

# Trust Deed

## AMP Managed Funds

AMP Wealth Management New Zealand  
Limited (Manager)

The New Zealand Guardian Trust Company  
Limited (Supervisor)



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## TRUST DEED – AMP MANAGED FUNDS

*Date:* 03 March 2022

### PARTIES

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

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

### BACKGROUND

- A The Manager wishes to establish a managed investment scheme, which will be known as AMP Managed Funds (*the Scheme*) and which will be made up of the initial funds set out in clause 3.1(b).
- B The Scheme shall be governed by this Deed and any further schemes or funds shall be established under the terms of an Establishment Deed.
- C The Manager will act as manager of the Scheme on the terms and conditions set out in this Deed.
- D The Supervisor has agreed to act as supervisor of the Scheme for the benefit of the Scheme Participants on the terms and conditions set out in this Deed.
- E The Manager and the Supervisor wish to record in this Deed the terms and conditions under which the Scheme is to be constituted and administered.

**BY THIS DEED** the parties agree as follows:

## 1 DEFINITIONS AND CONSTRUCTION

### 1.1 Defined terms

In this Deed, unless the context otherwise requires:

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

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

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

- (a) attributed under the Tax Act to a Scheme Participant; or
- (b) determined by the Manager to be attributable to a Scheme Participant.

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

*Borrow* means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other

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



financial instruments, or otherwise howsoever, whether in New Zealand currency or any other currency and *Borrowing* and *Borrowed* have a corresponding meaning;

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

*Cash* includes all forms of electronic payments, including deposits in a bank account which may be made electronically;

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

*Custodian* means, in relation to a Fund, a person appointed to hold the Assets under clause 13.4 and includes, to the extent the context permits, any sub-custodian appointed by the custodian to hold such Assets under clause 13.4;

*Distributable Amount* means, in relation to a class of Units, the amount per Unit determined by the Manager as being the amount to be distributed to the Scheme Participants holding those Units from the relevant Fund in accordance with the terms of issue of the Units in that class;

*Distribution Account* means, in relation to a Fund, the account to which Distributable Amounts may be transferred pursuant to clause 19.2(a);

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

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

*Establishment Deed* means any establishment deed in respect of a New Scheme or a New Fund prepared in accordance with clause 4.8, as any such deed may be amended from time to time;

*Exit Fee* means, in respect of Units which are to be redeemed in a Scheme or Fund, any fee specified in the relevant PDS or offering document as an amount or percentage of the Units' Withdrawal Amount which is to be payable as a result of the withdrawal of the relevant Withdrawal Amount;

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

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

*Fractional Unit* means part of a Unit;

*Fund* means, in respect of a Scheme, each fund constituted under the provisions of this Deed in respect of that Scheme. For the avoidance of doubt, where a Scheme is established without Funds, the Scheme shall constitute a single Fund;

*Liabilities* means, in relation to a Fund, all liabilities of the Fund and any provision which the Manager decides should be taken into account in determining the liabilities of the Fund, but excluding any amount which results from treating Units as liabilities and, in the case of a Scheme or Fund which is a PIE, where the Manager, in its complete discretion considers it appropriate to do so, any PIE Tax Liability;

*Management Agreement* means the agreement between the Supervisor and the Manager entered into on 9 July 2021 which sets out the Manager's reporting obligations and other agreements in respect of the Scheme from time to time;

*Management Fee* means, in relation to a Fund, the fee for managing that Fund determined in accordance with clause 20.1;

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

*Minimum Unitholding Balance* means, in relation to a Fund or class of Units, such dollar amount or amounts as the Manager may determine from time to time in respect of the Fund or class;

*Net Asset Value* means, in relation to a Fund, such amount as is from time to time ascertained by the Manager in respect of that Fund in accordance with clause 18;

*New Fund* means any Fund established by an Establishment Deed under clause 4.8;

*New Scheme* means any scheme established by an Establishment Deed under clause 4.8;

*Offering Document* means any information memorandum, other material information uploaded to the Disclose register or any advertisement;

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

*PIE Tax Liability* means, in respect of a Fund or a Scheme that is a PIE, the Tax liability for the Fund or Scheme as calculated under the Tax Act;

*Portfolio Investment Entity* or *PIE* means a portfolio investment entity as defined in the Tax Act;

*Prescribed Investor Rate* has the same meaning as in the Tax Act;

*Record Date* means, in relation to a Fund, a time and date determined by the Manager for the purpose of determining the persons presently entitled to a Distributable Amount in respect of that Fund;

*Register* means, in respect of a Scheme, the register of Scheme Participants maintained for the Scheme pursuant to the FMCA;<sup>2</sup>

*Registrar* means, in relation to a Scheme, any person appointed by the Manager pursuant to clause 9.2;

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

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

*Scheme* means the managed investment scheme established by this Deed, known as the AMP Managed Funds, or any other scheme established under this Deed;

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

*Security Interest* has the same meaning as in the Personal Property Securities Act 1999;

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

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

*Subscription Bank Account* means, in relation to a Scheme or a Fund, a bank account used to hold subscriptions or withdrawal proceeds for that Scheme or that Fund in the name of the Supervisor or a Custodian in accordance with clause 17.11;

*Supervisor* means The New Zealand Guardian Trust Company Limited or such other person who is for the time being appointed as supervisor of the Scheme pursuant to

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

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

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

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

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

this Deed, and, where the context requires or allows, this term includes any Custodian;

*Suspension Notice* means a notice given by the Manager under clause 7.13(a);

*Tax* means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties, including any PIE Tax Liability;

*Tax Act* means the Income Tax Act 2007 and, where relevant, the Tax Administration Act 1994;

*Tax Bank Account* means, in relation to the Scheme, the bank account established by the Supervisor or its Custodian and managed by the Manager for that Scheme in accordance with clause 17.12;

*Tax Credit* means a credit against a person's tax liability provided for under the Tax Act, or any other similar credit and includes, in the case of a Fund or a Scheme that is a PIE, a refund payable to the Fund or the Scheme in respect of losses or excess tax credits which is attributable to a Scheme Participant;

*Tax File Number* has the same meaning as in the Tax Act;

*Transaction* means the:

- (a) Issue of Units; or
- (b) Withdrawal of Units; or
- (c) or any one or more of those events, as is applicable in the context;

*Trusts Act* means the Trusts Act 2019;

*Unit* means, in relation to a Fund, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units, an undivided share in the beneficial interest in the Fund;

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

*Unitholding Balance* means, at any time in relation to a Unitholding, the Scheme Participant's Unitholding at that time multiplied by the Unit Price of those Units at that time;

*Unit Price* means, in relation to a Unit, such amount as is ascertained by the Manager in accordance with clause 6.6;

*Unpaid Amount* means, in relation to a Unit, any amount of the Unit Price which:

- (a) has not been paid or credited; or
- (b) has been reversed and remains unpaid; or
- (c) is otherwise not satisfied under this Deed; or
- (d) is due and payable to the Manager or the Supervisor in respect of a Unit;

*Valuation Date* means, in relation to a Fund, a date at which the Manager calculates the Unit Price in respect of the Fund in accordance with clause 18.1;

*Winding Up Entitlements* means, in respect of a Scheme or a Fund being wound up, and a Scheme Participant, Assets (including, where relevant, Cash) equal in value to the proportion of the Scheme's or Fund's Assets after allowing for the deduction of all amounts under clauses 31.5 and 31.7, which is equal to the proportion of Units held by the Scheme Participant in the relevant Scheme or relevant Fund, reduced by other deductions permitted by this Deed;

*Withdrawal Amount* means the amount of the proceeds of a redemption of Units which the Scheme Participant wishes to receive (or to be paid to another person) as a result of the redemption (before any deduction from, or credit to, such Withdrawal Amount in accordance with this Deed);

*Withdrawal Price* means, in relation to a Unit in a class, the amount payable to a Scheme Participant (or any other person in accordance with the Scheme Participant's instructions) upon a redemption of that Unit, determined under clause 6.6 and 7.7 (but, for the avoidance of doubt, prior to any deductions made in accordance with clause 6.6(f)(ii) or the payment of any Exit Fee in accordance with clause 7.7(b)); and

*Withdrawal Request* means any form of instruction (including a written, oral, electronic or phone instruction) acceptable to the Manager from a Scheme Participant, or any person appointed by the Scheme Participant for such purpose, to withdraw an amount from a Fund, which has been received by the Manager (or any other person appointed by the Manager for such purpose) pursuant to clause 7.2, or otherwise a withdrawal request deemed to have been received by the Manager under the provisions of this Deed.

## 1.2 **Implied terms**

Terms implied in this Deed under the FMCA apply for so long as they are implied in this Deed under the FMCA despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term (while it is so implied) is void to the extent that it is inconsistent with such implied terms.<sup>7</sup>

## 1.3 **Frameworks or methodologies**

Where any frameworks or methodologies are specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA, apply to a Scheme and relate to any matter which is required by the FMCA to be provided for adequately in this Deed, the

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<sup>7</sup> Regulation 84 and clauses 1 to 3 of Schedule 13 of the FMC Regulations.

provisions of this Deed dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for that Scheme.

#### 1.4 Requirements reflected in this Deed

Where:

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

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

#### 1.5 General construction

In this Deed, unless the context otherwise requires:

- (a) **In writing:** References to “in writing” include any written Electronic Communication and any non-electronic form of communication approved by the Manager pursuant to clause 26.1;
- (b) **Persons:** References to a person (or persons) include a natural person or persons, a company, a corporation, a corporation sole, a managed investment scheme (as defined in the FMCA), and a government or a body of persons (whether corporate or unincorporated);
- (c) **Singular, plural and gender:** Words importing the singular number include the plural and vice versa and a gender includes the other genders.
- (d) **Statutes:** References to statutes or regulations include all amendments, re-enactments and replacements of those statutes or regulations and, when the context requires, any regulations made under them.
- (e) **Headings:** Headings are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- (f) **Business Days:** anything required by this Deed to be done on a day which is not a Business Day may be done on the next Business Day.
- (g) **Footnotes:** Footnotes used in this Deed do not form part of this Deed, are a guide only and where they refer to legislative provisions, they are not intended to incorporate those provisions in this Deed or affect the interpretation of this Deed. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Deed to comply with a particular Act or legislation to the extent they are relevant.

- (h) **Currency:** In this Deed, unless the context otherwise requires, references to money are references to a currency determined by the Manager.
- (i) **Currency conversion:** If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may reasonably select.
- (j) **Defined Terms:** Words or phrases appearing in this Deed with capitalised initial letters are defined terms and have the meanings given to them in this Deed.
- (k) **Documents:** A reference to any document, including this Deed, includes a reference to that document as amended, supplemented (by supplemental deed or otherwise) or replaced from time to time.
- (l) **GAAP:** Notwithstanding any provision of this Deed, where a matter is to be or may be interpreted pursuant to any provision of this Deed by reference to generally accepted accounting 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.
- (m) **No Contra Proferentem Rule:** The rule of construction known as the contra proferentem rule does not apply to this Deed.
- (n) **Representatives:** A reference to a party to this Deed or any other document includes that party's personal representatives/successors and permitted assigns.
- (o) **Related Terms:** Where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- (p) **Time:** A reference to time is to New Zealand time.
- (q) **Trusts Act:** In the event of any inconsistency between a provision in this Deed and a provision in the Trusts Act that applies to the Funds or the Scheme unless modified or excluded by the express or implied terms of this Deed, the relevant provisions in this Deed will (to the extent permitted by law) prevail and the Trusts Act provision will be deemed modified or excluded (as appropriate) by this Deed.
- (r) **Discretion:** Where the Manager is able to exercise a power under this Deed, it may, subject to any express limitation set out in this Deed, do so in its absolute discretion.

- (s) **Examples:** References to the words *include, including, for example* or *such as* are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

## 2 PURPOSE

### 2.1 Purpose

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

## 3 ESTABLISHMENT OF THE INITIAL SCHEME

### 3.1 Establishment

- (a) The initial Scheme shall be known as the AMP Managed Funds.
- (b) The initial Funds within the Scheme shall be known as the:
- (i) AMP Conservative Managed Fund;
  - (ii) AMP Balanced Managed Fund; and
  - (iii) AMP Growth Managed Fund.

### 3.2 Commencement of the initial Scheme

The Scheme is established with effect from the date of this Deed and it is to be governed and administered in accordance with the provisions of this Deed.

### 3.3 Commencement of the initial Funds

Each of the initial Funds shall commence on either:

- (a) the date which the Manager specifies as the date on which that Fund is to commence, by way of giving notice in writing to the Supervisor; or
- (b) if no such notice is given to the Supervisor, the date on which the first invitation for applications for Units is issued by the Manager in respect of that Fund.

## 4 CONSTITUTION OF SCHEME

### 4.1 Contributions and other Assets held on trust

All contributions and Assets of a Scheme shall be held on trust in accordance with the terms of this Deed and all applicable legislation, in one or more Funds.

### 4.2 Appointment of Supervisor

The Supervisor is appointed as the supervisor of the initial Scheme (and any other Scheme established under this Deed) for the purposes of the FMCA and agrees to act as supervisor of the Scheme, and to hold (or arrange for the Custodian to hold) the Assets in trust solely for the Scheme Participants, upon and subject to the terms



and conditions expressed or implied in this Deed, the FMCA and any other applicable legislation.<sup>8</sup>

#### 4.3 **Appointment of Manager**

The Manager is appointed manager of the initial Scheme (and any other Scheme established under this Deed) and is responsible for managing the Scheme and performing the functions set out in this Deed. The Manager agrees to act as the manager upon and subject to the terms and conditions expressed or implied in this Deed and any applicable legislation, and to observe and perform its obligations under this Deed and any applicable legislation.<sup>9</sup>

#### 4.4 **Names**

- (a) The Scheme or the Funds shall be known by such name or names as the Manager shall determine from time to time, subject to compliance with any regulatory requirements.<sup>10</sup>
- (b) Notwithstanding any name given to a Scheme or Fund pursuant to this Deed or any Establishment Deed, the Manager may change the name of the Scheme or Fund by written notice to the Supervisor. The Manager shall notify Scheme Participants in a Scheme or a Fund of any change of name of that Scheme or Fund by way of Electronic Communication when next convenient for the Manager.

#### 4.5 **Units**

The beneficial interests in each Fund shall be divided into Units and Fractional Units. Each Unit in each class in a Fund shall be of equal value and shall confer an equal interest in that Fund, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units or class of Units. No Unit shall confer any interest in any particular part of a Scheme, a Fund or in any Asset. A Fractional Unit confers a proportion of the interest represented by a Unit in the relevant Fund but, if the Manager so decides, shall not confer any voting rights on the holder.

#### 4.6 **Rights not attaching to Units**

Subject to the Scheme Participants' rights created by this Deed, the FMCA and any other applicable legislation, no Scheme Participant shall be entitled to:

- (a) require the transfer to him or her of any of the Assets; or
- (b) interfere with or question the exercise or non-exercise by the Supervisor or the Manager of the rights, discretions and powers of the Supervisor and the Manager in their dealings with a Scheme or its Assets; or
- (c) by virtue of holding Units, attend meetings whether of shareholders, scheme participants or otherwise or vote or take part in or consent to any action concerning any property or corporation in which a Scheme holds an interest.

