

BOOSTER KIWISAVER SCHEME

TRUST DEED

BETWEEN

**BOOSTER INVESTMENT MANAGEMENT LIMITED
(THE 'MANAGER')**

AND

**PUBLIC TRUST
(THE 'SUPERVISOR')**

Effective from 25 June 2018

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DEED dated

25 June 2018

PARTIES

- 1 **BOOSTER INVESTMENT MANAGEMENT LIMITED** a company duly incorporated in New Zealand under the Companies Act 1993 (“**Manager**”)
- 2 **PUBLIC TRUST** a New Zealand Crown Entity established under the Public Trust Act 2001 (“**Supervisor**”)

BACKGROUND

- A. Kiwi Super Savers Limited and Grosvenor Trustees Limited (company number 965248) established a Superannuation Scheme under the Superannuation Schemes Act 1989 under a Trust Deed dated 31 October 2006 (the “Original Deed”).
- B. The Original Deed was replaced with a deed dated 13 June 2007 (the “2007 Deed”) so as to enable the Superannuation Scheme to be registered as a KiwiSaver Scheme under the KiwiSaver Act 2006 and to be known as the Grosvenor KiwiSaver Scheme (the “Scheme”). Since 19 September 2016, the Scheme has changed its name to the Booster KiwiSaver Scheme.
- C. Kiwi Super Savers Limited amalgamated with Grosvenor Investment Management Limited on 15 September 2010 and, on 19 September 2016, Grosvenor Investment Management Limited changed its name to Booster Investment Management Limited.
- D. Grosvenor Trustees Limited was replaced by Public Trust as trustee of the Scheme with effect from 15 September 2010.
- E. The 2007 Deed was replaced with a deed dated 15 September 2010 (the “2010 Deed”) so as to give effect to the change of trustee and consolidate previous changes to the 2007 Deed.
- F. The principal purpose of the Scheme is providing retirement benefits directly or indirectly to beneficiaries who are natural persons.
- G. The 2010 Deed was replaced with a deed dated 14 September 2012 (the “2012 Deed”) so as to give effect to the restructure of the Scheme as a retail KiwiSaver Scheme under the KiwiSaver Amendment Act 2011, and to make a number of other minor amendments to the 2010 Deed as a consequence of that restructure.
- H. The 2012 Deed was replaced with a deed dated 1 July 2014 (the “2014 Deed”) so as to give effect to the Scheme’s status as a Default KiwiSaver Scheme.
- I. The 2014 Deed was replaced with a deed dated 19 September 2016 (the “2016 Deed”) so as to give effect to compliance under the Financial Markets Conduct Act 2013 (“FMCA”), and all other relevant enactments as amended by the FMCA.
- J. The Parties wish to enter into this Deed to:
 - amend and consolidated the provisions of the 2016 Deed in order to amend:
 - clause 2.1 “Definitions” in order to amend the definition “Market Value” in relation to (c) Real Property Investments; and
 - clause 2.1 “Definitions” in order to amend the definition “Real Property”; and
 - clause 2.1 “Definitions” in order to amend the definition “Withdrawal Amount”; and
 - clause 4.3 in order to ensure the Liabilities attributable to an Investment Fund (other than Liabilities to a Member) can only be met by that Investment Fund and not met by another Investment Fund; and
 - clause 11.3 in order to reflect the cost of acquiring Authorised Investments for an Investment Fund when issuing a Unit; and
 - add clause 58 “Provisions which apply if the Scheme is a PIE”; and

- make other minor and consequential changes.
- K. The Supervisor and the Manager consider the amendments referred to in Recital J above comply with the terms of clause 51.1 (b) and (e) of the 2016 Deed.
- L. Prior to executing this Deed:
- The Supervisor has in respect of the amendments certified to the effect that it is satisfied that the amendments do not have a material adverse effect on Members and has obtained a certificate from a lawyer that this Deed as amended and consolidated will comply with sections 135 to 137 of the FMCA on the basis set out in the certificate.

COVENANTS

1 REPLACEMENT

- 1.1 **Deletion and replacement:** The words within the 2016 Deed are deleted and replaced with those contained within this Deed on and from the date of execution.

2 INTERPRETATION

- 2.1 **Definitions:** In this Deed unless the context otherwise requires:

“Act” means the KiwiSaver Act 2006 (including the KiwiSaver Scheme Rules) and any regulations issued thereunder;

“Additional Fund” means a separate Investment Fund constituted pursuant to clause 4.4;

“Annual Report” means the annual report required by regulation 62 of the Regulations;

“Associated Employer” means any Employer (whether a corporate body, association, partnership or individual) who is a subsidiary of, or associated with a Participating Employer;

“Auditor” means the auditor of the Scheme appointed pursuant to clause 48;

“Authorised Investments” means any investment, interest or estate relating to the investment of trust funds, whether in New Zealand or any other country, and whether legal or equitable, corporeal or incorporeal, freehold, leasehold or some other tenure, in or in relation to any or all of:

- (a) any share, security (as defined in the FMCA) or like interest in any company, partnership, or other Person;
- (b) deposits with or loans to (with or without security) any Person;
- (c) debentures, bonds, notes, debt securities (as defined in the FMCA) or similar obligations (with or without security) issued by any Person;
- (d) bills of exchange or promissory notes made, drawn, or accepted by any Person;
- (e) Real Property;
- (f) Mortgages of any Real Property;
- (g) Cash, foreign currencies, foreign exchange contracts;
- (h) any interest of any nature in any real or personal property of any nature whatsoever;
- (i) Futures Contracts;
- (j) any right or option to acquire or take up any of the above;
- (k) any other investment, right, interest, obligation or property of any nature whatsoever nominated by the Manager and approved by the Supervisor;

and without prejudice to the generality of (a) to (k) above includes:

- (l) units, sub-units or other interests in any managed investment scheme or similar undertaking or scheme; and
- (m) stocks, bonds, mortgages, or securities of, or deposits with, any government, public, municipal or local body or authority in any part of the world;

“Beneficiary” means a natural person entitled to receive all or part of a Withdrawal Amount;

“Benefit” means any lump sum, annuity, pension, allowance, refund or other payment as permitted under the Act including any Insurance Benefits provided pursuant to a Participating Employer’s Participation Agreement;

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

“Business Day” means a day upon which registered banks are open for business in Wellington;

“Cash” includes a cheque and bank cheque;

“Chartered Accountant” has the meaning set out in section 2 of the New Zealand Institute of Chartered Accountants Act 1996;

“Commencement Date” means

(a) in relation to each Investment Fund, the date which the Manager by notice in writing to the Supervisor specifies as the date on which that Investment Fund is to commence or, if no such notice is given by the Manager to the Supervisor, the date of the first invitation to Members to apply for Units issued by the Manager in respect of that Investment Fund; and

(b) in relation to the Scheme means the commencement date of the Original Deed;

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

“Contributing Employer” means an Employer (whether a corporate body, association, partnership or individual) who contributes to the Scheme on behalf of their employees, with the consent of the Manager, but who has not signed a Participation Agreement;

“Contribution” means an amount payable in relation to any subscription for Units in an Investment Fund and includes any amount paid by a Participating Employer and/or the Crown in respect of a Member who is an Employee of that Participating Employer to the Manager as a contribution to the Scheme;

“Crown” includes a Minister of the Crown, a Government department, and the Commissioner;

“Deed” means this deed as amended from time to time;

“Default Investment Product” means the Investment Fund specified as the default investment product of the Scheme in the Instrument of Appointment;

“Default KiwiSaver Scheme” means a KiwiSaver Scheme specified as a default KiwiSaver Scheme under an instrument of appointment to which section 132 of the Act applies;

“Default Member” means any Member who became a Member in accordance with sections 50 to 52 of the Act and who has not made an Investment Election;

“Disclosure Document” means any PDS or Register Entry required by the FMCA and includes any amendment to such documents;

“Electronic Communication” means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium approved by the Manager or Supervisor as applicable (where the Supervisor may expect to receive a communication directly) subject

to such conditions as the Manager or Supervisor as applicable considers appropriate as to identification of the person making the communication or verification of the content of the communication;

“Employee” means a natural person who is engaged to work, or who works, under a contract of service or apprenticeship with an Employer;

“Employer” (whether a corporate body, association, partnership or individual) means any Associated Employer, Contributing Employer or Participating Employer and includes any Related Company;

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

“Financial Markets Legislation” has the meaning set out in section 6(1) of the FMCA;

“Financial Year” means in relation to the Scheme:

- (a) the period commencing on the Commencement Date of the Original Funds and ending on the next following 31 March; and
- (b) each subsequent period of one year thereafter commencing on 1 April; and
- (c) the period commencing on 1 April immediately preceding the date of termination of the Scheme and ending on the date of termination of the Scheme;

or such alternative period as the Supervisor and the Manager may agree;

“FMA” or **“Financial Markets Authority”** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011;

“FMCA” means the Financial Markets Conduct Act 2013 and any Regulations;

“Futures Contract” means a contract for the sale or purchase of a financial commodity, right or interest of any nature, such sale or purchase to be effected at some time later than the date at which that contract is entered into but does not include the sale and purchase of securities on standard terms and conditions of settlement;

“Income” means in relation to any Investment Fund the net income earned by that Investment Fund, determined in accordance with the provisions of clause 25.2;

“Income Entitlement” means, in relation to a Unit, the amount to be distributed to a Member in respect of that Unit and includes, where the Scheme is a PIE, the Unit’s proportionate share in any Income that has not been allocated to Members and is held by the Scheme;

“Independent Expert” means an appropriately qualified person nominated by the Supervisor and agreed to by the Manager (such agreement not to be unreasonably withheld) or nominated by the Manager and agreed to by the Supervisor (such agreement not to be unreasonably withheld);

“Insurance Benefits” means those benefits paid under an insurance policy, if any, to Members as described in the Participating Employer’s Participation Agreement;

“Instrument of Appointment” means the instrument of appointment, if any, under which the Scheme is specified as a Default KiwiSaver Scheme under the Act;

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

“Investment Election” means an election made by a Member in accordance with clause 6.11;

“Investment Fund” means any Original Fund and any Additional Fund;

“Investment Fund Assets” or **“Assets”** means in relation to any Investment Fund the Investments and any other assets of that Investment Fund as described in clause 4.2;

“Investment Fund Particulars” means the particular terms and condition in relation to an Investment Fund as set out in the deed establishing that Investment Fund;

“Investment Fund Value” means in relation to any Investment Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Investment Fund and that Valuation Day by deducting from the aggregate of:

- (a) the amount of Cash forming part of the Assets of the Investment Fund; and
- (b) the Market Value of all of the Investments of the Investment Fund (including for the avoidance of doubt all accrued Income of the Investment Fund on that Valuation Day);

the aggregate of:

- (a) Liabilities of that Investment Fund; and
- (b) all costs, charges and other outgoings (other than those which in the reasonable opinion of the Manager are not material) incurred or accrued in connection with the Liabilities of that Investment Fund or otherwise in connection with that Investment Fund which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment);

“Issuer Obligations” has the meaning given to it in section 6(1) of the FMCA;

“Issue Price” means the price for issue of Units determined in accordance with clause 11.33;

“Liabilities” in relation to any Investment Fund means debts and other obligations of the Supervisor acting in its capacity as trustee of that Investment Fund, payable from the Investment Fund Assets of that Investment Fund (including in particular but without limitation all taxes or duties payable by or in respect of that Investment Fund) but excludes contingent liabilities (except to the extent that the Manager with the approval of the Auditor decides that an allowance should be made for such liabilities) and such debts and other obligations of the Supervisor in respect of which by the terms of this Deed the Supervisor is not entitled to be indemnified out of the Investment Fund Assets of that Investment Fund;

“KiwiSaver Scheme” has the meaning given to that term by the Act;

“KiwiSaver Scheme Rules” means the provisions implied in this Deed under section 116 and schedule 1 of the Act;

“Management Fee” means in relation to any Investment Fund the fee for managing that Investment Fund determined in accordance with clause 29.1;

“Manager” means the party to this Deed named as the Manager or such other company as may from time to time be appointed to carry out the function of manager of the Scheme pursuant to clause 30;

“Market Value” in relation to any Investment as at any Valuation Day means:

- (a) in respect of Investments which are listed on an Exchange, by reference to the price quoted for the last sale of that Investment on the relevant Exchange on or before that Valuation Day, or if there has been no such sale, or if the last sale is not considered by the Manager or the Supervisor to be an accurate measure, the value determined by the Manager having regard to such information as the Manager considers appropriate, including without limitation the advice of an Independent Expert (if any);

- (b) in respect of Investments which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, provided that the Manager and the Supervisor may agree upon some other form of appropriate determination as to value in respect of any specific Investment from time to time;
- (c) in respect of Real Property Investments, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor based on:
 - (i) a valuation provided by an independent registered valuer at a minimum once every three years; and
 - (A) in the interim years when an independent valuation referred to subparagraph (c) (i) above is not available, then based on the most recent independent valuation and advice from an independent registered valuer on the market movements of similar assets; or
 - (B) in the interim years, another alternative methodology as agreed between the Supervisor and the Manager; or
 - (ii) another alternative methodology as agreed between the Supervisor and the Manager, with any such independent valuation and advice provided to the Supervisor;
- (d) in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or failing such agreement according to principles of valuation determined by an Independent Expert;

and where in respect of an Investment to which sub-paragraph (a) or (b) applies the relevant information as to value is not received prior to 4.30pm on that Valuation Day for determination of the Investment Fund Value, means the value of that Investment which applied on the preceding Valuation Day (“Adopted Value”) but an Adopted Value shall not be applied on more than two successive Valuation Days;

“**Member**” means, in relation to:

- (a) the Scheme, a natural person who has become a Member of the Scheme pursuant to clause 6.1, including a Participating Member, and who has not stopped being a Member in accordance with clause 6.12; and
- (b) an Investment Fund, a Member who for the time being is entered on a Register as the holder of a Unit of that Investment Fund;

“**Member Account**” means an account in the name of a Member established and maintained pursuant to clause 24;

“**Member Account Balance**” means, on any date, the balance of the Member’s Account at that date determined in accordance with clause 24.5;

“**Member’s Interest**” or “**Interest**” means in respect of a Member the Units of a relevant Investment Fund acquired with or attributable to the Contributions of the Member invested in the relevant Investment Fund;

“**Month**” means a calendar month;

“**Monthly Date**” means the last Business Day of each Month in each year;

“**Mortgage**” means any Mortgage or charge secured over Real Property or any share in any Mortgage or charge secured over Real Property including any contributory Mortgage held by a trustee, supervisor

or nominee, any sub mortgage or sub charge secured over Real Property and any Mortgage Backed Securities or other Mortgage related security;

“Mortgage Backed Security” means any Investment conferring or creating an interest, whether legal or equitable, in any Mortgage by virtue of any agreement, declaration of trust or otherwise;

“Office” means the registered office from time to time of the Manager;

“Ordinary Resolution” has the meaning set out in paragraph 11.2 of Schedule 2 to this Deed;

“Original Fund” means each of the following separate Investment Funds in existence at the date of this Deed:

- Geared Growth Fund;
- High Growth Fund;
- Asset Class Growth Fund;
- Balanced Growth Fund;
- Balanced Fund;
- Asset Class Conservative Fund;
- Asset Class Balanced Fund;
- Asset Class Growth Fund;
- Moderate Fund;
- Shielded Growth Fund;
- Default Saver Fund;
- Capital Guaranteed Fund; Enhanced Income Fund;
- Trans-Tasman Share Fund;
- Socially Responsible Investment Growth Fund;
- Socially Responsible Investment Balanced Fund; and
- International Share Fund;

“Participating Employer” means an Employer, (whether a corporate body, association, partnership or individual) who has entered into an agreement with the Supervisor or Manager and has not ceased to be a participating employer and includes an Associated Employer;

“Participating Member” means a Member who joins the Scheme under the terms of a Participation Agreement;

“Participation Agreement” means an agreement between the Supervisor or Manager and a Participating Employer pursuant to clause 32;

“PDS” or “Product Disclosure Statement” has the meaning set out in section 6(1) of the FMCA;

“Person” means and includes a natural person, a company, a corporation, a corporation sole, a managed investment scheme, a government or a body of persons (whether corporate or unincorporated);

“Personal Representative”, in relation to a deceased Member, means a person to whom probate of the will of the deceased Member, letters of administration of the estate of the deceased Member, or any similar grant, has been granted, whether in New Zealand or anywhere else;

“PIE” means a portfolio investment entity as defined in section YA 1 of the Income Tax Act 2007;

