AMP Wealth Management New Zealand Limited
Manager

and

The New Zealand Guardian Trust Company Limited
Supervisor

Trust Deed

relating to

the AMP KiwiSaver Scheme
## Contents

1. Interpretation .......................................................................................... 1
2. Constitution of the Scheme ...................................................................... 6
3. Admission of Members ............................................................................. 7
4. Member Accounts .................................................................................... 8
5. Unitisation ............................................................................................... 9
6. Valuations ............................................................................................... 13
7. Contributions ......................................................................................... 14
8. Benefits ................................................................................................. 15
9. Participating Employers ......................................................................... 17
10. Management and administration of the Scheme ...................................... 19
11. Reimbursement of Expenses of the Scheme ........................................... 22
12. Establishment of Funds .......................................................................... 22
13. Manager’s powers to invest ................................................................... 25
14. Powers of the Supervisor ....................................................................... 28
15. Liability and indemnities ....................................................................... 30
16. Remuneration of Supervisor .................................................................. 33
17. Remuneration of Manager ..................................................................... 33
18. Amendments ......................................................................................... 34
19. Appointment and removal of Supervisor ................................................ 35
20. Appointment and removal of Manager .................................................... 36
21. Winding up of the Scheme .................................................................... 38
22. Members bound by this Trust Deed ........................................................ 38
23. Limitation of liability of Members ........................................................... 39
24. Notices and information to Members ...................................................... 39
25. Notices between Manager and Supervisor ............................................. 40
This Trust Deed is made on 12th April 2016

between (1) AMP Wealth Management New Zealand Limited (Manager)

and (2) The New Zealand Guardian Trust Company Limited (Supervisor)

Introduction

A The AMP KiwiSaver Scheme (Scheme) was established by a trust deed dated 29 March 2007 and is currently governed by a trust deed dated 18 March 2016 (together, the Existing Deed).

B The Scheme is a KiwiSaver scheme registered under the FMCA, and is not a restricted scheme as defined in that Act.

C The Manager and the Supervisor amended the Existing Deed in order to comply with the requirements of the FMCA, the KiwiSaver Act and all other relevant legislation, and to make a number of other minor amendments as a consequence of the introduction of the FMCA and the amendments to other legislation or for the more efficient operation of the Scheme.

D The Manager and the Supervisor now wish to make a minor amendment to the Existing Deed in order to clarify the date on which the Management Agreement (as defined below) was entered into between the Manager and the Supervisor.

E Prior to executing this deed, the Supervisor obtained a certificate from its solicitor as required by section 129 of the KiwiSaver Act and to the effect that this deed complies with sections 135 to 137 of the FMCA.

By this Deed:

In accordance with the power of amendment contained in clause 18 of the Existing Deed, it is declared that with effect from the Effective Date, the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this deed so that from the Effective Date the Scheme will be operated, administered, and governed in accordance with the provisions of this deed.

1 Interpretation

1.1 Definitions

In this Trust Deed, unless the context otherwise requires:

Account means an account established and maintained by the Manager under clause 4;
**Application Form** means an application for membership of the Scheme completed in such form and in such manner as the Manager prescribes or otherwise requires from time to time;

**Associated Person** has the meaning given to it by the FMCA;

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

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

**Custodian** means a person appointed to hold the Scheme property under clause 14.2 and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Scheme property under clause 14.2;

**Effective Date** means the date of this Trust Deed;

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

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

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

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

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

**Fund** means an investment fund established by the Manager under clause 12.1;

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

**Instrument of Appointment** means an instrument of appointment applying to the Scheme under section 132 of the KiwiSaver Act;

**KiwiSaver Act** means the KiwiSaver Act 2006;

**Management Agreement** means the agreement between the Supervisor and the Manager entered into on 18 March 2016 which sets out the Manager's reporting obligations and other agreements in respect of the Scheme from time to time;
Manager means AMP Wealth Management New Zealand Limited or such other person who may be appointed as the manager for the time being of the Scheme in accordance with clause 20;

Member means a natural person who has been admitted to membership of the Scheme and who is, or may become, entitled to benefits under the Scheme;

Member Tax Credits means member tax credits payable under the Income Tax Act;

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

Participating Employer means an employer which has entered into a Participation Agreement;

Participation Agreement means an agreement entered into between the Manager and an employer under clause 9, as amended from time to time;

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

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;

Register means the register maintained for the Scheme pursuant to the FMCA;¹

Related Party has the meaning given to it by the FMCA;²

Related Party Benefit has the meaning given to it by the FMCA;³

Retirement Scheme means a KiwiSaver scheme, superannuation scheme or workplace savings scheme as defined in the FMCA, a superannuation scheme registered under the Superannuation Schemes Act, or any overseas superannuation scheme, in respect of which transfers to or from the Scheme are permissible;⁴

Scheme means the AMP KiwiSaver Scheme governed by this Trust Deed;

Scheme Provider Agreement means the scheme provider agreement applying from time to time with respect to the Scheme under the KiwiSaver Regulations 2006;

¹ Section 215 of the FMCA.
² Section 172(2) of the FMCA.
³ Section 172(1) of the FMCA.
⁴ Section 6 of the FMCA.
SIPO has the meaning given to it by the FMC Regulations;\(^5\)

**Special Resolution** has the meaning given to it in relation to a KiwiSaver Scheme by the FMCA;\(^5\)

**Subscription Bank Account** means, in relation to the Scheme, the bank account established for the Scheme in the name of the Supervisor or its Custodian in accordance with clause 13.7;

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

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

**Supervisor** means The New Zealand Guardian Trust Company Limited or such other person who is appointed as the Supervisor for the time being of the Scheme in accordance with clause 19 and, where the context requires or allows, this term includes any Custodian;

**Tax** 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 established for the Scheme by the Supervisor or its Custodian and managed by the Manager in accordance with clause 13.8;

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

**Trust Deed** means this trust deed as amended from time to time;

**Unit** means a unit in a Fund as referred to in clause 5;

**Unit Price** means the price which is from time to time determined under clause 5.3; and

**Valuation Day** means a day on which the Manager values a Fund under clause 6:

### 1.2 Terms defined in KiwiSaver Act

Each of the terms **Commissioner, Contribution, Crown Contribution, Default Investment Product, Employer's Chosen KiwiSaver Scheme, KiwiSaver End Payment Date, KiwiSaver Scheme, KiwiSaver Scheme Rules, Member's Accumulation, Permitted Withdrawal and ESCT Rules** has the meaning given to that term by the KiwiSaver Act, and is capitalised for ease of reference.

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\(^5\) Regulation 5 of the FMC Regulations.

\(^6\) Section 6 of the FMCA.
1.3 **Implied terms**

The terms of the KiwiSaver Scheme Rules and the provisions implied in the Trust Deed under the KiwiSaver Act or the FMCA apply for so long as they are implied in the Trust Deed under the KiwiSaver Act or the FMCA despite anything to the contrary in the Trust Deed, and any provision in the Trust Deed that is contrary to any such implied term is void to the extent that it is inconsistent with such implied terms.  

1.4 **Construction**

In the construction of the Trust Deed, unless the context otherwise requires:

(a) headings appear as a matter of convenience and shall not affect construction;

(b) references to clauses and Schedules are to clauses and Schedules of the Trust Deed;

(c) references to money are references to New Zealand currency;

(d) the singular includes the plural and vice versa;

(e) references to any statutes, regulations and other statutory instruments include all amendments, re-enactments and replacements thereof and, when the context requires, any regulations made under them;

(f) references to any deed, agreement or other instrument shall be read as referring to such deed, agreement or other instrument as from time to time modified, supplemented or novated;

(g) the word "including" and other similar words do not imply any limitation; and

(h) footnotes used in this Trust Deed do not form part of this Trust Deed, are a guide only and where they refer to legislative provisions, they are not intended to incorporate those provisions in this Trust Deed or affect the interpretation of this Trust Deed. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Trust Deed to comply with a particular Act or legislation generally.