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<sup>8</sup> Sections 135(1)(g) and 152(1)(c) of the FMCA.

<sup>9</sup> Section 135(1)(h) of the FMCA.

<sup>10</sup> Section 127(1)(a) of the FMCA.

#### 4.7 **Classes of Units**

Different classes of Units may be issued within a Fund with such rights, terms of issue, obligations and restrictions attaching to the Units of such classes, as the Manager determines after prior notice to the Supervisor. Such issue is subject to, and must be in accordance with, the FMCA<sup>11</sup> and any other applicable legislation.

#### 4.8 **Establishment of New Schemes or New Funds**

The Manager may at any time give prior written notice to the Supervisor of its intention to constitute a New Scheme, or a New Fund within an existing Scheme. If the Supervisor approves the constitution of a New Scheme or a New Fund (such approval not to be unreasonably withheld or delayed), the Supervisor and the Manager shall execute an Establishment Deed upon terms agreed between the parties, which shall:

- (a) contain a provision for the constitution of the New Scheme (and the Funds within that Scheme), or the New Fund;
- (b) specify the name of the New Scheme (and the Funds in respect of that Scheme), or the New Fund;
- (c) prescribe the SIPO for the New Scheme, or in the case of a New Fund, changes to the SIPO for the Scheme in which that Fund is to be established, to cover that New Fund, which in each case must comply with the requirements of the FMCA;
- (d) specify the date of commencement of the New Scheme or the New Fund;
- (e) specify whether any New Scheme or New Fund is to be a PIE; and
- (f) make any amendment to this Deed in respect of the New Scheme or New Fund that is approved by the Supervisor.

#### 4.9 **Separation of Schemes**

The Supervisor and the Manager will at all times treat each Scheme (if more than one Scheme is established under this Deed) as an entirely separate arrangement, with each Scheme as a separate trust. Where a Scheme is made up of more than a single Fund, each Fund within a Scheme will be treated as a distinct fund within the Scheme with its own Assets and Liabilities, but on the basis that the Scheme as a whole will comprise a single trust, and subject to clause 4.10. Nothing in this clause 4.9 and clause 4.10 shall be construed as to prohibit the Manager from transferring amounts between Funds within a Scheme to accommodate the Scheme being a single taxpayer.

#### 4.10 **Liabilities and Assets of Funds within each Scheme**

All Liabilities incurred in relation to a Fund shall be met in the first instance from the Assets held for that Fund but, if there is a shortfall in the Assets of a Fund, the Liabilities incurred in relation to that Fund may be met from the Assets of the other Funds within the applicable Scheme (in such equitable manner as the Manager, with

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<sup>11</sup> Including section 143(1)(b)(ii) of the FMCA.

the Supervisor's approval, see fits), so that the Liabilities of a Fund are not limited to that Fund's Assets and are recoverable from the Assets of the other Funds within that Scheme. Except in the event of a shortfall of the Assets of a Fund, in which case the Liabilities of such Fund shall be met from the Assets of its Scheme as permitted by the foregoing sentence:

- (a) The Supervisor (or the Custodian) will hold the Assets of each Fund (or, where a Scheme does not have Funds, each Scheme) on trust solely for those persons who are Scheme Participants in that Fund (or Scheme) in accordance with the terms and conditions of this Deed.
- (b) All investments made by a Fund (or, where a Scheme does not have Funds, a Scheme) shall be held by the Supervisor (or the Custodian) as the exclusive property of that Fund (or that Scheme) and exclusively for the benefit of the Scheme Participants in that Fund (or Scheme).
- (c) The Assets of a Fund (or, where a Scheme does not have Funds, a Scheme) will not be available to meet the liabilities of (or apportioned to) another Fund or Scheme.
- (d) No Scheme Participant in one Fund (or, where a Scheme does not have Funds, in one Scheme) shall have any claim on any other Fund or Scheme.

#### 4.11 **Effect of constituting a New Fund or a New Scheme**

- (a) The constitution of a New Fund within a Scheme shall not in any way vary or affect another Fund or any Scheme, nor give rise to any resettlement of the Assets of that Scheme.
- (b) The constitution of a New Scheme shall not in any way vary or affect another Fund or any Scheme, nor give rise to any resettlement of the Assets of any existing Scheme or Fund.

#### 4.12 **Apportionment of indemnified amounts**

Without prejudice to the generality of clause 4.10, the provisions of this Deed relating to indemnities in favour of the Supervisor and the Manager, the fees payable to the Supervisor and the Manager, and the reimbursement of the Supervisor and the Manager shall be construed in a manner consistent with clause 4.10 where distinct Funds have been established within a Scheme, so that:

- (a) any amounts payable to the Supervisor or the Manager shall be payable in the first instance from the Fund or Funds to which the matter giving rise to the amount relates (which may, for the avoidance of doubt, be all of the Funds within a Scheme); and
- (b) where the amount payable to the Supervisor or the Manager relates to more than one Fund within a Scheme, that amount shall be apportioned between the Funds within that Scheme on such fair and equitable basis as the Manager may in its discretion determine, subject to any direction from time to time given by the Supervisor.

#### 4.13 **Consolidation of Funds**

Subject to clause 12.3, the Manager may consolidate Funds within a Scheme at any time by:

- (a) giving prior written notice of such proposed consolidation to the Supervisor and all Scheme Participants;
- (b) if requested by the Supervisor in writing within 10 Business Days of being notified of the Manager's intention to consolidate the relevant Funds, convening a meeting of Scheme Participants, and passing a special resolution by the required majority of such Scheme Participants in attendance at the meeting, each in accordance with the requirements under clause 25; and
- (c) obtaining the prior approval of the Supervisor.

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

## 5 **OFFER OF UNITS**

### 5.1 **Manager may invite offers<sup>12</sup>**

The Manager may from time to time invite applications from any person or category of persons it chooses at its absolute discretion to contribute to a Scheme or a Fund by subscribing for or purchasing Units, in compliance with the FMCA and any other applicable legislation, for the Unit Price and upon and subject to the terms and conditions contained in or pursuant to this Deed and otherwise in such manner and upon such terms and conditions (not being inconsistent with this Deed) as the Manager may from time to time determine. The Manager shall, in inviting such applications, provide any required documents to the Supervisor in accordance with the Management Agreement, including the provision of any relevant PDS for review.

### 5.2 **Manager may refuse application**

The Manager may in its absolute discretion accept or refuse an application or a contribution in whole or in part, without reason, and may limit the size of any contribution, Fund or class of Units in its discretion.

### 5.3 **Minimum Unitholding Balance**

Without limiting clause 5.2, the Manager may refuse any application for Units in a Fund or a contribution which would result in an Unitholding Balance less than a Minimum Unitholding Balance in respect of that Fund or class of Units, and redeem at any time any Units held by a Scheme Participant whose Unitholding Balance is less than a Minimum Unitholding Balance in respect of that Fund or class of Units.

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<sup>12</sup> Section 135(1)(b) of the FMCA.

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

Subject to relevant law relating to the issue of financial products,<sup>13</sup> the Manager may from time to time issue additional Units to any Scheme Participant without any specific application for those Units, whether pursuant to clause 6.1 or otherwise as the Manager determines.

**5.5 Portfolio Investment Entity**

Without limiting clause 5.2, the Manager may refuse any application for Units in a Fund where to do otherwise would threaten the Scheme's or Fund's eligibility as, or cause the Scheme or the Fund to become ineligible to be, a PIE.

**6 ISSUE OF UNITS<sup>14</sup>**

**6.1 Manager's power to issue**

- (a) If the Manager accepts a contribution to a Scheme from any person in respect of a Scheme Participant, or a person who will be a Scheme Participant, the Manager shall issue Units to that Scheme Participant in accordance with this section.
- (b) Unless otherwise provided in the applicable PDS or offering document for the relevant Fund, each Unit shall be issued for the Unit Price calculated by the Manager prevailing at the time the Units are issued. Such price shall be paid to the Manager (or into an account nominated by the Manager) on behalf of the relevant Fund or may be credited where amounts are credited in the form of Units pursuant to this Deed.<sup>15</sup>
- (c) The Manager may issue Units in a Fund ranking equally with all existing Units of the same class. Any such issue will not be treated as an action affecting the rights attached to the existing Units, and the Manager need not first offer those Units to existing Scheme Participants.
- (d) Where required by law, the Manager shall issue confirmations to the relevant Scheme Participant recording the issue of Units in a Fund, in the form of an Electronic Communication and within such time frames as the Manager shall decide, subject to any applicable legislation.<sup>16</sup>
- (e) The Manager may otherwise impose such conditions or restrictions as the Manager may from time to time determine on the offer for sale or issue of Units.

**6.2 Contributions**

Each Scheme Participant may, or any other person with the consent of the Manager may in respect of a Scheme Participant, contribute to a Scheme or a Fund such

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<sup>13</sup> Part 3 of the FMCA.

<sup>14</sup> Section 135(1)(a) and (b) of the FMCA.

<sup>15</sup> Section 135(1)(c) of the FMCA.

<sup>16</sup> Section 100 of the FMCA and FMC Regulations 65 to 68.

funds or assets in such amounts and at such times as the Manager may accept and subject to any minimum if applicable.

### 6.3 **Minimum contributions**

The Manager may require that any amount contributed or transferred to a Scheme or a Fund by or in respect of a Scheme Participant:

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

and the Manager may impose, with respect to the acceptance of the relevant amount, such other terms and conditions (including as to the mode or means of payment) as the Manager may set from time to time.

### 6.4 **Fractional Units**

The Manager may issue Fractional Units (rounded to the number of decimal places and in such manner as the Manager may decide) where the amount contributed by or on behalf of a Scheme Participant is less than the Unit Price applicable at the time of issue of a Unit. Fractional Units shall rank and confer entitlements in proportion to the fractional proportion they represent (subject to clause 4.5).

### 6.5 **Initial issue price**

The first Units issued in any Fund established under or in accordance with this Deed shall be issued at a price of \$1.00.

### 6.6 **Unit Price determination**

Subject to clause 6.5, and unless otherwise provided for in the applicable PDS or offering document for the relevant Fund:

- (a) *Unit Price*: The Manager shall determine a Unit Price for each Fund on each Valuation Date.
- (b) *Unit Price Calculation*: Each Unit Price shall be determined by dividing the Net Asset Value for the relevant Fund, less the balance of the Distribution Account (to the extent this balance is included in the Net Asset Value calculation as an Asset), by the aggregate number of Units and Fractional Units in the Fund on issue at the date of calculation.
- (c) *Allocation of Subscription and Withdrawal Amounts*: The Assets used to determine the Net Asset Value on a Valuation Date for the purposes of calculating the Unit Price shall not include subscription amounts received for which no Units have been issued and, subject to clause 17.11(c), shall include Withdrawal Amounts for Units which have not been cancelled, at the time of such determination.
- (d) *NAV Rounding*: The Unit Price shall be rounded in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion.

- (e) *Change to NAV Rounding*: The Manager shall provide prior written notice to the Supervisor when there is a change to the number of decimal places the Unit Price is rounded to or the rounding manner to be adopted.
- (f) *Unit Price adjustments*: Before applying the Unit Price:
  - (i) to an application for Units, the Manager may adjust the Unit Price by an amount the Manager thinks appropriate to reflect the fees, expenses, Taxes, costs or other liabilities associated with the application, including the costs of investing the application proceeds for the relevant Unit which may include the difference between the price paid for an Asset and its market value immediately after its acquisition; or
  - (ii) to a withdrawal of Units, the Manager may adjust the Unit Price by an amount the Manager thinks appropriate to reflect the fees, expenses, Taxes, costs or other liabilities associated with the withdrawal, including the costs of selling Assets to meet the Withdrawal Price for the relevant Unit which may include the difference between the price received for an Asset and its market value immediately prior to its disposal,

provided that there shall be no double-counting in view of calculations undertaken in accordance with clause 18.4. Such additional or deducted amount may be set by the Manager as a standard amount or percentage reflecting the Manager's estimate of such costs generally, and may be rounded as the Manager thinks fit.

#### 6.7 **Payment for a Unit**<sup>17</sup>

- (a) Payment for Units shall be in Cash.
- (b) The Manager may, in its absolute discretion, pay, as an expense of a Fund, brokerage and/or commission on the issue of Units at a rate set by the Manager, from time to time, provided that there shall be no double-counting in view of calculations undertaken in accordance with clause 18.4.<sup>18</sup>

#### 6.8 **Unit issue date**

- (a) The Manager shall issue Units in the relevant Fund or Funds either:
  - (i) by the next Valuation Date; or
  - (ii) 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 Date and advises the Supervisor accordingly, by what the Manager considers to be the next reasonably practicable Valuation Date (provided that the Manager may not invoke this clause 6.8(a)(ii) for a period exceeding 5 Business Days with respect to any amount accepted or payable or

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<sup>17</sup> Section 135(1)(c) of the FMCA.

<sup>18</sup> Section 135(1)(f) of the FMCA.

switched without the Supervisor’s prior agreement, which shall not be unreasonably withheld).

- (b) Units are taken to be issued when:
- (i) the Manager accepts the application for those Units; or
  - (ii) the consideration against which Units are to be issued is transferred or credited to the Supervisor,

whichever happens later. Units issued against consideration paid other than in cleared funds are void if the money is not subsequently cleared or the Assets are not subsequently transferred (in the case of a payment *in specie*).

#### 6.9 Pricing errors

Where there is a Unit pricing error,<sup>19</sup> the Manager:

- (a) has the power to alter a Scheme Participant’s Unitholding, or allocate Units to former Scheme Participants, to the extent reasonably practicable in the circumstances to address partly or entirely the impact of the Unit pricing error, provided such alteration does not adversely affect the relevant Scheme Participant’s Unitholding or the position of other Scheme Participants, as compared with the position such Scheme Participant or Scheme Participants would have been in had the Unit pricing error not occurred;
- (b) shall report to the Supervisor any material error in the calculation of the Unit Price or material non-compliance with any FMA notices relating to the pricing methodology for managed investment products to the extent required by the FMCA;<sup>20</sup>
- (c) shall correct any material Unit pricing errors or material non-compliance with a pricing methodology for a Fund, to the extent required by the FMCA, provided that where (after all relevant Unit adjustments and set offs have been made under clause 6.9(a) or otherwise) the amount of any reimbursement or compensation required is less than any minimum level of reimbursement or compensation which is determined in accordance with the Management Agreement, then no reimbursement or compensation shall be required to be provided;<sup>21</sup> and
- (d) shall notify each of those impacted current or former Scheme Participants of any material Unit pricing error or material non-compliance with a pricing methodology for a Fund, and, except to the extent clause 6.9(c) applies, any

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<sup>19</sup> Section 168(2) of the FMCA.

<sup>20</sup> Section 168 of the FMCA and FMC Regulations 97 to 98.

<sup>21</sup> Section 168 of the FMCA and Regulation 99 of the FMC Regulations.



action that has been or will be taken to reimburse or compensate the current or former Scheme Participants.<sup>22</sup>

## 7 **WITHDRAWALS**<sup>23</sup>

### 7.1 **Procedure and applicable provisions for withdrawals**

Unless otherwise provided for in an applicable PDS or offering document, all withdrawals (other than pro rata distributions in accordance with clause 19) shall be effected by redemptions of Units in accordance with clauses 7 and 8.

