 2007:
  - (i) to the executor or administrator of the deceased Member or Beneficiary, upon production of probate or letters of administration, to be held by them upon the trusts which affect the Member's estate; or
  - (ii) in accordance with section 65 of the Administration Act 1969.

If the executor or administrator of a deceased Member or Dependants or Beneficiary is not known, the Manager shall hold the Benefit otherwise payable for the same period and apply the same in the same manner as an unclaimed Benefit in accordance with clause 15.17.

### 15.14 Payment of Benefits to Dependants

Where this Deed provides for payment of Benefits to Dependants, the Manager shall pay or apply those Benefits in the manner, at the time, by the instalments and subject to such terms and conditions and in such proportions between Dependants (if more than one) with the power to vary any of the aforesaid. When any Beneficiary is under the legal age of adulthood, the Manager may pay all or a part of the Benefit to any other person for application on behalf of the Beneficiary and/or the Beneficiary's Dependants. 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 Beneficiary, and the Manager shall not be bound or concerned to see the application of the Benefit so paid.

### 15.15 Forfeiture of Benefits

If any Member or Beneficiary is subject to a Court order under the Protection of Personal and Property Rights Act 1988, or shall become bankrupt, assign, charge, alienate, or Borrow against the Member's interest in such a Benefit (or attempt so to do) other than in accordance with clause 16.2, then to the maximum extent permitted by law, that Member or Beneficiary shall forfeit his or her entitlement to all Benefits. The Manager shall apply such forfeited Benefits for the benefit of the Member or former Member or Beneficiary or any Dependants of that person, in such manner as the Manager shall in its discretion think

fit. The Manager shall not be under any obligation to make enquiry as to whether circumstances exist in respect of any Member or Beneficiary which may give rise to operation of this clause.

**15.16 Receipt for Benefits**

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

**15.17 Unclaimed Benefits**

If a Member cannot be located (after reasonable enquiries have been made by the Manager) within 7 years from the date on which the Member became entitled to a Benefit, the Manager shall, at the end of the financial year of the Scheme during which that period ends, transfer the Benefit to the Subscription Bank Account in respect of Benefits arising from the membership of a Member, cancel the Units associated with that Benefit and the Benefit shall, from the date of such transfer, merge with the Subscription Bank Account and any unclaimed Benefit shall be paid to the person entitled thereto.

**16 ASSIGNMENT OF BENEFITS**

**16.1 Assignment of Benefits**

Except as provided in the FMCA or otherwise required by law, and except as provided by clause 16.2, no Member, Beneficiary or Dependant may assign, charge, alienate or Borrow against the security of the Benefits to which the Member, Beneficiary or Dependant is or may become entitled.

**16.2 Charging of Benefits**

A Member may assign by way of mortgage or charge the Member's right to receive a Benefit up to:

- (a) in the case of an Insured Benefit, the full value of that Insured Benefit; and
- (b) in the case of all other Benefits (other than an Insured Benefit), the Loan Value,

**provided that** in no circumstances may a Member whose membership has Locked-in Status assign by way of mortgage or charge the Member's right to receive a Benefit if the Manager considers that assignment or charging of the Benefit may contribute to the Scheme being de-registered as a legacy superannuation scheme under the FMCA or may be prejudicial to the status or treatment of the Scheme, any Member or any Contribution made by or in respect of a Member under the Scheme under any law (including without limitation tax status or treatment).

**16.3 Notice to Manager**

No assignment or charge effected pursuant to clause 16.2 shall be effective against the Manager for the purposes of this Deed unless a copy of the documentation evidencing the same has been delivered to the Manager. Where a copy of such documentation has been delivered by the relevant Lender to the Manager and the Manager has not been notified

by the Lender that the security has been discharged, notwithstanding anything otherwise contained in this Deed the Manager shall:

- (a) upon the Member becoming entitled to or requesting payment of a Benefit pay to the Lender an amount equal to the least of:
  - (i) the amount requested by the Lender;
  - (ii) the amount secured to the Lender pursuant to the mortgage or charge; and
  - (iii) the amount of the Benefit which the Member is entitled to receive;

and shall pay the balance of the Benefit (if any) to the Member; or

- (b) on receiving evidence in writing from the Lender that the Member has defaulted payment on any loan advanced pursuant to or in consideration for the security deem the Member to have given a Withdrawal Request in respect of the least of:
  - (i) the amount requested by the Lender;
  - (ii) the amount of the loan then outstanding; and
  - (iii) the Loan Value;

and shall pay that amount to the Lender on demand.

## 17 GENERAL TRANSFERS IN AND OUT OF THE SCHEME<sup>26</sup>

### 17.1 Transfers into the Scheme

If a Member is entitled to a benefit from any other superannuation scheme, the Manager shall accept from that superannuation scheme a transfer amount which the supervisors or managers of that scheme or other person or persons having the necessary power thereunder may be authorised to pay or transfer to the Scheme in respect of the Member provided that such transfer amount shall only be accepted by the Manager if the Member has complied with such requirements as the Manager may prescribe and has provided an Investment Direction.

### 17.2 Transfers out of the Scheme

If a Member shall become or shall be entitled to become a member of another Retirement Scheme, the Manager shall, at the request and with the consent of the Member, transfer to the other Retirement Scheme a transfer amount equivalent to the Member's Balance, as adjusted for Tax at the date of the Member's transfer, so that the Member shall become entitled to such rights under the other scheme as may be agreed between the Manager and the supervisors or managers of the other Retirement Scheme or other

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<sup>26</sup> Section 135(1)(a) of the FCMA.



person or persons authorised thereunder, having regard to all of the circumstances including (but not limited to) the limitations attached to a Member who was immediately prior to the Member's transfer a Member with Locked-in Status, **provided that** in paying any such transfer amount the Manager shall at all times comply with the FMCA.

### 17.3 **General**

A Member in respect of whom a transfer amount is paid under clause 17.2 shall not be entitled to any other Benefit from the Scheme and shall cease to be a Member in accordance with clause 3.1. The receipt of the supervisor or any other authorised person or persons of the other Retirement Scheme shall be a complete discharge to the Manager of all liability in respect of the Member under the Scheme and the Manager shall be under no liability to see to the application of the amount so transferred.