“PIE Tax” means in relation to the Scheme, tax payable by the Scheme in respect of one or more Investment Funds, the Supervisor, or the Manager (whether provisional, deferred, or current) which is determined by reference to Prescribed Investor Rates of Members or is otherwise determined by the Manager or the Supervisor to be payable on income attributed to Members;

“Prescribed Investor Rate” means the rate advised by the Member at which the Member pays tax on their Investment Income;

“Real Property” means unlisted land and real estate of every description and every interest therein or

relating thereto and includes without limitations:

- (a) estates and interests in freehold and leasehold or other tenure;
- (b) estates and interests in any stratum or similar estate created pursuant to legislation in New Zealand or elsewhere in the world;
- (c) any purchase agreement, licence, easement, option or other agreement or right of any type attaching to or relating to land, real estate or any interest therein; and
- (d) all building, improvements, plant machinery, fixtures and fittings erected, installed on or relating to land, real estate or any interest therein;

“Register” means a register referred to in clause 17;

“Register Entry” means the entry for the offer in the register of offers of financial products required under the FMCA;

“Registered Scheme” means a KiwiSaver Scheme that for the time being is registered as a KiwiSaver Scheme under the FMCA;

“Regulations” means any regulations under the FMCA;

“Regulated Offer” has the meaning set out in section 6(1) of the FMCA;

“Related Company” has the meaning assigned to that term in Section 2(3) of the Companies Act 1993;

“Related Party” as the context requires has the meaning given to it in section 172 of the FMCA;

“Related Party Benefit”, is a benefit:

- (a) that either is given out of Investment Fund Assets or creates an exposure to loss for Investment Fund Assets; and
- (b) that is given to, or received by, a Related Party; but
- (c) does not include fees or expenses that are paid or reimbursed to the Manager in accordance with the Act, the FMCA or this Deed;

“Relevant Law” means, as appropriate, all laws applicable to the Manager, the Supervisor, the Scheme or an Investment Fund at applicable points in time which may include, without limitation, the Act and Financial Markets Legislation;

“Scheme” means the Booster KiwiSaver Scheme constituted by this Deed and comprising all of the various Investment Funds from time to time;

“SIPO”, means the statement of investment policy and objectives for the Scheme, and each Investment Fund, that meets the requirements of the FMCA;

“Special Resolution” has the meaning set out in paragraph 11.1 of Schedule 2 to this Deed;

“Superannuation Scheme” has the meaning given in section 6(1) of the FMCA and includes any foreign superannuation scheme in respect of which transfers to or from the Scheme (as applicable) are permitted and, during the period ending on 1 December 2016, includes a superannuation scheme registered under the Superannuation Schemes Act 1989;

“Supervisor” means the supervisor for the time being appointed pursuant to clause 28 and, where the

context requires or allows, this term includes any nominated person or nominee appointed in accordance with clause 4.5;

“Switching Notice” means a notice given in accordance with clause 15.1;

“Switch Fund” has the meaning specified in clause 15.1;

“Tax” includes all present and future taxes, duties, levies, deductions, withholdings and charges imposed, assessed or levied by any government authority including any penalties, interest or any other amount imposed in respect of the foregoing;

“Tax Act” means the Income Tax Act 2007 and/or the Tax Administration Act 1994 (as applicable);

“Tax Item” means any Tax Relief and any amount of deemed or actual income, gain, or accrual that is taken into account for Tax purposes;

“Tax Liability” means any Liabilities in respect of Tax after taking into account any applicable Tax Relief but excluding contingent Tax Liabilities (except to the extent that the Manager determines that an allowance should be made for such liabilities);

“Tax Relief” means any credit, rebate, offset or in respect of Tax and any cost, deduction, expenditure or loss (including depreciation loss) that is taken into account for Tax purposes;

“Transaction” means the

- (a) issue of Units; or
- (b) withdrawal of Units; or
- (c) switching of Units,

as may be appropriate in accordance with the context;

“Unit” means an undivided part or share in an Investment Fund Asset as described in clause 5 and includes parts of a Unit;

“Unit Value” means in relation to any Investment Fund and any Valuation Day such amount as is ascertained by dividing the Investment Fund Value of the Investment Fund by the number of Units in that Investment Fund on issue on that Valuation Day rounded down if necessary to the fourth decimal place of a dollar;

“Valuation Day” means a day whether periodical or otherwise specified by the Manager and determined in accordance with the relevant Investment Fund Particulars as a day in respect of which the Market Value of the Investments of an Investment Fund is determined. Unless the relevant Investment Fund Particulars indicate otherwise, the day shall be each Business Day;

“Withdrawal Amount” means, subject to clause 58.2 and 58.3, the aggregate Unit Value of the number of Units to be redeemed in relation to the Withdrawal Notice or Switching Notice pursuant to clause 14.3 or 15.1 (as the case may be) determined on:

- (a) the day that the Switching Notice or Withdrawal Notice (as the case may be) is received; or
- (b) if that day is not a Valuation Day, on the next Valuation Day; or
- (c) another Valuation Day as described in the relevant Investment Fund Particulars; and

in each case less any applicable fees and, in the Manager's discretion, the amount per Unit determined by the Manager from time to time to reflect the cost of disposing of Authorised Investments in the Investment Fund;

“Withdrawal Fund” has the meaning specified in clause 15.1;

“Withdrawal Notice” means a notice given in accordance with clause 14.3; and

“Withdrawal Suspension Notice” means a notice given in accordance with clause 14.11.

2.2 **General construction:**

- (a) Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) References to statutes or regulations include all amendments, re-enactments and replacements thereof.
- (c) Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- (d) Where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
- (e) If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may select.

2.3 **Compliance with the FMCA and the Act:** While the Scheme is a Registered Scheme, if any provision in the Deed is inconsistent with the FMCA, Act or Instrument of Appointment, that provision shall be deemed to be amended or deleted to the extent necessary to make that provision consistent with the FMCA, Act or Instrument of Appointment.

2.4 **Inclusion of implied provisions:** The provisions of this Deed are deemed to include the provisions implied by Relevant Law for so long as those provisions are in force and any provision of this Deed that is contrary to such implied provisions is void to the extent it is contrary.

3 **ESTABLISHMENT OF SCHEME**

3.1 **Establishment:** The **Booster KiwiSaver Scheme** was established as a KiwiSaver Scheme on the 13 June 2007 for the principal purpose of providing retirement benefits directly or indirectly to beneficiaries who are natural persons.

3.2 **Continuation of Supervisor:** The Supervisor agrees to continue to act as supervisor for the Members of the Scheme, and to hold the Investment Fund Assets of each Investment Fund on trust for those Members who have an interest in that Investment Fund, upon and subject to the terms and conditions contained or implied in this Deed.

3.3 **Continuation of Manager:** The Manager agrees to continue to act as manager of the Scheme upon and subject to the provisions applicable at law and the terms and conditions contained or implied in this Deed.

3.4 **Provisions benefit Members:** Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions contained in this Deed, enure for the benefit of and bind each Member.

3.5 **Composition of the Scheme:** The Scheme comprises of all the various Investment Funds, Contributions and other amounts from time to time held by the Supervisor upon the trusts of this Deed subject to any Liabilities of the Investment Funds.

3.6 **Commencement of the Scheme:** The Scheme commenced on the commencement date in the Original Deed.

4 CREATION OF THE INVESTMENT FUNDS

- 4.1 **Original Funds:** The Manager and Grosvenor Trustees Limited entered into separate deeds establishing each Original Fund. The Supervisor is now the supervisor and trustee of the Scheme and the Original Funds.
- 4.2 **Investment Fund Assets:** The Investment Fund Assets of each Investment Fund shall consist of all Investments for the time being held by or on behalf of the Supervisor by its nominated person(s) or by that nominated person(s) nominee(s) in respect of that Investment Fund upon the trusts of this Deed including:
- (a) the proceeds of sale or realisation of any Investments of that Investment Fund pending distribution or reinvestment; and
 - (b) all additions or accretions thereto; and
 - (c) all Income there from held pending distribution or reinvestment;
 - (d) Contributions to the Investment Fund that have been received but not yet invested.
- 4.3 **Separate Investment Funds:** Although the Scheme is intended to be treated as one Registered Scheme and the statutory and other obligations applicable to it construed accordingly, the Investment Fund Assets of each Investment Fund are intended to be treated as separate and independent from the Investment Fund Assets of every other Investment Fund with separate property and Liabilities, and the Supervisor and the Manager shall in all respects act so as to give effect to this intention. Without prejudice to the generality of the foregoing:
- (a) the Investment Fund Assets of one Investment Fund shall not be available to meet the Liabilities of any other Investment Fund;
 - (b) all Investments made with the moneys of an Investment Fund shall be held by or on behalf of the Supervisor by its nominated person(s) or the nominated person(s) nominee(s) as the exclusive property of that Investment Fund and for the exclusive benefit of the Members who have an interest in that Investment Fund pursuant to this Deed;
 - (c) the Manager shall keep separate records and accounts in respect of each Investment Fund, and shall not permit the property, Assets or Liabilities of any Investment Fund to become intermingled with those of any other Investment Fund **PROVIDED THAT** nothing in this sub clause shall prevent the Assets of any Investment Fund being lent to, deposited with or invested in another Investment Fund in accordance with this Deed;
 - (d) the creation of Additional Investment Funds shall not in any way vary or affect any other Investment Fund nor give rise to any resettlement of any other Investment Fund; and
 - (e) where the Investment Fund Assets attributable to a particular Investment Fund are insufficient to meet the Liabilities attributable to that Investment Fund, those Liabilities (other than any Liabilities to a Member) will be met by the Manager.
- 4.4 **Additional Funds:** The Manager may at any time on such terms and conditions as it thinks fit, establish a new Investment Fund to be governed by this Deed and subject to the Supervisor consenting to the creation of a new Investment Fund the Supervisor and the Manager shall enter into a deed establishing that new Investment Fund and incorporating in respect of that new Investment Fund such of the particulars set out in Schedule 1 to this Deed as the Supervisor and the Manager may consider necessary or appropriate. No such document shall contain any provision which affects the rights or interests of Members having an interest in any Investment Fund then in existence unless made in accordance with clause 51.1.

4.5 **Supervisor's Nominee:**

- (a) The Supervisor may from time to time contract out the holding of any Investment Fund Assets. The Supervisor shall advise the Manager of any delegation or contracting out under this clause before any such delegation, appointment or contracting out agreement is entered into.
- (b) Any company contracted by the Supervisor under this clause may, if authorised in writing by the Supervisor, in turn contract one or more persons as a nominee in which may be vested all or any Investment Fund Assets. The Supervisor shall cause any such nominated company and procure each nominated company that appoints any nominee to comply with the relevant covenants and obligations on the part of the Supervisor expressed or implied in the FMCA and this Deed.

4.6 **Duty on person contracting out:** If a person contracts the holding of any Investment Fund Assets to another person under clause 4.5, the person contracting out that function:

- (a) must take all reasonable steps to:
 - (i) ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person had performed then directly; and
 - (ii) monitor the performance of the function;
- (b) is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the performance of that function in accordance with clause 4.6(a)(i) .

4.7 **Default Investment Product:** The Manager shall ensure that while the Scheme is a Default KiwiSaver Scheme, an Investment Fund is specified to be, and will be governed as, the Default Investment Product as described in the Instrument of Appointment.

5 UNITISATION OF INVESTMENT FUNDS

5.1 **Beneficial Interest in Investment Funds:** The beneficial interest in the Investment Fund Assets of each Investment Fund shall be divided into Units.

5.2 **Equal but not specific interests:** Each Unit shall confer an equal interest in the Investment Fund Assets, but shall not confer any interest in any particular part of the Investment Fund Assets, and no Member shall be entitled to require the transfer to the Member of any of the Investments of the Investment Fund Assets.

5.3 **No interest in other Investment Fund Assets:** A Unit of one Investment Fund shall not confer any right or interest in the Investment Fund Assets of any other Investment Fund.

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

5.5 **Provisions benefit Members:** 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 Members) contained in this Deed, enure for the benefit of and bind each Member (and all persons claiming through them) as if they were a party to this Deed.

5.6 **Part Units:** Parts of a Unit may be created and can exist under this Deed and be denoted by figures up to four decimal places.

6 MEMBERSHIP AND INVESTMENT ELECTIONS

6.1 **Eligibility:** A natural person may become a Member of the Scheme:

- (a) in accordance with section 48 of the Act; or
- (b) by applying to join the Scheme by completing an application in such form as may be prescribed from time to time by the Manager; or
- (c) in respect of any period during which the Scheme is a Default KiwiSaver Scheme, in accordance with sections 50 to 52 of the Act.

6.2 As regards a Member who joins under clause 6.1, such a Member becomes a Member of the Scheme when the Manager accepts the person's application.

6.3 Any conditions of eligibility for a Participating Member will be contained in the relevant Participation Agreement.

6.4 **Manager may invite offers:** Following the execution of this Deed the Manager may at any time and from time to time invite applications:

- (a) from Persons who are eligible to become Members for membership of the Scheme, or
- (b) from, or on behalf of, Members, Contributing Employers and Participating Employers,

for Units of any Investment Fund to be created pursuant to this Deed, upon and subject to the terms and conditions contained in this Deed and the relevant Investment Fund Particulars and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine.

6.5 **Compliance with legislation:** The Manager shall in making any invitation in terms of clause 6.4, and accepting Member allocations under clause 6.1(c), comply with all of the Relevant Laws and the Instrument of Appointment.

6.6 Without limiting clause 6.5, the Manager must, if required by Relevant Law, not make a Regulated Offer of Units in an Investment Fund unless:

- (a) the Scheme is registered under the FMCA;
- (b) a PDS has been prepared and lodged as a Register Entry in respect of the Investment Fund; and
- (c) all of the information that the Register Entry is required to contain under the FMCA has been lodged as required with respect to the Scheme and the Investment Fund.

6.7 Each PDS and Register Entry must comply with the Financial Markets Legislation in force at the time, and otherwise be in a form provided to the Supervisor in advance of lodgement or supply (as the case may be).

6.8 The Manager must use its best endeavours to ensure that the PDS and Register Entry for the Scheme and each Investment Fund at all times comply with Financial Markets Legislation.

6.9 Refusal of Application:

- (a) As regards a Member who joins under clause 6.1, the Manager may refuse any application without giving reasons for any refusal.
- (b) Subject to the Act and the FMCA, the Manager may refuse in whole or in part any application for membership of the Scheme and is not required to give any reason or ground for such refusal. A decision to refuse an application in whole or in part shall be made promptly and the Manager shall promptly refund or arrange for the Supervisor to refund any application moneys received in respect of such application.

6.10 Commencement of Membership: Subject to the Act, FMCA and clause 6.2, membership of the Scheme shall be deemed to commence on the date the application for membership is accepted by the Manager. The Manager shall forthwith notify the applicant in writing of the acceptance of the applicant as a Member and of the date of acceptance.

6.11 Investment Election:

- (a) A Member shall be entitled to complete and lodge with the Manager an Investment Election in respect of the Contributions made or to be made to the Scheme to become operative on or after the expiration of one Business Day following the delivery of the Investment Election to the Manager. A Member's Investment Election is a direction by a Member in terms of Section 13G of the Trustee Act 1956 with respect to investment of that Member's Contributions in a specified Investment Fund or Investment Funds. The Investment Election shall be in writing or by Electronic Communication in such form or to such specification as is from time to time prescribed by the Manager.
- (b) A natural person shall complete an Investment Election upon making application for membership of the Scheme under clause 6.1(b) or upon becoming a Member of the Scheme in accordance with clause 6.1(a).
- (c) An Investment Election may be completed at any time by a Default Member, and changed at any time by a Member, by completing a new Investment Election and providing it to the Manager in such form or to such specification as is from time to time prescribed by the Manager.

6.12 Cessation of Membership: Subject to the Act a Member stops being a Member of the Scheme when the Member receives all Benefits the Member is entitled to receive under the Scheme including any transfer out of the Scheme in accordance with clauses 16.2 and 16.3, is otherwise not entitled to any Benefits under the Scheme, or the Member's membership terminates by either:

- (a) the Manager giving notice to the Member that the balance in the Member's Account is zero and the Member's membership is terminated; or
- (b) in accordance with section 20(1) of the Act.

6.13 Continuation of Membership: A Participating Member will remain a Member of the Scheme if their Participating Employer ceases to participate in the Scheme and the Manager decides to partially wind up the Scheme in respect of that Participating Employer.

6.14 A Member who is a Participating Member will remain a Member in the Scheme if the Member ceases to be eligible to be a Participating Member under the terms of the relevant Participation Agreement.