### 7.2 **Redemption requests to be made by notice to the Manager**

Unless otherwise provided for in an applicable PDS or offering document, where a Scheme Participant wishes to withdraw an amount from a Scheme or a Fund, the Scheme Participant shall give the Manager, or any other person appointed by the Manager for such purpose, a Withdrawal Request (in such form and with such minimum notice period (if any) as may be acceptable to the Manager from time to time) specifying the Fund in which the Units are held and the number of Units to be redeemed (or, if acceptable to the Manager, the amount of the proceeds which the Scheme Participant wishes to receive from the redemption). A Withdrawal Request shall be irrevocable unless the Manager, or any other person appointed by the Manager for such purpose, agrees otherwise.

### 7.3 **Obligation to redeem**

Subject to clauses 7.13 and 7.14, any applicable PDS or offering document, and any terms of issue delaying or restricting redemptions, the Manager shall, within the time prescribed in any applicable PDS or register entry for a Scheme or a Fund or, where no such time is prescribed, within a reasonable time after the next Valuation Date on or following the receipt of a Withdrawal Request, cause the value (or number) of Units held by the Scheme Participant referred to in the Withdrawal Request to be redeemed by the Supervisor out of the Assets of the relevant Fund.

### 7.4 **Permitted Withdrawals**

Where Units are to be redeemed pursuant to clause 7.3, the Manager may:

- (a) make withdrawals in one or more lump sums and/or at regular intervals in its discretion;
- (b) unless the Withdrawal Request relates to all the Units in a class or a Fund held by a requesting Scheme Participant, refuse the redemption of the Units to which the Withdrawal Request relates in any case where:
  - (i) the redemption is of Units which would lead to a Unitholding Balance less than a Minimum Unitholding Balance for the relevant class or Fund if it was processed;

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<sup>22</sup> Section 168 of the FMCA and FMC Regulation 99.

<sup>23</sup> Sections 135(1)(a) and (b) of the FMCA.



- (ii) the Withdrawal Request is less than any minimum number of Units or dollar amount and multiples thereof as determined by the Manager from time to time;
  - (iii) the frequency of any regular withdrawals or lump sums would be greater than the Manager may permit; or
  - (iv) the withdrawal would be contrary to the issue terms of the relevant Units, including the terms set out in any applicable PDS, register entry or offering document; and
- (c) if the number of Units in a class held by the requesting Scheme Participant (after excluding the number of Units to which the Withdrawal Request relates) would constitute a Unitholding Balance less than a Minimum Unitholding Balance for the relevant class or Fund, cause to be redeemed all Units in that class or Fund held by that Scheme Participant as if the request relates to all the Units in that class or Fund held by that Scheme Participant.

#### 7.5 **Regular withdrawals**

Where any PDS or offering document for a Fund specifies that regular withdrawals of Units may occur in respect of a Fund or the Manager otherwise allows regular withdrawals, the Manager shall cause, at such frequency as specified in the PDS or offering document or as the Manager so allows, such Units held by a Scheme Participant in that Fund to be withdrawn by the Supervisor in accordance with the description in the applicable PDS or offering document or the Manager's decision, and the Withdrawal Amount (less amounts deducted from such Withdrawal Amount in accordance with this Deed) shall be paid to Scheme Participants' bank accounts (with the Manager's approval) as notified to the Manager by the relevant Scheme Participant or any person authorised by the Scheme Participant for that purpose.

#### 7.6 **Amount payable**

Unless otherwise provided for in an applicable PDS or offering document, upon the redemption of a Unit, the amount payable to the Scheme Participant shall be the Withdrawal Price of the Unit less any Unpaid Amount and less any other deductions permitted under this Deed or provided for in the PDS or offering document for the relevant Scheme or Fund, including any Exit Fee (determined in accordance with clause 7.7(b)).

#### 7.7 **Withdrawal Price**

- (a) Unless otherwise provided for in an applicable PDS or offering document, the Withdrawal Price of a Unit of a Fund shall be the Unit Price, calculated by the Manager, prevailing at the time set by the Manager for processing the withdrawal or such other time as the Manager shall reasonably decide.
- (b) The Manager may charge an Exit Fee either generally or in relation to particular Units, calculated in such manner and at such level (and subject to such limitations) as the Manager may from time to time determine, provided such Exit Fee is specified in the PDS or offering document of the relevant Scheme or Fund applicable at the time the relevant Units are issued.



### 7.8 **Order of redemption**

Either in respect of the Scheme or any particular Fund or Funds or in respect of any particular Withdrawal Request, if:

(a) a Scheme Participant makes a Withdrawal Request which requires redemption of less than all of the Units held by the Scheme Participant in a particular Fund; and

(b) the Scheme Participant does not specify particular Units to be redeemed,

the Manager may determine which Units are first redeemed by that Scheme Participant.

### 7.9 **Delay if consideration not otherwise received**

Where the consideration for Units has not been received or cleared or the transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not cause the redemption of the Units so applied for until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

### 7.10 **Manager to effect redemptions**

Where the Manager is required to cause the Units specified in a Withdrawal Request to be redeemed, the Manager shall, on behalf of the Supervisor, take all steps reasonably necessary to effect the redemption on behalf of the Supervisor (including causing an appropriate entry to be made on the Register in respect of the number of Units redeemed).

### 7.11 **Cancellation of Units**

Where Units are redeemed, the number of Units so redeemed shall be cancelled as at the date of redemption.

### 7.12 **Withdrawals satisfied by transfers of Assets**

The Manager may, with the relevant Scheme Participant's prior agreement, require the Supervisor to transfer Assets of a Fund to a Scheme Participant in that Fund, or to hold such Assets on trust solely for such a Scheme Participant on such terms as the Manager requires, rather than pay Cash on the redemption of Units. These Assets must be of equal value to the Withdrawal Price less any deductions permitted by this Deed.

### 7.13 **Suspension of redemption**

(a) Notwithstanding the foregoing and subject to prior written notification to the Supervisor (such notification to be provided as soon as reasonably practicable upon forming the opinion outlined below), if for any good reason reasonably determined by the Manager, the Manager shall form the opinion that it is not desirable, or would be prejudicial to the interests of Scheme Participants in a Fund or Scheme as a whole, for the Manager to cause the redemption of Units of Scheme Participants in that Fund or Scheme, or would threaten that Fund or Scheme's eligibility for PIE status, then the Manager may suspend all such Scheme Participants' redemptions by giving notice to (in its discretion) either Scheme Participants in that Fund or Scheme whose Withdrawal Requests have not been processed, or to all Scheme Participants holding Units in that Fund or Scheme. A Suspension Notice shall have the effect of suspending the processing of all Withdrawal Requests from all such Scheme Participants in



respect of that Fund or Scheme, effective from the time the decision to suspend is made until the Manager gives to the affected Scheme Participants notice to the effect that the Suspension Notice is cancelled.

- (b) Where a Suspension Notice has been given to Scheme Participants in a relevant Fund or Scheme pursuant to clause 7.13(a) and not cancelled within 90 Business Days of such Suspension Notice, the Manager shall obtain the Supervisor's written approval of the continuation of the suspension, if the suspension is to continue.
- (c) Where the operation of Withdrawal Requests are suspended pursuant to this clause 7.13, the Withdrawal Price payable to the Scheme Participants, in respect of any redemption which has been suspended, shall be determined as if the Withdrawal Request is made on the first Business Day following the end of the period covered by the Suspension Notice.

#### 7.14 Side-Pocketing

- (a) Where the Supervisor and the Manager consider that it is in the interests of the Scheme Participants in a Scheme or Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues or Asset or underlying asset impairment), the Manager may, with effect from a particular date (a *Record Date*), and without the agreement of, or consultation with, those Scheme Participants:
  - (i) determine that particular Assets and Liabilities of a Fund (the *Side-Pocketed Assets and Liabilities*) be quarantined in accordance with this clause 7.14; and
  - (ii) reclassify, divide or otherwise reconstruct the Unitholdings of Scheme Participants as at the Record Date so that those holdings consist of:
    - (A) Units that relate to the Assets and Liabilities of the Fund that have not been side-pocketed (the *Non-Side-Pocketed Assets and Liabilities*); and
    - (B) Units that relate to the Side-Pocketed Assets and Liabilities,
 all on a pro rata basis.
- (b) The provisions of this Deed will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the Units relating to the Side-Pocketed Assets and Liabilities as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and the related Units, provided that the Manager may (after consulting with the Supervisor) determine special arrangements relating to the Side-Pocketed Assets and Liabilities and the related Units. Without limiting the generality of the proviso to the previous sentence, those special arrangements may include arrangements:
  - (i) preventing Scheme Participants in the relevant Fund from giving Withdrawal Requests in relation to the Side-Pocketed Assets and Liabilities and the related Units;



- (ii) preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;
  - (iii) for the realisation/discharge of the Side-Pocketed Assets and Liabilities;
  - (iv) relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets to or for the benefit of Scheme Participants holding Units relating to the Side-Pocketed Assets and Liabilities;
  - (v) relating to the termination of the side-pocketing arrangement (including the cancellation of Units relating to the Side-Pocketed Assets and Liabilities);
  - (vi) relating to the fees and expenses associated with the Side-Pocketed Assets and Liabilities and the related Units;
  - (vii) relating to the recovery of PIE Tax Liabilities attributed to those Scheme Participants holding Units relating to the Side-Pocketed Assets and Liabilities (including, where applicable, the recovery of such PIE Tax Liabilities from such Scheme Participants by way of arrangements relating to Units (if any) held by those Scheme Participants that relate to the Non-Side-Pocketed Assets and Liabilities), and the payment of the tax liabilities of the relevant Fund;
  - (viii) that the Manager considers appropriate in relation to the Scheme's or Fund's status as a PIE;
  - (ix) for the treatment of Withdrawal Requests that remain outstanding as at a Record Date (including, without limitation, the cancellation of any such Withdrawal Requests);
  - (x) for treating Units held by Scheme Participants that relate to Side Pocketed Assets and Liabilities as a different class of Unit; and
  - (xi) which the Manager otherwise considers to be appropriate and in the interests of Scheme Participants generally in relation to the side-pocketing arrangements contemplated by this clause 7.14.
- (c) Where any conflict arises between the special arrangements agreed between the Manager and the Supervisor under this clause 7.14 and any other provision of this Deed or any Establishment Deed, the special arrangements will prevail, except to the extent any applicable legislation requires that the other provision prevails.
- (d) For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause 7.14, although they may involve a different class of Unit, operate within the relevant Fund and Scheme and do not create a new Fund or Scheme. Unless required by law, the Manager need not prepare separate financial statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities.
- (e) Notwithstanding clause 7.14(d), the Manager and the Supervisor may, at any time, decide that the Side-Pocketed Assets and Liabilities shall constitute a



distinct Fund and may accordingly segregate such Assets and Liabilities into a distinct Fund. In such case, the Units that relate to the Side-Pocketed Assets and Liabilities shall become Units in that new Fund.

#### 7.15 **Other withdrawal terms may be applied**

Notwithstanding any other provisions of this Deed, the Manager may in its discretion determine from time to time and must specify in any PDS or offering document for the relevant Scheme or Fund, other limitations on withdrawals or prohibitions on withdrawals or the transfer of Units which will take effect in accordance with their terms.

#### 7.16 **Manager instigated pro rata withdrawals**

Where the Supervisor and the Manager consider that it is in the interests of the Scheme Participants in a Scheme or Fund generally to do so, the Manager may redeem, in accordance with this clause 7, an equal pro rata share (determined by the Manager) of all Unitholders' Units in a Fund, as if a Withdrawal Request had been made under clause 7.2 in respect of such Units, provided that the Manager notifies the Unitholders in that Fund that the Manager is making such an equal pro rata share redemption and the Manager's reasons for doing so.

### 8 **TRANSFER AND TRANSMISSION OF UNITS<sup>24</sup>**

#### 8.1 **Units are transferable**

Subject to clause 8.2, all or any of the Units in a Fund in a Scheme which are of the same class that are held by a Scheme Participant may be transferred to another person at the request of the Scheme Participant. In the Manager's absolute discretion, the transfer shall be effected by registering a transfer of Units from the transferor to the transferee or by:

- (a) cancelling the number of Units sought to be transferred without any payment to the Scheme Participant; and
- (b) issuing to the transferee such number of Units as the Manager thinks is appropriate taking into account the number of Units cancelled pursuant to paragraph (a) above and the Taxes and Tax Credits attributable to the Units cancelled, treating the transferee as having satisfied payment of the Unit Price by the cancellation of the Units referred to in paragraph (a) above.

#### 8.2 **Manager may reject a transfer request**

Subject to the applicable provisions of the FMCA, the Manager may in its absolute discretion reject a Scheme Participant's transfer request.<sup>25</sup>

#### 8.3 **Registration of transfers may be suspended**

Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding ninety (90) Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably or arbitrarily withheld).

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

<sup>25</sup> Section 379 of the FMCA.



#### 8.4 **Transfers between Funds and between managed investment schemes**

Unless otherwise provided for in an applicable PDS or offering document, a Scheme Participant's total Unitholding in a Fund may be transferred by the Manager from a Fund to another Fund or to another managed investment scheme, or from a managed investment scheme to a Fund, with the written consent of the Scheme Participant, or, if provided for in a PDS or offering document for the Scheme or Fund, at the Manager's discretion, provided either:

- (a) in the case of a transfer from a Fund to another Fund or to another managed investment scheme, the transfer is effected as if it were a withdrawal in Cash from the Fund, and the Cash transferred to the new Fund or managed investment scheme is equal to the Withdrawal Price (after taking into account Taxes and Tax Credits attributable to the withdrawn Units and any deductions permitted by this Deed) of the relevant Scheme Participant's Units (which Units shall be cancelled on completion of the transfer); or
- (b) in the case of a transfer from a managed investment scheme or another Fund to a Fund, the transfer is effected as if it were an application for Units, with the Unit Price being met by the Cash transferred to the Fund and the Cash transferred to the Fund corresponds in value to the Unit Price of the Units to be issued to the Scheme Participant as part of the transfer.

#### 8.5 **No Security Interests**

Subject to this Deed, and except with the approval of the Manager, no Scheme Participant may assign nor grant a Security Interest in respect of the Scheme Participant's Unitholding. Any such approval may be given subject to such terms and conditions and may be conditional on the payment of such fees as the Manager may determine.

#### 8.6 **Persons recognised by the Manager on death**

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

#### 8.7 **Claimants to prove entitlement**

Any person becoming entitled to any Units in consequence of the death, incapacity, or bankruptcy of any Scheme Participant may, upon producing such evidence as the Manager may require to establish that person's entitlement to such Units, be registered as the Scheme Participant with respect to such Units.

### 9 **REGISTERS**

#### 9.1 **Register to be maintained**

The Manager shall keep and maintain or cause to be kept and maintained in respect of each Fund an up-to-date Register of Scheme Participants in each Fund. Such Registers shall:



- (a) be kept in the manner;<sup>26</sup>
- (b) contain the content;<sup>27</sup>
- (c) be audited;<sup>28</sup> and
- (d) be available for inspection,<sup>29</sup>

as required by the FMCA.