### 17.4 **In Specie Transfers**

Notwithstanding any other provision of this Deed but without otherwise affecting the operation of any of the transfer provisions in this Deed or of clause 5.3, the Manager shall (in connection with the proposed transfer to another Retirement Scheme under section 181 of the FMCA of all or a substantial number of the Members, or the proposed transfer of any Members to another Retirement Scheme under section 180 of the FMCA) transfer to that other Retirement Scheme, on such terms and conditions as the Manager determines, Investments:

- (a) proposed by the Manager in accordance with this Deed; and
- (b) determined by the Manager to be of equal value to the aggregate (after deducting all Tax) of the transfer amounts contemplated by whichever of the provisions in clause 17 applies;

unless the Manager forms the opinion that the transfer would result in a breach of any obligations or duties imposed on the Manager or the Supervisor by the FMCA, the Trustee Act 1956 or any other relevant legislation (or that the selection of Investments is prejudicial to Members generally).

## 18 **REGISTER**

### 18.1 **Register to be maintained**

The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of the Scheme an up-to-date register of Members in each Fund. Such registers shall:

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

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

## 18.2 **Reliance upon Register**

Each of the Manager and the Supervisor shall be entitled:

- (a) to rely absolutely on the Register as being correct; and
- (b) for all purposes to treat a person whom it believes to be the person entered on the Register as the holder of an interest in the Scheme as the legal and beneficial owner of that interest; and
- (c) to effect Transactions on the basis of the information recorded in the Register.

## 18.3 **Evidence of entitlement**

Notwithstanding clause 18.2, the Manager shall be entitled, at its absolute discretion before giving effect to any Transaction to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect that Transaction is the person named in the Register as the holder of the interest in the Scheme.

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

Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor shall be bound to accept or record notice of or see to the performance of any trust (express, implied or constructive) or of any charge, pledge, or equity to which any interest in the Scheme is or may be subject, or to recognise any person as having any interest in the Scheme except for the person recorded in the Register as the Member.

## 19 **MANAGEMENT**

### 19.1 **Manager's duties**

- (a) The Manager, in exercising its powers and performing its duties as the manager of the Scheme, must comply at all times with its duties under the FMCA.<sup>28</sup>
- (b) The Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed and as otherwise required by law for the benefit of the Members.
- (c) Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager, supervisor or trustee for trusts whether of a nature similar to or different from the trusts of this Deed.

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

<sup>28</sup> Sections 143 to 151 of the FMCA.

## 19.2 Manager's responsibilities

The Manager is designated as the manager of the Scheme and is responsible for performing the functions for which responsibility is attributed to it as manager under the FMCA.<sup>29</sup>

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

- (a) maintaining the Register, and maintaining records for all Accounts, in accordance with the requirements of the FMCA;<sup>30</sup>
- (b) arranging for the receipt and acceptance of Contributions and other monies payable to the Scheme in accordance with clause 4;
- (c) providing Members with information, notices and disclosures required to be given to them under the FMCA;<sup>31</sup>
- (d) keeping complete and accurate records of all Investments of the Scheme and each Fund;
- (e) effecting switches between Funds pursuant to clause 12;
- (f) discharging its obligations under clauses 8 to 10 and 15 with respect to unitisation, valuations and Benefit calculations;
- (g) determining the terms of all contracts to be entered into in respect of the Scheme provided that the Manager must ensure that at all times, to the extent possible having regard to the FMCA and the law relating to trusts and trustees, the liability of the Supervisor in relation to any contract is limited to the Assets of the Scheme or the relevant Fund or Funds (as applicable);
- (h) subject to the requirements of the FMCA, determining whether Benefits are payable and arranging for the payment of Benefits to or in respect of Members, and for transfers to other Retirement Schemes;
- (i) appointing and engaging solicitors and other consultants, advisers, investment managers, and administration managers on such terms as the Manager determines, and the Auditor, subject to the terms of clause 29;
- (j) reporting and providing information to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, unit pricing errors and non-compliances

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

<sup>30</sup> Subpart 4 of Part 4 of the FMCA.

<sup>31</sup> Sections 96, 97 and 100 of the FMCA and FMC Regulations.

with the applicable unit pricing methodology for Units in a Fund) to the extent required by the FMCA and complying in all respects with the Manager's obligations under the Management Agreement as to the frequency and content of such reports;<sup>32</sup>

- (k) altering a Member's Balance to address partly or entirely the impact of any unit pricing error<sup>33</sup> provided such alteration does not adversely affect the relevant Member's Balance or the position of other Members, as compared with the position such Member or Members would have been in had the unit pricing error not occurred;
- (l) correcting unit pricing errors or non-compliances with a unit pricing methodology for Units in a Fund to the extent required by the FMCA, provided that where (after all relevant Unit adjustments and set offs have been made under clause 19.2(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;<sup>34</sup>
- (m) ensuring compliance by the Scheme with the requirements of the FMCA, the Financial Reporting Act 2013 and other applicable legislation;
- (n) ensuring compliance by the Scheme with all Tax obligations;
- (o) maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA<sup>35</sup>;
- (p) arranging for the preparation, audit and lodgement of the financial statements for the Scheme, and the preparation of the Scheme's annual reports in accordance with the requirements of the FMCA; and<sup>36</sup>
- (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 Trust Deed and the FMCA.

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<sup>32</sup> Sections 147 to 151, 167 and 168 of the FMCA and FMC Regulations 83, 94 to 98 and 100.

<sup>33</sup> Section 168(2) of the FMCA

<sup>34</sup> Section 168 of the FMCA and FMC Regulation 99.

<sup>35</sup> Section 459 of the FMCA.

<sup>36</sup> Sections 461A, 461D and 461H of the FMCA, and FMC Regulations 62 and 63.

### 19.3 **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.<sup>37</sup>

### 19.4 **Delegation by Manager**

Without in any way affecting the generality of clauses 19.1, 19.2 or 19.3, the Manager may in carrying out and performing its duties and obligations under the FMCA or this Deed and subject to the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:<sup>38</sup>

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

### 19.5 **Manager may appoint Investment Managers and Administration Managers**

The Manager may appoint in respect of the Scheme:

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

and (subject to clause 23.1 in relation to Related Party Benefits) agree with such party the fees that may be charged and the extent to which expenses will be reimbursed.<sup>39</sup>

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

All rights of voting or other rights conferred by the Investments of a Fund shall be exercised in such manner as the Manager may determine to be in the best interest of the Scheme and provided the Manager is not acting in breach of its obligations under this Deed or the law in general neither the Supervisor nor any Member shall have any right to

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<sup>37</sup> Section 135(1)(k)(iii)

<sup>38</sup> Section 146 of the FMCA.