1.5 **Currency**

Where for the purposes of any provision of this Trust Deed, it is necessary to determine the New Zealand currency equivalent at any date of a sum expressed in a non-New Zealand currency, such sum shall be converted to New Zealand currency on the basis of such rate of exchange prevailing as at that date as the Manager may reasonably select (except that the Manager may take account of any contractual arrangement in force for covering the risk of currency fluctuations).

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7 Sections 116, 120 to 122, and Schedule 1 of the KiwiSaver Act.
1.6 **Generally accepted accounting practice**

Notwithstanding any provision of this Trust Deed, where a matter is to be or may be interpreted pursuant to any provision of this Trust Deed by reference to generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may, at its discretion, following consultation with the Supervisor, elect not to follow such generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards.

2 **Constitution of the Scheme**

2.1 **Continuation of trusts**

The trusts established in accordance with the Existing Deed continue after the Effective Date on the terms contained in this Trust Deed.

2.2 **Purpose of the Scheme**

The purpose of the Scheme is to provide retirement benefits directly to individuals in accordance with the FMCA and KiwiSaver Act.9

2.3 **Contributions and other assets held on trust**

Subject to clause 14.2, all contributions and other assets of the Scheme shall be held on trust in accordance with the terms of the Trust Deed and all applicable legislation.9

2.4 **Name**

The Scheme and Funds shall be known by such name or names as the Manager shall decide from time to time.

2.5 **Perpetuities**

If the Scheme ceases to qualify under the provisions of section 19 of the Perpetuities Act 1964, the Manager may take such action as it thinks fit (including re-establishing the trusts of the Scheme and paying over the assets of the Scheme to a new supervisor) in order to prevent the operation of any rule of law relating to perpetuities which might otherwise invalidate any of the trusts of the Scheme.

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8 Section 128(1)(b) of the FMCA.

9 Sections 152(1)(c), 156 and 157 of the FMCA.
3 Admission of Members

3.1 Admission

Natural persons shall be admitted to membership of the Scheme:

(a) in accordance with sections 48 and 52 of the KiwiSaver Act, as applicable; or

(b) by completing an Application Form and contracting directly with the Manager to become a Member of the Scheme in accordance with sections 45 and 55 of the KiwiSaver Act, as applicable;

provided that only persons who meet the New Zealand criteria set out in sections 128(2) and (3) of the FMCA shall be admitted to membership of the Scheme,10 and in each case the Manager may (or, if required by the KiwiSaver Act, shall), as applicable, also effect transfers into the Scheme in respect of those persons under subpart 3 of Part 2 of the KiwiSaver Act or otherwise in accordance with the requirements of the KiwiSaver Act.

For the avoidance of doubt, the Manager may at its discretion refuse to admit to membership of the Scheme any prospective Member to whom paragraph (b) applies, and shall not be required to give a reason for that refusal.

3.2 Deemed acceptances

On admission to membership of the Scheme pursuant to clause 3.1(a), a Member shall be deemed (except as otherwise prescribed in the Scheme Provider Agreement) to have consented to the Supervisor and the Manager obtaining, holding, using and disclosing personal information in respect of the Member in the same manner, and to the same extent, as if the Member has been admitted to membership of the Scheme pursuant to clause 3.1(b).

3.3 Terms of admission to membership

Subject to the requirements of the KiwiSaver Act and this Trust Deed, but without limiting clause 9, the Manager may from time to time prescribe differing terms and conditions of membership for persons:

(a) who become Members in accordance with, respectively, section 45, section 48, section 52 or section 55 of the KiwiSaver Act;

(b) whose employer has made the Scheme the Employer’s Chosen KiwiSaver Scheme, but is not a Participating Employer; and

(c) who are employed by a Participating Employer.

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10 Section 128(1)(c), (2) and (3) of the FMCA.
3.4 **Cessation of membership**

A person shall cease to be a Member on the first to occur of the person:

(a) receiving from the Scheme the Member’s Accumulation in accordance with the KiwiSaver Scheme Rules (which are implied in the Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act);

(b) transferring from the Scheme to another KiwiSaver Scheme in accordance with the requirements of subpart 3 of Part 2 of the KiwiSaver Act, or to a Retirement Scheme in accordance with the requirements of the KiwiSaver Act; and

(c) receiving notice from the Manager under rule 4(5)(b) of the KiwiSaver Scheme Rules.

4 **Member Accounts**

4.1 **Member Account**

Pursuant to clause 10.3, the Manager shall establish and maintain for each Member one or more Member Accounts, denominated in Units and designated (where there are two or more such accounts) in such manner as the Manager considers appropriate, each comprising Units issued in respect of:

(a) that portion of any Contributions to the Scheme from the Member which the Manager determines to allocate to the Member Account;

(b) any amount transferred into the Scheme in respect of the Member which the Manager determines to allocate to the Member Account;

(c) the Crown Contributions paid in respect of the Member (except to the extent that the Crown Contribution amount is required, pursuant to the KiwiSaver Act, to be credited to another or other Accounts);

(d) any other amount received by or payable to the Scheme which the Manager considers should be credited to the Member Account; and

(e) any amount comprised in the Member Account that is switched from one Fund to another Fund;

and any Units transferred from another Account to the Member Account under clause 4.3, less Units cancelled in respect of:

(f) any amount that the Manager determines to debit from the Member Account with respect to costs, expenses, fees or (subject to clause 26.1) Tax payable pursuant to this Trust Deed or any Participation Agreement;

(g) any amount comprised in the Member Account that is transferred out of the Scheme to another KiwiSaver Scheme or to a Retirement Scheme in accordance with the KiwiSaver Act;
(h) the Permitted Withdrawal of any amount comprised in the Member Account;

(i) any amount comprised in the Member Account that is switched from one Fund to another Fund; and

(j) any other amount comprised in the Member Account which the Manager considers should be debited to the Member Account;

and less any Units transferred from the Member Account to another Account under clause 4.3.

4.2 **Varying Accounts**

The Manager may from time to time establish other Accounts or establish sub-accounts within Accounts or amalgamate two or more Accounts, in each case on such terms and conditions as the Manager considers appropriate.

4.3 **Transferring Units between Accounts**

The Manager may from time to time transfer Units between Accounts on such terms and conditions as the Manager considers appropriate.

5 **Unitisation**

5.1 **Funds unitised**

Pursuant to clause 10.3, the Manager shall operate each Fund on a unitised basis, with the beneficial interests in each Fund divided into Units.

5.2 **Equal but not specific interests**

Units referable to a Fund:

(a) shall be of one class and shall confer identical rights and interests;

(b) shall not confer any interest in any particular investment comprised in the Fund to which they relate (with the result that no Member will be entitled to require the transfer of any of the investments to the Member); and

(c) shall not confer any right or interest in the assets of any other Fund.

5.3 **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.
5.4 Unit Prices binding

In the absence of an error (and subject to clause 10.3(l) and 10.3(m)), Unit Prices determined pursuant to this Trust Deed shall be final and binding on all Members and all other persons claiming beneficial interests in the assets of the Scheme.

5.5 Unitising Contributions

Subject to clause 5.6, in respect of:

(a) each Contribution and other amount accepted into the Scheme under clause 7;
(b) any other amount accepted or payable into the Scheme which the Manager considers should give rise to the issue of Units; and
(c) any amount switched from one Fund to another Fund pursuant to clause 12.5(c),

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

(d) by the next Valuation Day; or
(e) if and to the extent that the Manager determines that (for administrative or other reasons) it is not reasonably practicable to issue Units in a particular Fund or Funds by the next Valuation Day and advises the Supervisor accordingly, by what the Manager considers to be the next reasonably practicable Valuation Day (provided that the Manager may not invoke this clause 5.5(e) for a period exceeding 5 Business Days with respect to any amount accepted or payable or switched without the Supervisor’s prior agreement, which shall not be unreasonably withheld).