## 9.2 **Appointment of Registrar**

The Manager may appoint a registrar to maintain a Register at the expense of the relevant Funds.

## 9.3 **Tax information**

To the extent such information has been provided to the Manager or any Registrar, the following information shall also be kept by the Manager or the Registrar (if appointed) in respect of any period where the Fund or Scheme is a PIE:

- (a) the Tax File Number and notified Prescribed Investor Rate of the Scheme Participants of that Fund or Scheme; and
- (b) such details as the Manager considers are necessary or desirable for that Fund or Scheme to comply with, and to enable the Manager to administer that Fund or Scheme in accordance with, all relevant PIE rules under the Tax Act.

## 9.4 **Retention of Tax information**

To the extent such information has been provided to the Manager or any Registrar, the Manager or the Registrar (if appointed) shall keep such details as the Manager considers are necessary or desirable for that Fund or Scheme to comply with, and to enable the Manager to administer that Fund or Scheme in accordance with, all relevant laws, including the Common Reporting Standard and the Foreign Account Tax Compliance Act (US) in respect of any period required by law.

## 9.5 **Scheme Participants to notify changes**

Any change of name or address (including email address), Tax File Number, Prescribed Investor Rate or tax residency of any Scheme Participant shall be notified by the Scheme Participant in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

## 9.6 **Register deemed to be accurate**

Each of the Manager and the Supervisor:

- (a) shall be entitled to rely absolutely on a Register as being correct;

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<sup>26</sup> Sections 215, 216 of the FMCA.

<sup>27</sup> Section 217 of the FMCA.

<sup>28</sup> Sections 218 and 219 of the FMCA and FMC Regulations 108 to 110.

<sup>29</sup> Sections 221 and 222 of the FMCA.





- (b) shall not be required to enquire into the authenticity of a Register; and
- (c) shall not incur any liability or responsibility on account of any mistake in a Register.<sup>30</sup>

#### 9.7 **No Security Interests to be entered upon a Register**

Except as required by the FMCA and any other applicable legislation, neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express, implied, or constructive) or of any Security Interest to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Scheme Participant, and accordingly no notice of any Security Interest or trust (expressed, implied, or constructive) shall be entered upon a Register.<sup>31</sup>

#### 9.8 **Joint Scheme Participants**

The Manager may, in its absolute discretion, determine whether two or more persons may be registered as the Scheme Participants with respect to any Unit in a Scheme or a Fund. If two or more persons are registered as the Scheme Participants, they shall be deemed to hold the same as joint tenants with the benefit of survivorship subject to the following provisions:

- (a) the joint Scheme Participants shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (b) on the death of any one of such joint Scheme Participants, the survivor or survivors of them shall be the only person or persons recognised by the Manager or the Supervisor having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- (c) any one of such joint Scheme Participants may give instructions in relation to the Scheme Participants' joint Unitholding or their Units, which instruction shall bind all such Scheme Participants;
- (d) only the person whose name stands first in the Register as one of the joint Scheme Participants shall be entitled to receive notices and other Scheme-related communications from the Manager or Supervisor, and any notices and other Scheme-related communications given to any joint Scheme Participant shall be deemed notice to all the joint Scheme Participants;
- (e) at any meeting of Scheme Participants any one of such joint Scheme Participants may vote, either personally, or by duly appointed and authorised representative, or any attorney or proxy, in respect of such Unit, as if he or she were solely entitled to it, provided that if more than one of such joint Scheme Participants is present personally, or by duly authorised representative, or attorney or proxy, then (both on a poll and on a show of hands) only one of them may vote as a Scheme Participant in respect of a Unit, and if both of them vote in respect of a Unit, such one of those joint Scheme Participants so present whose name stands first in the Register in

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<sup>30</sup> Section 217(3) of the FMCA.

<sup>31</sup> Section 217(2) of the FMCA.



respect of the Unit shall alone be entitled to vote as a Scheme Participant in respect of that Unit; and

- (f) for the purposes of calculating the relevant Fund's PIE Tax Liability or Tax Credit and attributing such liability to Scheme Participants and for all other purposes relating to the application of the Tax Act to the Fund as a PIE, the Manager may in its complete discretion either treat the Scheme Participants as separate Scheme Participants (in equal shares), or treat the joint Scheme Participants as a single Scheme Participant with a Prescribed Investor Rate equal to the highest notified Prescribed Investor Rate of the joint Scheme Participants or, subject to the Tax Act, such other rate as the Manager thinks fit in its complete discretion.

## 10 ADJUSTMENT TO UNITHOLDINGS

### 10.1 Sale by Manager of Units where less than a Minimum Unitholding Balance

The Manager may sell, or direct the Supervisor to compulsorily redeem, the Units of any Scheme Participant whose Unitholding Balance is less than the Minimum Unitholding Balance prescribed in respect of a relevant class or Fund from time to time. Any such disposition shall be conducted as follows:

- (a) the Scheme Participant shall be notified via an Electronic Communication of the disposition of the Units, to the extent required by any relevant terms of issue;
- (b) the Manager may cause the Units to be transferred to applicants for Units or redeemed in accordance with clause 7.1; and
- (c) promptly after the transfer or redemption, the Manager shall transfer to the Scheme Participant the proceeds of the sale or redemption after deduction of Taxes and of any amount due under this Deed, including any reasonable expenses of conducting the sale or effecting the redemption.

The Manager and the Supervisor shall have no liability for loss on any sale or redemption made pursuant to this clause 10.1.

### 10.2 Consolidation or subdivision of Units

Subject to clause 12.3, the Manager may at any time, by written notice to the Supervisor, cause the Units of a Fund in existence at the date of that notice to be consolidated or subdivided. For such purpose, the Manager may specify:

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

### 10.3 Effect of consolidation or subdivision

As from the Operative Date, each Scheme Participant of the relevant Fund or Scheme shall be deemed to hold a number of Units equivalent to the number held



by him or her before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, at the option of the Manager, fractions may be dealt with by rounding upwards or downwards to the nearest number of decimal places as the Manager may determine.

## 11 CONFIRMATIONS

### 11.1 Provision of required confirmations

Where required by law, the Manager shall issue confirmations to the relevant Scheme Participants recording the issue, transfer, or redemption of Units in the Scheme, in the form of an Electronic Communication and within such time frames as the Manager shall decide, subject to the FMCA, the FMC Regulations and any applicable legislation.<sup>32</sup>

### 11.2 Manager may provide other confirmations

The Manager may issue confirmations recording the issue, transfer, or redemption of Units, in the form of an Electronic Communication and within such time frames as the Manager shall decide, even if it is not required to do so by law.

## 12 MANAGER'S RESPONSIBILITIES, POWERS AND DUTIES

### 12.1 Manager's responsibilities

The Manager shall perform the functions, in respect of a Scheme, of the manager of the Scheme under the FMCA.<sup>33</sup> Subject to the provisions of this Deed, the FMCA and any applicable legislation, the Manager shall have full and complete power of management in respect of the Assets and the Schemes, and without limiting the generality of the foregoing, the Manager shall perform the following specific functions:

- (a) arranging for the receipt and acceptance of contributions and other money payable to each Scheme;
- (b) maintaining the Register in accordance with the requirements of clause 9;
- (c) discharging its obligations under this Deed with respect to unitisation, investment management, borrowing (with or without security), valuations, distributions and withdrawals;
- (d) keeping complete and accurate records of all investments of each Scheme and each Fund;
- (e) determining the terms of, and entering into on behalf of the Supervisor or Custodian (as the case may be), all contracts and other arrangements to be entered into in respect of a Scheme, provided that such contracts or arrangements are consistent with the SIPO and the Manager ensures that at all times, to the extent permitted by the FMCA,<sup>34</sup> the liability of the Supervisor in relation to any contract is limited to the extent to which the Supervisor is

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<sup>32</sup> Section 100 of the FMCA and Regulations 65 to 68 of the FMC Regulations.

<sup>33</sup> Section 133 and 142 of the FMCA.

<sup>34</sup> Section 136 of the FMCA.



actually and effectively indemnified out of the Assets of the relevant Scheme or the relevant Fund (as applicable);

- (f) appointing and engaging solicitors and other consultants, advisers, investment managers, and administration managers in accordance with clause 12.5, on such terms as the Manager determines, and the Auditor, subject to the terms of clause 24;
- (g) providing Scheme Participants with information, notices and disclosures required to be given to them under the FMCA (and providing the Supervisor with copies of any such information, notices or disclosures that the Manager has given to Scheme Participants as a class);<sup>35</sup>
- (h) reporting and providing information (including requested documents and records) to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, unit pricing errors and non-compliance with the applicable unit pricing methodology for Units in a Fund) to the extent required by the FMCA and any agreement with the Supervisor as to the frequency and content of such reports;<sup>36</sup>
- (i) altering a Scheme Participant's Unitholding Balance to address partly or entirely the impact of any unit pricing error<sup>37</sup> in accordance with clause 6.9(a);
- (j) correcting unit pricing errors or non-compliance with a unit pricing methodology for Units in a Fund to the extent required by the FMCA and clause 6.9(c);<sup>38</sup>
- (k) ensuring compliance by each Scheme with the requirements of the FMCA, the Financial Reporting Act 2013 and other applicable legislation, including the Common Reporting Standard and the Foreign Account Tax Compliance Act (US);
- (l) ensuring compliance by each Scheme with all Tax obligations;
- (m) maintaining all accounting records for each Scheme and allowing for inspection of those records to the extent required by the FMCA and clause 23;<sup>39</sup>
- (n) arranging for the preparation, audit and lodgement of the financial statements for each Scheme, and the preparation of each Scheme's annual reports to the extent required by the FMCA and clauses 23.2 and 23.3;<sup>40</sup>

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<sup>35</sup> Sections 96, 97 and 100 of the FMCA and FMC Regulations 56, 62 and 65.

<sup>36</sup> Sections 147 to 151, 167 and 168 of the FMCA and FMC Regulations 83, 94 to 98 and 100.

<sup>37</sup> Section 168(2) of the FMCA.

<sup>38</sup> Section 168 of the FMCA and FMC Regulation 99.

<sup>39</sup> Sections 455 to 459 of the FMCA.

<sup>40</sup> Sections 461A, 461D and 461H of the FMCA and FMC Regulations 62 and 63.



- (o) subject to compliance with the relevant SIPO and all applicable laws, lend money; and
- (p) exercising such other powers, authorities, functions and discretions as are granted or imposed by the FMCA or incidental to the above functions,

and in performing the above responsibilities, the Manager shall act in accordance with this Deed and the FMCA.

### 12.2 **Manager's powers**

In addition to any powers granted under this Deed, the FMCA or by law, but subject to the FMCA, the Manager may do anything the Manager considers necessary or expedient to enable it to discharge the Manager's responsibilities and meet its duties under this Deed.

### 12.3 **Manager's duties**

The Manager shall, in exercising its powers and performing its duties as the manager of a Scheme:

- (a) comply with the duties applicable to the Manager, as manager of the relevant Scheme, under the FMCA;<sup>41</sup> and
- (b) use its reasonable endeavours to ensure that, if a Fund or a Scheme is a PIE, that the Fund or the Scheme meets the eligibility requirements in the PIE rules in the Tax Act.

### 12.4 **Delegation by Manager**

The Manager may delegate the performance of all or any of the Manager's powers, authorities, functions and discretions under the FMCA or the provisions of this Deed, including to any Associated Person of the Manager. The Manager may agree with such delegate the fees that may be charged and the extent to which expenses will be reimbursed<sup>42</sup> (subject to clause 17.5 in relation to Related Party Benefits) as the Manager may consider suitable, provided that the Manager shall:<sup>43</sup>

- (a) take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly;
- (b) take all reasonable steps to monitor the performance of those functions; and
- (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause 12.4.

### 12.5 **Manager's power to appoint third party advisers**

- (a) The Manager may appoint in respect of a Scheme or a Fund:

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<sup>41</sup> Sections 143 and 144 of the FMCA.

<sup>42</sup> Section 135(f) of the FMCA.

<sup>43</sup> Section 146 of the FMCA.



- (i) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of a Scheme (and all or any Funds within the Scheme);
- (ii) one or more investment managers (including any Associated Person of the Manager) to manage the Scheme's (or any Fund's) property; and
- (iii) any other experts (including, without limitation, any valuer, barrister, solicitor, accountant or share broker) for the provision of services relevant to the Scheme or Funds (which person or persons may be an Associated Person of the Manager except where prohibited by any applicable legislation),

and (subject to clause 17.5 in relation to Related Party Benefits) agree with such party the fees that may be charged to each relevant Scheme or Fund, and the extent to which expenses will be reimbursed.

- (b) The Manager may agree to indemnify any investment manager and administration manager from and against any and all losses, costs, and expenses incurred by them, to the fullest extent permitted by the FMCA, in relation to the performance of their functions in respect of a Scheme or Fund.<sup>44</sup>

#### 12.6 **Manager's powers if a Scheme or Fund is a PIE**

The Manager may elect that a Scheme or Fund be a PIE, or cease to be a PIE, in its absolute discretion. The Manager shall have the following additional powers and discretions in respect of any Scheme or Fund which is a PIE:

- (a) to determine, on such basis as the Manager thinks appropriate in its complete discretion, any matter which is necessary or desirable to be decided in order to operate a Scheme or Fund as a PIE;
- (b) to retain any amount to which a Scheme Participant otherwise would be entitled if that amount is required to be paid to Inland Revenue pursuant to the Tax Act;
- (c) to make available to the Scheme Participant the benefit of any Tax Credit in such manner as the Manager considers appropriate in its complete discretion;
- (d) to make any elections or exercise any options under the Tax Act as it thinks fit having regard to the interests of Scheme Participants generally and the rules in the Tax Act;
- (e) to carry out any tax calculations, allocations or attributions required by the Tax Act for a PIE;
- (f) to adjust a Scheme Participant's Unitholding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted

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<sup>44</sup> Sections 135(f) and 136(2) of the FMCA.



by law, at any time (including immediately prior to the redemption of the Scheme Participant's Units);

- (g) to deduct any amount on account of a PIE Tax Liability from any Distributable Amount or Withdrawal Amount (or to recoup the PIE Tax Liability from redemption proceeds of the relevant Scheme Participant's Units which shall be redeemed to meet such PIE Tax Liability) or to credit any amount on account of a Tax Credit to any Distributable Amount or Withdrawal Amount in respect of a Scheme Participant on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption of the Scheme Participant's Units);
- (h) to elect to offset Tax liabilities and Tax Credits in respect of more than one Scheme Participant and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act;
- (i) to allocate the costs associated with being a PIE between Scheme Participants and Funds or Schemes on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;
- (j) to take all steps as the Manager considers necessary or desirable to ensure the Scheme or Fund is eligible or continues to be eligible as a PIE, or otherwise to comply with the PIE rules in the Tax Act, including (in the Manager's complete discretion):
  - (i) rejecting applications for Units;
  - (ii) treating Units issued to a Scheme Participant as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Scheme Participant acknowledges that any Units issued which exceed the investor interest size requirement prescribed in the Tax Act, shall be deemed to be held by that Scheme Participant on trust for the Manager and the Manager shall, subject to clause 34.3, have full powers of direction in relation to those Units including when, how and to whom they shall be disposed of; or
  - (iii) redeeming Units where the relevant Scheme Participant's Unitholding would threaten the Scheme's or Fund's eligibility as, or cause a Scheme's or Fund to be ineligible to be, a PIE, provided the Manager has given the Scheme Participant one month's notice or such shorter notice as is necessary in order to maintain the Scheme's or Fund's status as a PIE;
- (k) to require that before accepting an application for Units the applicant provides their Tax File Number, Prescribed Investor Rate, and any other information required by the Tax Act, and that at any time a Scheme Participant must confirm such details or provide such other information as required by the Tax Act on request from the Manager;



- (l) to disclose any information, including issuing any statements and providing any information to Scheme Participants as required by the Tax Act and in respect of their tax position in relation to the Scheme or Fund, and providing any information (including personal information) to Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Scheme or Fund's Tax obligations;
- (m) to value Tax losses of the Scheme or Fund for the purpose of determining the Unit Price as the Manager thinks fit in its complete discretion having regard to the Tax Act and to the Scheme or Fund's stated policies (if any) from time to time; and
- (n) to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Scheme or Fund to and from being a PIE or to administer the Scheme or Fund as a PIE.