<sup>39</sup> Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. Provided the Manager is not acting in breach of its obligations under this Deed or the law, the Manager shall not be under any liability or responsibility in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

## 20 **BORROWING POWERS**

### 20.1 **Borrowing powers**

Subject to the relevant SIPO and clauses 20.2 and 20.3 the Supervisor has power to, and must, if so directed by the Manager:

- (a) Borrow money from any person;
- (b) for the purpose of such Borrowing, enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such Borrowing; and
- (c) mortgage, charge, pledge or otherwise create a security interest over all or any of the Scheme Assets as security for any moneys Borrowed.

### 20.2 **Limitation on Borrowings**

The Supervisor must not Borrow if at the time of the proposed Borrowing the aggregate of the principal moneys Borrowed and outstanding in respect of the Scheme or secured against Scheme Assets, together with the amount proposed to be Borrowed, would exceed 50% of the value of the Scheme Assets (calculated as being the aggregate of the Net Asset Value of all the Funds).

### 20.3 **Conditions of Borrowing**

There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 20.1 or to complete any loan or security documents unless the Supervisor is satisfied that:

- (a) the Supervisor's liability is restricted to the Scheme Assets from time to time;
- (b) any loan security or other obligations binding on the Supervisor do not impose any unreasonable obligation upon the Supervisor; and

- (c) there will be compliance with clause 20.2. In satisfying itself whether clause 20.2 will be complied with in any instance the Supervisor may rely upon a certificate of the Manager as conclusive evidence to that effect unless the Supervisor had actual knowledge that the requirements of clause 20.2 will not be satisfied;
- (d) doing so is not contrary to the provisions of this Deed or the FMCA, and would not otherwise result in a breach by the Supervisor of any obligations imposed on it by the Trustee Act 1956 or the FMCA.

#### 20.4 **Third Parties need not inquire**

No person from whom the Supervisor has Borrowed or intends to Borrow needs to enquire as to whether or not the limitation set out in clauses 20.2 and 20.3 have been observed or complied with.

### 21 **SUPERVISOR'S AND MANAGER'S POWERS DUTIES AND INDEMNITIES**

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

- (a) The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions and duties as the supervisor of the Scheme, it must comply at all times with its duties under the FMCA.<sup>40</sup>
- (b) In addition to any other powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Supervisor may do anything the Supervisor considers necessary or expedient to enable it to discharge the Supervisor's statutory duties in relation to the Scheme.

#### 21.2 **Delegation by Supervisor**

In addition to any other powers granted under this Trust Deed, the FMCA or by law, but subject to the FMCA, the Supervisor may delegate the performance of all or any of its powers, authorities, functions and discretions under this Trust Deed to its officers and employees.

#### 21.3 **Appointment of Custodian**

The Supervisor may, subject to obtaining the prior written approval of the Manager (which shall not be unreasonably withheld), nominate, in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the Investments or property of the Scheme are to be vested. The Custodian must meet the requirements for such person under the FMCA<sup>41</sup>. The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions

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<sup>40</sup> Section 152 to 155 and section 160 of the FMCA.

<sup>41</sup> Sections 127(1)(f), 156 and 158 of the FMCA.

(and subject to the same duties and restrictions) imposed on it pursuant to this clause 21.3 and the FMCA<sup>42</sup> with respect to the Scheme.

**21.4 Appointment of Sub-custodians**

If authorised in writing by the Supervisor (subject to obtaining the prior written approval of the Manager, which shall not be unreasonably withheld), a Custodian appointed under clause 21.3 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 the Scheme are to be vested. Any sub-custodian appointed under this clause 21.4 must meet the requirements for such a person under the FMCA<sup>43</sup>. The Supervisor and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the performance by the sub-custodian of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 21.4 and the FMCA<sup>44</sup> with respect to the Scheme.

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

The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to clauses 21.3 and 21.4, the fees that may be charged and the extent to which expenses will be reimbursed.

**21.6 Supervisor and Manager in representative capacity**

The Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of the Scheme or any Investment or Fund, are each, and shall each be deemed to be, acting for and on behalf of the Members or the Members having an interest in that Fund (as the case may be) and not in their own respective personal capacities.

**21.7 No personal liability**

Subject to the requirements of the FMCA<sup>45</sup>, neither the Supervisor nor the Manager shall be:

- (a) under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with the Scheme or any Fund, but the Scheme or relevant Fund only shall be liable or subject to execution;
- (b) liable to the Scheme or any Fund or to any Member as a result of acting as Supervisor or Manager (as the case may be) under this Deed or for any act or

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<sup>42</sup> Sections 157 to 159 of the FMCA.

<sup>43</sup> Section 156 of the FMCA.

<sup>44</sup> Sections 157 to 159 of the FMCA.

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



omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Scheme or any Fund.

### 21.8 Indemnity

Subject to the indemnity limitations applying under the FMCA,<sup>46</sup> if, contrary to the provisions of clauses 21.6 and 21.7 either the Supervisor or the Manager is held personally liable to any other person (or any person shall seek to hold the Supervisor or Manager liable) in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or any Fund and in respect of any action taken or omitted, for or in connection with the Scheme or any Fund, then the Supervisor or the Manager (as the case may be) shall be entitled to the fullest extent permitted by law<sup>47</sup> to indemnity and reimbursement out of the Scheme to the full extent of such liability and the costs of bringing or defending any litigation or other proceedings in which the existence or non-existence of such liability shall have been determined.

### 21.9 Reimbursement

The Manager and Supervisor shall be entitled to be reimbursed from the Scheme for all expenses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as applicable) under this Deed. Without prejudice to the generality of the foregoing the Manager and the Supervisor shall be entitled (subject to the indemnity limitations applying under the FMCA) to be indemnified against:

- (a) any expense or liability which may be incurred by the Manager or the Supervisor (as applicable) in bringing or defending any action or suit in respect of the Scheme, any Fund or the provisions of this Deed;
- (b) any expense or cost incurred in maintaining accounting systems and the keeping of accounting records and the Register, annual audit of accounting records and the Register;
- (c) all costs, charges and expenses (including legal costs incurred by the Manager and the Supervisor) of and incidental to the preparation, execution and distribution of this Deed and any disclosure documentation prepared for the Scheme pursuant to any applicable legislation<sup>48</sup>;
- (d) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealings with an authorised investment, including commission and bank charges;

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<sup>46</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

<sup>47</sup> Sections 143, 144, 153 and 154 of the FMCA.