Units issued under this clause 5.5 shall be based upon the amount accepted or payable or switched, net of any amount that the Manager considers appropriate to deduct for fees, expenses, Taxes (subject to clause 26.1) or other liabilities, and the relevant Unit Price or Unit Prices applying for the purpose of issuing Units on the day when the Units are issued.

5.6 Delaying unitisation

Without limiting clause 5.5, the Manager may delay the conversion into Units under clause 5.5 of any Contributions accepted into the Scheme in respect of any Member or group of Members until such time as the Manager is reasonably satisfied that those Contributions:

(a) do not exceed the amount required to be paid to the Scheme in respect of that Member, or those Members collectively, under the KiwiSaver Act and this Trust Deed; and
(b) have not otherwise been paid in error;

and if the Manager concludes that those Contributions exceed the amount required to be paid under the KiwiSaver Act and this Trust Deed, or were
otherwise paid in error, the Manager shall refund the amount of those Contributions to the Commissioner or the relevant employers or Members as applicable from time to time.

5.7 Ceasing to issue Units

Without limiting clause 5.6 or any other provision of this Trust Deed (but subject at all times to the provisions of the KiwiSaver Act and the Instrument of Appointment) the Manager may notify the Supervisor at any time or times that from a date specified in that notice, no further Units will be issued pursuant to this Trust Deed, or in relation to a specified Fund or Funds, either:

(a) for any period specified in the notice; or

(b) until the relevant Fund or Funds, or the Scheme, is or are terminated;

and in that case the Manager shall not, after the date specified in the notice and for the period contemplated by paragraph (a) or paragraph (b) (as applicable), issue any further Units under this Trust Deed or in relation to such Fund or Funds.

5.8 Cancelling Units

In respect of amounts debited, transferred or withdrawn from Accounts pursuant to clause 4 (excluding clause 4.3), the Manager shall cancel the number of Units determined by dividing the amount debited, transferred or withdrawn in respect of the relevant Fund or Funds by the relevant Unit Price or Unit Prices applying for the purpose of cancelling Units on a day no later than the next Valuation Day after the Manager makes a final determination that the debit, transfer or withdrawal shall be made (provided that, for amounts debited on account of Tax payable, the Manager may use the Valuation Day on which the Manager finally determines the amounts of Tax payable, and for transfers out of the Scheme the cancellation of Units shall be completed within the timeframes set out in the KiwiSaver Act and the Instrument of Appointment).

5.9 Delaying redemption of Units

(a) Subject to the requirements of the KiwiSaver Act and subclause 5.9(b), the Manager may defer giving effect to a Permitted Withdrawal or any transfer out of the Scheme under clause 8.6, or any switch between Funds pursuant to clause 12.5(c), if (and for so long as) the Manager determines that, having regard to the realisation of assets required in order to make the withdrawal, transfer, or switch or the occurrence or existence of any other circumstance or event relating to the Scheme or generally, earlier withdrawal, transfer or switch would be imprudent or is impracticable.

(b) Clause 5.9(a) is subject to the requirement that the Manager must give the Supervisor prior notification of any deferral and, to the extent that the Manager requires the deferral to exceed 90 days, it must obtain the prior written approval of the Supervisor to extend the deferral for a further period or periods that the Manager and the Supervisor agree are appropriate.
5.10 **Uncleared funds**

Units issued against uncleared funds may be treated as void if the funds are not subsequently cleared.

5.11 **Units issued in error**

Subject to the requirements of the KiwiSaver Act and the Scheme Provider Agreement, Units that the Manager determines have been issued:

(a) in respect of Contributions that exceeded the amount required to be paid to the Scheme under this Trust Deed or the KiwiSaver Act; or

(b) in respect of Contributions that were otherwise paid to the Scheme in error;

may be treated as void unless a Member has altered his or her position in good faith to the Member's detriment in reliance on the validity of those Units (in circumstances where relevant law does not require the Units to be treated as void).

5.12 **Refunds and void allotments**

In respect of the voidance of Units under clause 5.10 or clause 5.11, the Manager shall, subject to the requirements of the KiwiSaver Act and the Scheme Provider Agreement, as soon as practicable refund the value of those Units. The refund shall be paid to the Commissioner in the case of any Contribution paid to the Scheme by the Commissioner in respect of a Member or group of Members that:

(a) exceeded the amount required to be paid to the Scheme under this Trust Deed or the KiwiSaver Act, or was otherwise paid to the Scheme in error; or

(b) is a Contribution in respect of which a refund is otherwise permissible under this Trust Deed and the KiwiSaver Act.

Where money has been refunded pursuant to this clause 5.12, subject to compliance with relevant law and maintenance of equity as between Members, the Manager shall have all powers necessary to restore the Scheme to the position it would have been in if the Units determined to be void had never been issued.

5.13 **Part Units etc.**

For the purposes of this clause 5, the Manager may at any time and from time to time:

(a) create and cancel part Units; and

(b) consolidate or divide Units;

In each case in such manner as the Manager may determine from time to time.
6 Valuations

6.1 Net Asset Value of Fund

Pursuant to clause 10.3, the Manager shall calculate the Net Asset Value of each Fund as frequently as the Manager may consider necessary or desirable from time to time (but at least once every 5 Business Days, or at such longer intervals as the Manager may determine from time to time subject to the Supervisor's prior agreement, which shall not be unreasonably withheld) by deducting the liabilities attributable to that Fund from the market value of its assets (other than the Tax Bank Account Balance and the Subscription Bank Account Balance to the extent they have been included in the market value of its assets).

6.2 Determining Market Value

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

6.3 Determining liabilities

For the purpose of determining the Net Asset Value of a Fund under clause 6.1, the Manager shall determine the liabilities attributable to the Fund on such basis as the Manager considers to be fair and equitable having regard to generally accepted accounting practice as defined by the Financial Reporting Act 2013 (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and in doing so may (subject to clause 12.2):

(a) apportion the liabilities of the Scheme generally among the Funds on such basis as the Manager considers appropriate and fair and equitable for Members; and

(b) take account of each debt, liability, provision, cost, charge, expense, outgoing, Tax obligation or other matter as the Manager considers appropriate;

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

11 Section 135(1)(d) of the FMCA.
6.4 Reliance by Supervisor

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

7 Contributions12

7.1 Contributions that must be accepted

Members and employers shall contribute to the Scheme in accordance with Part 3 of the KiwiSaver Act and, subject to clauses 7.3 and 7.4, the Manager shall accept:

(a) Contributions required to be made to the Scheme by or in respect of a Member via the Commissioner under the KiwiSaver Act, unless the Manager has reasonable cause to believe that:
   (i) those Contributions have not been correctly deducted or remitted to the Scheme in terms of Part 3 of the KiwiSaver Act; or
   (ii) the Commissioner has not provided, with respect to those Contributions, the information required under section 79 of the KiwiSaver Act;

(b) Crown Contributions;

(c) Contributions required to be made to the Scheme by or in respect of a Member under a Participation Agreement; and

(d) amounts transferred from another KiwiSaver Scheme or Retirement Scheme in respect of a Member in accordance with subpart 3 of Part 2 of the KiwiSaver Act.

7.2 Contributions that may be accepted

The Manager may accept, but shall not be required to accept, Contributions and monies payable to the Scheme by or in respect of a Member other than those referred to in clause 7.1, including (without limitation) Contributions made via the Commissioner pursuant to subpart 3 of Part 3 of the KiwiSaver Act. The Manager may impose additional fees on a Member for the acceptance of any Contributions payable to the Scheme as voluntary lump sums.

7.3 Conditions for acceptance

Without limiting clause 7.2, the Manager may require that any amount contributed or transferred to the Scheme by or in respect of a Member other than in terms of clauses 7.1(a) to 7.1(c):

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12 Section 135(1)(c) of the FMCA.
(a) must be no less than such minimum amount as the Manager may set from time to time; and

(b) must be made in New Zealand currency;

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

7.4 Small contributions

Without limiting any other provision of this clause 7, if the Commissioner and the Manager have agreed under section 77(1) of the KiwiSaver Act on a minimum threshold for the payment of Contributions to the Scheme then (for the avoidance of doubt) the provisions of this clause 7 shall apply subject to the terms of that agreement.