6.15 A Member who is not already a Participating Member may, subject to meeting the eligibility criteria as specified in the relevant Participation Agreement, apply to become a Participating Member if:

- (a) they start new employment with a Participating Employer; or
- (b) their Employer becomes a Participating Employer of the Scheme by:

- (i) signing a Participation Agreement as required under clause 32.1(c); or
- (ii) in accordance with clause 32.4.

7 CONTRIBUTIONS

- 7.1 **Minimum Contributions:** Subject to Relevant Law, the Manager may set minimum Contribution amounts.
- 7.2 **Suspension of Contributions:** The following provisions shall apply to a Member who is not a Participating Member:
- (a) The Member may stop and recommence making Contributions at any time and for any period provided that any requirements contained in the Act, which relate to contributions holidays, have been complied with.
 - (b) A Member who stops or recommences making Contributions under clause 7.2(a), must advise the Manager, or the Manager's agent, provided however that the Member shall not be required to advise the Manager if the Member makes Contributions to the Scheme via the Commissioner of Inland Revenue in accordance with the Act.
- 7.3 A Participating Member may only suspend Contributions to the extent provided for under the Act and the relevant Participation Agreement.
- 7.4 **Termination of Contributions:** When a Member stops being a Member all Contributions shall cease.

8 MEMBER CONTRIBUTIONS

- 8.1 Each Member will make Contributions in the manner specified in, and as required under, the Act. Subject to the requirements of the Act, a Participating Member must make Contributions as required under the relevant Participation Agreement.
- 8.2 A Member may make additional Contributions as permitted in the Act.

9 EMPLOYER CONTRIBUTIONS

- 9.1 A Participating Employer shall contribute at a percentage rate of each Participating Member's salary provided for in the Participation Agreement as a Contribution to the Scheme, subject to any minimum requirements under the Act.
- 9.2 Subject to the Act, a Contributing Employer shall contribute such amounts as it chooses.
- 9.3 Before paying any Contributions to the Scheme the Employer shall deduct any withholding or other taxes or deductions required to be paid to any regulatory or Government authority.
- 9.4 Unless the Participation Agreement provides otherwise and subject to the requirements of the Act, the Participating Employer may by notice to the Manager at any time:
- (a) reduce Contributions;
 - (b) increase Contributions; or
 - (c) make additional Contributions.
- 9.5 Employer Contributions shall vest fully in the Member immediately after the Contributions are made.

10 OTHER CONTRIBUTIONS:

- 10.1 Any other Person may make Contributions in respect of a Member of the Scheme.

11 APPLICATION OF CONTRIBUTION MONEYS

- 11.1 **Contributions to be applied for subscription:** Contributions shall be applied as a subscription for Units in such Investment Fund or Investment Funds as specified in the Member's Investment Election or, if the Member is a Default Member, in the Default Investment Product until an Investment Election is made. Units in respect of Contributions received on any Business Day shall be issued from the relevant Investment Fund or Investment Funds at the Unit Value on the next Valuation Day following receipt of the relevant Contribution monies.
- 11.2 **Registration and Issue of Units:** The Manager shall issue Units with respect to Contributions received in accordance with clause 11.1.
- 11.3 **Issue Price:** Each Unit of any Investment Fund shall be issued at the Unit Value determined as at the Valuation Day on which it is issued plus, in the Manager's discretion, the amount per Unit determined by the Manager from time to time to reflect the cost of acquiring Authorised Investments for the Investment Fund provided that Units issued on the first Valuation Day after the establishment of the relevant Investment Fund shall be issued at an Issue Price of \$1.00 unless agreed otherwise by the Manager and the Supervisor.
- 11.4 **Number of Units:** The number of Units sold or issued pursuant to a Contribution shall be that number of Units (rounded down if necessary to four decimal places) that have an aggregate Unit Value equal to the Contribution moneys.
- 11.5 **Contribution moneys subject to trusts:** All Contribution moneys received in payment of the Issue Price for Units pursuant to clause 11.3 shall become subject to the trusts created by this Deed immediately upon payment to the relevant bank account of the Scheme.

12 CONSOLIDATION AND SPLIT OF UNITS

- 12.1 **Manager may consolidate or subdivide:** The Manager may at any time following consultation with the Supervisor, by notice in writing to the Supervisor and to the Members who have an interest in an Investment Fund cause the Units of that Investment Fund in existence at the date of that notice to be consolidated or subdivided. Each such notice shall:
- (a) specify the date on which such consolidation or subdivision is to take place ("Operative Date"); and
 - (b) specify the ratio ("Ratio") which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.
- 12.2 **Effect of consolidation or subdivision:** As from the Operative Date, each Member having an interest in the relevant Investment Fund shall be deemed to hold a number of Units equivalent to the number held before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, parts of a Unit beyond four decimal places shall be rounded down and disregarded.

13 CESSATION OF ISSUES OF UNITS

- 13.1 **Manager may determine:** The Manager may, at any time or times by notice in writing given to the Supervisor, determine that after a date specified in the notice given to the Supervisor, no further Units shall be issued pursuant to this Deed or that no further Units shall be issued in respect of a specified Investment Fund or Investment Funds either for any specified period (which period may subsequently

be varied by the Manager by further notice in writing to the Supervisor) or until this Deed is terminated. In such event the Manager agrees with the Supervisor that the Manager will not after the date specified in the notice issue any further Units under this Deed or in respect of such Investment Fund or Investment Funds for the specified period or until this Deed is terminated whichever situation applies.

- 13.2 **Manager to give notice:** Where any determination is made by the Manager in accordance with clause 13.1, the Manager shall forthwith give notice to all Members of any Investment Fund affected ("Closed Fund").

14 WITHDRAWALS

- 14.1 **Permitted Withdrawals or Benefits:** A Member shall only be entitled to withdraw part or all of their Member Account where and to the extent that the Act allows, subject to compliance with any rules prescribed by the Manager from time to time regarding minimum withdrawals.

- 14.2 **Payment of Benefits:** The circumstances in which benefits are payable by the Scheme are set out in the KiwiSaver Scheme Rules,

- 14.3 **Withdrawal Notice:** Subject to clause 14.4, if a Member wishes to receive a Benefit from the Scheme at any time, the Member shall give notice in writing or by Electronic Communication ("Withdrawal Notice") to the Manager to that effect. Each Withdrawal Notice shall:

- (a) be in such form or comply with such specification (if any) as may be prescribed by the Manager and/or the Supervisor from time to time and may, amongst other things, specify:
 - (i) the Investment Fund or Investment Funds from which the Benefit is to be paid; and
 - (ii) either a monetary amount or the number of Units in respect of which the Member desires to effect withdrawal; and
- (b) not be able to be revoked by the Member by whom it has been given, unless the Manager in its absolute discretion permits the Withdrawal Notice to be revoked at the request of the Member made prior to payment of the applicable Withdrawal Amount.

- 14.4 **Withdrawal Request:** A Withdrawal Notice given by or on behalf of a Member will only be valid if the Member or the Member's Personal Representative is permitted to make a withdrawal under the Act, subject to compliance with any rules prescribed by the Manager from time to time regarding minimum withdrawals. In determining whether the requested Benefit payment under a Withdrawal Notice is valid, the Supervisor and Manager:

- (a) shall have all abilities and discretions provided for under the Act; and
- (b) will specify the amount, if any, of Benefit payable ("Withdrawal Amount").

- 14.5 The Supervisor or Manager must, at the Member's request, pay the Withdrawal Amount as a lump sum.

- 14.6 Subject to the Act, if the Member does not request the Withdrawal Amount as a lump sum, the Manager may pay or arrange for the Supervisor to pay or withdraw by instalments in such manner as the Member and the Manager agree.

- 14.7 **Redemption:** Subject to clauses 14.4, 14.11 and 17.8 the Manager shall upon receipt of a Withdrawal Notice procure that on or within twenty-one (21) Business Days after that day or if that day is not a Valuation Day, twenty-one (21) Business Days after the next Valuation Day (or upon such later date that the Manager is satisfied of a Member's right to make a withdrawal), the number of Units or Units of aggregate Unit Values equal to the Withdrawal Amount are redeemed, and the holder of those Units is paid the Withdrawal Amount in respect of such Units. For the avoidance of doubt and without limiting

the generality of clause 22.2, it is declared that the obligation of the Manager pursuant to this clause 14.7 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 22.2

14.8 **Effective Withdrawal Notice:** A Withdrawal Notice received prior to 12.00pm on a Valuation Day shall be effective for that Valuation Day. A Withdrawal Notice received after 12.00pm on a Valuation Day or received on a day that is not a Valuation Day, shall be deemed to have been received on the next Valuation Day.

14.9 **Redemption Funds:** In connection with redemption of Units under clause 14.7 the Manager shall have the right to:

- (a) direct the Supervisor pursuant to clause 23.7 to realise Investments of the relevant Investment Fund; and/or
- (b) direct the Supervisor (subject to clauses 21.2, 21.3 and 23.4) to Borrow on behalf of the relevant Investment Fund (pursuant to clause 21.1) a sufficient amount,

to provide the Withdrawal Amount and any applicable fees in respect of the Units to be redeemed. Upon receipt of such a direction, and subject to clause 23.4, the Supervisor shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the Scheme.

14.10 **Cancellation of Units redeemed:** Units redeemed pursuant to this clause 14 shall cease to exist and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the relevant Register in respect of such cancellation.

14.11 **Withdrawal Suspension Notice:** If by reason of:

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

the Units in the Investment Fund specified in the Withdrawal Notice cannot be redeemed or the Manager in good faith forms the opinion that it is not practicable, or would be materially prejudicial to the interests of any Members, for the Units in the Investment Fund specified in the Withdrawal Notice to be redeemed, then the Manager shall as soon as reasonably practicable advise the Supervisor and then may give notice ("Withdrawal Suspension Notice") to that effect to any holder of Units of the relevant Investment Fund who gives or has given a Withdrawal Notice or a Switching Notice. A Withdrawal Suspension Notice in respect of any

Investment Fund shall have the effect of suspending the operation of all Withdrawal Notices and Switching Notices given in respect of that Investment Fund until such time as the Manager gives to the Members who gave those Withdrawal Notices or Switching Notices notice to the effect that the Withdrawal Suspension Notice is cancelled.

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

- 14.13 **Calculation of Units to be redeemed:** If a Withdrawal Suspension Notice is given and is later cancelled, then where the Withdrawal Notice specifies a Withdrawal Amount the number of Units to be redeemed in respect of the Withdrawal Notice shall be calculated as if the reference in clause 14.7 to the next Valuation Day were a reference to the next Valuation Day following the cancellation of that Withdrawal Suspension Notice.
- 14.14 **Order of redemption:** If a Member having an interest in any Investment Fund gives a Withdrawal Notice which requires redemption of less than all of the Units held by the Member in that Investment Fund and the Member does not specify particular Units to be redeemed, the Units which are first redeemed by that Member shall be deemed to be those of the Units held by that Member which were earliest subscribed or purchased.

15 SWITCHING OF INVESTMENT FUNDS

- 15.1 **Switching Notice:** Any Member may at any time give a notice in writing or by Electronic Communication (“Switching Notice”) to the Manager to the effect that the Member wishes to withdraw Units having a certain total value (“Withdrawal Amount”) from one Investment Fund (“Withdrawal Fund”) and invest the Withdrawal Amount in another Investment Fund or Investment Funds (“Switch Fund” or “Switch Funds”). The provisions of clause 14.4 shall not apply where a withdrawal is made for the purposes of investment of all the proceeds of that withdrawal in another Investment Fund or Investment Funds.
- 15.2 **Contents of Switching Notice:** A Switching Notice shall:

- (a) be in such form or comply with such specification as may be prescribed by the Manager from time to time and may, amongst other things, specify:
 - (i) a monetary amount, or the percentage or number of Units in the Withdrawal Fund in respect of which the Member desires to effect withdrawal;
 - (ii) the Switch Fund or Switch Funds, and, if more than one Switch Fund is specified, specify the proportions in which it is desired to invest in those Switch Funds;
 - (iii) whether the Switching Notice is intended to be an Investment Election in respect of future Contributions;
 - (iv) whether the Member wishes to rebalance their existing Investments;
- (b) unless otherwise agreed by the Manager, not be able to be revoked by the Member by whom it has been given,

and the provisions of clause 14 shall apply to a Switching Notice as if it were a Withdrawal Notice in respect of Units in the Withdrawal Fund.

- 15.3 **Switching:** The Manager shall, subject to clause 14.11, and compliance with all Relevant Laws relating to disclosure of information upon receipt of a Switching Notice, procure that:
- (a) the number of Units to be withdrawn from the Withdrawal Fund of aggregate Unit Values equal to the Withdrawal Amount are dealt with on or within twenty-one (21) Business Days after the day on which the Switching Notice was received or, if that day is not a Valuation Day, on or within twenty-one (21) Business Days of the next Valuation Day in accordance with clause 14; and
 - (b) the proceeds are applied (after deduction of any applicable taxation) in the acquisition of Units in the Switch Fund or Switch Funds at a price determined in accordance with clause 11.1 (as if the Switching Notice were a Contribution in respect of those Units) and (if more than one

Switch Fund is involved) in the proportions specified in the Switching Notice.

16 TRANSFERS

- 16.1 **Transfers in to the Scheme:** Subject to the Act and the FMCA, the Manager may accept from a Superannuation Scheme or a KiwiSaver Scheme on behalf of a person applying to be a Member of the Scheme a transfer amount which the trustees or manager of that scheme or other person or persons having the necessary power thereunder may be authorised to pay or transfer to the Scheme in respect of the person **PROVIDED THAT** such transfer amount may only be accepted by the Manager if the person has complied with such requirements as set out in clause 6. The amount transferred shall be allocated to the Member Account as agreed between the Manager, the Member and, where applicable, the trustees or manager of the transferring scheme.
- 16.2 **Transfers out of the Scheme:** Subject to the Act and the FMCA, if a Member, on leaving employment or leaving the Scheme, joins or becomes a member of another KiwiSaver Scheme (“Transferee Scheme”) the Manager shall, at the Member’s request and with the Members written consent, or if the Act requires it, as provided under the Act transfer to the Transferee Scheme an amount equal in value to the Member’s Account.
- 16.3 Subject to clause 32.6, the Act and the FMCA, a Participating Employer may, with consent of all employees of the Participating Employer who are Participating Members, elect to transfer that part of the Scheme that is relevant to its participation in accordance with the Act or the FMCA to a Transferee Scheme. Subject to clause 32.6, the Act and the FMCA, a Participating Employer may also elect to transfer that part of the Scheme that is relevant to its participation without the consent of its employees who are Participating Members.
- 16.4 The following shall apply to a transfer under clauses 16.1 to 16.3:
- (a) Participating Members need not cease Employment with the Participating Employer for clause 16.3 to apply;
 - (b) Following the transfer Participating Members will cease to be Members of the Scheme;
 - (c) The Manager shall direct the Supervisor to:
 - (i) with the approval of the trustee or manager of the Transferee Scheme transfer Investment Fund Assets equivalent in value to the amount in the relevant Members’ Member Accounts to the trustee or manager of the Transferee Scheme; or
 - (ii) with the approval of the trustee or manager of the Transferee Scheme realise all investments of the relevant Members’ Member Accounts and as soon as the proceeds are received by the Supervisor transfer an amount equivalent in value to the amounts of those accounts to the trustee or manager of the Transferee Scheme.
- 16.5 A Participating Employer transferring under clause 16.3 will be responsible for payment of reasonable costs incurred by the Scheme, the Supervisor and the Manager in response to each such transfer.
- 16.6 A Member in respect of whom a transfer amount is paid under clause 16.2 shall not be entitled to any other Benefit from the Scheme and shall cease to be a Member in accordance with clause 6.12. The receipt by the trustee or manager or any other authorised person or persons of the other Registered Scheme shall be a complete discharge to the Manager and Supervisor of all liability in respect of the Member under the Scheme and the Manager and Supervisor shall be under no liability to see to the application of the amount so transferred.