### 12.7 Fair dividend rate powers

Where the Manager considers it necessary or desirable in the Manager's complete discretion that a Scheme or Fund should meet the requirements of section EX 52A(2)(a) of the Tax Act, the Scheme or Fund shall be treated as having assigned to each Scheme Participant an interest in a proportion of the net returns from investments of the Scheme or Fund corresponding to the Scheme Participant's Unitholding in the Scheme or Fund.

### 12.8 Provision of Information where a Scheme or Fund is a PIE

The Manager may request any Scheme Participant to provide information to the Manager to enable the Manager to determine whether a Scheme or Fund continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Scheme Participant to:

- (a) provide details of Units held by any associated person (as defined in the Tax Act) of the Scheme Participant where the associated person holds 5% or more of the Units in a class; and/or
- (b) confirm that the Scheme Participant either is or is eligible to be a PIE.

If the Manager requests a Scheme Participant to provide information to the Manager pursuant to this clause, the Scheme Participant shall supply such information within 30 days of the request, or such shorter notice as is necessary in order to maintain the Scheme's or Fund's status as a PIE.

## 13 SUPERVISOR'S RESPONSIBILITIES, POWERS AND DUTIES

### 13.1 Supervisor's responsibilities

The Supervisor shall perform, in respect of a Scheme, the functions of the Supervisor of the Scheme under the FMCA including acting on behalf of Scheme Participants in relation to the Manager and supervising the performance by the Manager of its functions and its issuer obligations.<sup>45</sup>

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<sup>45</sup> Section 152 of the FMCA.





### 13.2 Supervisor's powers

The Supervisor shall have the powers conferred on it by the FMCA, and when exercising its powers and performing its functions as supervisor of the Scheme, it must comply with its duties under the FMCA.<sup>46</sup> Subject to the provisions of this Deed, the FMCA, any applicable legislation and the powers, rights and discretions given to the Manager by this Deed, the FMCA and any applicable legislation, the Supervisor may:

- (a) delegate the performance of all or any of its powers, authorities, functions and discretions under this Deed (including power to sub-delegate such powers, duties and discretions) to its officers and employees;
- (b) subject to prior consultation with the Manager (if the Supervisor deems it appropriate in the circumstances) appoint, engage, employ and contract any valuer, accountant, sharebroker, lawyer or any other person from whom the Supervisor reasonably considers the Supervisor requires assistance in respect of its functions under this Deed, on such terms and conditions and remuneration as are agreed by the Supervisor (after consultation with the Manager, if applicable) and the other person, and the Manager shall comply with the requirements of the FMCA with respect to such engagement;<sup>47</sup>
- (c) at the direction of the Manager:
  - (i) raise or borrow from any person (including a Scheme Participant) any sum or sums of money or obtain credit, accommodation or finance for the purposes of the Scheme in relation to a particular Fund or Funds;
  - (ii) for the purpose of any borrowing under clause 13.2(c)(i), enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such borrowing; and
  - (iii) give any mortgage, charge, pledge, guarantee or undertaking or otherwise create a security interest over all or any Asset of a Fund in relation to the repayment of money and interest, costs and other charges and expenses,
 

upon such terms and conditions in all respects as the Supervisor and the Manager may think fit, provided that:

    - (iv) the liability of the Supervisor in respect of any such borrowing shall be limited to the Assets of the relevant Fund;
    - (v) the aggregate of the principal moneys borrowed and outstanding from time to time in relation to any Fund does not exceed 50% of the Fund's Net Asset Value;
    - (vi) the Supervisor may not mortgage, charge, pledge or otherwise create a security interest over all or any of the Assets of a Fund or Scheme as security for any moneys borrowed for any other Fund or Scheme, or

<sup>46</sup> Sections 153 and 154 of the FMCA.

<sup>47</sup> Section 155 of the FMCA.



take any of the actions contemplated by clause 13.2(c) in respect of one Fund to give effect to any borrowing for any other Fund or Scheme;

- (vii) borrowings shall be entered into or made only when the Manager in good faith determines that the borrowing is necessary or desirable for the sole purpose of conducting the operation of the relevant Fund pursuant to this Deed, including to provide liquidity for the repayment or redemption of any Units from time to time or to provide for PIE tax rebates, and the Supervisor and any lender may rely upon a certificate given by the Manager as to any determination made under this clause 13.2(c)(vii) without further enquiry; and
- (viii) 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 Deed;
- (ix) there is no obligation upon the Supervisor to comply with any direction given pursuant to this sub-clause (c) or to complete any loan or security documents unless the Supervisor is satisfied that:
  - (A) the Supervisor's liability is restricted to the Assets from time to time comprising the relevant Fund;
  - (B) the Assets of any Fund shall not be or become liable in respect of borrowing made by or on behalf of another Fund, except in the event of a shortfall as described in clause 4.10;
  - (C) any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- (x) there will be compliance with clause 13.2(c)(vii); 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.

### 13.3 **Limitation on investment duty**

To the extent that any provisions in this Deed expressly or impliedly impose any obligation on the Supervisor in respect of such Assets, the Supervisor is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets of a Fund, and the duty on the Manager and Supervisor to invest prudently in the Trusts Act is expressly excluded by the provisions in this Deed.

### 13.4 **Appointment of Custodian**

- (a) *Power to appoint a Custodian:* The Supervisor may, subject to obtaining the prior written approval of the Manager if the Custodian is anyone other than an Associated Person of the Supervisor (which approval shall not be unreasonably withheld or delayed), appoint any other person or persons (other than the Manager or an Associated Person of the Manager) to be a Custodian in respect of a Scheme or a Fund to hold all or some of the Assets on such terms and conditions as the Supervisor thinks fit, including the power



to appoint sub-custodians, provided, in each case, the Custodian or sub-custodian meets the criteria for their respective appointment set out in the FMCA.<sup>48</sup>

- (b) *Custodian's duties:* Where the Supervisor appoints a Custodian, or the Custodian appoints a sub-custodian, in respect of a Scheme or a Fund, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Scheme or Fund are performed by the Custodian or sub-custodian in the same manner and subject to the same duties and restrictions as if the Supervisor were performing the custodial functions itself and in a manner which complies with all of the covenants and obligations relating to holding the Assets as supervisor or custodian expressed or implied in this Deed and any applicable legislation. The Supervisor shall be jointly and severally liable with the Custodian (and any sub-custodian appointed) for the performance by the Custodian or the sub-custodian, where relevant) of the functions (and subject to the same duties and restrictions) imposed on it pursuant to this clause 13.4(b) and the FMCA with respect to the relevant Scheme or Fund.
- (c) *Supervisor to monitor:* The Supervisor shall monitor the performance of any Custodian appointed pursuant to this clause.

### 13.5 **Supervisor's liability**

- (a) Subject to any applicable legislation and without prejudice to any powers of and protections available to trustees, the Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to it by Scheme Participants.<sup>49</sup>
- (b) The Supervisor has the same duties and liability in the performance of its functions as it would if it performed those functions as a trustee (except to the extent those duties are altered by or inconsistent with the FMCA).<sup>50</sup>
- (c) Notwithstanding anything contained in this Deed, but subject to the FMCA,<sup>51</sup> in no event is the Supervisor bound to make any payment to Scheme Participants except out of the appropriate Fund or be liable to the Scheme Participants to any greater extent than the amount by which it is actually and effectively indemnified out of the Assets of the relevant Fund.

## 14 **SUPERVISOR'S FEES AND EXPENSES**<sup>52</sup>

### 14.1 **Supervisor's fees**

The Supervisor shall be entitled to receive and retain for its own use and benefit out of each Fund or Scheme, by way of remuneration for its services as Supervisor, such fees as may be agreed upon in writing between the Supervisor and the Manager.

<sup>48</sup> Section 156 of the FMCA.

<sup>49</sup> Section 153(3) of the FMCA.

<sup>50</sup> Section 153(4)(b) of the FMCA.

<sup>51</sup> Section 136 of the FMCA.

<sup>52</sup> Section 135(1)(f) of the FMCA



The Supervisor may be paid additional fees for non-routine matters as the Supervisor and the Manager may agree from time to time.

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

The fee referred to in clause 14.1 shall be calculated and accrued daily on the basis of the relevant Fund value or Scheme value from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of the Fund or Scheme in question from time to time) and paid quarterly in arrears.

#### 14.3 **Reimbursement of expenses**

In addition to its fee referred to in clause 14.1, the Supervisor is authorised to pay out of a Fund or reimburse itself from that Fund for all expenditure reasonably incurred in respect of that Fund that may from time to time be met by the Supervisor from its own funds.

### 15 **REMOVAL AND RETIREMENT OF SUPERVISOR**

#### 15.1 **Removal of Supervisor**

Subject to any restrictions in the FMCA,<sup>53</sup> the Supervisor shall cease to hold office as Supervisor of a Scheme if:

- (a) the Supervisor ceases to hold any licence it is required to hold as a supervisor of the Scheme;
- (b) the Supervisor is removed from office as supervisor of the Scheme by the High Court on application of the Manager;
- (c) Scheme Participants resolve by Special Resolution that the Supervisor be removed from office as supervisor of the Scheme;<sup>54</sup>
- (d) the FMA or any court removes the Supervisor from office as Supervisor of the Scheme in accordance with any applicable legislation; and
- (e) the Manager (as issuer) removes the Supervisor from office as Supervisor of the Scheme in accordance with Part 2 of the Financial Markets Supervisors Act 2011;<sup>55</sup> or
- (f) the Supervisor does not meet the solvency test as defined in section 4(1) of the Companies Act 1993 and either:
  - (i) it has a receiver or voluntary administrator appointed; or
  - (ii) an order is made by a court or a formal resolution is passed for the appointment of a liquidator or voluntary administrator of the Supervisor,

provided that in any case where the Manager commences any actions to remove the Supervisor (other than as a result of the Supervisor ceasing to hold any licence it is required to hold as a supervisor of the Scheme and/or the Supervisor's insolvency),

<sup>53</sup> Sections 135(1)(g) and 193(2) of the FMCA.

<sup>54</sup> Section 193(1)(c) of the FMCA.

<sup>55</sup> Section 193(1)(b) of the FMCA and section 23 of the Financial Markets Supervisors Act 2011.



the Manager shall give the Supervisor not less than six months' written notice prior to the commencement of such action.

#### 15.2 **Retirement of Supervisor**

Subject to the restrictions in the FMCA,<sup>56</sup> the Supervisor may retire as supervisor of a Scheme at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do (or such shorter period as the Supervisor and Manager may agree).

#### 15.3 **Appointment of a new supervisor**

The power of appointing a new supervisor of a Scheme shall be vested in the Manager. No person shall be appointed as a new supervisor unless that person holds a licence under the Financial Markets Supervisors Act 2011 that covers the Scheme.

#### 15.4 **Provision in relation to new supervisor**

A new supervisor appointed in relation to a Scheme pursuant to this Deed shall forthwith upon appointment execute a deed in such form as the Manager may require whereby the new supervisor undertakes to the Manager and the Scheme Participants of the Scheme to be bound by all the covenants on the part of the Supervisor under this Deed from the date of such appointment. From such date, the retiring Supervisor shall be absolved and released from all such covenants under this Deed (except in respect of antecedent breach) and the new supervisor shall thereafter have all the powers and shall be subject to all the duties and obligations of the Supervisor under this Deed in all respects as if such new supervisor had been originally named as the Supervisor.

#### 15.5 **Restrictions on removal and retirement**

No removal or retirement under clauses 15.1 or 15.2 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 15.4; and
- (c) all of the Assets of the relevant Scheme have been transferred to the new supervisor, or a Custodian(s) which holds all such Assets has acknowledged in its capacity as custodian for the relevant Scheme that it is acting for the new supervisor.

### 16 **SUPERVISOR'S AND MANAGER'S INDEMNITY AND RESPONSIBILITIES**

#### 16.1 **Liability**

Subject to this Deed and the indemnity limitations under the FMCA,<sup>57</sup> and except as otherwise provided at law, neither the Supervisor nor the Manager, nor a director or officer of either of them, shall be under any personal liability in respect of any loss or breach of trust relating to a Scheme unless the same shall have been due to that person's own dishonesty or gross negligence.

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<sup>56</sup> Section 193(2) of the FMCA.

<sup>57</sup> Sections 153 and 154 of the FMCA.



## 16.2 Indemnities

The Supervisor and the Manager shall each be indemnified out of each Fund or Scheme, to the maximum extent permitted by the FMCA, from and against any and all losses, costs, and expenses incurred by the Supervisor or Manager in performing any of their respective duties or responsibilities, or exercising or purporting to exercise any of their respective powers, authorities or discretions in relation to the Scheme or Fund pursuant to this Deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed or the relevant Fund or Scheme, including all actions or omissions in relation to the offer and issue of Units and the Manager may retain and pay out of the relevant Fund or Scheme all sums necessary to give effect to such indemnity.

## 16.3 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 a Scheme or Fund) of; and/or
- (b) indemnify and reimburse out of a Scheme or Fund's property,

any investment manager or administration manager appointed in respect of the Scheme or Fund, to the maximum extent permitted by law in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including legal fees and disbursements).<sup>58</sup>

## 16.4 Power to indemnify custodians

The Supervisor may agree:

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

any Custodian or sub-custodian appointed in respect of the Scheme or Fund, to the maximum extent permitted by law in respect of any debt, liability or obligation incurred by or on behalf of the Custodian or sub-custodian in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including legal fees and disbursements) except to the extent such losses, costs and expenses arose from a failure to exercise the care, diligence and skill a prudent person engaged in the Custodian's profession would exercise in the same circumstances.<sup>59</sup>

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<sup>58</sup> Section 135(1)(f) and 136(2) of the FMCA.

<sup>59</sup> Section 135(1)(f) of the FMCA.