7.5 Receipt of contributions

Contributions received by (or on behalf of) the Manager shall be paid into a bank account established under clause 13.6 and shall be held pursuant to clause 2.3 of this Trust Deed.

8 Benefits

8.1 Calculation of Member’s Accumulation

Benefits shall be payable from the Scheme in accordance with the KiwiSaver Scheme Rules (which are implied in this Trust Deed under section 116 and Schedule 1 of the KiwiSaver Act) and, subject to clauses 8.2 and 26, when the Manager is required under the KiwiSaver Scheme Rules to calculate an amount representing a Member’s Accumulation, the Manager shall calculate that amount by:

(a) multiplying the Units attributable to the Accounts maintained for the Member by the relevant Unit Price or Unit Prices applying for the purpose of cancelling Units on a day no later than the next Valuation Day (except in relation to transfers from the Scheme, which shall be completed within the timeframes set out in the KiwiSaver Act and the Instrument of Appointment) after the Manager makes a final determination that a benefit should be paid; and

(b) deducting any further amount that the Manager considers appropriate to deduct with respect to costs, expenses, fees, premiums or (subject to clause 26.1) Tax payable pursuant to this Trust Deed or the relevant Participation Agreement.

13 Section 135(1)(e) of the FMCA.
8.2 **Different method of calculation**

Subject to clause 8.3, the Manager:

(a) must adopt a method of calculating the amount representing the Member’s Accumulation that is different to that set out in clause 8.1 if the Manager determines that the method does not comply with the KiwiSaver Act; and

(b) may adopt a method of calculating that amount that is different to that set out in clause 8.1 if the Manager considers that it is appropriate to do so.

8.3 **Different method of calculation must meet certain requirements**

Any different method adopted by the Manager under clause 8.2 must:

(a) comply with the KiwiSaver Act; and

(b) not be adopted until after the Manager has consulted with the Supervisor.

8.4 **Withdrawals after KiwiSaver End Payment Date**

Subject to the KiwiSaver Act, the Manager may impose such conditions and restrictions (including, without limitation, as to fees and the amounts and frequency of withdrawals) as it considers appropriate from time to time on withdrawals from a Member’s Accumulation after a Member has reached the Member’s KiwiSaver End Payment Date, or on withdrawals of amounts transferred to the Scheme from any overseas superannuation scheme.

8.5 **Member’s Accumulation not assignable**

Except as expressly provided in the KiwiSaver Act, the FMCA or otherwise required by law, a Member’s Accumulation and any future benefits that will or may become payable to a Member under the Scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.\(^{14}\)

8.6 **Transferability of entitlements**

The Manager shall effect transfers to or from the Scheme in accordance with the requirements of the KiwiSaver Act and the FMCA.\(^{15}\)

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\(^{14}\) Section 127(1) of the KiwiSaver Act and 135(1)(a) of the FMCA.

\(^{15}\) Subpart 3 of Part 2 of the KiwiSaver Act, the KiwiSaver Scheme Rules and sections 178 to 182 of the FMCA.
9 Participating Employers

9.1 Participation Agreements
The Manager and an employer may enter into an agreement that prescribes conditions on which all or any of the employer’s employees may become Members of the Scheme, including conditions relating to:

(a) any Contributions payable by the employer in addition to those required under subpart 3A of Part 3 of the KiwiSaver Act;

(b) the Funds (including the default Fund) applicable to those Members, provided that the employer may from time to time direct the Manager to make changes in that regard and those directions shall not be treated as amendments to the agreement; and

(c) such other matters as the Manager and employer consider appropriate, including the provision of additional benefits under any policy of insurance and the manner (and consequences) of terminating the employer’s obligations under the agreement;

and designates the participation arrangement in such manner as the Manager considers appropriate, and the Manager and the employer may amend that agreement from time to time by instrument in writing.

9.2 Terms of Participation Agreement prevail
Subject to clause 9.3, in the event of any conflict or inconsistency between the terms of a Participation Agreement and the other terms contained in this Trust Deed, the terms of the Participation Agreement shall prevail.

9.3 KiwiSaver Act prevails
Notwithstanding any other term in this Trust Deed, no term in a Participation Agreement may be contrary to the requirements of the KiwiSaver Act and any such term shall be void to the extent that it is contrary.

9.4 Cessation of employment with Participating Employer
If a Member ceases to be employed by a Participating Employer without a new employer agreeing to assume the obligations of the former employer under the relevant Participation Agreement, or if the Member’s employer otherwise ceases to participate in the Scheme under a Participation Agreement, then the provisions of any relevant Participation Agreement shall cease to apply to the Member and:

(a) except to the extent that the Manager otherwise determines, the balance in any Account that was established and maintained for the Member under the relevant Participation Agreement (or otherwise by reason of the employer’s Contributions) will be transferred to another Account established and maintained for the Member under clause 4.1; and
(b) the terms and conditions prescribed for the Member's continuing membership of the Scheme may be modified, subject to the KiwiSaver Act and this Trust Deed, in such manner and to such extent as the Manager considers appropriate;

and the Member shall be notified accordingly.

9.5 Termination of employer participation by Manager

Unless otherwise specified in any relevant Participation Agreement, the Manager may by giving not less than 60 Business Days' notice in writing to an employer:

(a) require the employer, if the Scheme is its Employer's Chosen KiwiSaver Scheme, to notify the Commissioner:

(i) under section 47(2)(b)(ii) of the KiwiSaver Act, that the employer no longer has an Employer's Chosen KiwiSaver Scheme; or

(ii) if the employer prefers, of an alternative choice of Employer's Chosen KiwiSaver Scheme (under section 47(2)(b)(i)); and

(b) determine that the provisions of any relevant Participation Agreement have ceased to apply to the Members employed by that employer (in which case the terms and conditions prescribed for those Members' continuing membership of the Scheme may be modified, subject to the KiwiSaver Act and this Trust Deed, in such manner and to such extent as the Manager considers appropriate).

9.6 Wind-up of Scheme

If the Scheme is wound up then each Participating Employer shall be treated as having terminated that Participating Employer's obligations under the relevant Participation Agreement on the effective wind-up date (and the relevant Account balances shall be dealt with accordingly).

9.7 Employer contributions

Unless otherwise specified in a Participation Agreement the Participating Employer's Contributions shall, so far as reasonably practicable, be made at the same time as Contributions are deducted from the salary or wages of the relevant Members.

9.8 Execution of Participation Agreements

A Participation Agreement may be executed in any number of counterparts, each of which is to be deemed an original, but all of which taken together shall constitute the same instrument.

9.9 Participating Employer's Indemnity

By its entry into a Participation Agreement, each Participating Employer shall indemnify the Supervisor and the Manager against any costs, expenses or other
liabilities of any type whatsoever that are incurred as a result of any breach by the Participating Employer of the KiwiSaver Act, this Trust Deed or the relevant Participation Agreement. This indemnity shall survive termination of the Participation Agreement.

10 **Management and administration of the Scheme**

10.1 **Continued appointment of the Supervisor**

The Supervisor continues as trustee of the Scheme for the purposes of the KiwiSaver Act and is the supervisor 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.\(^{16}\)

10.2 **Continued Appointment of the Manager**

The Manager continues as manager of the Scheme upon and subject to the terms and conditions contained or implied in or prescribed pursuant to this Trust Deed, the FMCA and any other applicable legislation, and will observe and perform the manager obligations under this Trust Deed and the FMCA.