<sup>48</sup> Sections 96 and 97 of the FMCA and FMC Regulations 56 and 62

- (e) all Tax, stamp duties, financial institutions duties and bank account debits, or any other Tax properly charged to or payable by the Supervisor (whether by any taxing authority or any other person) in connection with the Scheme or any Fund Assets;
- (f) costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Members;
- (g) costs of convening and holding any meeting of Members;
- (h) costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with any Fund, pursuant to this Deed or any relevant law;
- (i) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this Deed and any deeds supplemental hereto;
- (j) fees and expenses of any solicitor, barrister, computer expert or other person from time to time employed by the Supervisor in the discharge of its duties and exercise of powers under this Deed including (without limitation) any person to whom the Supervisor delegates all or any of its powers, authorities, functions and discretions pursuant to clause 21.2;
- (k) all costs, charges and expenses incurred in the advertising and promotion of the Scheme;
- (l) all costs, charges and expenses incurred in providing or procuring provision of any services to any Member or group of Members;
- (m) the cost of complying with legislative requirements including (but not limited to) the FMCA and FMC Regulations;
- (n) the cost of liaison with and complying with the requirements of any statutory, regulatory or other authority including (but not limited to) the FMA and any dispute resolution scheme provider.

#### 21.10 Limitation on liability

Without prejudice to the generality of clauses 21.6 to 21.9, and subject to the requirements of the FMCA<sup>49</sup>:

- (a) the Supervisor shall not be responsible for any loss incurred by any person or by the Scheme as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager (whether in relation to the investment or management of Scheme Assets, the calculation and payment of Benefits or

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<sup>49</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

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

- (h) 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.

#### 21.11 Power to indemnify investment managers and administration managers

The Manager may agree:

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

any investment manager or administration manager appointed in respect of the Scheme, to the fullest extent permitted by the FMCA<sup>50</sup>, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including, without limitation, for legal fees and disbursements).<sup>51</sup>

#### 21.12 Power to indemnify Custodians

The Supervisor may agree:

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

any Custodian appointed in respect of the Scheme, to the fullest extent permitted by the FMCA,<sup>52</sup> in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including without limitation, for legal fees and disbursements).<sup>53</sup>

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

<sup>51</sup> Section 135(1)(f) and 136(2) of the FMCA.

<sup>52</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

<sup>53</sup> Sections 153 and 154 of the FMCA.

### **21.13 Reliance on Manager by Supervisor**

Subject to the provisions of the FMCA<sup>54</sup> 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).

### **21.14 Indemnity Limitations**

No provision of clauses 21.7 to 21.13 and 21.15 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 FMCA<sup>55</sup> or any other statute.

### **21.15 Reliance upon advice**

The Supervisor and the Manager may each accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Supervisor or the Manager or instructed by the Supervisor or the Manager and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. Neither the Supervisor nor the Manager is liable for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information.

Without limiting this clause 21.15, the Supervisor and/or the Manager may also engage an expert in accordance with the requirements of the FMCA.<sup>56</sup>

### **21.16 Reliance upon documents**

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

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

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<sup>54</sup> Sections 135(1)(f) and 136(1)(b) of the FMCA.

<sup>55</sup> Section 136 of the FMCA.

<sup>56</sup> Section 155 of the FMCA.

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

#### **21.17 Advisors**

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

#### **21.18 Specific Reimbursement**

Without limiting the generality of the indemnities provided at clauses 21.8 and 36.2 and their other powers (and only in respect of Members who joined the Scheme after 1 April 2007) the Manager and the Supervisor shall each be entitled to be reimbursed out of the Scheme for Attributed Tax by debiting a Member's Account.

### **22 ALLOCATIONS OF INCOME**

#### **22.1 Income allocation or retention**

The Income of each Fund shall be retained by the Manager and re-invested by way of that Fund in accordance with the provisions of clause 5.2.

#### **22.2 Determination of Income**

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

- (a) all costs and disbursements incurred in connection with the relevant Fund Assets or the administration thereof and chargeable against Income including fees payable to the Manager; and
- (b) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the relevant Fund; and
- (c) such other provisions as the Manager deems necessary to bring to account in order that the net Income for the particular period may fairly represent the results of the relevant Fund Assets for that period; and
- (d) the fees and expenses of the Auditor attributable to the relevant Fund in connection with the audit of the Scheme, to the extent not paid by the Manager.

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

### 22.3 **Determination by Auditor**

If any question shall arise as to whether any money or property constitutes Income or not or whether any expense is chargeable against Income or not such question shall be determined by the Auditor.

## 23 **RELATED PARTY TRANSACTIONS**

### 23.1 **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;<sup>57</sup>
- (b) The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit, in accordance with the Management Agreement;
- (c) Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or any Member for any profit arising from any such transaction; and
- (d) A failure to comply with clause 23.1(a) does not affect the validity of a transaction (subject to any Court order to the contrary).<sup>58</sup>

## 24 **REMUNERATION OF THE SUPERVISOR**

### 24.1 **Remuneration basis**

The Supervisor shall be paid by the Manager an annual fee in respect of its services, calculated in such manner and of such amount as may be agreed from time to time in writing between the Supervisor and the Manager.

### 24.2 **Reimbursement of Taxes**

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

### 24.3 **Special fees**

In addition to the fee payable to the Supervisor under clause 24.1, the Supervisor is entitled to charge in respect of the 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).

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<sup>57</sup> Sections 172 to 175 of the FMCA.

<sup>58</sup> Section 173(6) of the FMCA.

#### 24.4 **Fee calculated on a quarterly basis**

The fee referred to in clause 24.1 may be calculated quarterly on the basis of the average of the Net Asset Value of each Fund at the end of each month in the quarter (or on such other basis as the Manager and the Supervisor may agree in respect of any Fund), and shall be paid quarterly in arrears (or on such other date as shall be agreed between the Manager and the Supervisor) and on the date of termination of the Fund.

