

# Booster System



## Terms and Conditions

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By completing the Application Form you agree to the following:

## 1 DEFINITIONS

1.1 In this Booster System – terms and conditions (the ‘Agreement’), terms which start with capital letters have the following meaning:

**Account** means your account with the Administrator, opened and maintained in accordance with this Agreement.

**Administrator** means Booster Custodial Administration Services Limited (BCAS).

**Agent** means a person, company or other entity appointed in accordance with clause 6 of this Agreement.

**Application Form** means the relevant application form completed in respect of the Fund/s you are investing in with Booster Investment Management Limited.

**BIS** means collectively Booster Investment Scheme and/or Booster Investment Scheme 2.

**Business Day** means any day other than a Saturday, Sunday or statutory or regional holiday in Wellington.

**Client** means the person named as the client in the Application Form.

**Agreement** means this Booster System – terms and conditions, including the Application Form.

**Custodian** means Asset Custodian Nominees Limited (ACNL).

**Funds** means the managed funds available for investment by you and our other clients issued by Booster Investment Management Limited.

**GST** means goods and services tax under the Goods and Services Tax Act 1985.

**Instructions** mean instructions to deal with your Investments provided by you through mybooster.co.nz or by email to clientservices@booster.co.nz.

**Investments** means any assets, recorded in your Account from time to time.

**Manager** means Booster Investment Management Limited.

**Nominated Bank Account** means the bank account which you have selected for withdrawals in the Application Form, or any replacement bank account which you select in accordance with such procedures as we specify from time to time.

**Parties** mean the Administrator, Manager and the Client, and Party means any of them.

**Portfolio Investment Entity (PIE)** has the same definition as under the Income Tax Act 2007.

**Prescribed Investor Rate (PIR)** has the same definition as under the Income Tax Act 2007.

**Privacy Policy** means the policy as in force from time to time which governs how we will handle any personal information collected by us. The Privacy Policy is available through the Website [www.booster.co.nz/terms-and-conditions](http://www.booster.co.nz/terms-and-conditions).

**Services** means the services provided by the Administrator to you under this Agreement.

**Terms and Conditions** means the general terms and conditions of use applicable to users of our Website as in force from time to time. The Terms and Conditions are available through the Website [www.booster.co.nz/terms-and-conditions](http://www.booster.co.nz/terms-and-conditions).

**Website** means the website through which the services are provided to you under this Agreement. As at the date of this Agreement, the website can be accessed through [www.booster.co.nz](http://www.booster.co.nz).

## 2 GENERAL INTERPRETATION

- 2.1 Unless the context otherwise requires, references to 'we', 'us' and 'our' are references to the Administrator (including its successors and assigns and all delegated parties) and references to 'you' and 'your' are references to the person or persons whose name appears in the Application Form as the Client, including that person or persons administrators, executors and successors.
- 2.2 Unless otherwise stated, a reference to a clause is a reference to a clause in this Agreement.
- 2.3 Words in the plural include the singular and vice versa.
- 2.4 Headings are inserted for guidance only and shall be ignored in interpreting this Agreement.
- 2.5 a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations, instruments, class orders and policy statements in all instances as amended, consolidated, re-enacted, replaced or re-written.

### **3 APPOINTMENT OF ADMINISTRATOR**

- 3.1 You appoint the Administrator to act as the administrator of your Account in accordance with this Agreement.
- 3.2 The Administrator will:
  - 3.2.1 buy and sell Investments on your behalf in accordance with Instructions from you;
  - 3.2.2 redeem interests in your Investments to allow for the payment of tax at your PIR in order to comply with New Zealand law;
  - 3.2.3 following the end of each tax year, provide tax statements in respect of your Investments to you; and
  - 3.2.4 provide you with access to a web-based reporting system that produces reports, portfolio valuations and transaction statements for you.
- 3.3 We may refuse to act on Instructions if the Instructions:
  - 3.3.1 are incomplete, ambiguous or unclear;
  - 3.3.2 conflict with any law or this Agreement; or
  - 3.3.3 would give rise to a suspicious transaction reporting obligation under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and its regulations and industry guidance.
- 3.4 We may require additional clarification, confirmation, supporting evidence or information before acting on any Instructions.
- 3.5 We are not responsible for the accuracy or appropriateness of Instructions and we are not providing you any financial advice, whether implied or direct.