17 REGISTERS

- 17.1 **Records to be kept:** The Manager shall keep a complete record of:
- (a) Members;
 - (b) Participating Employers;
 - (c) the Members employed by each Participating Employer; and
 - (d) all other matters, information and data necessary or expedient for the proper and efficient working of the Scheme or required by law or the Instrument of Appointment.
- 17.2 **The Register:**
- (a) The Manager shall keep and maintain or cause to be kept and maintained a separate Register of Members in respect of each Investment Fund.
 - (b) Each Register may take the form of a computer file compiled in a manner required by the FMA (if any) and as determined in consultation with the Supervisor.
 - (c) Each Register shall be kept or caused to be kept by the Manager at the Office or such other place as the Manager may from time to time approve.
 - (d) On request by the Supervisor, the Manager will provide the Supervisor with a copy of each Register in such form as the Supervisor may approve and the Supervisor and/or the Auditor shall be entitled to inspect the Register at any time during the normal working hours of the Manager.
- 17.3 **Details to be entered in Registers:** There shall be entered in each Register:
- (a) the names, addresses and Prescribed Investor Rates (if given) of the Members having an interest in the relevant Investment Fund;
 - (b) the number and type of Units held by each Member in the Investment Fund;
 - (c) the date on which the name of every person was entered in the Register as a Member having an interest in the Investment Fund;
 - (d) the date on which any person ceased to be a Member having an interest in the Investment Fund;
 - (e) in respect of Members who are Employees of Participating Employers, the name of the relevant Participating Employers; and
 - (f) such other details as the Manager may require or as may be required by Relevant Law from time to time.
- 17.4 **Audit of the Register:** The Manager shall cause each Register to be audited by the Auditor at annual intervals or as required by the FMCA. Such audit shall be completed in accordance with the FMCA and shall include an affirmation from the Auditor that the Auditor does not consider subpart 4 of Part 4 of the FMCA has not been complied with. The Supervisor may at any time for a specified and reasonable purpose request the Manager to cause each Register or one or more of them to be audited.
- 17.5 **Changes of name or address:** Any change of name or address of any Member shall be notified by such Member in writing to the Manager who shall alter the relevant Register accordingly.
- 17.6 **Inspection:** Any Member having an interest in any Investment Fund shall be entitled to inspect the Register of that Investment Fund in respect of their interest in that Investment Fund free of charge at

any time during normal working hours of the Manager.

17.7 **Reliance upon Register:** Each of the Manager and the Supervisor shall be entitled:

- (a) to rely absolutely on each Register as being correct; and
- (b) for all purposes to treat a person whom it believes to be the person entered on a Register as the holder of any Units as the legal and beneficial owner of those Units; and
- (c) to effect transfers, redemptions or other dealings of any nature with Units on the basis of the information recorded in a Register.

17.8 **Evidence of entitlement:** Notwithstanding clause 17.7, the Manager shall be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in a Register as the holder of the Units in question.

17.9 **No notice of trust etc.:** Except as required by law or to the extent the Manager and the Supervisor determine to the contrary, neither the Manager nor the Supervisor shall be bound to see to the performance of any Investment Fund (express implied or constructive) or of any charge, pledge, or equity 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 the Register as the Member.

18 CERTIFICATES

18.1 **No issue of certificates:** Unless required by a Relevant Law, the Supervisor and the Manager shall not be required to issue to a Member a certificate of Units held by that Member.

19 MANAGERS POWERS AND DUTIES

19.1 **Manager's duties:** The Manager hereby agrees to carry out and perform the duties and obligations on its part contained in this Deed, the Instrument of Appointment and as otherwise required by Relevant Law for the benefit of the Members in each Investment Fund. Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this Deed. In particular, the Manager must:

- (a) act honestly in acting as manager; and
- (b) in exercising any powers or performing any duties as Manager:
 - (i) act in the best interests of the Members;
 - (ii) treat the Members equitably; and
- (c) not make use of information acquired through being Manager in order to:
 - (i) gain an improper advantage for itself or any other Person; or
 - (ii) cause detriment to the Members; and
- (d) exercise the care, diligence and skill that a prudent person engaged in the profession of managing a Registered Scheme would exercise in the same circumstances; and
- (e) carry out its functions in accordance with this Deed, the SIPO and all other Issuer Obligations.

- 19.2 The Manager shall have the same duties and liabilities in the performance of its functions as manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the FMCA).
- 19.3 **Manager's functions:** The Manager shall be responsible for the following functions for the Scheme and shall carry out such functions in accordance with the Instrument of Appointment:
- (a) offering interests in the Scheme for subscription;
 - (b) issuing interests in the Scheme;
 - (c) managing Investment Fund Assets; and
 - (d) administering the Scheme and the Investment Funds;

Without limiting the generality or the above, the Manager shall perform each of the following duties in relation to the Scheme:

- (e) prepare on behalf of the Scheme any taxation returns and deal with all other taxation matters regarding the Scheme in accordance with this Deed and the Instrument of Appointment;
 - (f) prepare application forms, Disclosure Documents and other promotional material in respect of the Scheme as required in terms of this Deed, the Instrument of Appointment and any Relevant Law and, in order for the Supervisor to be able to satisfy its statutory obligations, provide to the Supervisor:
 - (i) such application forms and Disclosure Documents in draft form sufficiently far ahead of the proposed registration or distribution date to allow the Supervisor a reasonable period of time to review and provide comments; and
 - (ii) a copy of the Disclosure Documents and any other promotional material as referred to above as soon as practicable after distribution;
 - (g) provide to the Supervisor as soon as possible following receipt copies of all notices or communications received from any regulatory authority.
- 19.4 The Manager must, in exercising a power of investment, exercise the care, diligence, and skill required of a trustee by section 13B or 13C of the Trustee Act 1956 and in accordance with the Instrument of Appointment.
- 19.5 **Manager's powers:** Subject to Relevant Law and this Deed, in performing its duties and responsibilities the Manager shall have all powers over and in respect of each Investment Fund and its Investment Fund Assets which it could exercise if it were the absolute and beneficial owner of such Investments. In particular, without derogating from the foregoing, the Manager shall perform the following specific functions:
- (a) purchase, sell and otherwise deal with Investments upon such terms as the Manager thinks fit;
 - (b) lease and accept surrenders of leases and otherwise deal in any manner with lessees or other occupants of Investments;
 - (c) execute and pay for repairs and improvements relating to Investments;
 - (d) insure any Investment for such amounts and on such conditions and in such types of insurance as may be deemed necessary;

- (e) attend and vote at meetings;
- (f) lend money;
- (g) in accordance with clause 21, arrange for the Investment Fund to borrow or raise money unsecured or secured subject to the conditions contained in this Deed and the relevant Investment Fund Particulars and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the Assets of the Investment Fund;
- (h) develop, build, demolish and otherwise make improvements or alterations to any real estate or other Investment in such manner as the Manager thinks fit;
- (i) instruct and pay from an Investment Fund, agents, consultants and other persons to act in relation to Investments or proposed Investments;
- (j) make and carry out any takeover proposal, offer or invitation;
- (k) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager deems fit;
- (l) create, grant, renew, alter or vary any Mortgage, charge or other encumbrance over the whole or any part of an Investment Fund for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (m) agree to enter into and perform any contract option or other right relating to any Investment including any Futures Contract;
- (n) agree to the release, modification or variation of any rights, privileges or liabilities of any Investments or any securities given in relation thereto;
- (o) agree to the rearrangement or reconstruction of any person including any increase or reduction in the capital of the person;
- (p) agree to the amalgamation or merger of any person with any other person or the sale or other disposition of all or any part of the property or undertaking of any person;
- (q) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
- (r) manage any Real Property or other Investment being an Asset of an Investment Fund and for that purpose at its discretion to employ managing agents and delegate powers of management to such managing agents and to employ or authorise the employment of staff and contractors and to enter into maintenance and management contracts of all kinds at the expense of an Investment Fund;
- (s) participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership, joint venture or other agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relate to Authorised Investments;
- (t) consolidate and divide all or any of the Units of an Investment Fund into Units of a larger amount or subdivide all or any Units into Units of a smaller amount in accordance with clause 21.1;
- (u) perform and enforce agreements;
- (v) institute, prosecute, compromise and defend legal proceedings including arbitration;

- (w) enter into or obtain any guarantee, indemnity or similar contract for the benefit of an Investment Fund or Member (and whether relating to the guaranteeing of the capital or income of an Investment Fund any amounts to be paid to the Members in respect of an Investment Fund or otherwise) and to pay any guarantee fee or other consideration from an Investment Fund for any such guarantee, indemnity or similar contract;
- (x) group the profits or losses of an Investment Fund with those of any other person and for such purposes to make or to accept subvention or other payments between an Investment Fund and the other person;
- (y) incur and pay charges and expenses which, in the opinion of the Manager, are necessary or desirable to carry out the purposes of an Investment Fund, including tax and other levies imposed on the Scheme or the Manager or the Supervisor in connection with an Investment Fund;
- (z) invest in pooled or mixed forms of Investments in common with other investors;
- (aa) enter into any Futures Contracts subject to any limitations contained in this Deed, any relevant Investment Fund Particulars or the SIPO; and
- (bb) appoint and engage solicitors and other consultants and advisers on such terms as the Manager determines.

19.6 **Delegation by Manager:** Without in any way affecting the generality of clause 19.1 the Manager may in carrying out and performing the duties and obligations on its part which are contained in this Deed, subject to the Instrument of Appointment, the Manager advising the Supervisor of any delegation or contracting out under this clause before any such delegation, appointment or contracting out agreement is entered into and the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:

- (a) delegate all or any of its powers, authorities, functions and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion to its officers and employees or to any other Person nominated by the Manager;
- (b) by power of attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers authorities or discretions; and
- (c) appoint any Person in any part of the world to be an agent, investment manager or sub- manager in respect of all or any of the Investments or of any Investment Fund or the Investments or any part thereof, and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of any Investment Fund (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

19.7 The Manager must take reasonable steps to monitor the performance of the delegate and of the functions delegated and to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly.

19.8 **Exercise of voting rights by Manager:** All rights of voting conferred by the Investments of an Investment Fund shall be exercised in such manner as the Manager may determine and provided the Manager is not acting in breach of its obligations under this Deed or the law in general neither the Supervisor nor any Member shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. **PROVIDED THAT** the Manager is not acting in breach of its obligations under this Deed or Relevant Law, the Manager shall not be under any liability or

responsibility in respect of the management of any Investment Fund nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and neither the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

20 SUPERVISOR'S POWERS AND DUTIES

20.1 **Supervisor's duties:** The Supervisor, in exercising its powers and performing its duties as the supervisor of the Scheme, must:

- (a) act honestly in acting as the Supervisor of the Scheme and each Investment Fund; and
- (b) in exercising any powers or performing duties as Supervisor:
 - (i) act in the best interests of the Members;
 - (ii) exercise reasonable diligence in carrying out its functions as the Supervisor; and
- (c) do all things it has the power to do to cause any contravention referred to in clause 20.5(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members); and
- (d) act in accordance with any direction given by a Special Resolution of Members that is not inconsistent with any enactment, rule of law or this Deed, and subject to any order of the court made under section 210 of the FMCA, in relation to:
 - (i) seeking a remedy to a contravention referred to in clause 20.5(a); and
 - (ii) any other matter connected with the Supervisor's functions under clause 20.5; and
- (e) do anything that the Supervisor considers necessary to enable it to discharge the Supervisor's statutory duties in relation to the Scheme.

20.2 The Supervisor may:

- (a) act on the advice or the opinion of an accountant, actuary, solicitor or other professional adviser without being responsible for any resulting loss; and
- (b) institute and/or defend and/or compromise legal proceedings against third parties and recover any loss suffered by Members on behalf of third parties in each case (unless it is to defend legal proceedings) at the direction of the Manager.

20.3 The Supervisor:

- (a) is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Members; and
- (b) has the same duties and liability in the performance of its functions as Supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act); and
- (c) must, in exercising its powers and performing its duties as Supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Supervisor would exercise in the same circumstances.

20.4 Subject to the provisions of this Deed and all Relevant Law and the powers, rights and discretions given to the Manager by all Relevant Law and this Deed, the Supervisor shall have the rights and powers in respect of the Scheme and each Investment Fund and over and in respect of the Scheme and each Investment Fund which it could exercise if it were the absolute and beneficial owner of such Investment Fund. Notwithstanding the preceding references to the provisions of this Deed, the Supervisor shall have the power to settle and complete all transactions in respect of the Scheme and each Investment Fund.

20.5 **Supervisor's functions:** The Supervisor has the following functions in respect of the Scheme:

- (a) act on behalf of the Members in relation to:
 - (i) the Manager;
 - (ii) any matter connected to this Deed or the terms of any offer of Units;
 - (iii) any contravention or alleged contravention of the Issuer Obligations;
 - (iv) any contravention or alleged contravention of the FMCA by any other Person in connection with the Scheme and each Investment Fund.
- (b) supervising:
 - (i) the performance by the Manager of its functions and its Issuer Obligations;
 - (ii) the financial position of the Manager and each Investment Fund, to ascertain that they are adequate;
- (c) holding the Investments of each Investment Fund, or ensuring that the Investments of each Investment Fund are held, in accordance with sections 156 to 158 of the FMCA;
- (d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the FMCA, Financial Markets Supervisors Act 2011 or this Deed.

20.6 The Supervisor shall:

- (a) provide to the Manager, as soon as possible following receipt, copies of all notices or documents received by the Supervisor, or any of its nominees, in relation to any Assets of an Investment Fund; and
- (b) at all times be lawfully entitled to act as supervisor of the Scheme.

20.7 **Supervisor's delegates:** The Supervisor may, subject to clause 20.8, authorise any Person or Persons to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to any Investment, perform any act, or exercise any discretion within the Supervisor's power. The authorisation must be written. The Supervisor remains liable for the acts or omissions of a delegate. However, the Supervisor may include provisions to protect and assist those dealing with the delegate in the authorisation as the Supervisor thinks fit. The delegate may be the Manager or a Related Party of the Manager or the Supervisor.

20.8 The Supervisor:

- (a) must not delegate its functions under clause 20.7 (except its function of holding the Investments of a Fund under clause 20.5(c)) unless otherwise permitted by the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011;
- (b) shall advise the Manager of any delegation or contracting out under clause 20.7 before any such delegation, appointment or contracting out agreement is entered into.

- 20.9 **Right of Supervisor to engage expert:** The Supervisor may in the performance of its functions engage an expert if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
- (a) determine the financial position of the Manager, Scheme or an Investment Fund; or
 - (b) review the business, operation, management systems or governance of the Manager, Scheme or an Investment Fund.
- 20.10 If the Supervisor engages an expert under clause 20.9:
- (a) The Manager must provide reasonable assistance to the expert, to allow the expert to provide the assistance under clause 20.9; and
 - (b) The Manager must pay the experts reasonable fees and expenses.
- 20.11 The Manager shall be indemnified for those fees and expenses out of the relevant Investment Fund, subject to any limits under this Deed or the FMCA.
- 20.12 **Proceedings:** The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of this Deed and may recover any loss suffered by any Members on their behalf in respect of their Units.

21 BORROWING POWERS

- 21.1 **Borrowing powers:** Subject to clauses 21.2, 22.1(a) and 23.4, in respect of any Investment Fund the Supervisor has power to and must if so directed by the Manager:
- (a) Borrow money from any Person;
 - (b) for the purpose of such Borrowing, enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such Borrowing; and
 - (c) mortgage, charge, pledge or otherwise create a security interest over all or any of the Investments forming part of the relevant Investment Fund as security for any moneys Borrowed.
- 21.2 **Limitation on Borrowings:** The Supervisor may not Borrow if at the time of the proposed Borrowing the aggregate of the principal moneys Borrowed and outstanding in respect of any Investment Fund or secured against the Investments of that Investment Fund together with the amount proposed to be borrowed, would exceed 50% of the Investment Fund Value of the Investment Fund.
- 21.3 **Conditions of Borrowing:** There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 21.1 or to complete any loan or security documents unless the Supervisor is satisfied that:
- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Investment Fund;
 - (b) the Investments of any Investment Fund shall not be or become liable in respect of Borrowing made by or on behalf of another Investment Fund;
 - (c) any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor;
 - (d) there will be compliance with clause 21.2. In satisfying itself whether clause 21.2 will be

complied with in any instance the Supervisor may rely upon a certificate of the Manager as conclusive evidence to that effect unless the Supervisor had actual knowledge that the requirements of clause 21.2 will not be satisfied; and

- (e) doing so is not contrary to the provisions of this Deed, and would not otherwise result in a breach by the Supervisor of any obligations imposed on it by the Trustee Act 1956.

21.4 **Third Parties need not Inquire:** No Person from whom the Supervisor has or intends to Borrow in respect of any Investment Fund needs to enquire as to whether or not the limitation set out in clauses 21.2 and 21.3 have been observed or complied with.