#### 24.5 **Alteration of fee**

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

### 25 **REMOVAL AND RETIREMENT OF SUPERVISOR**

#### 25.1 **Removal**

- (a) Subject to clause 25.3, the Manager may remove the Supervisor from office with the FMA's prior consent:
  - (i) with immediate effect, by giving the Supervisor written notice of such removal, if the Manager reasonably believes that the Scheme will be adversely affected if the Supervisor continues to hold office (such notice to specify the grounds on which the Manager has formed this belief); and
  - (ii) otherwise upon giving the Supervisor not less than six months' written notice of such removal.
- (b) Subject to clause 25.3, the Supervisor may be removed from office otherwise in the circumstances prescribed in the FMCA.<sup>59</sup>
- (c) The Manager must not discharge or remove the Supervisor from office unless the Manager does so:
  - (i) with the approval of the High Court; or
  - (ii) under Part 2 of the Financial Markets Supervisors Act 2011.

#### 25.2 **Retirement**

Subject to clause 25.3, and to all applicable laws, the Supervisor may retire at any time upon giving the Manager not less than three months' written notice of such retirement.

#### 25.3 **Restrictions on retirement or removal**

No removal or retirement under clause 25.1 or 25.2 will take effect unless:

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<sup>59</sup> Section 193(1) of the FMCA.



- (a) the requirements for such removal or retirement, and for any new supervisor under the FMCA or any other applicable legislation have been met;<sup>60</sup>
- (b) any new supervisor has executed the deed referred to in clause 25.6; and
- (c) all of the Investments of the Scheme have been transferred to the new supervisor, or a custodian(s) who holds all of the Investments of the Scheme has acknowledged in its capacity as custodian for the Scheme, that it is acting for the new supervisor.

#### 25.4 **Appointment of Supervisor**

The Scheme shall have a single supervisor who:

- (a) must not be an Associated Person of the Manager; and
- (b) must otherwise be a person entitled by law to act as the supervisor of the Scheme.<sup>61</sup>

#### 25.5 **New appointment**

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

#### 25.6 **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 the Deed from the date of such appointment.

#### 25.7 **Retiring Supervisor released**

From the date of execution by the new supervisor of a deed in accordance with clause 25.6, the retiring supervisor is absolved and released from all such covenants 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.

### 26 **REMUNERATION OF THE MANAGER**

#### 26.1 **Management Fees**

The Manager shall be paid out of the Scheme in respect of its services hereunder or any services it provides or procures to be provided in respect of the Scheme or any Member such fees as may be prescribed or varied by the Manager from time to time by notice to

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<sup>60</sup> Section 193(2) of the FMCA.

<sup>61</sup> Section 127(1)(d) of the FMCA.

the Supervisor. Those fees may be set and charged by reference to the Scheme as a whole or any Member or group of Members.

## 26.2 **Transaction Fees**

The Manager shall be paid in respect of any Transaction a fee calculated as either a percentage of the Unit Price of the Units, or the Benefit, subject to the Transaction or as a fixed amount, as may be prescribed from time to time by notice to the Supervisor but no such fee shall be payable by or in respect of any Member unless set out in the investment statement received by that Member prior to becoming a Member. Those fees may be set and charged by reference to the Scheme as a whole or any Member or group of Members.

## 26.3 **Manager's entitlements**

The Manager shall be entitled:

- (a) at its sole discretion at any time and from time to time to waive, rebate or reduce the Management Fee or Transaction Fee either generally or specifically in relation to a particular Member, group of members, Fund or Funds or Transaction in any particular case and for any particular period;
- (b) to receive, in addition to the Management Fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.

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

Where any fee payable to the Manager is calculated by reference to the Net Asset Value of each Fund it shall be calculated daily on the basis of the Net Asset Value of each Fund from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of any Fund), and shall be deducted from the Unit Price daily (or such other date as may be agreed between the Manager and the Supervisor).

## 27 **REMOVAL AND RETIREMENT OF MANAGER**

### 27.1 **Appointment**

The Scheme shall have a manager, who:

- (a) must not be an Associated Person of the Supervisor; and
- (b) must otherwise be a person entitled in accordance with the FMCA<sup>62</sup> and otherwise by law to act as the manager of the Scheme.

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<sup>62</sup> Sections 127(1)(c) and 135(1)(h) of the FMCA.

## 27.2 Removal

The Manager shall be removed from office in the circumstances set out in the FMCA.<sup>63</sup>

## 27.3 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).

## 27.4 Restrictions on retirement

No removal or retirement under clause 27.2 or clause 27.3 will take effect until a new manager that is qualified for appointment under clause 27.1 has been appointed pursuant to clause 27.5.

## 27.5 New Manager appointment

- (a) The power to appoint a temporary manager under the FMCA<sup>64</sup> shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
- (b) Subject to all applicable laws, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, but no new permanent manager shall be so appointed without the approval of the Supervisor (such approval not to be unreasonably withheld).
- (c) Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

## 27.6 Release of Manager

Subject to all applicable laws,<sup>65</sup> from the date of appointment of a new manager, the retiring Manager is absolved and released from all such covenants under this Deed. For the avoidance of doubt, the retiring Manager shall be entitled to payment of all fees, and reimbursement of any expenses, accrued up to and including the date on which it ceases to hold office under this Deed.

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<sup>63</sup> Sections 185, 209 and 210 of the FMCA.

<sup>64</sup> Sections 186, 187, 189 and 191 of the FMCA.

<sup>65</sup> Section 191 of the FMCA.

### 27.7 **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.

### 27.8 **Former Managers must hand over records and give reasonable assistance**

A former manager must hand over records and give reasonable assistance to the new manager in accordance with the requirements of the FMCA.<sup>66</sup>

## 28 **LIMITATION OF LIABILITY**

### 28.1 **Limitation**

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

- (a) no Member 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 the Scheme or any Fund;
- (b) nothing in this Deed or in the relationship between the Members shall be deemed to create a partnership amongst Members;
- (c) 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.

## 29 **AUDITOR**

### 29.1 **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 such<sup>67</sup> must be appointed as Auditor of the Scheme. The Manager and the Supervisor must agree upon the services to be performed and reports to be provided by the Auditor and their scope, having regard to requirements under the FMCA<sup>68</sup> and in accordance with the Management Agreement. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

### 29.2 **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 Scheme and/or Members and instructs the Manager to remove the Auditor.

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<sup>66</sup> Section 190 of the FMCA.

<sup>67</sup> Section 461E of the FMCA.