### **4 APPOINTMENT OF CUSTODIAN**

- 4.1 You appoint the Custodian to act as the custodian of your Account in accordance with this Agreement.
- 4.2 The Custodian will:
  - 4.2.1 hold Investments on your behalf in trust as bare trustee. Your Investments will be held in a pooled account, which means that the legal title to Investments held on your behalf and on behalf of our other clients is held in a single name. BCAS will maintain accounting and custody records that enable the Investments held on your behalf to be readily identified as your property;

## **5 OUR DUTY OF CARE TO YOU**

- 5.1 In providing the services under this Agreement the Administrator and the Custodian will:
- 5.1.1 exercise the care, diligence and skill of an experienced, prudent and professional administrator or custodian; and
  - 5.1.2 hold and deal with your Investments in a proper and efficient business-like manner with security arrangements that are prudent for a professional portfolio administrator or custodian.

## **6 CUSTODIANS, NOMINEES, DELEGATES AND AGENTS**

- 6.1 We can, without notice to you:
- 6.1.1 appoint any other person as our Agent to perform any of our duties, functions or powers under this Agreement, and revoke any such appointment; and
  - 6.1.2 delegate any of our duties, functions or powers under this Agreement to any person, and revoke any such delegation.
- 6.2 When we appoint an Agent or delegate, the Agent or delegate may be able to appoint another person as a sub-custodian, nominee or agent, or to sub-delegate that person's duties and functions to any person.
- 6.3 If we exercise reasonable care in the selection of any Agent or delegate, we will not be liable to you for any loss you suffer as a result of an act or omission of that Agent or delegate, or any act or omission of its appointed sub-custodians, nominees, agents or delegates.
- 6.4 If an act or omission of any person appointed in accordance with this clause causes a loss to be suffered by you and our other clients and compensation is applied, you agree that we can allocate that loss to relevant clients on a proportionate basis.

## **7 OUR LIABILITY TO YOU**

- 7.1 We will not be liable to you for any losses that you suffer in connection with investments in the BIS, except where those losses arise as a direct result of:
- 7.1.1 dishonesty on the part of any of our employees; or
  - 7.1.2 negligence, wilful default or fraud on our part or on the part of any of our employees.
- 7.2 In all cases in relation to clause 7.1, our liability to you will be limited to the direct losses suffered by you. We will not be liable to you for any consequential loss or loss of income, business, profit or saving or any other loss.

- 7.3 Should we become liable to you under clauses 7.1 and 7.2 in connection with this Agreement, in no circumstance shall (and to the maximum extent permitted by law) our aggregate liability under clauses 7.1 and 7.2 in connection with this Agreement for any event and in any calendar year exceed the lesser of:
- 7.3.1 the market value of the Investments in your Account in respect of which, and at the time at which, such liability arose; and
- 7.3.2 an amount equal to the average market value of the Investments in your Account for that calendar year.
- 7.4 To the extent our liability under clause 7.3 is attributable to fault on the part of an Agent or delegate under clause 6, our liability is further limited to the amount we are able to recover from that person or persons in respect of that fault.
- 7.5 Clauses 7.1, 7.2 and 7.3 are intended to confer a benefit on, and be enforceable by, any person appointed under clause 6. This means that the liability to you of our Agents or delegates is subject to the same exclusions and limitations as our liability to you.