22 SUPERVISOR'S AND MANAGER'S ADDITIONAL POWERS AND INDEMNITIES

22.1 **Supervisor's additional powers:** In addition to any other powers granted under this Deed or by law, the Supervisor may, subject to any Relevant Law:

- (a) in accordance with clause 21, borrow or raise money unsecured or secured subject to the conditions contained in this Deed and the relevant Investment Fund Particulars and secure the repayment of moneys so borrowed and interest on those moneys by charge over all or any of the Assets of an Investment Fund, provided that nothing in this sub-clause 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 the Deed;
- (b) waive any breach, or anticipated breach of this Deed by the Manager on such terms as it considers necessary provided no such waiver may be made where if it required an amendment to the Deed would require consent under the FMCA;
- (c) in the event of a material error being made in calculating a Unit Value on any Valuation Day, determine a minimum level of reimbursement or compensation to be paid to or in respect of any disadvantaged Member or former member for the purposes of regulation 99 of the Regulations. Reimbursement or compensation of amounts lower than a minimum of \$20 per Member or former member will not be paid unless, in the Supervisor's sole discretion, the Supervisor determines that it is fair and equitable for an alternative minimum to apply. This minimum level, determined at the date of this Deed, shall be reviewed in consultation with the Manager at such times as the

Supervisor considers reasonable and such other minimum as is determined by the Supervisor to be appropriate shall become the minimum.

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

22.3 **No personal liability:** Neither the Supervisor nor the Manager shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any Investment Fund, but that Investment Fund only shall be liable or subject to execution.

22.4 **Indemnity:** If, contrary to the provisions of clause 22.2 and 22.3 either the Supervisor or the Manager shall be held personally liable to any other Person in respect of any debt, liability or obligation incurred by or on behalf of an Investment Fund or any action taken or omitted in connection with an Investment Fund, then the Supervisor or the Manager (as the case may be) shall, subject to the FMCA, be entitled to the fullest extent permitted by Relevant Law to indemnity and reimbursement out of that Investment Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined except to the extent that such expense or liability is caused by the failure of the Manager or the Supervisor (as the case may be) to meet the standard of care required by

Relevant Law.

22.5 **Liability for default:** The Supervisor and the Manager shall each be liable for any loss arising out of their respective wilful default or wilful breach of trust but subject thereto neither the Supervisor nor the Manager shall be liable to the Scheme or any Investment Fund or to any Member as a result of acting as Supervisor or Manager (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Scheme or any Investment Fund.

22.6 **Reimbursement:** The Supervisor and the Manager shall each be entitled to be reimbursed for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Deed. Without prejudice to the generality of the foregoing the Supervisor and the Manager shall be entitled to be indemnified against:

- (a) any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of any Investment Fund or the provisions of this Deed;
- (b) all income tax, capital gains tax, stamp duties, brokerage, financial institutions duties and bank account debits, taxes or any other duty, tax or impost properly charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other person) in connection with any Investment Fund or the acquisition, registration, custody, disposal of or other dealing with an Authorised Investment;
- (c) costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Members;
- (d) costs of convening and holding any meeting of Members;
- (e) costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with any Investment Fund, pursuant to this Deed or any relevant law;
- (f) all costs, charges and expenses of and incidental to the preparation, execution and stamping any deeds supplemental hereto;
- (g) fees and expenses of any solicitor, barrister, computer expert or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 19.6(c);
- (h) all costs, charges and expenses incurred in the advertising and promotion of the Investment Funds;

PROVIDED THAT the Manager shall not be entitled to be reimbursed for and shall bear the expense or cost incurred in:

- (i) establishment and maintenance of accounting systems and the keeping of accounting records and the Register; and
- (ii) all costs, charges and expenses (including legal costs incurred by the Manager or the Supervisor) of and incidental to the preparation, execution, stamping and distribution of this Deed and any Disclosure Document prepared for the Scheme.

22.7 **Limitation on liability:** Without prejudice to the generality of clauses 22.2 to 22.5:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the

Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;

- (b) the Manager shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
- (c) the Supervisor and the Manager may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted and neither the Supervisor nor the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- (d) whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director or officer of the Manager or by any other person or persons, authorised by the Manager;
- (e) except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
- (f) nothing in this Deed shall be deemed to prohibit the Supervisor or any Related Company of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Related Company of the Manager or any shareholder or officer of the Manager ("Relevant Persons") who is eligible for membership of the Scheme in terms of clause 6.1 from being a Member or from acting in any representative capacity for a Member. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Member and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- (g) the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by the relevant Investment Fund as a result of any such documents being held by any such person; and
- (h) the Supervisor is entitled to rely on the Manager's assessment of the validity of any signature on any transfer, application or other instrument if such reliance is based on a reasonable belief that the signature is genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement of any other person, be borne by the relevant Investment Fund except that such loss may be attributable to the Supervisor's own negligence or wilful default.

22.8 **Apportionment:** If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of several Investment Funds, then that expense, cost or liability shall be apportioned amongst those Investment Funds in such manner as the Manager with the approval of the Auditor may conclusively determine. The Supervisor or the Manager may at any time elect not to seek reimbursement from any Investment Fund for any expense, cost or liability without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

22.9 **Degree of care and skill required:** In conjunction with clauses 19 and 20, no provision of clause 22 shall have the effect of exempting the Supervisor or Manager or any director, board member or officer of the Supervisor or Manager or indemnifying the Supervisor or Manager or any such director, board member or officer against, any liability for breach of trust where it fails to meet the standard of care, diligence, and skill that a prudent person engaged in the profession or business of acting as a supervisor or manager respectively would exercise unless the Manager is exercising a power of investment, in which case clause 19.4 applies.

22.10 **Manager to provide information:** The Manager shall:

- (a) upon demand make available to the Supervisor for inspection all books and papers relating to the Scheme and Investment Funds, and allow reasonable access to all electronic records in respect of each Register;
- (b) give to the Supervisor such information as the Supervisor requires with respect to all matters relating to the Scheme and Investment Funds; and
- (c) give the Supervisor or the Auditors such oral or written information and such reports and certificates as may be reasonably required with respect to all matters relating to each Investment Fund, the Investments and the management of each Investment Fund.

22.11 **Indemnity by Manager:** The Manager shall indemnify and keep indemnified the Supervisor against all losses suffered and liabilities incurred by the Supervisor:

- (a) through the unauthorised acts, wilful breach of the provisions of this Deed, gross negligence, fraud or dishonesty of the Manager or its officers or employees (including of the Scheme and any Investment Fund); or
- (b) as a result of an act or omission by the Supervisor where such act or omission occurs because the Supervisor has followed directions given to it in writing by the Manager pursuant to the provisions of this Deed; or
- (c) as a result of the Manager exercising its powers under this Deed not to approve any action which the Supervisor notifies the Manager in writing it wishes to take.

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

22.13 **Supervisor's other powers:** The Supervisor may:

- (a) appoint an authorised person to attend meetings of the Manager, including board meetings, investment committee meetings and other administrative meetings, to the extent that such meetings relate to the Scheme; and
- (b) inspect the Manager's premises, upon giving the Manager 24 hours written notice, to the extent necessary to enable the Supervisor to perform the Supervisor's duties under this Deed.

23 INVESTMENTS

23.1 **Authorised Investments:** Each Investment Fund Asset shall be invested only in Authorised Investments permitted under the Investment Fund Particulars for that Investment Fund and in accordance with the SIPO. This requirement shall constitute a 'contrary intention' for the purposes of sections 2(5) and 2(5A) of the Trustees Act 1956.

- 23.2 **SIPO:** The Manager in consultation with the Supervisor must ensure there is a SIPO that provides adequately for the investment policy and objectives of the Scheme and for each Investment Fund in accordance with section 164 of the FMCA.
- 23.3 The Manager may amend the SIPO only after giving prior written notice to the Supervisor.
- 23.4 **Supervisor's discretion:** Notwithstanding clause 23.7, the Supervisor must refuse to act, and must direct any nominee appointed under clause 4.5 to refuse to act, on the direction of the Manager to invest, acquire or dispose of or transfer any Investment, enter into any loan security or other obligation, or exercise rights of voting conferred by the Investments, if, in the opinion of the Supervisor conveyed in writing to the Manager, the proposed acquisition or disposition or transfer of Assets into or out of an Investment Fund or the loan security or other obligation or exercise of rights of voting conferred by the investments, as the case may be:
- (a) is manifestly not in the interests of Members of that Investment Fund; or
 - (b) would breach the provisions of this Deed, any rule of law or enactment.
- 23.5 The Supervisor shall not be liable to Members or the Manager for acting or refusing to act on any such direction by the Manager, or for directing any custodian or nominee contracted under clause 4.5 to act or refuse to act on any such direction, in respect of the acquisition or disposal of any Investment Fund Assets in accordance with the provisions of this Deed.
- 23.6 If the Supervisor refuses to act on a direction of the Manager, or directs any custodian or nominee to refuse to act on a direction of the Manager, the Supervisor must notify the Manager and the FMA in writing of the Supervisor's reasons for refusing to do so.
- 23.7 **Manager directs Supervisor:** The Manager will manage each Investment Fund for the benefit of the Members, and as and when required the Manager may (subject to the provisions of this Deed) direct the Supervisor to:
- (a) invest in, purchase, acquire, realise, sell or dispose of the Investments of any Investment Fund;
 - (b) enter into any commitments or liabilities in respect of such Investments;
 - (c) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing;
 - (d) take any other action which may be required in respect of the Authorised Investments; and
 - (e) complete and deliver any proxies or related notices,
- and (subject to the provisions of clause 23.4) the Supervisor will from time to time, to the extent of the Investment Fund Assets of each Investment Fund in its possession or control, act as directed in writing by the Manager.

- 23.8 **Investments in name of Supervisor:** Any Investments of any Investment Fund shall as soon as reasonably practicable after receipt of the necessary documents by the Supervisor be registered in the name of the Supervisor (or any nominated company or nominee contracted pursuant to clause 4.5), and be held in safe custody by the Supervisor or by such nominated company or nominee, and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this Deed.
- 23.9 **Supervisor's Power:** The Supervisor's power of investment (subject to the provisions of clause 20) in respect of Investment Fund Assets is, as directed by the Manager, in Investments authorised by the Investment Fund Particulars applicable to the relevant Investment Fund. However, any direction by a Member in terms of this clause will not exempt the Manager or Supervisor from their responsibilities regarding the prudent investment of the Member's savings set out in sections 13B and 13C of the Trustee Act 1956.
- 23.10 **Investment Directions:** A direction by a Member under clause 6.11 or clause 15.2(a)(ii) as to the investment of Contributions in an Investment Fund shall be binding on the Supervisor and the Manager and shall constitute a direction to the Supervisor in terms of section 13G of the Trustee Act 1956 in respect of the investment of the relevant Investment Fund Assets.

24 ACCOUNTS

- 24.1 **Account to be kept:** The Manager shall ensure that a Member Account in respect of each Member is established and maintained within the Scheme.
- 24.2 **Units Held:** The Member Account must record the Units held by the Member from time to time.
- 24.3 **Credit to Member Account:** A Member Account shall be credited immediately with:
- (a) the Member's own Contributions to the Scheme for the purchase of Units in the relevant Investment Fund;
 - (b) if applicable, Contributions by the Member's Participating Employer or Contributing Employer in respect of the Member;
 - (c) any amount transferred from any superannuation or KiwiSaver Scheme in respect of the Member which the Supervisor decides is appropriate to be credited to the Member Account;
 - (d) the amount of any Income determined in accordance with clause 25.2;
 - (e) any Contributions received from the Crown in respect of the Member;
 - (f) any amounts representing rebates of tax requiring to be made in respect of that Member;
 - (g) any amounts representing rebates of fees made in respect of that Member; and
 - (h) subject to the Act, any other amount attributable to the Member Account under the Deed or that the Supervisor considers is appropriate.
- 24.4 **Debit to a Member Account:** A Member Account shall be debited with:
- (a) the amount of any negative Income determined in accordance with clause 25.2;
 - (b) the cost of providing any Benefit from the Member's Account, except where deducting the cost of provisions of that Benefit would be contrary to the Act;
 - (c) the amount of any Benefit;
 - (d) fees or other Liabilities and reimbursements that are charged by the Supervisor or Manager

that are to be paid by the Member and deducted from the Member Account;

- (e) the payment of any amount required by the Act, any statute or a court order made under any statute;
- (f) deductions for payment of any tax made on behalf of that Member;
- (g) subject to the Act or the FMCA, any other amount payable from the Member Account under this Deed or that the Supervisor considers appropriate; and
- (h) any amount paid to or applied in respect of that Member (including without limitation any Withdrawal Amount).

24.5 **Member Account Balance:** The Member Account Balance in respect of a Member shall mean the balance of the Member Account from time to time after completion of all transactions mentioned in clauses 24.3 and 24.4.

24.6 **Other Accounts:** The Manager may open such other special purpose accounts as it considers necessary for the management or administration of the Scheme.

25 ALLOCATIONS OF INCOME

25.1 **Income Allocation or Retention:** The Income of each Investment Fund shall be retained by the Supervisor and invested in accordance with the provisions of clause 23.

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

- (a) all costs and disbursements incurred in connection with the relevant Investment Fund Assets or the administration thereof and chargeable against income including fees payable to the Supervisor and the Manager; and
- (b) the Supervisor's and the Manager's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor and the Manager reasonably contemplated by this Deed for or in connection with the relevant Investment Fund; and
- (c) any taxes or duties paid or payable by or in respect of the relevant Investment Fund Assets; and
- (d) such other provisions as the Manager with the approval of the Auditor deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the relevant Investment Fund Assets for that period.

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

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

26 RELATED PARTY TRANSACTIONS

26.1 **Transactions with Related Party:** The Manager (and any investment manager, administration manager, or other Person to whom the Manager has contracted out or delegated some or all of its functions as a manager) must not enter into a transaction that provides for a Related Party Benefit to be given.

26.2 However, clause 26.1 does not apply to a transaction or series of transactions if the Manager notifies

the Supervisor of the transaction or transactions, including the Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions and either:

- (a) the Manager obtains the Supervisor's consent for the transaction or transactions under clause 26.3; or
- (b) section 174 of the FMCA applies to the transaction or transactions or Related Party Benefits to be given and the Manager certifies to that effect.

26.3 The Supervisor must not consent to a transaction or transactions under clause 26.2(a) unless one of the following applies and the Supervisor certifies to that effect:

- (a) the Supervisor considers that the transaction or transactions are in the best interests of the Members; or
- (b) the transaction or transactions are approved by, or contingent on approval by, a Special Resolution of the Members of the relevant Investment Fund that are affected or potentially affected by the transaction or transactions.

26.4 Subject to clauses 19.1 to 19.5 and clauses 26.1 to 26.3, the Manager may, where a transaction:

- (a) will cause any part of any Investment Fund Asset to be invested or lodged with the Manager or any Related Party of the Manager; or
- (b) is to sell, purchase or otherwise dispose of or acquire any Asset or Investment to or from the Manager or any Related Party of the Manager or managed investment scheme or other trust or scheme managed by the Manager or by such Related Party of the Manager; or
- (c) is to enter into any contract, agreement or other arrangement with any Related Party of the Manager to provide management or consultancy services or any other services that the Manager considers desirable,

enter into the transaction only if the transaction is on reasonable commercial terms and the provisions contained in clause 26.5 are satisfied.

26.5 Before entering into a transaction or series of transactions under clause 26.4, the Manager must provide the Supervisor with reasonable detail of the transaction and a certificate that complies with section 175 of the FMCA signed on behalf of the Manager by two directors, or one director and one authorised signatory, of the Manager.

26.6 **No liability to account:** Neither the Manager, Supervisor nor any Related Party shall be liable to account to any Investment Fund, the Scheme or any Member for any profit or loss arising from any transaction entered into in accordance with clauses 26.4 and 26.5 unless the Manager or Supervisor has failed to meet the standard of care required of it by clauses 19.2 and 20.3(c).

26.7 The Manager shall provide notification to the Supervisor as soon as practicable following the completion of any transaction or transactions entered into in accordance with clauses 26.4 and 26.5. The acquisition of Units in one Investment Fund by another Investment Fund, and any disposal thereof, will not require any notification or certification under clause 26.5 or this clause 26.7.

26.8 **Limitation of powers:** The powers contained in this clause 26 are subject to clauses 23.1 to 23.10.