10.3 **Manager’s responsibilities**

The Manager is designated as the manager of the Scheme for the purposes of the KiwiSaver Act and is responsible for performing the functions for which responsibility is attributed to it as manager under the FMCA.\(^ {17}\)

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

(a) admitting Participating Employers;

(b) establishing and maintaining the Register, and maintaining records for all Accounts, in accordance with the requirements of the FMCA;\(^ {18}\)

(c) arranging for the receipt and acceptance of Contributions and other monies payable to the Scheme in accordance with clause 7.5;

(d) providing Members with information, notices and disclosures required to be given to them under the FMCA;\(^ {19}\)

(e) keeping complete and accurate records of all investments of the Scheme and each Fund;

(f) effecting switches between Funds pursuant to clause 12.4;

\(^{16}\) Section 152 of the FMCA.

\(^{17}\) Sections 133 and 142 of the FMCA.

\(^{18}\) Subpart 4 of Part 4 of the FMCA.

\(^{19}\) Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.
(g) discharging its obligations under clauses 5, 6 and 8 with respect to unitisation, valuations and benefit calculations;

(h) 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 KiwiSaver Act, 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);

(i) subject to the requirements of the KiwiSaver Act, determining whether benefits are payable and arranging for the payment of benefits to or in respect of Members, and for transfers to other KiwiSaver Schemes and Retirement Schemes;

(j) appointing and engaging solicitors and other consultants, advisers, investment managers, and administration managers on such terms as the Manager determines, and the Auditor, subject to the terms in clause 27.1;

(k) 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 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;\(^{20}\)

(l) altering a Member's Accumulation to address partly or entirely the impact of any unit pricing error\(^{21}\) provided such alteration does not adversely affect the relevant Member's Accumulation 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;

(m) 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 setoffs have been made under clause 10.3(1) 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;\(^{22}\)

(n) ensuring compliance by the Scheme with the requirements of the KiwiSaver Act, the FMCA, the Financial Reporting Act 2013 and other applicable legislation, provided that no PDS may be registered or distributed unless it has been provided to the Supervisor for review in accordance with the Management Agreement;

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\(^{20}\) Sections 147 to 151, 167 and 168 of the FMCA and Regulations 83, 94 to 98 and 100 of the FMCA Regulations.

\(^{21}\) Section 168(2) of the FMCA.

\(^{22}\) Section 168 of the FMCA and Regulation 99 of the FMCA Regulations.
(o) ensuring compliance by the Scheme with all Tax obligations, and with any Tax – related requirements prescribed in an Instrument of Appointment;

(p) maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA;\(^{23}\)

(q) discharging all of the obligations of the scheme provider under the Scheme Provider Agreement;

(r) 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\(^ {24}\)

(s) 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, the FMCA and the KiwiSaver Act.

10.4 **Supervisor’s duties**

The Supervisor, in exercising its powers and performing its duties as the supervisor of the Scheme, must comply at all times with its duties under the FMCA.\(^ {25}\)

10.5 **Manager’s duties**

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.\(^ {26}\)

10.6 **Delegation by Manager**

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

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

The Manager may appoint in respect of the Scheme:

(a) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Scheme;

\(^{23}\) Section 459 of the FMCA.

\(^{24}\) Sections 461A, 461D and 461H of the FMCA, and Regulations 62 and 63 of the FMC Regulations.

\(^{25}\) Sections 153 to 155 and 160 of the FMCA.

\(^{26}\) Sections 143 to 151 of the FMCA.
(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 13.4 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.27

11 Reimbursement of Expenses of the Scheme

All costs, expenses, fees, premiums and (subject to clause 26) Tax payable by or to the Supervisor or the Manager in relation to the management and administration of the Scheme and which are to be paid out of the assets of the Scheme may be charged to a particular Member’s Account or Accounts, in such manner as the Manager considers fair and equitable. Where those amounts payable from the assets of the Scheme relates to more than one Fund, that amount shall be apportioned between those Funds on such fair and equitable basis as the Manager determines.

12 Establishment of Funds

12.1 Separate Funds

(a) The Manager may establish separate Funds within the Scheme, designed to enable Members to have their savings invested by reference to particular asset classes or mixes of asset classes on such terms and conditions determined by the Manager. The terms and conditions as set by the Manager must include a written SIPO for the Scheme which covers each Fund and complies with the requirements of the FMCA,28 which SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA29, 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.30

(b) This clause 12.1 shall not be construed so as to prohibit the Manager from transferring amounts between Funds to accommodate the Scheme being a single taxpayer.

27 Sections 135(1)(f), 146 and 172 to 175 of the FMCA.
28 Section 164 of the FMCA.
29 Section 164 of the FMCA.
30 Sections 165 and 166 of the FMCA.
12.2 Single trust fund

Notwithstanding the establishment of separate Funds within the Scheme pursuant to clause 12.1, the assets of the Scheme shall comprise a single trust fund, but without prejudice to the generality of the foregoing the value of each Member’s Accumulation shall be determined by reference to the value of the Units held by the Member in relation to a Fund or Funds and:

(a) all liabilities incurred in relation to a Fund shall be met in the first instance from the assets held for that Fund;

(b) the liabilities incurred in relation to a Fund may be met from other Scheme assets (and in such equitable manner as the Manager, with the Supervisor’s approval, sees fit) only if, and to the extent that, the assets held for that Fund are insufficient to meet such liabilities;

(c) except to the extent necessary (pursuant to clause 12.2(b)) to meet liabilities incurred in relation to another Fund, all investments made with the moneys of a Fund shall be held by the Supervisor or the Custodian appointed in accordance with clause 14.2;

(i) exclusively for that Fund; and

(ii) for the exclusive benefit of the Members who have interests in that Fund;

provided that the Manager may (subject to clause 27.1) transfer value between Funds to accommodate the Scheme being a single taxpayer;

(d) pursuant to clause 10.3, the Manager shall keep separate records and accounts in respect of each Fund and (subject to this clause 12.2) shall not permit the assets or liabilities relating to any Fund to become intermingled with those relating to any other Fund, provided that nothing in this subclause shall prevent the assets held in any Fund being lent to, deposited with or invested in another Fund; and

(e) the provisions of this Trust Deed relating to the indemnities in favour of the Supervisor and the Manager, the fees payable to the Supervisor and the Manager and the other costs, expenses, fees, premiums and Taxes payable in relation to the management and administration of the Scheme shall be construed such that:

(i) any amount payable from the assets of the Scheme shall (subject to this clause 12.2) be payable from the assets held for the Fund or Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Funds); and

(ii) where any amount payable from the assets of the Scheme relates to more than one Fund, that amount shall be apportioned between those Funds in accordance with clause 11.
12.3 **Winding up or alteration of Funds**

The Manager may close, wind up or alter any Fund on such terms and conditions as it thinks fit, subject to providing prior written notice to the Supervisor (unless providing prior notice is not reasonably practicable in the circumstances).

12.4 **Member entitled to choose Fund(s)**

Subject to clause 12.5, a Member shall be entitled to choose the Fund or Funds in which the Member’s savings will be invested from time to time.

12.5 **Restrictions on choosing Fund(s)**

In exercising their choice under clause 12.4, Members shall comply with all rules prescribed by the Manager from time to time regarding:

(a) the maximum number of Funds that may be chosen in respect of any Member;

(b) the minimum amounts that may be invested in any Fund in respect of any Member, provided that any rules prescribed by the Manager regarding such minimum amounts must be consistent with the requirements of the KiwiSaver Act;

(c) changing their choice of Funds (in relation to either amounts already invested or amounts to be invested in the future);

(d) the manner in which choices should be communicated; and

(e) any other matters relating to the choice of Funds by Members.

12.6 **Effect of Fund choice**

The choice of a default Fund by an employer and the choice of a Fund or Funds by a Member under clauses 12.4 and 12.7 shall each be directions given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956, and the investment obligations of the Manager or the Supervisor under the Trust Deed shall constitute a contrary intention for the purposes of sections 2(5) and 2(5A) of the Trustee Act 1956. However, any direction by an employer or a Member in terms of this clause will not exempt the Manager from its responsibilities under the FMCA.31

12.7 **Winding up a Fund**

If a Fund is wound up under clause 12.3, the Manager must notify each Member holding Units in that Fund, specifying the Fund to which the Member will be deemed to have elected to transfer the relevant amount if no choice of replacement Fund is exercised within the period prescribed in the notice.