<sup>68</sup> Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

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

### 29.3 **New appointment**

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

### 29.4 **Restrictions on Auditor**

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

### 29.5 **Compliance with FMCA auditor requirements**

The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's obligation to report to the Supervisor.<sup>69</sup>

## 30 **NOTICES**

### 30.1 **To Member**

Any notice to be given to any Member must be given in writing and may be given either personally, by sending it by post to the address of the Member shown in the relevant Register or by Electronic Communication.

### 30.2 **Notice to manager, legal representative etc.**

A notice may be given by the Manager to the manager of a person who is subject to a Court order under the Protection of Personal and Property Rights Act 1988, or the legal representatives of a Member in consequence of the death or bankruptcy of a Member, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the person who is subject to a Court order under the Protection of Personal and Property Rights Act 1988, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the lack of competence, death or bankruptcy had not occurred.

### 30.3 **Notice where no address**

If any Member has no registered address and has not supplied to the Manager an address for the giving of notices, or if any 2 notices posted to a Member are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Member shall give notice to the Manager of some other address,

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<sup>69</sup> Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

the address of the Member for all purposes of this Deed shall be deemed to be the Office of the Manager.

**30.4 Calculation of notice period**

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

**30.5 Notice to Supervisor or Manager**

Any certificate, notice, communication or information required by this Deed to be given:

- (a) to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing, shall be signed by a duly authorised officer of the party giving the notice and may be given either personally, by sending it by post or Electronic Communication to the Office of the intended recipient or to such other address as the intended recipient may have previously notified;
- (b) to the Supervisor or Manager by any other person shall be in writing and may be given in person, by post at the Office of the intended recipient or such other address as the recipient may have notified **provided that** the Manager or Supervisor may agree that certain notices or communications may be given by Electronic Communications to such address and in such manner as the intended recipient may have specified.

**30.6 Manner of notice**

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected on the third day following the day of posting. Without limiting section 11(a) of the Electronic Transactions Act 2002, a notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5 p.m. on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of confirmation of transmission).

**30.7 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.

**31 AMENDMENTS TO DEED**

**31.1 Power to amend**

Subject to the provisions of the FMCA, the Supervisor and the Manager may by deed at any time make any alteration, modification, variation or addition to the provisions of this Deed.

## 32 WINDING UP

### 32.1 Winding up of a Fund

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

- (a) if the Manager resolves to wind up that Fund or to wind up every Fund and gives notice to the Supervisor accordingly; or
- (b) if the Scheme is wound up in accordance with clause 32.4.

### 32.2 Procedure for winding up Fund

Within 14 days of winding up a Fund under clause 32.1, the Manager must give to each Member having an interest in the relevant Fund or Funds notice of the winding up and of the intention of the Manager to distribute to Members the Fund Assets of that Fund or those Funds. From the date of the giving of such notice no Withdrawal Request shall be given in respect of that Fund or those Funds. A notice given by the Manager pursuant to this clause may invite any of the Members affected to give a Switching Notice to the Manager in accordance with clause 12.1 within such period as the Manager may prescribe. A notice given by the Manager pursuant to this clause may also specify a particular Fund in favour of which the relevant Member shall be deemed to have given a Switching Notice in accordance with clause 12.1 on expiration of the prescribed period if no Switching Notice is received from the Member prior to that time.

### 32.3 Cashing up of Fund

Following the expiration of the notice period prescribed in clause 32.2 or in the absence of an invitation pursuant to clause 32.2 being made, the Manager shall as soon as is practicable and in respect of each Fund in question:

- (a) sell, call in and convert into Cash the whole of the Fund Assets of the Fund;
- (b) pay out, discharge or otherwise make proper provision for the liabilities of that Fund;
- (c) distribute the Fund Assets of that Fund (or so much of the Fund Assets as may from time to time be available for distribution) less all costs and expenses incurred by the Supervisor or the Manager in respect of the winding up by crediting to the Accounts of Members having an interest in that Fund in proportion to the numbers of Units allocated to each Account maintained in respect of that Member as adjusted for any Tax Liabilities.

**32.4 Supervisor notification of the Scheme wind up**

The Scheme shall be wound up if the Manager gives 60 days' written notice (or such other notice as the Supervisor shall agree with the Manager) to the Supervisor that the Scheme is to be wound up, the Scheme's registration is cancelled or if the Scheme is required to be wound up under the FMCA.<sup>70</sup> If the Manager notifies the Supervisor that the Scheme is to be wound up, the wind-up shall take effect on the date specified for that purpose in a notice. The provisions of the FMCA, relating to the winding up of the Scheme, shall apply to the winding up of the Scheme.<sup>71</sup>

**32.5 Perpetuities**

In the event that the Scheme shall cease to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit including the re-establishment of the trusts of the Scheme and the payment over of the Scheme Assets to a 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 Scheme or any disposition made under it or for its purposes.

**32.6 Member notification:**

Where the Scheme is being wound up, within 14 days of giving notice to wind up the Scheme (or such longer period as the Supervisor shall agree with the Manager), under clause 32.4, the Manager must give to each Member who has an interest in the Scheme, notice of the winding up and of the intention of the Supervisor to distribute to Members the Assets of that Scheme.

**32.7 Winding Up Entitlements may be satisfied through the distribution of Units in another scheme.**

Where the Manager believes it is in the best interests of Members in the Scheme generally to do so, the Manager may (subject to clause 32.8) provide those Members with the choice of having their Winding Up Entitlements paid in cash or through the distribution (in specie) of units in another Registered Scheme or a fund of another Registered Scheme in accordance with this clause ("**Default Option**"). If the Manager makes such an election, the notice given by the Manager pursuant to clause 32.6 shall invite the relevant Members to elect, within such reasonable period as the Manager may prescribe:

- (a) to receive payment in cash; or
- (b) to have the Member's Winding Up Entitlements satisfied by the distribution (in specie) of units in a Registered Scheme or a fund of another Registered Scheme specified in respect of the Member in the notice given by the Manager pursuant to

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<sup>70</sup> Sections 195 and 211 of the FMCA.