27 REMUNERATION OF THE SUPERVISOR

- 27.1 **Remuneration basis:** Subject to the Act, the FMCA and the Instrument of Appointment, the Supervisor shall be paid by the Manager for its services hereunder a fee as may be agreed from time to time in writing between the Supervisor and the Manager.
- 27.2 **Cashing up of Units:** The Supervisor shall be entitled to withdraw money (including by way of selling Units) from an appropriate Member Account or other account to meet the costs of meeting any fees or expenses reasonably incurred by the Supervisor or the Manager within the terms of this Deed.
- 27.3 **Reimbursement of taxes:** The Supervisor shall be entitled to receive, in addition to such fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.
- 27.4 **Supervisor's expenses:** Notwithstanding clauses 27.1 and 27.3, and subject to the Instrument of Appointment, in consideration of the Supervisor agreeing to act as trustee of the Investment Funds, the Supervisor shall be paid by the Manager from the Investment Fund Assets:
- (a) the Supervisor's reasonable legal expenses in respect of on-going advice in respect of this Deed;
 - (b) the Supervisor's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor reasonably contemplated by this Deed but not relating to any particular Investment Fund or Investment Funds to the exclusion of other Investment Funds;
 - (c) all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an Authorised Investment or any Borrowing including commission and bank charges;
 - (d) all costs, charges and expenses (including legal costs) of and incidental to the preparation, execution and stamping of this Deed or any Disclosure Document prepared for the Scheme; and
 - (e) expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Registers.
- 27.5 **Waiver of fees:** The Supervisor may waive or reduce the amount of any fees payable to the Supervisor by a Member or in respect of any Investment Fund either generally or specifically in any particular case and for any period.

28 APPOINTMENT, REMOVAL AND RETIREMENT OF SUPERVISOR

- 28.1 **Removal of Supervisor:** The Supervisor will cease to hold office as supervisor if the Supervisor is removed:
- (a) by the FMA if the FMA is satisfied that the Supervisor no longer meets the requirements in section 127(1)(e) of the FMCA (not to be an associated person of the Manager);
 - (b) by the FMA or the Manager under Part 2 of the Financial Markets Supervisors Act 2011;
 - (c) subject to the requirements of section 193(2) of the FMCA being met, by the Members by Special Resolution.
- 28.2 **Retirement:** The Supervisor may retire at any time without assigning any reason upon giving ninety (90) days notice (or such lesser period as may be agreed by the Supervisor and the Manager) in writing to the Manager of its intention so to do. The Supervisor shall retire if the Supervisor itself goes into liquidation. No retirement under this clause will take effect until the requirements of section 193(2) of the FMCA have been met, the new Supervisor has executed the deed referred to in clause 28.5 and all of

the Investment Fund Assets of all of the Investment Funds have been transferred to the new Supervisor.

28.3 The Supervisor may only retire in respect of all the Investment Funds.

28.4 **Appointment of Supervisor:** There shall at all times be one supervisor of the Scheme who:

- (a) must not be an associated person (within the meaning of section 12(1) of the FMCA) of the Manager;
- (b) is a person who holds a licence to act as supervisor of a management investment scheme under Financial Markets Legislation; and
- (c) must otherwise be a person entitled by Relevant Law to act as the supervisor of the Scheme.

Subject to all Relevant Laws, the power of appointing a new supervisor of the Scheme (in place of a supervisor which has retired pursuant to clause 28.2 or been removed from office pursuant to clause 28.1) shall be vested in the Manager, provided that any supervisor so appointed meets the requirements of Financial Markets Legislation. If the Manager fails or refuses to appoint a new supervisor, such new supervisor may be appointed by a Special Resolution of the Members.

28.5 **New Supervisor to execute a deed:** Any new Supervisor must forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and the Members to be bound by all the covenants on the part of the former Supervisor under this Deed from the date of such appointment.

28.6 **Retiring Supervisor released:** From the date of execution by the new Supervisor of a deed in accordance with clause 28.5, the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any prior breach in respect of which the retiring Supervisor is not indemnified under this Deed) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such new supervisor had been originally named as a party hereto.

29 REMUNERATION OF THE MANAGER

29.1 **Management Fees:** Subject to the Act and the FMCA, the Manager shall be paid out of the Assets of each Investment Fund in respect of its services hereunder the fee specified for that Investment Fund in that Investment Fund's deed of establishment.

29.2 **Manager's entitlements:** Subject to the Act and the Instrument of Appointment, the Manager shall be entitled:

- (a) at any time and from time to time after consultation with the Supervisor to:
 - (i) increase the amount of the Management Fee by giving at least one (1) months prior notice to all Members having an interest in that Investment Fund, except in relation to the Default Investment Product, where the fee may only be increased by variation to the Instrument of Appointment; and/or
 - (ii) waive or reduce the Management Fee,
either generally, or in relation to a particular Investment Fund(s), Member or transaction; and
- (b) to receive, in addition to the Management Fee, any value added tax or duty or similar tax or duty payable in respect of such fee including goods and services tax under the Goods and Services Tax Act 1985.

29.3 **Fees calculated on a daily basis:** The fees referred to in clauses 29.1 and 29.2 shall be calculated daily

on the basis of the Investment Fund Value of each Investment Fund from day to day (or on such other basis as the Manager and the Supervisor may agree in respect of any Investment Fund), and shall be paid in arrears on each Monthly Date and on the date of termination of the period of that Investment Fund.

- 29.4 **Waiver of fees:** The Manager may waive or reduce the amount of any fees or reimbursement payable to the Manager by a Member or in respect of any Investment Fund either generally or specifically in any particular case and for any period.

30 APPOINTMENT, REMOVAL AND RETIREMENT OF MANAGER

- 30.1 **Appointment:** The Scheme shall have a manager, who:
- (a) must not be an associated person (within the meaning of section 12(1) of the FMCA) of the Supervisor;
 - (b) is a person who holds a licence to act as a manager of a managed investment scheme under Part 6 of the FMCA; and
 - (c) must otherwise be a person entitled by Relevant Law to act as the manager of the Scheme.
- 30.2 **Cessation of office:** Subject to Relevant Laws, the Manager shall cease to hold office as manager of the Scheme if the Manager is:
- (a) removed by written direction of the Supervisor after the Supervisor certifies, in respect of the Scheme, pursuant to section 185(1)(a) of the FMCA, that it is in the best interests of Members that the Manager should cease to hold office. Without in any way limiting the generality of the foregoing it will be sufficient and valid grounds for such a certificate to be given if the Manager has a receiver or manager or statutory manager appointed or if an order is made or a resolution is passed for the liquidation or winding up of the Manager; or
 - (b) removed by a Special Resolution of the Members; or
 - (c) substituted from office by court order on the application of the Supervisor, the FMA or a Member under sections 207, 208 or 209 of the FMCA.
- 30.3 If the Manager ceases to hold office pursuant to clause 30.2, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Scheme and the Investment Fund unless the Supervisor agrees to the contrary.
- 30.4 **Retirement:** The Manager may retire as manager of the Scheme at any time without assigning any reason upon giving not less than 90 days' notice (or such lesser period as may be agreed by the Supervisor and Manager) in writing to the Supervisor of its intention to do so. No retirement under this clause will take effect until a new manager has been appointed pursuant to clauses 30.5 or 30.6 and the new Manager has executed the deed referred to in clause 30.7.
- 30.5 **Temporary Manager:** Subject to the powers of the FMA under the FMCA, the power of appointing a temporary Manager of the Scheme where a vacancy in the office of Manager arises is vested in the Supervisor. No Person can be appointed as a temporary Manager unless that Person meets the requirements of section 186(3) of the FMCA.
- 30.6 **Replacement Manager:** Upon any vacancy occurring in the office of Manager, the Supervisor, or the FMA if there is no Supervisor, must take all reasonable steps to secure, in accordance with this Deed, the appointment of a new Manager in place of the temporary Manager. The Supervisor shall have power by deed to appoint a new manager for the Scheme that is qualified for appointment under clause 30.1, in place of a manager which has ceased to hold office pursuant to clause 30.2 or 30.4.
- 30.7 **New Manager to execute a deed:** Any new Manager must forthwith upon such appointment execute

a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Members to be bound by all the covenants on the part of the Manager under this Deed from the date of such appointment.

- 30.8 **Retiring Manager released:** From the date of execution by the new Manager of a deed in accordance with clause 30.7, the retiring Manager shall be absolved and released from all such covenants under this Deed (save in respect of any prior breach in respect of which the retiring Manager is not indemnified under this Deed) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

31 LIMITATION OF LIABILITY

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

32 PARTICIPATING EMPLOYERS

- 32.1 **Participation Agreement:** An Employer shall be admitted as a Participating Employer by entering into an agreement in writing with the Manager in a form specified by the Manager. Any Employer who is invited to join by the Manager may join the Scheme as a Participating Employer. Any person who applies to participate in the Scheme as a Participating Employer shall:
- (a) provide all relevant information requested by the Manager;
 - (b) agree with the Manager, subject to the Act, the terms governing the membership of the Scheme for Participating Members in respect of that Participating Employer; and
 - (c) complete and sign a Participation Agreement.
- 32.2 The Participation Agreement shall, subject to the Act, contain the following:
- (a) the conditions of eligibility for membership;
 - (b) the Contributions to be paid by Members and the Participating Employer;
 - (c) any other provisions or rules for Members who are Participating Members in respect of that Participating Employer.
- 32.3 From the date specified in the Participation Agreement the Employer shall become a Participating Employer participating in this Scheme and shall be bound by this Deed.
- 32.4 A Participating Employer may, with the consent of the Manager, invite an Associated Employer to participate in the Scheme as an Associated Employer. The following provisions shall apply to an Associated Employer:
- (a) The Associated Employer shall enter into an agreement with the Manager whereby it agrees to be bound by the terms of the Participation Agreement entered into by the Participating

Employer and by the terms of this Deed.

- (b) If the Participating Employer ceases to participate in the Scheme, an Associated Employer may, subject to consent of the Manager, continue to participate in the Scheme provided that the Associated Employer signs a Participation Agreement on the same terms and conditions as the Participation Agreement entered into by the Participating Employer. On signing of the Participation Agreement, the Associated Employer will become a Participating Employer.
- (c) Any breach of the terms of a Participation Agreement or the terms of this Deed by an Associated Employer shall be treated as a breach by the Participating Employer and the Participating Employer shall be liable for that breach.

32.5 From the date of the 2012 Deed the Manager assumed, and will duly perform, all duties and obligations of the Supervisor, and have the benefit of all rights of the Supervisor, under each Participation Agreement as if it had been named as a party therein in place of the Supervisor.

32.6 A Participating Employer shall cease to participate in the Scheme if:

- (a) the Participating Employer gives 90 days prior notice in writing to the Manager of the effective date that it intends to cease to continue participating in the Scheme for any reason; or
- (b) an order is made or resolution is passed for the liquidation or bankruptcy of the Participating Employer except for the purposes of amalgamation or reconstruction; or
- (c) the Manager gives at least one months notice in writing to the Participating Employer of the effective date on which the Participating Employer's participation shall cease.

32.7 Subject to clause 32.8, if written notice is given under clauses 32.6(a) or 32.6(c) or an order is made or a resolution is passed for the liquidation or bankruptcy of the Participating Employer under clause 32.6(b) there will be a partial wind-up of the Scheme.

32.8 Where a Participating Employer ceases to participate in the Scheme and an Associated Employer enters into a Participation Agreement under clause 32.4 above the partial wind-up provisions set out in clause 33 will not apply to the Member Accounts of Participating Members in respect of that Associated Employer.

33 PARTIAL WIND-UP

33.1 Where a Member's Participating Employer ceases to participate in the Scheme, then:

- (a) the Member shall continue to contribute, subject to the Act, to the Scheme in a manner agreed to by the Manager;
- (b) the Participating Employer, subject to the Act, will be under no obligation whatsoever to make any future Contributions to the Scheme and will have no rights or powers whatsoever in respect of the Scheme.

34 BENEFITS FOR EMPLOYEES

34.1 The Participation Agreement between the Manager and the relevant Participating Employer will establish the benefits that are available to Members who are Employees of that Participating Employer and any conditions relating to qualification for payment of such benefits.

35 DEDUCTION OF OTHER CHARGES

- 35.1 Subject to clauses 27, 29 and 42.2, the Manager may deduct any other fees, costs, expenses or other liabilities payable in respect of a Member under this Deed from the Member Account if:
- (a) The Manager has consulted with the Supervisor prior to incurring such fee, cost, expense or liability; and
 - (b) A prudent professional manager would consider it reasonable to incur such fee, cost, expense or liability in order to assist the Manager or the Scheme to comply with its obligations and duties under this Deed and at law.

36 POWER OF APPORTIONMENT

- 36.1 The Manager shall determine whether any costs, expenses or charges incurred by the Scheme shall be apportioned between any two or more accounts, The Manager shall, subject to the Act and any other relevant legislation, in its discretion equitably apportion such costs, expenses or charges and every determination or apportionment shall be final and binding on all Members.

37 PROOFS

- 37.1 Any Person claiming to be entitled to a benefit from the Scheme shall on request produce to the Supervisor and/or the Manager any evidence or information that may be reasonably required by the Supervisor and/or the Manager.
- 37.2 Until that evidence or information is produced the Supervisor and/or the Manager may withhold payment of any benefit.

38 RECEIPTS

- 38.1 The payment by the Supervisor or the Manager of any Benefit in respect of a Member to a Beneficiary shall completely discharge any liability the Supervisor or the Manager may have in respect of that benefit.
- 38.2 The Supervisor and the Manager shall be under no obligation to see how any Benefit paid is used.
- 38.3 Any person to whom a benefit is payable shall, if requested, give to the Supervisor and the Manager at the time of payment a receipt and release in the form required by the Supervisor and/or the Manager.
- 38.4 In the event of any Member or any Person being paid any amount in error in excess of the Member's proper entitlement then that Person will immediately upon demand by the Supervisor and/or the Manager refund that amount as a debt due to the Scheme.

39 UNCLAIMED BENEFITS

- 39.1 If the Supervisor is unable to trace a Beneficiary, section 125 of the Act shall apply.

40 PAYMENT OF BENEFITS ON DEATH

- 40.1 If a Member dies the Manager must on application by the Member's Personal Representative, pay to that person an amount equal to the value of the Member's Account (net of any tax payable), at the date on which the application is accepted, as part of that Member's estate.
- 40.2 The Manager is entitled to insist on receiving death certificates, probate, letters of administration or any other information they may require before making payment of a death benefit.

41 BENEFITS NOT ASSIGNABLE

- 41.1 The benefits and rights under the Scheme belong only to the Member.
- 41.2 No Member or Beneficiary may assign, charge, pass to any other person or mortgage their benefits in any way.
- 41.3 The Manager may not recognise the interests of any other Person even if it has notice of that Person's interest.

42 INSURANCE BENEFITS

- 42.1 The Manager may, in its absolute discretion, provide death, disability or other similar benefits in respect of a Member or Members. The Manager may enter into any insurance arrangements with an insurer to make these benefits available for a Member or Members.
- 42.2 The Manager shall, subject to the Act, be authorised to deduct from a Member Account the premiums or cost of providing Insurance Benefits. Subject to the Act, the Insurance Benefits shall only continue to be offered to a Member if the relevant Member continues to hold interests sufficient to enable the payment of all premiums in respect of the Insurance Benefits. The Manager shall, unless an alternative arrangement is agreed with the Member, be entitled to require the relevant Member to make additional payments to the Scheme to cover the premiums or cost of providing Insurance Benefits to that Member. In particular, so long as the

Act so requires, no premiums shall be payable from Contributions that form part of the Contribution rate specified and paid under section 64 of the Act.
- 42.3 **Eligibility for Insurance Benefits:** For the purposes of eligibility for the Insurance Benefits, any Member may be required to undergo a medical examination and to deliver such statements of health as may be required either by the insurer or the Manager.
- 42.4 Any Insurance Benefits provided to Members will be subject to any conditions imposed by the insurer. The Manager shall be authorised to make payment of any Insurance Benefits subject to the approval and payment of the claim by the relevant insurer.
- 42.5 The Manager shall not be liable for payment of any Insurance Benefits where the conditions of that Insurance Benefit are not satisfied or payment is not made.

43 ADJUSTMENT TO MEMBER'S ACCOUNTS

- 43.1 As provided for in the Act, the Manager shall be authorised to adjust any Member's Accounts as required as a result of any underpayment or overpayment of Contributions.

44 BANKRUPTCY OF MEMBER

- 44.1 Subject to all applicable laws, where the Manager has reason to believe a Member is likely to or has committed an act of bankruptcy the Member shall forfeit entitlement to all that Member's benefits under this Deed.
- 44.2 Subject to all applicable laws, the Supervisor shall hold and may apply the benefits which would otherwise have been payable to the Member for the benefit of the Member or any dependants of the Member in such manner as it thinks fit.

45 INFANCY OR INCAPACITY OF MEMBER

- 45.1 Subject to all applicable laws, if any Benefit is for a Member who is:
- (a) an infant; or
 - (b) under a legal incapacity; or
 - (c) in the opinion of the Manager incapable of managing their own affairs,
- the Manager may pay the Benefit to another Person for the benefit of that Member on those terms the Manager thinks appropriate.