### 16.5 **Indemnity and liability exclusion limitations**

No provision of this Deed has the effect of exempting or indemnifying the Supervisor or the Manager or any director or officer of the Supervisor or the Manager to the extent that doing so would be void under the FMCA or any other statute.<sup>60</sup>

### 16.6 **Lien**

To the maximum extent permitted by the FMCA,<sup>61</sup> the Supervisor and the Manager shall have a lien on and may use any, or any part of, any Asset of a Fund or Scheme for the time being in the hands or coming into the hands of the Supervisor or the Manager for the indemnity from the Scheme referred to in clause 16.2 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets of the Scheme or Fund under this Deed.

### 16.7 **Reliance of Manager and Supervisor**

Neither the Supervisor nor the Manager shall incur any liability, to the maximum extent permitted by the FMCA,<sup>62</sup> in respect of any action taken or thing suffered by the Supervisor or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Supervisor or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

### 16.8 **Prohibited performance**

Neither the Supervisor nor the Manager shall incur any liability, to the maximum extent permitted by the FMCA<sup>63</sup>, to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law or ordinance, rule, regulation or bylaw made pursuant thereto or of any decree, order or judgment of any competent court, the Supervisor or the Manager shall be hindered, prevented or forbidden from so doing or performing.

### 16.9 **Tax payments in good faith**

Neither the Supervisor nor the Manager shall be liable, to the maximum extent permitted by FMCA,<sup>64</sup> to account to any Scheme Participant or otherwise for any payments made by the Supervisor or the Manager in good faith to any fiscal authority for Taxes in respect of a Scheme, any Fund, Scheme Participants or with respect to any transaction under this Deed notwithstanding that any such payment need not have been made.

### 16.10 **Supervisor relying on advice**

The Supervisor, in relation to this Deed, may rely on:

- (a) the opinion or advice of, or a certificate or any information obtained from, any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Party of the Manager or the Supervisor) (whether or not obtained by the Manager or the Supervisor)

<sup>60</sup> Section 136(1) of the FMCA.

<sup>61</sup> Section 136(1) of the FMCA.

<sup>62</sup> Section 136(1) of the FMCA.

<sup>63</sup> Section 136(1) of the FMCA.

<sup>64</sup> Section 136(1) of the FMCA.



and the Supervisor shall not be responsible, to the maximum extent permitted by the FMCA,<sup>65</sup> for any loss occasioned by so acting so long as the Supervisor has no reason to believe that the opinion or advice is not authentic;

- (b) a certificate signed on behalf of the Manager by two directors of the Manager (or one director and one authorised signatory of the Manager):
- (i) as to any fact or matter and which the Supervisor may, in the exercise of any of the powers and discretions under this Deed, require to be satisfied; or
  - (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Scheme Participants or any of them,

as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing; and

- (c) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated in that certificate.

#### 16.11 **Manager relying on advice**

The Manager may act on the opinion or advice of, or a certificate or any information obtained from, any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Party of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Manager shall not be responsible, to the maximum extent permitted by the FMCA,<sup>66</sup> for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic.

#### 16.12 **Communication between Manager and Supervisor**

Whenever, pursuant to any provision of this Deed, any certificate, notice, instruction or other communication is to be given by the Manager to the Supervisor, or the Supervisor to the Manager, the Supervisor or the Manager, as the case may be, may accept as sufficient evidence thereof a document (or its electronic copy) signed on behalf of the Manager or Supervisor by any one of their directors or board members (as the case may be) or by any other person or persons duly authorised by the Manager or Supervisor or any other form of communication as agreed.

#### 16.13 **Discretion of Manager and Supervisor**

The Manager and the Supervisor shall (except as otherwise provided in this Deed) when exercising any of their powers and discretions under this Deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise of that power or discretion and, provided the Manager or the Supervisor (as the case may be) shall not have acted fraudulently or with gross negligence, by act or omission, the Manager and the Supervisor (as applicable) shall not be responsible

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<sup>65</sup> Section 136(1) of the FMCA.

<sup>66</sup> Section 136(1) of the FMCA.





for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of that power or discretion to the maximum extent permitted by the FMCA.<sup>67</sup> The Manager shall have no liability for any loss suffered by a Scheme Participant on any action taken or adjustment made pursuant to clause 19.2 or clause 12.6 to the maximum extent permitted by the FMCA.

#### 16.14 **No conflicts of interest for Supervisor or Manager**

Subject to clause 17.3 and the FMCA,<sup>68</sup> nothing in this Deed or any rule of law shall prevent the Supervisor, or any Related Party of the Supervisor or any shareholder, board member, officer, or employee of the Supervisor or its Related Party, or the Manager, or any Related Party of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Party, from:

- (a) subscribing for, purchasing, holding, dealing in, or disposing of Units;
- (b) otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Supervisor or Manager (whether in respect of the relevant Scheme or otherwise) or with any Scheme Participant or any person whatsoever;
- (c) being interested in any such contract, transaction or otherwise;
- (d) acting as supervisor or manager of any other managed investment scheme;  
or
- (e) holding any Asset jointly with a Scheme;

and none of them shall be in any way liable to account either to any other of them, the Scheme, or to the Scheme Participants or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees).

#### 16.15 **Limitation on payments to Scheme Participants**

To the maximum extent permitted by the FMCA,<sup>69</sup> in no event shall the Supervisor or the Manager, as the case may be, be bound to make any payment to Scheme Participants except out of funds held by it for that purpose under the provisions of this Deed.

#### 16.16 **Failure to carry out agreement**

Subject to the provisions of this Deed, to the maximum extent permitted by the FMCA<sup>70</sup>, neither the Supervisor nor the Manager will be liable for the failure of any person to carry out any agreement in relation to a Scheme.

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<sup>67</sup> Section 136(1) of the FMCA.

<sup>68</sup> Sections 172 to 177 of the FMCA.

<sup>69</sup> Section 136(1) of the FMCA.

<sup>70</sup> Section 136(1) of the FMCA.



### 16.17 Resolutions of Scheme Participants

To the maximum extent permitted by the FMCA,<sup>71</sup> neither the Supervisor nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Scheme Participants even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Scheme Participants.

### 16.18 Reliance by Manager and Supervisor

To the maximum extent permitted by law:<sup>72</sup>

- (a) the Manager shall not be responsible for any loss arising as a result of any act or omission of the Supervisor or the Custodian, and the Supervisor shall not be responsible for any loss arising as a result of any act or omission of the Manager; and
- (b) the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Supervisor or the Custodian, and the Supervisor shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager.

### 16.19 Disclosure of information

Subject to the terms of this Deed, neither the Manager nor the Supervisor shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Scheme Participant confidential, financial or other information made available to it in connection with this Deed. Notwithstanding any provision of this Deed or the provisions of the Privacy Act 2020, the Scheme Participants authorise the Manager and the Supervisor to provide information relevant to a Scheme Participant to any person as may be deemed necessary by the Manager or the Supervisor.

### 16.20 Manager and Supervisor not acting personally

The Manager and the Supervisor are each deemed to be acting for and on behalf of the relevant Scheme and not in their own respective capacities. Subject to *clause 16.1*, neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for satisfaction of any obligation to or of a Scheme.

## 17 INVESTMENT

### 17.1 Establish SIPOs

- (a) The Manager shall establish, and may at any time change, a SIPO for each Scheme which covers each Fund in accordance with the requirements with the FMCA.<sup>73</sup> The Manager shall provide a copy of the proposed SIPO (or any proposed alteration to that SIPO) to the Supervisor in accordance with the timeframes specified in the Management Agreement.

<sup>71</sup> Section 136(1) of the FMCA.

<sup>72</sup> Section 136(1) of the FMCA.

<sup>73</sup> Sections 164 and 165 of the FMCA.



## 17.2 Investments to follow SIPO

The Assets of a Fund shall be invested by the Manager in accordance with the SIPO for the Scheme which covers that Fund.

## 17.3 Manager's power of investment

- (a) Subject to the requirements of the SIPO, the FMCA and any other applicable legislation (and in the case of a PIE, the rules prescribed by the Tax Act), the Manager shall have absolute and uncontrolled discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets and Liabilities from time to time.
- (b) The duty on the Manager and Supervisor to invest prudently in the Trusts Act is expressly excluded by this clause 17.3. However, any direction by a Scheme Participant in terms of this clause will not exempt the Manager from its responsibilities under the FMCA.<sup>74</sup>

## 17.4 Supervisor's role

Subject to its duties as supervisor under the FMCA, the Supervisor must:<sup>75</sup>

- (i) give effect to the Manager's directions in relation to the investment of the Assets;
  - (ii) not acquire, dispose of, mortgage or charge (or permit any Custodian so to do) any Asset except as directed by the Manager;
  - (iii) promptly forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets; and
  - (iv) subject to the terms of this Deed, execute all such proxies, powers of attorney and other instruments, deal with the Assets to enable the Manager or any person nominated by the Manager to exercise the powers of investment of the Manager in relation to this Deed.
- (b) The parties acknowledge that, to the extent permitted by the FMCA,<sup>76</sup> the Supervisor (or any Custodian appointed by the Supervisor) shall not be liable to the Scheme Participants or the Manager, for refusing, or directing a Custodian to refuse, to act on a direction of the Manager, in accordance with the requirements of the FMCA.

## 17.5 Related Party transactions

Notwithstanding any other provision of this Deed, the Manager must not enter into, nor authorise any investment manager, administration manager or other person to whom the Manager has contracted out some or all of its functions as a manager of a

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<sup>74</sup> Section 144 of the FMCA.

<sup>75</sup> Section 160 of the FMCA.

<sup>76</sup> Section 160(4) of the FMCA.



Scheme to enter into, a transaction that provides for a Related Party Benefit contrary to the requirements of the FMCA with respect to such transactions.<sup>77</sup>

#### 17.6 **Related party transactions not void**

A failure to comply with clause 17.5 does not affect the validity of any transaction (subject to any Court order to the contrary).<sup>78</sup>

#### 17.7 **Costs**

All costs, Taxes, legal fees and other fees, disbursements and expenses incurred by the Supervisor or the Manager in connection with the investigation of, negotiation for and acquisition of any Asset by a Fund, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Asset of a Fund, shall be payable (as determined by the Manager) by (and reimbursable from) the relevant Fund or Scheme.

#### 17.8 **Voting rights of investment**

(a) *Manager to decide*: Subject to the provisions of this Deed, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor (or the Custodian on behalf of the Supervisor) shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise, or act in relation to, such voting rights.

(b) *No liability*: Subject to the provisions of this Deed, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney of the Manager or Supervisor, shall be liable or responsible for any vote cast or not cast.

#### 17.9 **Vesting and custody of Assets**

The Manager shall cause Assets 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.

#### 17.10 **Bank accounts**

A bank account or accounts must be opened and maintained in the name of the Supervisor or a Custodian for each Scheme or each Fund or any combination of them as the Manager shall decide. All moneys held for the relevant Fund(s) or 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.<sup>79</sup>

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<sup>77</sup> Sections 172 to 175 of the FMCA.

<sup>78</sup> Section 173(6) of the FMCA.

<sup>79</sup> Section 87 of the FMCA and FMC Regulation 49.



### 17.11 Subscription Bank Account

- (a) A bank account or accounts, outside the Scheme, in the name of the Supervisor (or a Custodian), may be opened and maintained in respect of a Scheme or a Fund or a combination of them as the Manager shall decide.
- (b) If such Subscription Bank Accounts are opened, all subscriptions for Units that are paid prior to the issue or purchase of those Units shall be paid to the credit of the Subscription Bank Account in accordance with the FMCA<sup>80</sup> until Units for those subscription amounts are issued, at which point such subscriptions shall be credited to a bank account for the relevant Fund or the Scheme.
- (c) If the Manager elects, amounts payable to a Scheme Participant, or to effect a transfer when the relevant Units are cancelled, shall be paid to the credit of the Subscription Bank Account.
- (d) The Supervisor shall determine the persons authorised to operate such bank accounts.

### 17.12 Tax Bank Account

The Supervisor or Custodian must maintain a bank account outside of the Scheme for the purpose of the Manager managing taxation obligations in relation to the Scheme. 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 Scheme Participants pending or following payment to the relevant Scheme Participant, (including by way of application toward the issue of Units of the Scheme Participant entitled to the rebate); and
  - (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 Scheme Participant is entitled to a rebate or refund of Tax, to or for the benefit of that Scheme Participant; and

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<sup>80</sup> Section 87 of the FMCA and Regulation 49 of the FMC Regulations.



- (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 Scheme Participant 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 Scheme Participant shall have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent expressly provided for at clause 17.12(b)(ii); and
- (e) any costs incurred in operating the Tax Bank Account will be met by the Scheme.

#### 17.13 **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.

### 18 **VALUATIONS**<sup>81</sup>

#### 18.1 **Net Asset Value of a Fund**

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 there must be a Valuation Date, 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.

#### 18.2 **Determining Market Value**

For the purpose of determining the Net Asset Value of a Fund under clause 18.1, 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 (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).

#### 18.3 **Determining Assets**

For the purposes of determining the Net Asset Value of a Fund under clause 18.1, the Manager may include in the market value of a Fund's Assets, the market value

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<sup>81</sup> Section 135(1)(d) of the FMCA.



of any other amounts which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the net asset value of the Fund and, in the case of a Fund which is a PIE, where the Manager considers it appropriate to do so, exclude any Tax Credit.

#### 18.4 **Determining Liabilities**

For the purpose of determining the Net Asset Value of a Fund under clause 18.1, 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 (except to the extent that the Manager, following consultation with the Supervisor, elects not to have regard to such practice) and in doing so may:

- (a) apportion the Liabilities of a Scheme generally among the Funds on such basis as the Manager considers appropriate, fair and equitable for Scheme Participants; 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 PIE Tax Liability) or expenses charged to a Scheme Participant and met by cancellation of Units held by that Scheme Participant (whether or not those amounts are required to be treated as liabilities for accounting purposes).

#### 18.5 **Manager's decision is final**

Subject to clause 18.6, the Net Asset Value of the Fund ascertained by the Manager is final and binding on all persons, including, without limitation, the Supervisor and any applicant or subscriber for, or purchaser of, Units, and all Scheme Participants.

#### 18.6 **Valuation on a consistent basis**

The Manager shall ascertain the Net Asset Value of a Fund and the value of the Assets on a consistently applied basis accepted as being appropriate by the Supervisor. The Manager shall however be entitled at any time or times to alter that basis and the application to another basis accepted as being appropriate by the Supervisor, provided that the Manager first consults with the Supervisor on the alterations proposed by the Manager.

#### 18.7 **Remain in force**

Determinations of the value of an Asset pursuant to clause 18.1 shall remain in force from the time they take effect until the time determined by the Manager on the next Business Day that a determination of the value of the Asset is made by the Manager.

#### 18.8 **Reliance by Supervisor**

The Supervisor shall be entitled to rely on the Manager's calculations under this clause 18, 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.



## 19 PRO RATA DISTRIBUTIONS TO SCHEME PARTICIPANTS

### 19.1 Power to make pro rata distributions<sup>82</sup>

Subject to the provisions of this Deed and the rights, terms of issue, obligations and restrictions attaching to any Units or classes of Units, the Manager may at any time direct the Supervisor to distribute any amount of capital or income to Scheme Participants in a Fund, pro rata according to the aggregate number of Units and Fractional Units they hold in that Fund, on a Record Date and, in the case of a Scheme or Fund that is a PIE, subject to any adjustment made to the Distributable Amount to be distributed to Scheme Participants pursuant to clause 12.6. The Distributable Amount for each Fund and for each Scheme Participant shall be determined in accordance with the Manager's determination under this clause.