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31 Section 144 of the FMCA.
12.8 Instrument of Appointment prevails

The provisions of this clause 12 shall, for the avoidance of doubt, be subject at all times to the provisions of any Instrument of Appointment, including as to the Default Investment Product required for the Scheme from time to time under that Instrument of Appointment.

13 Manager's powers to invest

13.1 Investment directions by the Manager

Subject to this clause 13 and to compliance with the Scheme's SIPO which covers the relevant Fund, the Manager shall manage the investments of the Scheme and each Fund and may, in order to perform its function under clause 10.3 and the FMCA,\textsuperscript{32} direct the Supervisor, or a Custodian on behalf of the Supervisor, in writing to:

(a) purchase, acquire, sell, transfer or dispose of investments and property;

(b) enter into any commitments or liabilities in respect of investments and property;

(c) execute and deliver such contracts or other instruments as may be necessary in respect of the foregoing; and

(d) take any other action which may be required in respect of investments and property;

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

13.2 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\textsuperscript{33} 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 13.2(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.\textsuperscript{34}

\textsuperscript{32} Section 142 of the FMCA.
\textsuperscript{33} Section 160 of the FMCA.
\textsuperscript{34} Section 160 of the FMCA.
Subject to clause 15.7, 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.

13.3 Advisers
In relation to the purchase or sale of, or any other dealing with, any investment, the Manager may determine the time and mode of, and the consultants, agents, brokers and professional advisors (if any) for, the purchase, sale or other dealing. The Manager may agree to pay out of the assets of the Scheme all reasonable expenses of such advisers.

13.4 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.\(^{35}\)

(b) The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit, in accordance with the Management Agreement.

(c) Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or any Member for any profit arising from any such transaction.

(d) A failure to comply with clause 13.4(a) does not affect the validity of a transaction (subject to any Court order to the contrary).\(^{36}\)

13.5 Investments in Supervisor's or Custodian's name
The Manager shall cause investments and property to be:

a) vested in the Supervisor or a Custodian; and

b) registered in the name of the Supervisor (or, if applicable, such Custodian),

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

13.6 Bank accounts
A separate bank account or accounts in the name of the Supervisor or a Custodian appointed in accordance with clause 14.2 must be opened and maintained for each Fund or, if the Manager and the Supervisor agree, for the Scheme. All moneys held for the relevant Fund, or the Scheme, shall be paid to the credit of such bank account or bank accounts. The Supervisor shall determine the persons authorised to operate such bank accounts.

\(^{35}\) Sections 172 to 175 of the FMCA.

\(^{36}\) Section 173(6) of the FMCA.
13.7 Subscription Bank Account

A separate bank account or accounts outside the Scheme, in the name of the Supervisor or a Custodian appointed in accordance with clause 14.2, must 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 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.

13.8 Tax Bank Account

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

(a) The following payments will be made into the Tax Bank Account as and when directed by the Manager:

(i) any amounts deducted on account of the PIE Tax Liability;

(ii) any rebates 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 13.8(b)(ii); and

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

13.9 Supervisor’s right to limit liability
Before the Manager undertakes the Supervisor’s entry into any transaction, security or liability 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.

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

14 Powers of the Supervisor

14.1 General powers
The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions as supervisor of the Scheme, it must comply with its duties under the FMCA.37 In addition to any other powers granted under this Trust Deed, the FMCA or by law, but subject to the FMCA, the Supervisor may:

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

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

(c) at the direction of the Manager, borrow and raise money for any of the purposes of the Scheme on such terms and conditions as the Manager

37 Section 152 to 155 of the FMCA.
thinks fit and secure the repayment of moneys so borrowed, and interest on those moneys, by mortgage over all or any of the assets of the Scheme provided that nothing in this sub-clause (c) shall require the Supervisor to take any action which it reasonably believes would cause it to breach its obligations under any rule of law or under this Trust Deed; and

(d) do anything the Supervisor considers necessary or expedient to enable it to discharge the Supervisor's statutory duties in relation to the Scheme.

14.2 Appointment of Custodians

(a) 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. The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 14.2(a) and the FMCA with respect to the Scheme.

(b) If authorised in writing by the Supervisor (subject to obtaining the prior written approval of the Manager, which shall not be unreasonably withheld), a Custodian appointed under clause 14.2(a) 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 14.2(b) must meet the requirements for such a person under the FMCA. 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 14.2(b) and the FMCA with respect to the Scheme.

(c) The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to this clause 14.2, the fees that may be charged and the extent to which expenses will be reimbursed.

14.3 Exercise of Supervisor powers

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

35 Sections 127(1)(f) and 156 of the FMCA.
39 Sections 157 to 159 of the FMCA.
40 Section 156 of the FHCA.
41 Sections 157 to 159 of the FMCA.
15 Liability and indemnities

15.1 No personal liability of Supervisor and Manager

The Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Trust Deed for or in connection with the Scheme, are and are deemed to be each acting for and on behalf of the Scheme and not in their own respective capacities, and neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation or claim relating to the Scheme and only the assets of the Scheme are available for that purpose.

15.2 Indemnification from Scheme assets

Subject to the indemnity limitations under the FMCA, if, contrary to the provisions of clause 15.1, either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Scheme or any action taken or omitted, for or in connection with the Scheme, then the Supervisor or the Manager (as applicable) is entitled to indemnity and reimbursement out of the assets of the Scheme to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined (including, without limitation, legal fees and disbursements).

15.3 Power to indemnify investment managers and administration managers

The Manager may agree:

(a) to limit the liability (in connection with its services in respect of the Scheme) of; and/or

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

15.4 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

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42 Sections 135(1)(f) and 136(1)(b) of the FMCA.
43 Section 135(1)(f) and 136(2) of the FMCA.
(b) to indemnify and reimburse out of the Scheme's property,

any Custodian appointed in respect of the Scheme, to the fullest extent permitted by the FMCA, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or any action taken or omitted to be taken in connection with the Scheme (including without limitation, legal fees and disbursements). 44

15.5 Reimbursement of Supervisor and Manager

Subject to the indemnity limitations under the FMCA, 45 the Supervisor and the Manager are each entitled to be reimbursed out of the assets of the Scheme (whether from income or capital or both), and to the extent applicable from particular Funds, for and in respect of all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as applicable) under this Trust Deed including, without limitation, any expense, cost or liability which may be incurred by the Supervisor or the Manager (as applicable) in bringing or defending any action or suit in respect of the Scheme. 46

15.6 Reliance on Manager by Supervisor

Subject to the provisions of the FMCA, KiwiSaver Act 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).

15.7 Indemnity Limitations

No provision of clauses 15.1 to 15.4, 15.12 and 15.13 has the effect of exempting the Supervisor or the Manager or any director or officer of the Supervisor or the Manager from, and no provision of this Trust 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, 47 KiwiSaver Act or any other statute.

15.8 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

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

45 Sections 135(1)(f) and 136(1)(b) of the FMCA.

46 Section 135(1)(f) of the FMCA.

47 Section 136 of the FMCA.
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 clause 15.8, the Supervisor and/or the Manager may also engage an expert in accordance with the requirements of the FMCA.\textsuperscript{48}

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

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

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

15.10 Manager’s discretion and authority
Except as otherwise expressly provided in this Trust Deed or required by law, the Manager has absolute and uncontrolled discretion as to the exercise of all the powers, authorities and discretions vested in it by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to the Supervisor and the approval of or supervision by the Supervisor whenever required.

15.11 Supervisor’s discretion and authority
Except as otherwise expressly provided in this Trust Deed or required by law, the Supervisor has absolute and uncontrolled discretion as to the exercise of all the powers, authorities and discretions vested in it by this Trust Deed, whether in relation to the manner or as to the mode of and time for their exercise.