46 COURT ORDERS

- 46.1 The Manager shall give effect to any court order or provision under any enactment that requires them to release funds from the Scheme, including an agreement entered into by a Member to make a relationship property settlement with his or her spouse, civil union partner or de facto partner ("Partner").
- 46.2 A certified copy of the documentation between the Member and the Partner must be provided to the Manager before the Manager can give effect to any relationship property agreement or order of the Court. In the case of a relationship property agreement, the Manager shall give effect to such an agreement if the Manager is satisfied that the agreement has been approved by the Court as meeting the requirements of the Property (Relationships) Act 1976.
- 46.3 The Manager shall not pay an amount to the Member and/or Partner which would be greater in value than the Benefits to which the Member would have been otherwise entitled to receive.

47 ACCOUNTING AND REPORTS

- 47.1 **Accounting records:** The Manager must keep, or cause to be kept, in accordance with the accounting policies that are developed by the Manager for the Scheme and each Investment Fund and which comply with Relevant Law and generally accepted accounting policies:
- (a) proper accounting records of, or relating to, the Scheme and each Investment Fund; and
 - (b) true account of all sums of money received and expended by or on behalf of each Investment Fund and the matters in respect of which each receipt and expenditure takes place and of all sales, purchases and other transactions relating to the Investments and the Liabilities of each Investment Fund and issue or transfer of Units.
- 47.2 In keeping, or causing to be kept, the Manager's proper accounting records under clause 47.1:
- (a) the Manager must have appropriate systems of control and oversight;

- (b) the Manager must keep such accounting records at a suitable secured location accessible by the Supervisor and the Auditor; and
- (c) the provisions of Part 7 of the FMCA must be complied with.

47.3 **Inspection by the Auditor:** The accounting and other records of the Manager and of the Supervisor in respect of the Scheme and each Investment Fund are open to the inspection of each other and the Auditor. The Auditor is entitled to require from the Manager and the Supervisor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

47.4 **Financial statements to be audited:** At the end of each Financial Year, the Manager must:

- (a) prepare financial statements for the Scheme, and where required by the FMCA for each Investment Fund, and arrange for them to be audited by the Auditor;
- (b) provide a final draft of audited financial statements to the Supervisor for its review a reasonable time prior to their proposed execution; and
- (c) arrange for the audited financial statements to be sent or made available to the Supervisor together with any documents and reports required by any Relevant Law to be annexed to or to accompany the financial statements.

47.5 **Annual Report:** The Manager shall, within 4 months after the end of each Financial Year (or such other time as may be prescribed by law) prepare an Annual Report on the Scheme for that Financial Year as required by the FMCA or as may otherwise be required by Relevant Law. The Manager must provide the Supervisor with a draft Annual Report and allow the Supervisor a reasonable period of time to review and provide comments on the form of the Annual Report.

The Manager shall, on completing any such Annual Report, send a copy to the Supervisor and to any Person to whom a copy of the report is required to be sent under the Act or the FMCA, in the manner and within any timeframe prescribed by the Act or the FMCA.

47.6 **Annual Return:** The Manager shall, in consultation with the Supervisor, prepare an annual return on the Scheme for the FMA, and any reports and other information required under the Instrument of Appointment.

The annual return and any reports and other information required under the Instrument of Appointment shall include such matters and be provided to such persons and within such timeframes as may be required by relevant legislation and the Instrument of Appointment.

47.7 **Reporting to Members:** Each Member shall:

- (a) if required by the Act, have the right, upon request:
 - (i) to receive an estimate of the Member's maximum available Withdrawal Amount;
 - (ii) to look at, at any reasonable time, a copy of this Deed and the Investment Fund Particulars; and
 - (iii) to receive, upon payment of a reasonable fee, a copy of this Deed including any Investment Fund Particulars;
- (b) be provided with such other information which may from time to time be required to be given to the Member under the Act, including a personalised statement of contributions and accumulations, in accordance with the provisions of the Act.

47.8 **Auditor's Report to Supervisor:** The Manager shall furnish to the Supervisor at the same time as the Manager furnishes to the Supervisor a copy of the annual financial statements pursuant to clause 47.4, a separate report by the Auditor in the form prescribed by the Supervisor following consultation with

the Manager.

47.9 **Manager Reporting to Supervisor:** The Manager will provide to the Supervisor:

- (a) such reports as may be specified under the FMCA or Regulations including, but not restricted to, any reports required in the event of a limit break (within the meaning of section 167 of the FMCA) or material pricing error or non-compliance (in terms of section 168 of the FMCA) occurring;
- (b) any information, certification or reports as set out in a written agreement between the Manager and the Supervisor or as reasonably requested by the Supervisor to enable the Supervisor to comply with Relevant Law and the requirements of this Deed.

47.10 **Regulatory compliance:** The Manager shall, at all relevant times, make publicly available, file or lodge, or cause to be made publicly available, filed or lodged, all fund updates (within the meaning of, and in the manner specified in, the FMCA), reports, returns, statements, information or other material required by Relevant Law to be made publicly available, filed or lodged with any public registry or regulatory authority by the Manager (and Supervisor upon request) in respect of the Scheme or any Investment Fund.

48 AUDITOR

48.1 **Appointment:** The Manager shall (after consultation with the Supervisor in accordance with the FMCA) appoint as Auditor of the Scheme a person qualified in terms of clause 48.2. Such appointments shall be made as soon as possible after the execution of this Deed.

48.2 **Qualifications of Auditor:** The Auditor shall be a Chartered Accountant or firm of Chartered Accountants entitled by Financial Markets Legislation to act as such. The Auditor may also be auditor of the Manager or the Supervisor. The Auditor shall not be an officer or servant (or the partner of an officer or servant) of the Manager or the Supervisor.

48.3 **Remuneration and terms of appointment of Auditor:** The remuneration of the Auditor shall be fixed by the Manager on an arm's length basis. The terms of appointment of an Auditor must meet the requirements of Financial Markets Legislation.

48.4 **Removal and Retirement of Auditor:** The Auditor may at any time be removed by the Manager with notice to the Supervisor. The Manager must also remove the Auditor if the Supervisor, believing it to be in the best interests of the Scheme and/or Members, instructs the Manager to do so. An Auditor may retire upon the expiration of not less than ninety (90) days' notice in writing to the Manager.

48.5 **Vacancy:** Any vacancy in the office of auditor occurring under clause 48.4 shall be filled by the Manager (after consultation with the Supervisor in accordance with the FMCA) appointing as Auditor of the Scheme a person qualified for appointment in terms of clause 48.2.

49 MEETINGS OF MEMBERS AND DIRECTIONS TO SUPERVISOR

49.1 **Meetings:** Meetings of the Members shall be convened and conducted in accordance with the provisions in Schedule 2.

49.2 **Members' directions to the Supervisor:** By means of a Special Resolution passed at a meeting of Members, the Members have the power to give such directions to the Supervisor as they think proper concerning the Scheme or any Investment Fund, being directions that are consistent with the provisions of this Deed and, where applicable, the Act or the FMCA.

49.3 **Compliance with directions or orders:** Where any direction is given to the Supervisor pursuant to clause 49.2 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its following the direction. Where applicable, the Supervisor may also at its discretion in accordance with section 207 of the FMCA apply to the High Court for an

order in respect of any matter.

50 NOTICES

- 50.1 **Notice of meetings:** Notice of any meeting of Members must be given in accordance with the provisions of Schedule 2.
- 50.2 **To Member:** Any notice to be given to any Member may be given either personally or by sending it by post to the address of the Member shown in the relevant Register or by Electronic Communication. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the fifth day following the day of posting.
- 50.3 **Notice to manager, legal representative etc.:** A notice may be given by the Manager to the manager of a legally incapacitated Person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Member, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the legally incapacitated Person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if legal incapacity, death or bankruptcy had not occurred.
- 50.4 **Notice where no address:** If any Member has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two (2) notices posted to a Member are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Member shall give notice in writing to the Manager of some other address, the address of the Member for all purposes of this Deed shall be deemed to be the Office.
- 50.5 **Notice to Participating Employer:** Any notice to be given to any Participating Employer may be given either personally or by sending it by post to the address specified by the Participating Employer. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the fifth day following the day of posting.
- 50.6 **Calculation of notice period:** Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.
- 50.7 **Notice to Supervisor or Manager:** Any notice, communication or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice **PROVIDED THAT** the Manager and the Supervisor may agree that certain notices or communications may be given by Electronic Communication.
- 50.8 **Copy of notice to Members:** A copy of every notice given to Members under this Deed shall be given, at the same time at which it is given to the Members, to the Supervisor.

51 AMENDMENTS TO DEED

- 51.1 **Power to amend:** Subject to the provisions of the Act and the FMCA, and also subject to the Supervisor and the Manager not making any amendment that would result in any provision of section 84B of the State Sector Act 1988 ceasing to apply to the Scheme, the Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager) if:
- (a) in the opinion of the Supervisor, the change is made to correct a manifest error or is of a formal, administrative or technical nature; or
 - (b) in the opinion of the Manager and the Supervisor, the change is necessary or desirable for the

more convenient, economical or advantageous working, management or administration of the Scheme or any of the Investment Funds or for safeguarding or enhancing the interests of any of the Investment Funds or Members and is not or not likely to become materially prejudicial to the general interests of all Members of the Scheme or relevant Investment Funds; or

- (c) in the case of a change affecting all Members, the change is authorised by a Special Resolution of all Members as if they were beneficiaries of a single Investment Fund, the provisions of Schedule 2 relating to meetings of Members to be read accordingly; or
- (d) in the opinion of the Manager and the Supervisor after a change in any Relevant Law or requirement of any statutory authority affecting managed investment schemes, a change to this Deed is necessary or desirable; or
- (e) in the reasonable opinion of the Manager, such amendment is necessary or desirable to maintain the status of the Scheme or an Investment Fund as a PIE under the PIE rules or other relevant legislation or to permit and to operate more efficiently under such legislation; or
- (f) in the case of a change affecting Members in a particular Investment Fund, the change is authorised by a Special Resolution of those Members; or
- (g) subject to section 139 of the FMCA, the change is an alteration to any of the Investment Fund Particulars contained in the schedule to the deed establishing the Investment Fund.

51.2 **KiwiSaver Scheme:** In particular, the Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager) in order for the Scheme to continue to be a Registered Scheme subject to the provisions of the Act and the FMCA.

52 WINDING UP

52.1 **Winding up generally:** Subject to clause 52.2, an Investment Fund shall determine and be wound up upon the occurrence of the earliest of the following events:

- (a) if the Manager resolves to wind up that Investment Fund or to wind up every Investment Fund and gives notice to the Supervisor accordingly; or
- (b) in the case of every Investment Fund, if pursuant to any statutory power a court or regulatory authority orders that the Scheme be wound up.

52.2 **Winding up the Default Investment Product:** The Manager may not wind up the Default Investment Product unless that is permitted pursuant to the Instrument of Appointment.

52.3 **Winding up of the Scheme:** Where every Investment Fund is to be wound up pursuant to clause 52.1, or if, in the opinion of the Supervisor, it is appropriate to wind up the Scheme or if required by the FMA, the Supervisor shall resolve to wind up the Scheme, a copy of the resolution must be provided to the Manager in accordance with clause 52.6.

52.4 **Notice by Supervisor:** The Supervisor shall within fourteen (14) days after the occurrence of any event referred to in clause 52.1 or 52.3, give to each Member having an interest in the relevant Investment Fund or Investment Funds notice of the occurrence of that event and of the intention of the Supervisor to distribute the Investment Fund Assets of that Investment Fund or those Investment Funds. Except as provided in clause 52.5, from the date of the giving of such notice no Withdrawal Notice shall be given in respect of that Investment Fund or those Investment Funds.

52.5 **Switching Notices on Winding up:** Except where the Scheme is to be wound up pursuant to clause 52.3, a notice given by the Supervisor pursuant to clause 52.4 may invite the Members affected to give a Switching Notice and new Investment Election to the Supervisor in accordance with clause 15.1 within such period as the Supervisor in consultation with the Manager may prescribe. If agreed by the

Supervisor, at the request of the Manager a notice given by the Supervisor pursuant to clause 52.4 shall specify a particular Investment Fund (“Default Fund”) in favour of which the relevant Member shall be deemed to have given a Switching Notice and new Investment Election in accordance with clause 15.1 on expiration of the prescribed period if no Switching Notice and new Investment Election is received from the Member prior to that time. Following the expiration of such period or in the absence of such an invitation by the Supervisor, the Investment Fund shall be dealt with in accordance with clause 52.6.

52.6 **Procedure:** In respect of each Investment Fund in question, but subject to:

- (a) compliance with clause 52.4;
- (b) in the case of a resolution passed under clause 52.3, compliance with sections 212 and 213 of the FMCA; and
- (c) allowance for any period in which Switching Notices may be given or deemed to be given pursuant to clause 52.5;

the Supervisor shall, as soon as is practicable after the occurrence of an event referred to in clause 52.1 or 52.3, sell, call in and convert into Cash the whole of the Investment Fund Assets of the Investment Fund.

52.7 The Supervisor is entitled to retain out of the relevant Investment Fund or Investment Funds the amount that the Supervisor considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) and tax. Any such amount includes, at the Supervisor's discretion:

- (a) provision for PIE Tax in connection with the Scheme or Investment Fund or any Member or arising out of the liquidation of an Investment Fund;
- (b) any fees payable to the Supervisor or the Manager; and
- (c) 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 Investment Fund.

The Supervisor is entitled to be indemnified in respect of the foregoing from the moneys or Assets retained by the Supervisor.

52.8 **Application of realisation:** Subject to the retention of any moneys as provided in clause 52.7, the net proceeds of realisation of Investments shall be applied by the Supervisor as follows:

- (a) first, in payment or retention of all Liabilities, PIE Tax and contingent liabilities and all other costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Scheme or relevant Investment Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Deed; and
- (b) secondly, in payment to, or for the benefit of, the Members, (including holders of part Units) pro rata to the respective holding of Units held by them in the relevant Investment Fund.

52.9 **Interim distributions:** If in the opinion of the Manager it is expedient to do so, the Manager may direct the Supervisor to make interim payments or distributions on account of the moneys to be distributed in accordance with clause 52.8.

52.10 **Receipts:** Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

52.11 **Final accounts:** The Supervisor must on a wind up of the Scheme comply with the requirements of section 213 of the FMCA.

53 GOVERNING LAW

- 53.1 **New Zealand Law:** This Deed shall be governed by and construed in accordance with the law of New Zealand.

54 SEVERANCE

- 54.1 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.
- 54.2 Notwithstanding clause 54.1, 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 as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
 - (b) in any other case, the whole provision is hereby severed, and
- the remainder of this Deed has full force and effect.

55 CONTRACTS (PRIVITY) ACT 1982

- 55.1 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 Member from time to time except that, for the purposes of the proviso to section 4 of the Contracts (Privity) Act 1982, the benefit so extended to Members is intended to be limited by, and enforceable subject to, the rights of parties to the deed to vary or discharge benefits or obligations as provided in this Deed without the consent of any Member, other than as so provided.

56 DELIVERY

- 56.1 Without limiting any other mode of delivery, this Deed may be delivered by each of the parties to this Deed 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 facsimile or 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.

57 TAXATION LIABILITY

- 57.1 **Definitions:** In this clause 57:

“Interest Rate” means the actual rate of interest charged to or incurred by the Manager or the Supervisor (as the case may be) in respect of any Taxation Amounts paid on behalf of a Relevant Person.

“Relevant Person” means a Member or the Member’s Personal Representatives.

“Tax” includes all taxes, duties levies and other charges including penalties and interest.

“Taxation Amount” means, in relation to a Relevant Person:

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

57.2 **Deductions:** The Supervisor or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from an Investment Fund Asset.

57.3 **Application of deduction:** Amounts deducted under clause 57.2 shall be applied in:

- (a) payment of the Taxation Amount to the person or authority entitled thereto, or
- (b) reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and
- (c) any balance shall be refunded to the Relevant Person.

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

57.5 **Interest:** Any Taxation Amounts paid on behalf of a Relevant Person shall, to the extent that the Manager and the Supervisor (as the case may be) is unable to deduct that Taxation Amount in accordance with clause 57.2, carry interest calculated on a daily basis at the Interest Rate for the period from which the Supervisor or Manager is required to make payment of that Taxation Amount to the date of reimbursement of that Taxation Amount in full to the Supervisor or Manager and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

58 PROVISIONS WHICH APPLY IF THE SCHEME IS A PIE

58.1 **Additional powers to be exercised at Manager’s discretion:**

- (a) The Manager will have the additional powers and discretions listed in clause 58.2 in respect of the Scheme that is a PIE.
- (b) Subject to applicable law, the additional powers and discretions set out in clause 58.2 below may be exercised in the Manager’s absolute discretion at any time and in any manner the Manager thinks appropriate.