### 19.2 Entitlements to Distributable Amounts

Unless otherwise agreed by the Manager, and subject to the rights, terms of issue, restrictions and obligations attaching to any particular Units:

- (a) the Distributable Amounts for a Fund are to be transferred to a Distribution Account for that Fund as soon as practicable after the relevant Record Date and cease to be an Asset when they are transferred into the Distribution Account;
- (b) subject to clauses 19.2(d) and 19.2(e) and 12.6, Scheme Participants registered in the Register of a Fund at the relevant Record Date are presently entitled to the Distributable Amount attributed to the aggregate number of Units and part Units they hold in that Fund as calculated and adjusted in accordance with this Deed;
- (c) payments must be made out of the Distribution Account as soon as practicable after the relevant Record Date;
- (d) where a Unit is partly paid, it shall be treated for the purposes of calculating Distributable Amounts under this clause as that proportion of a whole Unit as the amount paid up bears to the Unit Price for that Unit or shall be treated in such other manner as the Manager determines; and
- (e) the Distributable Amount to be distributed to Scheme Participants of a Fund or Scheme that is a PIE may differ as between Scheme Participants as a result of the exercise of the Manager's discretion in clause 12.6 to adjust Scheme Participants' Distributable Amounts to reflect the Fund's or Scheme's PIE Tax Liability or Tax Credits attributable to a Scheme Participant.<sup>83</sup>

### 19.3 In specie distributions or the issue of bonus Units

The Manager may, in its discretion, make a distribution in Cash, in specie, or by way of bonus Units, provided that if the Manager proposes to make a distribution in specie to Scheme Participants, each Scheme Participant shall receive the same value of Assets for each of their Units (with the value of such Assets to be determined in accordance with clause 18.2), subject to any adjustments, and less any deductions permitted in accordance with this Deed.

<sup>82</sup> Sections 135(1)(e) of the FMCA.

<sup>83</sup> Section 170 of the FMCA.





#### 19.4 **Distribution reinvestment**

A Scheme Participant may elect to reinvest some or all of any distribution (or any Tax Credits under clause 12.6) by acquiring Units in a Scheme, Fund or class of Unit selected by the Scheme Participant, if the Manager decides to allow distribution reinvestment in such case. The procedure for such distribution reinvestment shall be determined by the Manager.

#### 19.5 **Bonus issues in lieu of distributions**

If the Manager decides to offer bonus issues of Units in lieu of distributions or a Tax Credit received by the Manager under clause 12.6, a Scheme Participant may elect this option in respect of all or some distributions from a Fund or Scheme or the Tax Credit on the terms offered by the Manager. In such cases, the Manager shall issue Units in accordance with the terms of the offer.

#### 19.6 **Payment**

The Manager must prepare or arrange for distributions to be paid.

#### 19.7 **Distributions in the context of transfers and transmissions**

Entitlements to distributions in a Distribution Account when a transfer of Units is registered remain credited to the transferor, unless the Manager receives evidence to its satisfaction, or the transferor advises the Manager, that distributions are to be transferred to the transferee. Entitlements to distributions in a Distribution Account when a transmission of Units is registered are to be credited to the beneficiary.

#### 19.8 **Distributions subject to terms of issue**

The rights of a Scheme Participant under this clause 19 are subject to the rights, terms of issue, obligations and restrictions attaching to the Units which they hold.

### 20 **MANAGER'S FEES AND EXPENSES**

#### 20.1 **Manager's fees**<sup>84</sup>

- (a) *Fee*: The Manager shall be entitled to receive from each Fund a management fee of an amount set by the Manager, such fee being calculated in the manner described in the relevant Fund's current PDS, offering document or register entry (and may include an Exit Fee which the Manager may deduct from the Withdrawal Amount or may recoup from the redemption proceeds of the relevant Scheme Participant's Units which shall be redeemed to meet such Exit Fees, and, for the avoidance of doubt, an administration fee).
- (b) *Fee payable monthly*: The Manager's fee shall be paid monthly in arrears while the Manager is managing the relevant Fund or Scheme.
- (c) *Fee calculated on a daily basis*: The Manager's fee shall be calculated and accrued daily on the basis of the relevant Fund value or Scheme value from day to day (or on such other basis as the Manager may (with the Supervisor's approval (such approval not to be unreasonably withheld or delayed) decide in respect of the Fund in question from time to time).
- (d) *Manager may provide services*: Instead of contracting other parties to do so, the Manager may, with the Supervisor's approval (such approval not to be unreasonably withheld or delayed), itself provide services in relation to

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<sup>84</sup> Section 135(1)(f) of the FMCA.



registry management and accounting. The Manager is entitled to reasonable fees for these services, if it provides them itself, in addition to its fees for managing the relevant Fund (or Scheme). Such services shall be on normal commercial terms, or terms as favourable to the relevant Fund as normal commercial terms.

- (e) *Allocation of Fees to Scheme Participants:* Where a fee is incurred in respect of a Scheme Participant, the Manager shall levy such fee to that Scheme Participant. Such levied fee shall be met by the redemption of Units of the relevant Scheme Participant with an aggregate Withdrawal Price (less any deductions permitted by this Deed) equal in value to the amount of the levied fee, and the proceeds of such redemption shall be paid to the Manager or at its direction (in full satisfaction of such fee). Where there are insufficient Units in a Scheme Participant's Unitholding to satisfy such fees, the unsatisfied balance of such fees shall be a debt owing to the Manager or the Supervisor in its capacity as Supervisor as the case may be.
- (f) *No amendment without Manager's agreement:* This clause 20.1 shall not be amended without the agreement of the Manager.

## 20.2 Reimbursement of Expenses of the Scheme<sup>85</sup>

- (a) The Manager may pay all reasonable expenses incurred in relation to the management or operation of a Fund from the Assets of that Fund (including expenses for which the Supervisor is entitled to be reimbursed pursuant to clause 14.3). The Manager may cancel or redeem Units of a Scheme Participant to reflect the Scheme Participant's share of any expenses so paid, from time to time in its absolute discretion.
- (b) Where any item of expenditure relates to more than one Fund or Scheme the amount thereof shall be apportioned among the relevant Funds or Schemes in such manner as the Manager determines.

## 20.3 Advances to the Manager

- (a) Subject to this Deed, the Supervisor is empowered to advance or otherwise make available to the Manager out of a Fund or to authorise the Manager to retain out of a Fund such amount as the Supervisor from time to time considers to be reasonable and proper in order to enable the Manager to perform and carry out its powers and obligations with regard to the management of the Fund, but any such amount shall be on account only of costs, charges and expenses that are or would become or are anticipated by the Supervisor to be the subject of reimbursement to the Manager or are or would become or are anticipated by the Supervisor to become owing in respect of Assets comprised in the relevant Scheme.
- (b) The Manager shall, whenever so required by the Supervisor, furnish to the Supervisor such evidence as the Supervisor may require as to the utilisation of any such amounts and the purpose for which the same have been or are intended to be applied by the Manager.

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<sup>85</sup> Section 135(1)(f) of the FMCA.



#### 20.4 **Alteration or waiver of fees**

The Manager may at any time and from time to time, in its absolute discretion, upon notifying the Supervisor in writing:

- (a) increase fees payable in respect of a Scheme or any Fund or by the relevant Scheme Participants;
- (b) provided that any such fee is not prohibited under this Deed, commence charging any such fee which is not currently being charged; or
- (c) waive payment of fees or expenses or reimbursement due to it generally or in relation to any particular Scheme Participant or potential Scheme Participant,

subject to the terms of issue and the Manager providing Scheme Participants with 30 Business Days' prior notice of any fee increase or new fee.

### 21 **REMOVAL AND RETIREMENT OF MANAGER<sup>86</sup>**

#### 21.1 **Criteria for removal**

The Manager shall be removed from office as Manager of a Scheme in the circumstances set out in the FMCA.<sup>87</sup>

#### 21.2 **Manager to cease activities**

If the Manager ceases to hold office as manager of a Scheme pursuant to clause 21.1 or clause 21.3, the Manager and any delegate shall immediately desist from all activities related to that Scheme, unless the Supervisor agrees to the contrary.<sup>88</sup>

#### 21.3 **Manager may retire**

The Manager may retire in relation to a Scheme at any time, without assigning any reason, upon giving to the Supervisor 90 days' (or such shorter period as the Supervisor shall reasonably permit) notice in writing of the Manager's intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the relevant Scheme pursuant to clause 21.4.

#### 21.4 **New Manager appointment**

- (a) The power to appoint a temporary manager under the FMCA<sup>89</sup> shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.
- (b) Subject to all applicable laws, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, but, except where the new permanent manager is a Related Party of the Manager, 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

<sup>86</sup> Section 135(1)(h) of the FMCA.

<sup>87</sup> Sections 135(1)(h), 185, 209 and 210 of the FMCA.

<sup>88</sup> Section 185(4) of the FMCA.

<sup>89</sup> Sections 186, 187, 189 and 191 of the FMCA.



Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

#### 21.5 **Release of former Manager**

Subject to all applicable laws,<sup>90</sup> from the date of appointment of a new Manager, the former Manager shall be absolved and released from all such covenants under this Deed (except in respect of antecedent breach). For the avoidance of doubt, the former Manager shall be entitled to payment of all fees, and reimbursement of all expenses, accrued before it ceased to hold office under this Deed.

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

The new Manager must lodge a notice of change of Manager with the Registrar of Financial Service Providers in accordance with the FMCA.<sup>91</sup>

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

In accordance with the requirements of the FMCA, a former manager must hand over records and give reasonable assistance to the new manager.<sup>92</sup>

#### 21.8 **Termination of Scheme on removal of the Manager**

Notwithstanding any other provision of, or amendment to, this Deed (but subject at all times to any applicable laws), if AMP Wealth Management New Zealand Limited is removed as Manager of a Scheme, the Scheme shall be wound up, unless AMP Wealth Management New Zealand Limited and the Supervisor agree otherwise. For the avoidance of doubt, this clause does not apply in the event that AMP Wealth Management New Zealand Limited retires as Manager of the Scheme.

## 22 **LIMITATION OF LIABILITY**

### 22.1 **Limitation**

Subject to clause 34.2, but notwithstanding anything else contained in this Deed or any rule of law:

- (a) no Scheme Participant shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Scheme or any Fund;
- (b) nothing in this Deed or in the relationship between the Scheme Participants shall be deemed to create a partnership amongst Scheme Participants; and
- (c) subject to clauses 4.9, 7.7 and 34, neither the Supervisor nor the Manager shall be or act as agent for the Scheme Participants in respect of Units in any Fund or Scheme, and neither shall have power to incur liabilities on behalf of any Scheme Participant or pledge the credit of any Scheme Participant beyond the extent of their investment in the Scheme or Fund.

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<sup>90</sup> Section 191 of the FMCA.

<sup>91</sup> Section 192 of the FMCA.

<sup>92</sup> Section 190 of the FMCA.



## 23 ACCOUNTING RECORDS, FINANCIAL STATEMENTS AND REPORTING

### 23.1 Accounting Records

- (a) The Manager shall keep or cause to be kept such accounting records as correctly record and explain the transactions and the financial position of each Fund and each Scheme to the extent required by the FMCA.<sup>93</sup>
- (b) The Supervisor shall (and shall procure that any Custodian shall) from time to time, upon request, furnish the Manager with any information necessary for the Manager's record keeping purposes.
- (c) The Manager shall allow for inspection of all records relating to a Fund or a Scheme to the extent required by the FMCA (including by procuring legal access rights for the Supervisor to the extent such records are maintained or held by third parties).<sup>94</sup>

### 23.2 Financial statements to be prepared

The Manager shall cause financial statements to be prepared in respect of each Scheme to the extent required by the FMCA.<sup>95</sup>

### 23.3 Audit of financial statements

The Manager shall ensure that the financial statements prepared for each Scheme are audited to the extent required by the FMCA.<sup>96</sup>

### 23.4 Annual Reports

The Manager shall prepare and lodge each Scheme's annual report in accordance with the requirements of the FMCA.<sup>97</sup>

### 23.5 Reporting and information to Scheme Participants

The Manager shall provide Scheme Participants with such information, notices, and disclosures as are required to be given to them under the FMCA.<sup>98</sup>

### 23.6 Regulatory compliance

The Manager shall at all relevant times:

- (a) file or lodge all reports, returns, statements, information or other material required by law to be filed or lodged with any public registry or regulatory authority; and
- (b) keep copies of documents in accordance with the FMCA.<sup>99</sup>

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<sup>93</sup> Sections 455 to 458 of the FMCA.

<sup>94</sup> Section 459 of the FMCA.

<sup>95</sup> Sections 460 and 461A of the FMCA.

<sup>96</sup> Sections 461D to 461G of the FMCA.

<sup>97</sup> Regulations 62 and 63 of the FMC Regulations.

<sup>98</sup> Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.

<sup>99</sup> Subpart 4 of Part 4 of the FMCA.



## 24 AUDITOR APPOINTMENT

### 24.1 Appointment

- (a) As soon as practicable after the date of execution of this Deed, the Manager shall, after consultation with the Supervisor, appoint an auditor or auditors for the Scheme, who shall be a qualified auditor (as defined in the FMCA).<sup>100</sup>
- (b) The Manager and the Supervisor shall consult on the services to be performed by the auditor and the scope of the services to be provided.
- (c) The Manager shall comply with the FMCA in relation to the appointment or reappointment of the auditor, including any provisions implied into this Deed by the FMCA or the FMC Regulations.<sup>101</sup>

### 24.2 Auditor may act for others

The Auditor may also be auditor of the Supervisor, the Manager, or any other fund or managed investment scheme.

### 24.3 Auditor's remuneration

The remuneration of the Auditor shall be fixed by the Manager on an arm's length basis, and may be paid out of the Scheme and apportioned between the Scheme's Funds as the Manager thinks fit.

### 24.4 Retirement or removal of auditor

The Auditor may at any time be removed from office by the Manager (after prior notice to the Supervisor) or by a Special Resolution of Scheme Participants. The Manager must remove the Auditor if the Supervisor believes it to be in the best interests of the Scheme and/or Scheme Participants and instructs the Manager to remove the Auditor. Subject to the FMCA, the Auditor may retire on such basis as is agreed with the Manager. The Manager shall comply with the FMCA in relation to the resignation of the auditor, including any provisions implied into this Deed by the FMCA or the FMC Regulations.<sup>102</sup>

### 24.5 Vacancy in office of Auditor

Any vacancy in the office of Auditor occurring under clause 24.4 shall be filled by the Manager (after consultation with the Supervisor) appointing a qualified auditor under clause 24.1.

### 24.6 Auditor's duties

In the performance of its responsibilities, the Auditor shall act in accordance with, and comply with its duties under, the FMCA.

## 25 MEETINGS

### 25.1 Meetings generally

The Manager may (and, if required by the FMCA<sup>103</sup> to call meetings, shall) convene a meeting of a class of Scheme Participants by giving notice in accordance with the

<sup>100</sup> Section 461E of the FMCA.