<sup>71</sup> Sections 171, 212 and 213 of the FMCA.



clause 32.6 in respect of the Member’s Units, which Registered Scheme or fund (“**Default Fund**”) must:

- (i) allow units to be redeemed at any time (subject, if at all, only to the Manager’s right to suspend redemptions in specified circumstances) in respect of the relevant Member;
- (ii) have a similar investment objective to the relevant Fund and be able to invest in similar Asset categories (as prescribed by clause 1(4) of Schedule 4 to the FMC Regulations), and in similar proportions, to those in which the relevant Fund is permitted to invest under the Scheme’s SIPO;
- (iii) have the Manager or a person Related to the Manager (within the meaning of the FMCA) as the manager;
- (iv) be continuously offered and redeemed on a basis calculated wholly or mainly on the value of the Default Fund’s property;
- (v) not be a superannuation scheme or fund in a superannuation scheme as defined in the FMCA;
- (vi) not require affected Members to pay withdrawal fees upon the Manager’s distribution (in specie) of units in the Default Fund in accordance with clause 32.9;
- (vii) not have higher overall fees than the relevant Scheme or Fund or have individual withdrawal fees which would apply to the Members; and
- (viii) would not have (under its terms, due to waiver or otherwise) individual contribution fees on the Units to be issued for the purpose of the distribution in specie pursuant to this clause 32.

### 32.8 **Supervisor Review**

- (a) Where the Manager proposes to utilise the Default Option in respect of a Fund, the Manager must, before giving notice to the Members in accordance with clause 32.6, provide to the Supervisor for review:
  - (i) a statement of the grounds upon which the Manager has determined that offering the Default Option is in the best interests of Members in the relevant Fund generally;
  - (ii) details of each Default Fund, including details as to its satisfaction of the conditions set out in clause 32.7(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 32.7 in respect of their Winding Up Entitlements,

(together, the “**Default Option Plan**”).

- (b) Upon receipt of the Default Option Plan, the Supervisor shall review the Manager’s decision to utilise the Default Option and the proposed process for doing so, to determine whether in doing so the Manager has:
  - (i) complied with its obligations under this Deed and the FMCA; and
  - (ii) acted reasonably and fairly in determining that offering the Default Option is in the best interests of Members in the relevant Fund.
  
- (c) If the Supervisor does not notify the Manager within 15 Business Days of receipt of the above information (“**Default Period**”), or such other period of time that the Supervisor reasonably requires to carry out its review under paragraph (b) as agreed between the Supervisor and the Manager prior to the end of the Default Period (“**Alternative Period**”), that it believes the Manager has not or may not comply with its obligations under this Deed or the FMCA, or has not acted reasonably and fairly in determining that offering the Default Option is in the best interests of the Members in the relevant Fund, the Manager may give notice to the Members in accordance with clause 32.6.
  
- (d) If the Supervisor does notify the Manager within the Default Period or Alternative Period (as applicable) that it believes the Manager has not or may not comply with its obligations under this Deed or the FMCA, or has not acted reasonably and fairly in determining that offering the Default Option is in the best interests of the Members in the relevant Fund, then the Manager will consider the reasons provided by the Supervisor for giving that notification, and will notify the Supervisor of the actions the Manager intends to take as a result, which may be to do any of the following:
  - (i) proceed with the wind up of the Scheme or 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 32.8 shall be followed in respect of that replacement information; or
  - (iii) subject to compliance with this Deed and the FMCA and the Supervisor’s rights under the FMCA and the Financial Markets Supervisors Act 2011, take any other action it considers appropriate in the circumstances.

### 32.9 Default Fund Option

Where:

- (a) the notice given by the Manager pursuant to clause 32.6 specifies a Default Fund for a Member in respect of a Fund; and

- (b) after implementation of the Engagement Plan, no election is received from the Member in respect of Units in that Fund by the end of the prescribed notice period,

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

### 33 PROCEDURE ON WINDING UP

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

- (a) no further Contributions shall be made by or in respect of any Member, except Contributions that accrued before the date of winding up;
- (b) no Withdrawal Requests or Switching Notices shall be accepted by the Manager;
- (c) the Supervisor shall:
  - (i) sell and realise the Scheme Assets maintained under the Deed and make provision for any debts and Benefits due but unpaid and the costs of winding up other than Units in a Default Fund to be distributed to Members in satisfaction of their Winding Up Entitlements; and
  - (ii) acquire such Units in a Default Fund to be distributed (in specie) to Members in satisfaction of their Winding Up Entitlements,  
  
as soon as reasonably practicable;
- (d) the Supervisor shall apply the net proceeds of the realisation determined by the Supervisor as representing the interests of Members in the Scheme in accordance with the following priority:
  - (i) firstly, in providing for the payment of the costs of winding up and in discharging all liabilities of the Scheme and any fees payable to the Manager and the Supervisor; and
  - (ii) secondly, in providing for Benefits payable in terms of this Deed which have become payable prior to the date of winding up and remain unpaid at that date; and
  - (iii) thirdly, in providing for the payment to each remaining Member the Supervisor will pay an amount equal to the Winding Up Entitlements of Members whose Winding Up Entitlements are to be paid in cash, and distribute to any Member who:
    - (A) has elected to receive Units in a Default Fund pursuant to clause 32.7;  
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 32.9;

- (iv) units in the relevant Default Fund equal to the Member's Winding Up Entitlements for the Member's Units in the relevant Fund, in satisfaction of those entitlements, provided that if the amount available is insufficient for the appropriate provision in respect of all Members then all the Benefits payable shall be reduced pro rata and fourthly, (if there is any money remaining) in augmenting the Member's Benefits and Winding Up Entitlements under clause 33.1(d)(ii) and 33.1(d)(iii) on a pro rata basis.

33.2 If in the opinion of the Supervisor it shall be expedient to do so, the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with this clause 33.

33.3 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.