58.2 **Additional powers:** In respect of the Scheme that is, or is intended to be or become, a PIE, the Manager may:

- (a) treat a Member as a member of, or exclude a Member from, an Investment Fund solely for the purposes of determining the Tax payable by the Scheme;
- (b) determine a Member’s proportionate interest in any Investment Fund solely for the purposes of determining the Tax payable by the Scheme under the Tax Act;
- (c) determine what Tax payment or calculation method under the Tax Act will apply to any Investment Fund;
- (d) determine the period under the Tax Act for calculating and allocating the Tax and Tax Items of any Investment Fund;
- (e) determine the Tax and Tax Items of any Scheme and allocate the Tax and Tax Items to or within a period or any Investment Fund determined by the Manager;
- (f) attribute Tax or Tax Relief to a Member under the Tax Act;

- (g) set off the Tax attributable to a Member against the Tax Relief attributable to a Member across any Investment Fund within the Scheme in which the Member has a Tax Liability;
- (h) adjust a Member's entitlements under this Deed (including the Member's entitlement to Units, Income Entitlements, and Withdrawal Amounts) in accordance with the Tax Act to take account of the amount of any Tax or Tax Relief attributable to that Member, including by way of:
 - (i) reduction or increase in the amount of any distribution otherwise payable to, or applied for the benefit of, the Member; or
 - (ii) cancellation, redemption or sale of Units of the Member; or
 - (iii) crediting a Member with further Units; or
 - (iv) adjustment to the amount of any payment required to be made by the Member to the Scheme;
- (i) holding any amount attributable to satisfy the Tax Liability of a Member separate from the Investments of an Investment Fund;
- (j) disclose any information to any Person as required by the Tax Act or where the Manager considers it reasonably necessary or desirable to do so in order to administer or satisfy the Scheme's obligations under the Tax Act;
- (k) take any steps which the Manager considers to be in the best interests of Members' prior to electing the Scheme be or become a PIE;
- (l) perform any act, or require the Supervisor to perform any act, including making all elections, filing all returns and providing any information to any Person the Manager considers necessary or desirable to:
 - (i) ensure the Scheme qualifies or continues to qualify as a PIE; or
 - (ii) to give effect to the powers and discretions set out in this clause 58.2; or
 - (iii) otherwise to comply with the requirements imposed by the Tax Act,
- (m) allocate Tax or Tax Relief between any Investment Fund of the Scheme and make any other transfers or payments necessary to equitably distribute the Tax and/or Tax Relief of the Scheme across the Investment Fund as if each Investment Fund was treated as a separate tax paying entity.

- 58.3 **Disposals of Units to avoid exceeding Member interest size requirements:** if a Member exceeds the PIE investor interest size requirement prescribed in the PIE Rules (a "Breach") in respect of an Investment Fund, the Breach will be remedied within the period determined in accordance with the PIE Rules (the "Remedy Period") and the Manager may take the following steps to ensure that the Breach is remedied:
- (a) as soon as practicable after the Manager becomes aware of the Breach, the Manager may give written notice to the relevant Members(s) of the Breach, including details of the number of Units ("Excess Units") giving rise to the Breach;
 - (b) the Member will then have a period consisting of the relevant Remedy Period less thirty (30) days to remedy the Breach, but if the Manager becomes aware of the Breach and determines that there are thirty (30) days or less to remedy the Breach then the Breach will be deemed to have not been remedied under this paragraph (b); and
 - (c) if the Breach has not been remedied upon expiry of the period in paragraph (b) above, then the Manager must, within the remaining thirty (30) days of the Remedy Period, in its discretion, sell, redeem, or repurchase the amount of the Excess Units in order to remedy the Breach, and:
 - (i) the Manager must account to the relevant Member for the proceeds of any disposal of the Excess Units after deduction of all expenses arising from such disposal; and
 - (ii) neither the Manager nor the Supervisor is required to maximise the Unit price for any disposal and in any event, will not be liable to any Member for any loss on disposal.

EXECUTION

SIGNED on behalf of **BOOSTER INVESTMENT MANAGEMENT LIMITED** of which we have consented to having our digital signature applied in accordance with the New Zealand Contract and Commercial Law Act 2017 by:



Director: Allan Yeo



Director: Paul Foley

SIGNED on behalf of **PUBLIC TRUST**

By its Attorney

Ireen Muir
Head of Client Services
Corporate Trustee Services
Public Trust
Wellington

Attorney

in the presence of:

Witness

Name

Occupation

Address



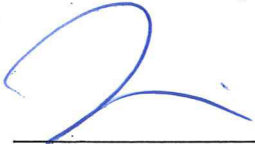
Harley Calder
Business Analyst
Corporate Trustee Services
Public Trust
Wellington

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Ireen Muir, of Wellington, hold the office of Head of Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 17 April 2018, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under registration number PA10765044.1; and
- 2 at the date hereof I hold the position of Head of Client Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Dated this 25th day of June 2018



Signature of attorney

SCHEDULE 1

Investment Fund Particulars

Name of Investment Fund:

Authorised Investments:

**Investment Strategy and
Objectives:**

Distribution Dates:

Fees:

Special Terms (if any):

SCHEDULE 2

Meeting Provisions

1 CONVENING OF MEETINGS

- 1.1 The Manager must summon a meeting of Members of the Scheme or Members of the Scheme who are Members in relation to any relevant Investment Fund ("Relevant Members") upon the request in writing of the Supervisor, of 5% in number of the Relevant Members, or of Relevant Members holding not less than 5% of the number of Units on issue in the relevant Investment Fund at the date of such request.
- 1.2 If the Manager fails to call a meeting in accordance with clause 1.1, the Supervisor shall be entitled to call such a meeting on behalf of the Manager.
- 1.3 The Manager may at any time of its own volition convene a meeting of Relevant Members to be held at such place as is acceptable to the Supervisor.

2 NOTICE OF MEETINGS

- 2.1 Notice of every meeting must be given in the manner provided in this Deed to every Relevant Member, the Supervisor, every director of the Manager and the Auditor.
- 2.2 Fifteen Business Days' notice at least of every meeting must be given. The notice is to be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice must specify:
 - 2.2.1 the place, day and hour of the meeting; and
 - 2.2.2 the general nature of the business to be transacted and sufficient detail to enable a Member to form a reasoned judgement in relation to it; and
 - 2.2.3 the text of any Special Resolution to be submitted to the meeting; and
 - 2.2.4 the right of a Member to appoint a proxy.
- 2.3 The accidental omission to give notice to or the non-receipt of notice by any Person entitled to that notice does not invalidate proceedings at any meeting.

3 QUORUM

- 3.1 No business is to be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 3.2 The quorum for meetings of Relevant Members for any business, other than that requiring a Special Resolution, is any two Relevant Members present in person or by proxy or by attorney or by authorised representative or electronically.
- 3.3 The quorum for meetings, if a Special Resolution is to be submitted, is Relevant Members present in person or by proxy or by attorney or by authorised representative or electronically who represent no less than 25% of Relevant Members.

- 3.4 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the request of Members must be dissolved. In any other case it will stand adjourned to such day and time not being less than 10 Business Days thereafter and to such place as may be appointed by the Supervisor and at such adjourned meeting the Relevant Members present in person or by proxy or by attorney or by authorised representative and entitled to vote shall form a quorum.
- 3.5 Notice of any such adjourned meeting must be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice must state that the Relevant Members present at the adjourned meeting, in the case of a meeting of Members, whatever their number and whatever the number of Units held by them, shall form a quorum.

4 SUPERVISOR AND MANAGER MAY ATTEND AND SPEAK

- 4.1 Any director, officer or solicitor of the Supervisor and any other Person authorised in that behalf by the Supervisor and any director, officer or solicitor of the Manager or any other Person authorised in that behalf by the Manager may attend any meetings and all such Persons have the right to speak at the meeting.

5 CHAIRPERSON

- 5.1 A Person nominated in writing by the Supervisor must preside at every meeting.

6 ADJOURNMENT OF MEETINGS

- 6.1 The chairperson may with the consent of any meeting at which a quorum is present and must if so directed by the meeting adjourn the meeting from time to time and from place to place.
- 6.2 No business is to be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

7 VOTING RIGHTS

- 7.1 The only persons entitled to vote in person or by proxy or by attorney or by authorised representative at a meeting of the Members are the Relevant Members registered in the Register at the date of the meeting (or if an adjourned meeting at the date the first meeting was first due to be held).
- 7.2 Votes may be given either personally, or by proxy, or by attorney or by authorised representative.

8 PROXIES

- 8.1 An instrument of proxy is to be in such form as the Manager may stipulate from time to time and need not be witnessed.
- 8.2 Whenever the chairperson of the meeting or an officer of the Supervisor is appointed a proxy for a Member and the Member has not indicated in the instrument of proxy or in any other way prior to the time for taking the poll the manner in which such Person's proxy is to vote upon any resolution coming before the meeting such Person's vote must be voted in the manner directed by the Manager.
- 8.3 The instrument appointing a proxy must be in writing under the hand of the appointer or

of such Person's attorney duly authorised in writing.

- 8.4 A Person appointed to act as a proxy need not be a Member.
- 8.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority is to be deposited at such place as the Manager may in the notice convening the meeting appoint.
- 8.6 If no such place is appointed, then it is to be deposited at the Manager's principal place of business not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the Person named in the instrument proposes to vote.
- 8.7 In default of the above the instrument of proxy is not to be treated as valid with the exception that the Manager may waive the foregoing requirements in relation to the power of attorney or other authority.
- 8.8 Unless it states to the contrary a proxy is valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy is valid after the expiration of 12 months from the date of its execution but this provision is not construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.
- 8.9 An instrument of proxy in favour of the chairperson of the meeting or the chairperson, (howsoever expressed) is valid and effective as though it were in favour of a named Person and constitutes the Person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointer.
- 8.10 A Person appointed proxy has the right to speak at a meeting and to demand or join in demanding a poll and (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) has power generally to act at the meeting for the Relevant Member concerned.
- 8.11 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or, in the case of a meeting of the Members, the transfer of the Units in respect of which the vote is given with the exception that no intimation in writing of such death, insanity, revocation or transfer must have been received by the Manager at the Manager's principal place of business before the commencement of the meeting or adjourned meeting at which the proxy is used.

9 POWER OF ATTORNEY

- 9.1 Any Relevant Member may by power of attorney appoint an attorney (who need not be a Member) to vote and act on the Member's behalf at any meeting.
- 9.2 Such power of attorney or proof thereof to the satisfaction of the Manager (unless such power of attorney or such proof has previously been produced to the Manager before the time of holding the meeting at which the attorney proposes to vote) be produced for inspection at such place as the Manager may in the notice convening the meeting direct or (if no such place is appointed) then at the Manager's principal place of business. Such attorney if so empowered may appoint a proxy for the Member granting the power of attorney.

10 PROCEDURE

- 10.1 A resolution put to the vote of a meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or any representative of the Supervisor or in the case of a meeting of the Relevant Members by one or more Relevant Members holding or representing not less than 5% of the number of Units on issue.
- 10.2 Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.3 If a poll is duly demanded, it is to be taken in such manner as the chairperson may direct and the result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
- 10.4 In the case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled for any reason whatsoever.
- 10.5 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 1 month from the date of the meeting) and place as the chairperson may direct. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 10.6 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 10.7 On a poll votes may be given either personally or by proxy or by attorney or by an authorised representative. On a poll a Person entitled to more than one vote need not use all such Person's votes or cast all the votes such Person uses in the same way.
- 10.8 In the case of a meeting of the Members, on a show of hands every Person present at the meeting and entitled to vote (whether as a Relevant Member or as a proxy or attorney or authorised representative) has one vote only. On a poll every Relevant Member who is present in person or by proxy or by attorney or by an authorised representative is entitled to one vote for every Unit of which such Relevant Member is the holder.

11 RESOLUTIONS

- 11.1 The expression 'Special Resolution' means a resolution:
- 11.1.1 approved by no less than 75% of the number of Relevant Members who are entitled to vote and who vote; and
 - 11.1.2 relating to a matter that is required by the FMCA to be done by way of Special Resolution; and
 - 11.1.3 relating to a matter that is required by this Deed to be done by way of Special Resolution.

- 11.2 The expression 'Ordinary Resolution' means a resolution approved by no less than 50% of the Relevant Members who are entitled to vote and who vote.
- 11.3 A meeting of Relevant Members has the following powers exercisable by Special Resolution:
- 11.3.1 To sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed or into units or other interests in any other managed investment scheme or similar entity.
 - 11.3.2 To sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Members howsoever such rights arise.
 - 11.3.3 To assent to any alteration, modification of, variation, or addition to the provisions contained in this Deed or any deed supplemental thereto or the conditions attaching to the Units and to authorise the Manager and Supervisor to concur in and execute any supplemental deed or other document embodying any such alteration or addition.
 - 11.3.4 To give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed.
 - 11.3.5 Subject to the FMCA (if applicable), to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed.
 - 11.3.6 To appoint a new supervisor if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new supervisor pursuant to this Deed.
 - 11.3.7 To appoint a new Manager if a vacancy arises in the office of Manager and the Supervisor fails to appoint a new Manager pursuant to this Deed.
 - 11.3.8 To sanction any variation to the Authorised Investments of a Fund.
 - 11.3.9 To give such directions to the Supervisor as they think proper concerning an Investment Fund being directions that are consistent with this Deed and the Act (where applicable).
 - 11.3.10 To direct the removal of the Manager.

12 RESOLUTIONS BIND ALL MEMBERS

- 12.1 An Ordinary Resolution and a Special Resolution passed at a meeting of Relevant Members duly convened and held in accordance with this Schedule are binding upon all Relevant Members present or not present at the meeting. Each of the Members, the Supervisor and the Manager is bound to give effect to such resolution accordingly.
- 12.2 The passing of any such resolution shall as between the Manager, the Supervisor, and the Relevant Members be conclusive evidence that the circumstances justify the passing of the Ordinary Resolution or Special Resolution as the case may be, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

13 MINUTES TO BE KEPT

- 13.1 Minutes of all resolutions and proceedings at every meeting must be made by the Supervisor or if the Supervisor is not present at any meeting by some person appointed by the chairperson of such meeting and duly entered in books from time to time provided for that purpose by the Supervisor.
- 13.2 Any such minutes as if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings had or by the chairperson of the next succeeding meeting are prima facie evidence of the matters in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings of the meeting had duly passed and conducted.



SUPERVISOR'S CERTIFICATE

(Replacement of the Booster KiwiSaver Scheme Trust Deed dated 19 September 2016)

25 June 2018

Public Trust (**Supervisor**), acting as the supervisor of the Booster KiwiSaver Scheme (**Scheme**):

- 1 for the purposes of section 139(1)(a) of the Financial Markets Conduct Act 2013 (**Act**), consents to the replacement of the Booster KiwiSaver Scheme Trust Deed dated 19 September 2016 by the Booster KiwiSaver Scheme Trust Deed dated 25 June 2018 (**Replacement Deed**).
- 2 for the purposes of section 139(2)(a)(ii) and (2)(b) of the Act, certifies that it is satisfied that the Replacement Deed does not have a material adverse effect on scheme participants.
- 3 for the purposes of section 139(2)(b) of the Act, confirms it has received a certificate from a lawyer that the Replacement Deed complies with sections 135 to 137 of the Act.

Public Trust as Supervisor by:



Signature of authorised person

Ireen Muir
Head of Client Services
Corporate Trustee Services
Public Trust
Wellington

Name of authorised person (print)

Office held



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19 June 2018

The Directors
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WELLINGTON 6142

The Board
Public Trust
Ground Floor
New Zealand Rugby House
100 Molesworth Street
PO Box 5067
WELLINGTON 6140

**CERTIFICATE PURSUANT TO SECTION 139 OF THE FINANCIAL MARKETS
CONDUCT ACT 2013**

We certify that the trust deed for the Booster KiwiSaver Scheme dated 19 September 2016, when rescinded and substituted in accordance with the trust deed for the Booster KiwiSaver Scheme effective from 25 June 2018, will comply with sections 135 to 137 of the Financial Markets Conduct Act 2013 and will not contain any provision that is contrary to those implied in the trust deed by or under the Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alasdair McBeth', written over a circular stamp or seal.

Alasdair McBeth
Partner

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