## **8 YOUR LIABILITY TO US**

- 8.1 You indemnify us and our related companies, Agents, delegates, officers and employees against any losses suffered by us as a result of:
- 8.1.1 a breach of this Agreement by you;
- 8.1.2 any actions undertaken in the proper performance of our obligations to you under this Agreement;
- 8.1.3 any Portfolio Investment Entity or other tax liability required to be deducted (at the PIR or other applicable tax rate nominated by you) from your Investment even if that liability exceeds the value of your Investment;
- 8.1.4 any incorrect notification or failure to notify your PIR.
- 8.2 You separately indemnify us and our related companies, delegates, officers and employees against any costs we incur in performing our duties and obligations under this Agreement.
- 8.3 You give the indemnities above for our benefit and for the benefit of any Agent or delegate appointed under clause 6. This means that any Agent or delegate will be able to enforce these indemnities directly against you.
- 8.4 If you are investing as joint investors, or as trustee of a trust or a director of a company and there are two or more trustees of the trust or two or more directors of the company, you agree that you are jointly and severally liable to us with the other joint investors or trustees or directors. This means that we can choose which of the joint investors or trustees or

directors to claim against, and that each joint investor or trustee or director will be liable to us for the full amount of any claim.

## **9 YOUR CONFIRMATIONS, ACKNOWLEDGEMENTS AND UNDERTAKINGS TO US**

- 9.1 You confirm that all information provided by you in the Application Form is complete and accurate.
- 9.2 You acknowledge that:
- 9.2.1 the services provided under this Agreement are limited to the administration and custodial (holding of Investments) selected by you. In particular, but without limitation, the services do not include the giving of financial advice and we take no responsibility for the performance of Investments;
  - 9.2.2 you consent to receiving all communications in respect of your Investments in BIS or the services provided in this Agreement and any information about any other products, services or promotions offered by Booster Financial Services Limited or any of its subsidiaries from the custodian, the Manager, or any other related party of Booster Financial Services Limited by email unless you positively opt-out of email communications;
  - 9.2.3 The Administrator and the Custodian are not the issuer of the Funds, and do not set the terms or conditions of, the Funds or any other Investments available through your account with the Administrator. As a result, we may not be able to discharge Instructions from you or an Authorised Person of the issuer provides any contrary information (for example, if the issuer declines to issue a product that you have asked us to buy on your behalf);
  - 9.2.4 you will be bound by the terms and conditions of any Fund that we buy on your behalf;
  - 9.2.5 you have full power and authority to enter into this Agreement and if this Agreement identifies more than one person (including, but not limited to, joint tenancy and tenants in common), we are entitled to rely on the instructions of any one person named, unless contrary instructions have been received by us from you.
- 9.3 You agree that:
- 9.3.1 we may make the information specified by clause 5(1) of the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (as amended, modified or replaced from time to time) available to you through an electronic facility on the Website and you acknowledge that by entering into this Agreement we have given you access to that facility;
  - 9.3.2 where we receive any rebates in respect of investments held by us for more than one client, we will apportion those rebates to the relevant clients on a pro rata basis; and
  - 9.3.3 you will read and understand the terms and conditions, privacy policy and disclosure material (including any relevant product disclosure statements) for any Investments that you apply for

through BCAS and that you will be bound by the terms and conditions of each such Investment.

- 9.4 For the purpose of verifying your identity and meeting our obligations in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 you consent to us using electronic verification services, including those services offered by third parties.
- 9.5 You consent to your personal information that you have provided in accordance with this Agreement being used by and, where necessary, being disclosed to third parties to be reported in compliance with relevant law and regulations in force in New Zealand, including (but not limited to) relevant persons and bodies located in New Zealand such as the Companies Office, Department of Internal Affairs, New Zealand Transport Agency, and in relation to relevant regimes such as the Foreign Account Tax Compliance Act (FATCA) and the Automatic Exchange of Information and Common Reporting Standard (AEOI). You indemnify the Administrator and the Custodian (including any related party thereof) for the consequences of you not providing or disclosing correct information to the Administrator, including any update of, and the Administrator or the Custodian reporting any incorrect information as a result of relying on the information you provided. You understand that you are responsible for determining whether you have any direct obligations in relation to FATCA and AEOI and the Administrator and the Custodian is only collecting information from you in respect of FATCA, AEOI or any other relevant law or regime to satisfy their own obligations.
- 9.6 You must comply with all instructions, authorisations, Terms and Conditions and any other conditions given by us or on our behalf from time to time. You must not:
- 9.6.1 breach these terms and conditions;
  - 9.6.2 access or use your Account in any unlawful or illegal manner or for any unlawful or illegal purpose;
  - 9.6.3 access or use your Account in a manner that may unreasonably affect the availability of the service for use by other users;
  - 9.6.4 use any software tool (other than your Account) for the purpose of extracting data from your Account;
  - 9.6.5 impersonate another user or an administrator;
  - 9.6.6 circumvent or modify any security technology or software that is part of the Administrator;
  - 9.6.7 provide false, fraudulent, or misleading information in any of your communications with us or any third party;
  - 9.6.8 upload, post or transmit any content that infringes any patent, trade mark, trade secret, copyright, or other proprietary right of any third party; or

9.6.9 remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use that are shown on the Website.