15.12 Supervisor’s limited liability to Members
Notwithstanding anything contained in this Trust Deed but subject to the indemnity limitations under the FMCA\textsuperscript{49}, in no event is the Supervisor bound to make any payment to Members except out of the assets of the Scheme or to be liable to the Members to any greater extent than the investments vested in or received by the Supervisor in accordance with this Trust Deed.

\textsuperscript{48} Section 155 of the FMCA.

\textsuperscript{49} Section 153 and 154 of the FMCA.
15.13 **Reliance upon apparently genuine documents**

Neither the Manager nor the Supervisor is liable for any action taken or thing suffered by the Manager or the Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

16 **Remuneration of Supervisor**

16.1 **Supervisor's annual fee**

Subject to the KiwiSaver Act, the Supervisor will be paid such annual fee, calculated daily and payable quarterly in arrears, as the Supervisor and the Manager may agree from time to time. That fee shall, subject to any agreed minimum annual fee, be determined and expressed as a percentage of the Net Asset Value comprised in each respective Fund (which percentage may differ between Funds). The fee may be deducted from the assets of that Fund or paid by cancelling Units in the relevant Members’ Accounts.

16.2 **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. Any fee agreed or fixed by arbitration under this clause shall comply with the KiwiSaver Act.

16.3 **Special fees**

In addition to the fee payable to the Supervisor under clause 16.1, the Supervisor is entitled (subject to the KiwiSaver Act) 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).

16.4 **Goods and Services Tax etc**

The Supervisor is entitled to receive, in addition to the fees referred to in this clause 16, any goods and services tax or duty or similar Tax payable in respect of such fees.

17 **Remuneration of Manager**

17.1 **Management fee**

Subject to the KiwiSaver Act, the Manager may charge for its services with respect to the Scheme any or all of the following management fees (in each case

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50 Section 135(1)(f) of the FMCA.

51 Section 135(1)(f) of the FMCA.
in such amounts as the Manager shall determine and notify to the Supervisor in writing from time to time):

(a) annual and other fees which are:

(i) calculated daily and payable monthly in arrears;

(ii) expressed as percentages of the Net Asset Value in each respective Fund; and

(iii) paid from the assets of the Scheme by way of either deduction from the assets of each Fund or the cancellation of Units from Members’ Accounts in such manner as the Manager determines at its discretion; and

(b) monthly and other fees, which are expressed in dollar terms and apportioned among each Member’s Accounts in such manner as the Manager determines at its discretion; and

(c) additional fees (including transaction fees, however expressed) charged to the Members (including, for the avoidance of doubt, individual Members) or the Scheme.

17.2 Alteration or waiver of fees

The Manager may, in respect of the Scheme and either generally or in respect of any particular Member or Members, waive part or all of any management fee or decrease any management fee and (subject to rule 2 of the KiwiSaver Scheme Rules and the KiwiSaver Act\(^2\)) the Manager may:

(a) increase the management fees payable in respect of the Scheme or Fund or by the relevant Members; or

(b) provided that any such fee is permitted under this Trust Deed, commence charging any such fee which is not currently being charged.

17.3 Goods and services tax etc

The Manager is entitled to receive, in addition to the fees referred to in this clause 17, any goods and services tax or duty or similar Tax payable in respect of such fees.

18 Amendments

18.1 General

Subject to the KiwiSaver Act, the FMCA and clause 18.2, this Trust Deed may at any time be amended by deed executed by the Manager and the Supervisor.\(^3\)

\(^2\) Section 117 to 119 of the KiwiSaver Act.

\(^3\) Section 139 of the FMCA.
18.2 **State Sector Act compliance**

The Manager and the Supervisor may not make any amendment to this Trust Deed that would result in any provision of paragraphs (b) to (g) of section 84B of the State Sector Act 1988 ceasing to apply to the Scheme.

19 **Appointment and removal of Supervisor**

19.1 **Appointment**

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.54

19.2 **Removal**

(a) Subject to clause 19.4, the Manager may remove the Supervisor from office with the FMA's prior consent:

(i) with immediate effect, by giving the Supervisor written notice of such removal, if the Manager reasonably believes that the Scheme will be adversely affected if the Supervisor continues to hold office (such notice to specify the grounds on which the Manager has formed this belief); and

(ii) otherwise upon giving the Supervisor not less than six months' written notice of such removal.

(b) Subject to clause 19.4, the Supervisor may be removed from office otherwise in the circumstances prescribed in the FMCA.55

(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


19.3 **Retirement**

Subject to clause 19.4 and to all applicable laws, the Supervisor may retire at any time upon giving the Manager not less than three months' written notice of such retirement.

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54 Section 127(1)(d) of the FMCA.
55 Section 193(1) of the FMCA.
19.4 **Restrictions on removal/retirement**

No removal or retirement under clause 19.2 or clause 19.3 will take effect unless:

(a) the requirements for such removal or retirement, and for any new supervisor under the FMCA or any other applicable legislation have been met;

(b) any new supervisor has executed the deed referred to in clause 19.6; and

(c) all of the investments of the Scheme have been transferred to the new supervisor, or a custodian(s) which 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.

19.5 **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.

19.6 **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 Trust Deed from the date of such appointment.

19.7 **Release of supervisor**

From the date of execution by the new supervisor of a deed in accordance with clause 19.6, the retiring supervisor is absolved and released from all such covenants under this Trust 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 Trust Deed in all respects as if such supervisor had been originally named as a party to this Trust Deed.

19.8 **Appointment not exclusive**

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

20 **Appointment and removal of Manager**

20.1 **Appointment**

The Scheme shall have a manager, who:

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

56 Section 193(2) of the FMCA.
(b) must otherwise be a person entitled in accordance with the FMCA\(^{57}\) and otherwise by law to act as the manager of the Scheme.

20.2 **Removal**

The Manager shall be removed from office in the circumstances set out in the FMCA.\(^{58}\)

20.3 **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).

20.4 **Restrictions on retirement**

No removal or retirement under clause 20.2 or clause 20.3 will take effect until a new manager that is qualified for appointment under clause 20.1 has been appointed pursuant to clause 20.5.

20.5 **New Manager appointment**

(a) The power to appoint a temporary manager under the FMCA\(^{59}\) 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.

20.6 **Release of manager**

Subject to all applicable laws,\(^{60}\) from the date of appointment of a new manager, the retiring Manager is absolved and released from all such covenants under this Trust 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 Trust Deed.

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\(^{57}\) Sections 127(1)(c) and 135(1)(h) of the FMCA.

\(^{58}\) Sections 185, 209 and 210 of the FMCA.

\(^{59}\) Sections 186, 187, 189 and 191 of the FMCA.

\(^{60}\) Section 191 of the FMCA.
20.7 **Appointment not exclusive**

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

20.8 **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.\(^{61}\)

21 **Winding up of the Scheme**

21.1 **Triggering wind-up**

The Scheme shall be wound up if the Manager resolves in writing 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.\(^{62}\) If the Manager resolves in writing that the Scheme is to be wound up then the Manager shall, as soon as practicable after passing that resolution, provide a copy of the resolution to the Supervisor, and the wind-up shall take effect on the date specified for that purpose in the resolution. The provisions of the FMCA and the KiwiSaver Act\(^{63}\) relating to the winding up of the Scheme shall apply to the winding up of the Scheme.

21.2 **Termination of Participation Agreements**

If the Scheme is wound up then each Participating Employer shall be treated as having terminated that Participating Employer’s obligations under the relevant Participation Agreement on the effective wind-up date (and the relevant Account balances shall be dealt with accordingly).