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

#### 34 **GOVERNING LAW**

##### 34.1 **New Zealand Law**

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

#### 35 **TAXATION**

##### 35.1 **PIE tax compliance**

Pursuant to clause 19.2 the Manager may elect that the Scheme will be a PIE, or will cease to be a PIE, in its complete discretion. Where the Scheme is a PIE, the Manager shall have the additional powers and discretions (having regard, in each case, to the best interests of Members generally and to the requirements of the Income Tax Act) to determine for the purposes of the PIE Legislation (and on such basis as the Manager considers appropriate in its complete discretion):

- (a) the classes of Members;
- (b) the attribution period for the Scheme;
- (c) the assessable income (for Tax purposes) of the Scheme for an attribution period and to allocate such income to each investor class for that attribution period;
- (d) the deductions incurred in deriving the assessable income allocated to an investor class of Members for an attribution period;
- (e) the class net income or the class net loss or other loss used, as the case may be, for each investor class for an attribution period;
- (f) the attributed PIE income or attributed PIE loss, as the case may be, for each investor class for an attribution period and for a tax year;

- (g) each Member's investor fraction or percentage for any period, based on what that Member's proportionate interest in any distribution from the Scheme to Members would be in that period, if such a distribution were to be made;
- (h) the Scheme Tax liability or rebate, as the case may be, for the applicable calculation period, and whether (and to what extent) to take into account any Tax liability of the Scheme for the purposes of determining the liabilities of the Scheme for any period;
- (i) from the available options under the PIE Legislation (taking into account such factors as the Manager considers relevant in its complete discretion) the method for paying the Scheme's PIE Tax Liability and to make any elections provided for in the PIE Legislation required to give effect to that selection;
- (j) to retain any amount to which a Member otherwise would be entitled if that amount is required to be paid to the Commissioner pursuant to the PIE Legislation;
- (k) to make any other elections as to the method of calculation, allocation or attribution of Tax as the Manager thinks fit having regard to the interests of Members generally and the requirements of the PIE Legislation;
- (l) the amounts of any rebates of Tax available to the Scheme by virtue of any relevant provision in the PIE Legislation;
- (m) the amount of any rebate of Tax referred to in paragraph (l) that is attributable to a Member (and to make available to the Member the benefit of that rebate of Tax in such manner as the Manager considers appropriate in its complete discretion);
- (n) the amount of any credits against income Tax payable by the Scheme that is available to the Scheme;
- (o) the amount of any Tax credit that is available to be allocated to an attribution period (and to allocate, in such manner and on such basis as the Manager considers appropriate in its complete discretion, such Tax credit to that attribution period);
- (p) the amount of Attributed Tax; and
- (q) to carry out any other Tax calculations, allocations or attributions required by the Income Tax Act;
- (r) to adjust a Member's Benefit in such manner as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the PIE Legislation or otherwise to the extent permitted by law, at any time (including immediately prior to paying any Benefit or accepting a request to switch some or all of a Member's Benefit from one Fund to another), having regard to the effect of:
  - (i) the Member's prescribed investor rate; and

- (ii) the income (and the losses and associated tax credits) allocated to the Member under the PIE Legislation, as adjusted for any expenses which the Manager considers it appropriate to charge to the particular Member;

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

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

### 35.2 **Changes in Tax legislation**

Without limiting clause 1.3(b), following any amendment to or re-enactment of the Income Tax Act (a *Revision*):

- (a) all of the discretions and powers available to the Manager where the Scheme is a PIE, whether under this clause 35 or otherwise, shall continue to apply with such modifications as are necessary to reflect the Revision;
- (b) the Manager shall have the discretion to apply all of the requirements of the Revision to the Scheme and its Members on such basis as the Manager considers appropriate and taking into account such factors as the Manager considers relevant; and
- (c) to the extent reasonably possible taking into account the nature of the Revision, any references in this Deed to terms defined in the Income Tax Act which are amended or replaced as a result of the Revision shall be deemed to be references to those defined terms as amended by the Revision.

### 35.3 **Withholding Tax from Benefits**

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

## 36 **TAXATION LIABILITY**

### 36.1 **Definitions**

In this clause 36:

*Interest Rate* means the rate per annum equal to the aggregate of 2% and the rate (expressed as a percentage rate per annum and rounded to the nearest second decimal place):

- (a) calculated as the average of the individual buy rates for one month Bank Bills quoted on Reuters Screen pages BKBL and BKBM (or the successor or equivalent pages) displayed at 10.45am on the relevant date; or
- (b) if quoted rates are not available, the rate the Manager determines at its discretion to be the equivalent of the one month Bank Bill rate.

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

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

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

### 36.2 **Indemnity**

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

### 36.3 **Interest**

Any Taxes paid on behalf of a Relevant Person shall, to the extent that the Manager and the Supervisor (as the case may be) is unable to deduct Taxes in accordance with clause 35.3, carry interest calculated on a daily basis at the Interest Rate for the period from which the Supervisor or Manager is required to make payment of Taxes to the date of reimbursement of Taxes in full to the Supervisor or Manager and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

## 37 **MEETINGS**

When required by the FMCA, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and the FMC Regulations.<sup>72</sup> A meeting of Members shall be conducted in accordance with the requirements of the FMCA.

## 38 **COUNTERPARTS**

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

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<sup>72</sup> Sections 161 to 163 of the FMCA and FMC Regulation 83.



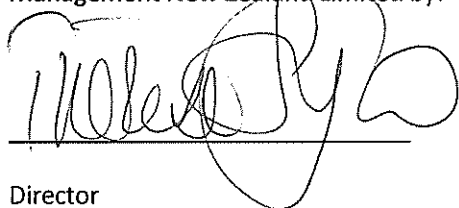
39 DELIVERY

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

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

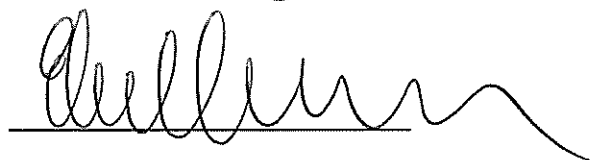
Execution

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



A handwritten signature in black ink, appearing to be 'Robert [unclear]', written over a horizontal line.

Director



A handwritten signature in black ink, appearing to be 'A. [unclear]', written over a horizontal line.

Director

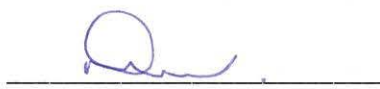
Signed for and on behalf of The New Zealand Guardian Trust Company Limited by



Authorised Signatory

**HRVOJE KOPRIVCIC**

Print Name

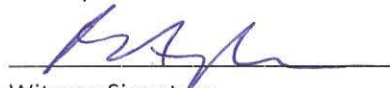


Authorised Signatory

**BRYAN DAVID CONNOR**

Print Name

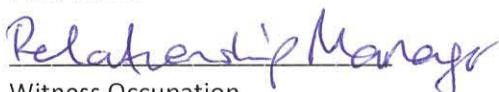
in the presence of:



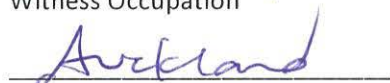
Witness Signature

**BARBARA PEARSE**

Print Name



Witness Occupation



Place of residence

ACT 967