9.7 If we buy or sell Investments on your behalf in error, you agree that we can take such steps as we determine in our discretion to correct that error.

## **10 FEES**

10.1 You may be charged fees within each of the Funds that you invest in through the Administrator. These fees are provided for in the disclosure material for each of the Funds.

10.2 We reserve the right to introduce an administration fee or any other relevant fee in relation to the services provided under the Agreement, by providing you with three months' notice of our intention to do this.

## **11 INVESTMENTS**

11.1 When you make an Investment, in order to pay for it you will need to either authorise the Administrator to direct debit your bank account or transfer money yourself to the Custodian's bank account. When you sell an Investment, the money will be paid to your nominated bank account (unless you have reinvested the proceeds from a sale into different Funds).

11.2 Currently no interest is paid to you on funds paid to the Custodian's bank account. The Administrator receives the interest on any money held by the Custodian in its bank account.

11.3 Any tax liability generated through the Administrator will be paid from your investments at the point of full withdrawal, and/or at the end of each financial year.

## **12 TAX**

12.1 You must notify us of your IRD Number and PIR and certain other tax information:

12.1.1 in the Application Form; and

12.1.2 as soon as reasonably practicable if your PIR, or that other tax information changes.

12.2 If you fail to notify us of your PIR we will use the default rate. As at the date of this agreement the default rate for PIR is 28%.

12.3 You must confirm your PIR to us:

12.3.1 by 31 March of each year if it has changed; and

12.3.2 at the point of any full withdrawal from a PIE in relation to your PIR rate.

- 12.4 For Investments in PIEs, we may be required to cancel units equal to the value of the tax you need to pay.
- 12.5 We will use your PIR to calculate the amount of tax to pay.
- 12.6 We shall have no responsibility or liability with regard to your tax status or position in any jurisdiction.
- 12.7 We take no responsibility for an incorrect declaration or election and note these may have tax consequences for you, including having to pay additional tax in your tax return, as well as possible exposure to penalties or interest.

### **13 REDELIVERY AND TERMINATION**

- 13.1 We may at any time deliver all or any Investments to you without terminating this Agreement. You can at any time request us to deliver any Investments to you without terminating this Agreement. Following redelivery, Investments will no longer be held by us as custodian and we will have no obligations in relation to the administration of such Investments. Note that not all Investments may be able to be transferred to you and some investments may need to be sold (with the proceeds of any such sale being transferred to you).
- 13.2 We can terminate this Agreement at any time by giving written notice to you. You can terminate this Agreement at any time by giving written notice to us.
- 13.3 Termination of this Agreement will not affect any pre-existing rights and obligations under this Agreement.
- 13.4 Following notice of termination:
  - 13.4.1 we will retain the powers necessary to effect and settle any transaction as a result of Instructions given to us before the time of termination; and
  - 13.4.2 you will remain responsible for payment of any amount due to us on any such transaction.
- 13.5 Within a reasonable period after you give notice of termination, we will deliver the balance of all Investments held by us to you.
- 13.6 We may make such arrangements as we deem appropriate and, where applicable, at your expense, in order that prompt delivery may be made. You agree that you will do all acts and execute, complete and otherwise enter into all documents that may be necessary to enable us to redeliver Investments to you following termination of the Agreement.
- 13.7 Our obligation to redeliver Investments to you under clauses 13.1 and 13.5 is subject to the following limitations:

- 13.7.1 we will not be required to transfer Investments to you if doing so would cause us to breach any applicable law or regulatory requirements;
- 13.7.2 we will only be required to transfer Investments to you if reasonable notice has been given to us; and
- 13.7.3 it may not be possible for us to redeliver some kinds of Investments and the Parties acknowledge that to the extent Investments cannot be redelivered this Agreement will continue to apply.
- 13.8 the transfer is permitted by the rules and requirements of any relevant exchange, clearing system, sub-custodian or other person referred to in clause 5 of this Agreement. You agree that the transfer of Investments to you will be solely at your risk, and we will have no liability for any losses that you may suffer where Investments are transferred to you.