22 **Members bound by this Trust Deed**

22.1 **Provisions benefit Members**

Except where this Trust Deed expressly provides otherwise or the context otherwise requires, the terms and conditions of this Trust Deed are for the benefit of and binding on each Member and legally enforceable as between the Manager, the Supervisor and Members (including, for the avoidance of doubt, any Member admitted to membership of the Scheme pursuant to clause 3.1(a)) and all persons claiming through each Member, as if the Member had been party to and had executed this Trust Deed.\(^{64}\)

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\(^{61}\) Section 190 of the FMCA.

\(^{62}\) Sections 195 and 211 of the FMCA.

\(^{63}\) Sections 171, 212 and 213 of the FMCA, and sections 50 to 52 and subpart 3 of Part 2 of the KiwiSaver Act.

\(^{64}\) Section 137 of the FMCA.
22.2 **No interference in management**

Subject to the rights created for Members by this Trust Deed, no Member shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or either of them by this Trust Deed or in respect of all or any of the assets of the Scheme, or to exercise any right, power or privilege in respect of any investment comprised in a Fund.

23 **Limitation of liability of Members**

23.1 **No personal obligation to indemnify**

Except as expressly provided by this Trust Deed, no Member is, by reason solely of being a Member or of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency in the assets of the Scheme as compared with the liabilities to be met from those assets.

23.2 **Limited recourse to assets of the Scheme**

Subject to clause 26.3, the rights (if any) of the Supervisor or Manager or of any creditor to seek indemnity are limited to having recourse to the assets of the Scheme and do not extend to a Member personally in such person’s capacity as a Member.

23.3 **No liability to contribute to any shortfall**

On the winding up of the Scheme, no Member will have any liability to contribute to any shortfall in the assets of the Scheme.

24 **Notices and information to Members**

24.1 **Notices**

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

(a) leaving it at the Member’s registered address; or

(b) sending it addressed to the Member at the Member’s registered address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail, prepaid post or advertisement; or

(c) subject to the member having given his or her electronic address to the Manager (as contemplated by section 219 of the KiwiSaver Act) or having otherwise consented to accept Scheme-related information in an electronic form, by means of an electronic communication.
A Member must notify the Manager of any change to the Member's registered or electronic address and the relevant Register shall be altered accordingly. Any notice given to Members by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Members in substantially the same form but with personalised details in respect of each Member, it shall be sufficient to provide the Supervisor with a sample of such a notice.

24.2 Manner of notice

Any notice sent by post will be deemed to have been given at the expiration of 2 Business Days after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Without limiting section 11(a) of the Electronic Transactions Act 2002, a notice sent by email will be deemed to have been received on the day of transmission if a confirmation of transmission or receipt is obtained (and if the date of transmission is not a Business Day, or the transmission is sent after 5 p.m. on a Business Day, then the notice will be deemed to have been given on the next Business Day after the date of confirmation of transmission).

24.3 Signature of notice

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

24.4 Calculation of notice periods

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

24.5 Receipt of notice

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

25 Notices between Manager and Supervisor

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

Pursuant to clause 10.3, 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's Tax liability or rebate, as the case may be, for the applicable calculation period, and whether (and to what extent) to take into account any Tax liability of the Scheme for the purposes of determining the liabilities of the Scheme for any period;

(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 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);

(o) the amount of any credits against income Tax payable by the Scheme that is available to the Scheme;

(p) 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);

(q) to carry out any other Tax calculations, allocations or attributions required by the Income Tax Act;

(r) to adjust a Member's Accumulation 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 Accumulation 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 permissible 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);

65 Section 170 of the FMCA.
(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 Accumulation from one Fund to
another as if the Manager had received a request to that effect from the
relevant Member;

(w) to require that before a Member is accepted into the Scheme he or she
provides their tax file number, prescribed investor rate and any other
information required by the PIE Legislation, and that at any time a Member
must confirm such details on request from the Manager;

(x) 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;

(y) 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;

(z) to pay any Member’s tax rebate before receipt of the tax rebate amount
from the Commissioner; and

(aa) 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.

26.2 Member Tax Credits

For the purposes of obtaining and administering Member Tax Credits payable to
the Scheme in respect of Members, the Manager shall (for the avoidance of doubt)
have the following powers and discretions (such powers and discretions to be
exercised having regard to the best interests of Members generally):

(a) to make claims for Member Tax Credits in accordance with relevant
legislation;

(b) to credit any Member Tax Credits paid to the Scheme in respect of a
Member to that Member’s Account, taking into account the requirements of
the Income Tax Act if necessary;
(c) to require a Member (or his or her personal representative or other relevant person for the purposes of section 65 of the Administration Act 1969) wishing to withdraw from the Scheme any amount arising from a Member Tax Credit to provide a statutory declaration stating the periods for which the Member has had his or her principal place of residence in New Zealand; and

(d) to calculate and pay to the Commissioner any amount required to be paid to the Commissioner in respect of a Member under the Income Tax Act and to make any consequential adjustment, on such basis as the Manager determines in its complete discretion, to the Member’s Account to reflect the amount of that payment.

26.3 **Attributed Tax indemnity**

If a Member’s Account balance is insufficient to meet any liability for Attributed Tax then the Member shall indemnify the Supervisor and the Manager for that shortfall.

26.4 **Changes in Tax legislation**

Without limiting clause 1.4(e), 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 26 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 Trust 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.

26.5 **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.
27 Auditor

27.1 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\textsuperscript{66} 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\textsuperscript{67} and in accordance with the Management Agreement. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis.

27.2 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.

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

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

27.4 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.

27.5 Compliance with FMCA auditor requirements
The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.\textsuperscript{68}

28 Meetings

When required by the FMCA, the Manager must call a meeting of Members in the manner and on the basis set out in the FMCA and the FMC Regulations.\textsuperscript{69} A meeting of Members shall be conducted in accordance with the requirements of the FMCA.

\textsuperscript{66} Section 461E of the FMCA.
\textsuperscript{67} Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.
\textsuperscript{68} Clauses 1 to 3 of Schedule 13 to the FMC Regulations.
\textsuperscript{69} Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.
29 Payments to Members

29.1 Method of payment
Subject to the KiwiSaver Act, any moneys payable by the Supervisor or by the Manager to a Member or the Member’s personal representative or another person pursuant to section 65 of the Administration Act 1969 under the provisions of this Trust Deed may be paid by cheque or direct credited to any bank account nominated by the Member, the Member’s personal representative, relevant agent or authorised person.

29.2 Satisfaction of moneys payable
Payment of every cheque, if duly presented and paid, and in respect of direct credits the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.

30 Law applicable
This Trust Deed shall be interpreted and administered in accordance with New Zealand law.\(^79\)

31 Changes to the law relating to managed investment schemes
It is acknowledged that this Trust Deed is drafted having regard to the provisions of the FMCA, KiwiSaver Act, the Income Tax Act and securities and other legislation relating to managed investment schemes, in each case as each applies to the Scheme at the date of drafting.

If any of the legislation referred to in this clause 31 changes after the date of this Trust Deed the Supervisor and the Manager will co-operate to make such amendments to this Trust Deed, and such other changes to the administration of the Scheme, as the Supervisor and the Manager may consider necessary or desirable in the light of the relevant changes.

32 Counterparts
This Trust 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 Trust 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 Trust Deed (such copies to be signed by all the parties) after the execution of counterparts.

\(^79\) Section 128(1)(a) of the FMCA.
Delivery

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

(a) physical delivery of an original of this Trust Deed, executed by the relevant party, into the custody of the other party or the other party’s solicitors; or

(b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a facsimile, photocopied or scanned copy of an original of this Trust Deed, executed by the relevant party, to the other party or the other party’s solicitors.
EXECUTION

Executed and delivered as a deed

AMP Wealth Management New Zealand Limited by:

[Signature]
Director

Elaine Campbell
Print Name

[Signature]
Director

Therese Singleton
Print Name
Executed on behalf of The New Zealand Guardian Trust Company Limited by

M. Tucker
Authorised Signatory

MARISA TUCKER
Print Name

In the presence of:

Margaret van Buitenen
Witness Signature

Print Name

Administrato
Witness Occupation

Wellington
Place of residence