<sup>101</sup> FMC Regulation 84 implies clauses 1 to 3 of Schedule 13 to the FMC Regulations into this Deed.

<sup>102</sup> FMC Regulation 84 implies clauses 1 to 3 of Schedule 13 to the FMC Regulations into this Deed.

<sup>103</sup> Sections 161 to 163 of the FMCA and regulation 83 of the FMC Regulations.



FMCA and FMC Regulations. A meeting of Scheme Participants shall be conducted in accordance with the requirements of the FMCA, the FMC Regulations and any other law, subject (where permitted) to any additions or changes expressly prescribed in this Deed.<sup>104</sup>

#### 25.2 **Attendance at meetings and right to be heard**

The Manager, the Supervisor and the Auditor and their duly appointed representatives may attend and address any meeting of Scheme Participants (including any adjourned meeting).

#### 25.3 **Validity of proxy's vote**

A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

#### 25.4 **Special Resolutions binding on all Scheme Participants**

A Special Resolution passed by the required majority at a meeting of a class of Scheme Participants shall be binding upon all the relevant Scheme Participants in that class, whether present or not present at such a meeting, and each of the Scheme Participants and the Supervisor and the Manager shall, to the extent required by the FMCA, be bound to give effect thereto accordingly.

#### 25.5 **Resolutions where more than one class of Units**

Where there is more than one class of Units in a Fund, a resolution of Scheme Participants in relation to any matter affecting the Fund as a whole shall require the approval of all classes of Units in that Fund by the required majority.

#### 25.6 **Class meetings**

The provisions of this clause 25 shall apply to meetings of Scheme Participants in a Scheme or a class of Scheme Participants, as if the Scheme, or each class of Units, were a separate Fund.

### 26 **NOTICES AND INFORMATION TO SCHEME PARTICIPANTS, SUPERVISOR, AND MANAGER**

#### 26.1 **Notices and information to Scheme Participants**

A notice under this Deed, and (without limiting any enabling provision in applicable legislation) any other Scheme-related communication intended for a Scheme Participant, will be given to the Scheme Participant in the first instance, where practicable, by way of Electronic Communication. The Manager may, in its absolute discretion, send a communication by the following non-electronic means if the Manager's attempts to give any notice or other Scheme-related communication to a Scheme Participant are unsuccessful, or if it otherwise considers it is appropriate or in the Scheme Participant's best interests in the circumstances:

- (a) leaving it at the Scheme Participant's registered address; or

<sup>104</sup> Sections 135(1)(j) and 161 to 163 of the FMCA and FMC Regulations 83(1)(b) and 89 to 91 and Schedule 11.



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

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

#### 26.2 **Deemed service**

Any notice and any other Scheme-related communication sent by post shall be deemed to have been served 4 Business Days after the notice is posted. Any notice and any other Scheme-related communication sent by email shall be deemed to have been served provided no non-delivery answer back is received by the sender within 1 hour of sending. Any notice and any other Scheme-related communication sent by mobile application or an online customer account provided by the Manager shall be deemed to have been served 3 Business Days after the notice is sent.

#### 26.3 **Receipt of notice by Scheme Participant**

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

#### 26.4 **Notice where no valid address held**

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

#### 26.5 **Notice where no access to application or portal**

Subject to the requirements of applicable legislation, in the event that:

- (a) any Scheme Participant does not have a valid email address or has not supplied to the Manager an email address for the giving of notices;
- (b) the Manager does not hold a valid registered address for the Scheme Participant in respect of the relevant Fund or Scheme; and





- (c) the Manager has ascertained that a Scheme Participant no longer has access to an application or a portal used by the Manager to communicate with Scheme Participants,

the Manager may provide notices to such Scheme Participant by posting them on the Manager's website.

#### 26.6 **Calculation of notice periods**

Subject to any applicable legislation, 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 included in the number of days or other period.

#### 26.7 **Transferees bound by notices sent to the transferor**

Every person who, by operation of law, transfer, death or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which (prior to his or her name and address being entered in the Register in respect of such Units) shall have been duly given to the person from whom he or she derives his or her title to such Units.

#### 26.8 **Notices between Manager and Supervisor**

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

### 27 **MONEY PAYABLE TO SCHEME PARTICIPANTS**

Any money payable by the Supervisor or the Manager to a Scheme Participant under this Deed may be paid to an account of a bank or financial institution nominated by the Scheme Participant:

- (a) by direct electronic bank transfer; or
- (b) as the Scheme Participant or joint Scheme Participants, with the approval of the Manager, may from time to time specify.

### 28 **MINIMUM ECONOMIC AMOUNT**

Subject to clause 12.3 (in the case of the Manager), neither the Supervisor nor the Manager shall be obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

### 29 **SEVERANCE**

#### 29.1 **Ability to read down clauses**

If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.



## 29.2 Severance of invalid clause

Notwithstanding clause 29.1 if a provision of this Deed is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal if a word or words (as the case may be) were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is hereby severed,

and the remainder of this Deed has full force and effect.

## 30 AMENDMENTS TO DEED

### 30.1 Power to amend

The Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed or any Establishment Deed (by means of a deed executed by the Supervisor and the Manager) to the extent permitted by the FMCA.<sup>105</sup>

### 30.2 Amendments by the Manager

Subject to any requirements of the FMCA,<sup>106</sup> the Manager may, with the consent of the FMA, by deed supplemental to this Deed amend, add to or revoke (in whole or in part) any provision of this Deed or any Establishment Deed if the FMA is satisfied that the amendment, addition or revocation is necessary to enable the Deed (including any Establishment Deed) to comply with sections 135 to 137 of the FMCA.

## 31 WINDING UP<sup>107</sup>

### 31.1 Supervisor notification of wind up

A Scheme or a Fund shall be wound up if:

- (a) subject to complying with the Manager's duties in the FMCA,<sup>108</sup> the Manager elects to wind up the Scheme or Fund by giving 90 days' written notice (or such shorter notice as the Supervisor shall agree) to the Supervisor that the Scheme or Fund is to be wound up; or
- (b) a Scheme registration is cancelled or the Scheme or Fund is required to be wound up pursuant to the FMCA,<sup>109</sup> this Deed, by the Courts or by operation of law,

and the wind-up shall take effect on the date specified for that purpose under such process requiring such winding up.

<sup>105</sup> Sections 139 and 141 of the FMCA.

<sup>106</sup> Section 140 of the FMCA.

<sup>107</sup> Section 135(1)(i) of the FMCA.

<sup>108</sup> Section 143 of the FMCA.

<sup>109</sup> Sections 195 and 211 of the FMCA.



### 31.2 **Scheme Participant notification**

Where a Scheme or a Fund is to be wound up, within 30 Business Days of giving notice to wind up the Scheme or Fund in accordance with clause 31.1(a), or within 30 Business Days of the Manager receiving notice that the Scheme registration shall be cancelled or any Scheme or Fund is required to be wound up pursuant to clause 31.1(b) (or any shorter notification period required by the Courts), the Manager must give to each Scheme Participant holding Units in the Scheme or Fund, notice of:

- (a) the winding up and of the intention of the Supervisor to distribute to Scheme Participants the Assets of that Scheme or Fund;
- (b) any suspension of all existing and future Withdrawal Requests pursuant to clause 7.15; and/or
- (c) as applicable, the details of any election offered to Scheme Participants as specified in clause 31.3(b).

### 31.3 **Winding up proceeds may be met by distributing units in another scheme or fund**

(a) Where the Manager elects to wind up a Scheme or a Fund, or a Scheme is wound up pursuant to clause 31.1(b) (in each case, the *Original Scheme* or *Original Fund*), the Manager may (where the Manager believes it is in the best interests of Scheme Participants of the applicable Original Fund or Original Scheme to do so and subject to the FMCA) satisfy Scheme Participants' Winding Up Entitlements:

- (i) through a payment in Cash; or
- (ii) through the distribution (*in specie*) of units in another scheme or a fund of another scheme (or in the case of the winding up of a Fund under clause 31.1, another Fund) (*an Alternate Fund*) in accordance with this clause; or
- (iii) by providing Scheme Participants with the choice of having their Winding Up Entitlements met in Cash or through the distribution (*in specie*) of units in one or more Alternate Funds,

provided that, in either case under clause 31.3(a)(ii) or (iii), the Manager shall (after good faith consultation with the Supervisor for a period of up to 20 Business Days), ensure that, unless the Supervisor agrees otherwise, the Alternate Fund(s) selected shall offer the ability to withdraw units generally without delay, and have substantially similar investment objectives and fees as each applicable Original Fund and/or Original Scheme, to ensure that Scheme Participants are not materially adversely affected by the distribution of units in one or more Alternate Funds, and the Manager shall certify to the Supervisor that these requirements have been met. For the avoidance of doubt, an Alternate Fund would allow withdrawal of units generally without delay, even if the Manager has a power to suspend withdrawals.

- (b) If the Manager makes an election to offer such a choice under clause 31.3(a)(iii), the notice given by the Manager pursuant to clause 31.2



shall invite the relevant Scheme Participants to elect, within such reasonable period as the Manager may prescribe:

- (i) to receive payment in Cash; or
- (ii) to have the Scheme Participant's Winding Up Entitlements satisfied by the distribution (*in specie*) of units in an Alternate Fund and may determine (and notify Scheme Participants in the notice pursuant to clause 31.2) whether Scheme Participants who do not make an election are to receive Cash or units in the Alternate Fund.

#### 31.4 Procedure on winding up

From and after the date of termination of a Scheme or a Fund, the Manager shall direct the Supervisor to (or, if the Manager cannot or will not provide such a direction, the Supervisor can apply to the court for a direction to):

- (a) sell and realise the Assets of the Scheme or Fund (other than units in an Alternate Fund to be distributed to Scheme Participants in satisfaction of their Winding Up Entitlements) and make provision for any debts and benefits due but unpaid and the costs of winding up; and
- (b) acquire such units in the Alternate Fund to be distributed (*in specie*) to Scheme Participants in satisfaction of their Winding Up Entitlements,

as soon as reasonably practicable, subject to clause 31.8(a).

#### 31.5 Supervisor's retention power

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

#### 31.6 Scheme Participant's entitlement on wind up

A Scheme Participant's Winding Up Entitlements on a winding up of a Scheme or a Fund shall be satisfied by the distribution of either Cash or units in an Alternate Fund equal in value to the Scheme Participant's Winding Up Entitlements in accordance with the process elected under this clause 31.

#### 31.7 Wind up procedure

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

- (a) first, pay or retain all costs, charges, expenses, taxes and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Scheme or the Fund and of all remuneration payable to the Supervisor and the Manager as provided by this Deed; and
- (b) secondly, satisfy the Winding Up Entitlements of Scheme Participants in the manner determined under this clause 31.



### 31.8 **Miscellaneous wind up provisions**

- (a) The Manager may postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Scheme Participants to do so, and will not be responsible for any Scheme Participant's consequent loss.
- (b) If, in the opinion of the Supervisor, it shall be expedient to do so, the Supervisor may make interim payments or distributions on account of the amounts to be distributed in accordance with clause 31.7.
- (c) Each distribution shall be made only against delivery to the Supervisor of such form of payment confirmation from the Manager as may be reasonably required by the Supervisor.
- (d) The Supervisor must provide all the reports and comply with all of the requirements set out in the FMCA and any other applicable legislation when a Scheme or a Fund is wound up.

## 32 **CONTRACT AND COMMERCIAL LAW ACT 2017**

This Deed shall take effect as a contract (as well as a deed) to the extent provided in this Deed, and shall be enforceable for the benefit of every Scheme Participant from time to time except that, for the purposes of the proviso to section 12 of the Contract and Commercial Law Act 2017, the benefit so extended to Scheme Participants is intended to be limited by, and enforceable subject to, the rights of parties to this Deed to vary or discharge benefits or obligations as provided in this Deed without the consent of any Scheme Participant, other than as so provided.

## 33 **GOVERNING LAW**

### 33.1 **New Zealand Law**

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

## 34 **TAX**

### 34.1 **Deduction of Tax in respect of a Scheme Participant<sup>110</sup>**

The Supervisor or the Manager may deduct from any amounts due or payable to a Scheme Participant (including, without limitation, from the proceeds of any redemption under clause 12.6 or prior to the satisfaction of such amounts through the cancellation of Units) any Tax paid or payable on behalf of or in respect of that Scheme Participant.

### 34.2 **Indemnity for Tax**

Every Scheme Participant shall indemnify the Supervisor and the Manager on demand, to the maximum extent permitted by law, in respect of any Tax paid or payable by the Supervisor or the Manager on behalf of or in respect of the Scheme Participant. The indemnified amount may be deducted from or set-off against any amount due to the Scheme Participant in relation to any Units.

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<sup>110</sup> Sections 170 of the FMCA.



### 34.3 Disposals of Units to avoid exceeding maximum investor interests requirements

If a Scheme Participant exceeds or is expected to exceed the maximum investor interests rules for PIEs prescribed in the Tax Act (the *Breach*) in respect of a Fund or Scheme, the Manager may, in its discretion, sell or redeem the amount of the excess Units required to remedy the Breach, and:

- (a) the Manager shall account to the relevant Scheme Participant for the proceeds of any disposal of the excess Units after deduction of all expenses and Taxes arising from such disposal; and
- (b) neither the Manager nor the Supervisor is required to maximise the Unit sale price for any disposal and, in any event, shall not be liable to any Scheme Participants for any loss on disposal.

## 35 SCHEME PARTICIPANTS BOUND BY DEED

### 35.3 Provisions benefit Scheme Participants

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind Scheme Participants) contained in this Deed, enure for the benefit of and bind each Scheme Participant and are legally enforceable as between the Manager, the Supervisor and Scheme Participants.<sup>111</sup>

## 36 COUNTERPARTS AND ELECTRONIC SIGNING

### 36.3 Execution by counterparts

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

### 36.4 Electronic signing

Either party may sign this Deed by way of the application of that party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017. Where a party applies an electronic signature to this Deed in accordance with this clause:

- (a) that party confirms that such method of signing is reliable and conclusive of that party's intention to be legally bound by this Deed;
- (b) all the parties are able to rely on such electronic signature as if that party had signed this Deed by manuscript signature in accordance with all legal requirements; and
- (c) the parties acknowledge that by accepting or acknowledging receipt of copies of the Deed with the other party's electronic signature, they are consenting to the use of the party's electronic signature.

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<sup>111</sup> Section 137 of the FMCA.



**37 DELIVERY**

**37.3 Delivery of Deed**


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

- (a) physical delivery by that party, its solicitors or any other person authorised by that party, of an original of this Deed, executed by that party, into the custody of the other party or its solicitors; or
- (b) transmission, in electronic form by any means of Electronic Communication (including email of a scanned copy) to the other party or its solicitors, by that party, its solicitors or any other person authorised in writing by that party, of an original of this Deed, executed by that party, and the parties hereby consent to such form of delivery.

**EXECUTION**

Executed and delivered as a deed

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

  
\_\_\_\_\_


Director

  
\_\_\_\_\_

Director

**The New Zealand Guardian Trust  
Company Limited** by:

(WCT588)

Witness signature: 

Witness name: Choo Lian Khor

Occupation: Financial Analyst

Address: Khandallah, Wellington

Authorised signatory



Authorised signatory