#### **14 AMENDMENT AND ASSIGNMENT**

- 14.1 We can amend this Agreement by giving you 10 Business Days' notice, from time to time.
- 14.2 We can assign our rights and transfer our obligations under this Agreement by giving you 30 days' written notice. If we do this you will be treated as releasing us absolutely from any obligations which we transfer.

#### **15 NOTICES**

- 15.1 Any notice or other communication given by us to you will be deemed to have been received as follows:
  - 15.1.1 a notice by email to the email address given in the Application Form (as updated by any Instructions) will be deemed to have been received by you on the date and time the email is sent (as shown in a confirmation of the email generated by our computer system which indicates that the email was sent and provided that our computer system has not generated a record that the email has not been received);
  - 15.1.2 any other notice or other communication posted by us to you will be treated as being effective on the fifth day following the day of posting.
- 15.2 Any notice or other communication given by you to us will be treated as having been received at the time we actually receive it.

#### **16 PRIVACY**

- 16.1 All information collected by us in relation to you will be held in accordance with our Privacy Policy available on our Website.

## **17 CONSUMER GUARANTEES ACT 1993 AND THE FINANCIAL ADVISERS ACT 2008**

- 17.1 The Consumer Guarantees Act 1993 will apply to the Administrator, unless you are using the Administrator for the purposes of a business.
- 17.2 No term of this Agreement is intended to have the effect of contracting out of our obligations, or obligations of any agents or delegates appointed under clause 5, under the Consumer Guarantees Act 1993, except to the extent that this is permitted by law. Any term of this Agreement will be treated as amended to the extent necessary to reflect this intention.
- 17.3 In addition, no term of this Agreement is intended to have the effect of contracting out of any obligations that we, or any agents or delegates appointed under clause 5, may have under the Financial Advisers Act 2008, in respect of BCAS except to the extent that this is permitted by law. Any term of this Agreement will be treated as amended to the extent necessary to reflect this intention.

## **18 MISCELLANEOUS PROVISIONS**

### Severance

- 18.1 If any parts of this Agreement are or become invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

### No waiver

- 18.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, nor will any single or partial exercise of such right, power or privilege preclude any further exercise of such right, power or privilege under this Agreement or otherwise. No waiver granted by a party to this Agreement in respect of any action taken by the other party shall be effective unless it is agreed in writing by both parties.

### Legally binding

- 18.3 You agree and acknowledge that this Agreement is intended to create legally binding obligations on each party to this Agreement in accordance with its terms.

#### Successors

- 18.4 This Agreement shall be binding upon the successors of each Party and shall endure for the benefit of, and shall be enforceable by, such successor and any officers or directors thereof.

#### Entire Agreement

- 18.5 This Agreement constitutes the entire agreement between the Parties about its subject matter and supersedes all previous agreements, arrangements, understandings and negotiations.

#### Further acts

- 18.6 The Parties will promptly do and perform all further acts and execute, complete and otherwise enter into and deliver all further documents (in form and content reasonably satisfactory to each Party) required by law or reasonably requested by any Party to give effect to this Agreement.

#### Survival

- 18.7 Clauses 6, 7, 8, 9, 12, 14, 15, 16 and this clause 18.7 shall survive the termination of this Agreement.

#### Rights are cumulative

- 18.8 Our rights under this Agreement are cumulative and not exclusive of any rights provided by law.

#### Counterparts

- 18.9 This Agreement may be executed in any number of counterparts, each of which is deemed an original but all of which shall constitute one and the same instrument.

#### Governing law

- 18.10 This Agreement will be governed by the laws of New Zealand and the Parties agree to submit to the jurisdiction of the courts of New Zealand.