

# **Governing Document**

**relating to the Bonus Bonds Scheme**

**ANZ Investment Services (New Zealand) Limited**

**and**

**Trustees Executors Limited**

**Dated 3 November 2016**

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This **Governing Document** is made on 3 November 2016

**between** (1) **ANZ Investment Services (New Zealand) Limited** a duly incorporated company having its registered office at Auckland (the **Manager**)

**and** (2) **Trustees Executors Limited** a duly incorporated company having its registered office at Wellington (the **Supervisor**)

## Introduction

- A. The Scheme is a unit trust established under the Unit Trusts Act 1960 by a trust deed dated 17 September 1990, as amended by deeds dated 28 September 1990, 18 May 1993, 7 March 2002, 18 June 2007, 17 September 2009 and 17 September 2010 (the **Original Deed**). The Original Deed was consolidated, amended and restated by deed dated 13 September 2013 (the **Existing Deed**).
- B. The Minister of Finance approved the Scheme for the purposes of the Finance Act (No. 2) 1990 by notice in the New Zealand Gazette on 17 September 1990.
- C. The Manager and the Supervisor wish to amend the Existing Deed by substituting this Governing Document for the Existing Deed in order to comply with the requirements of the FMCA and all other relevant legislation, and to make a number of other minor amendments to the Existing Deed as a consequence of the introduction of the FMCA and the amendments to other legislation or for the more efficient operation of the Scheme.
- D. Clauses 26.01(b), (c) and (e) of the Existing Deed provide that the Supervisor and the Manager may make an alteration, modification, variation or addition to the provisions of the Existing Deed if:
- (a) in the case of clause 26.01(b), in the opinion of the Supervisor the same is necessary or desirable for the more convenient economical or advantageous working, management or administration of the Trust Fund or to obtain listing of the Bonus Bonds on the New Zealand Stock Exchange or for safeguarding or enhancing the interests of the Trust Fund or Bondholders;
  - (b) in the case of clause 26.01(c), in the reasonable opinion of the Supervisor the same is necessary or desirable in view of legislation or requirements imposed by any lawful authority affecting the Scheme; and
  - (c) in the case of clause 26.01(e), the same is considered by the Supervisor not to be or likely to become prejudicial to the general interests of the Bondholders,
- provided that no amendment shall be made under clause 26 which would have the effect of materially altering the terms upon which the Scheme became an approved unit trust without the prior written consent of the Minister of Finance.
- E. The Supervisor and Manager are of the opinion that the amendments effected by this Governing Document comply with clause 26.01(b), (c) or (e) of the Existing Deed and that the consent of the Minister of Finance is not required.
- F. Accordingly, the Supervisor and the Manager have agreed to enter into this Governing Document to amend and restate the Existing Deed.

## It is agreed:

In accordance with the power of amendment contained in clause 26.01 of the Existing Deed, it is declared that with effect on and from the date elected under clause 19(1)(a) of Schedule 4 of the FMCA (the **Effective Date**), the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Governing Document so that on and from the Effective Date the Scheme will be operated, administered, and governed in accordance with the provisions of this Governing Document.

### 1. Definitions

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1.01 In this Governing Document and the Schedules hereto unless the context otherwise requires:

**Applicant** means any Person who has applied to the Manager to acquire Bonus Bonds in accordance with this Governing Document;

**Application** means an application for Bonus Bonds made in such form and in such manner as the Manager may from time to time determine;

**Appropriate Exchange** means any recognised market in New Zealand or Australia or anywhere else in the world, which brings together buyers and sellers of Authorised Investments including without limitation any stock exchange, options market, futures market or other market in which bargains are made on a trading floor or by direct contact between buyer and seller (or their respective agents or brokers ) or a market which is made or constituted by means of listing (by electronic media or other means) prices at which persons are willing to buy or sell Authorised Investments **PROVIDED THAT** in the case where an Investment is quoted on more than one Appropriate Exchange, the Appropriate Exchange in relation to that Investment means the exchange nominated for the time being by the Manager;

**Auditor** means the auditor of the Trust Fund for the time being appointed pursuant to clause 23;

**Authorised Investments** means:

- (a) any share, security (as defined in the FMCA) or like interest in any company, partnership, syndicate, or other Person formed or carrying on business in any part of the world;
- (b) deposits with or loans to (with or without security) any Person;
- (c) debentures, bonds, notes 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) futures and swap contracts;
- (f) insurance and underwriting contracts;
- (g) any other investment approved as an Authorised Investment pursuant to this Governing Document;
- (h) Mortgages and any Mortgage Backed Securities; and
- (i) any right or option to acquire or take up any of the above,
- (j) and without prejudice to the generality of (a) to (i) above includes:

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

**Bondholder** means, in relation to a Bonus Bond, the Person(s) for the time being entered on the Register as the holder of that Bonus Bond;

**Bonus Bond** means a unit issued on the terms of this Governing Document and any relevant law, representing an undivided part or share in the Trust Fund as described in clause 3;

**Bonus Bonds Prize** means a prize described or referred to in the Second Schedule to this Governing Document (as amended from time to time in accordance with the Finance Act (No. 2) 1990);

**“Bonus” Bonus Bond** means a bonus Bonus Bond issued pursuant to clause 9.02;

**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 the New Zealand Stock Exchange is open for trading or such other day as may be agreed from time to time between the Manager and the Supervisor;

**Capital Liabilities** means any liabilities other than liabilities that would ordinarily be met out of income or liabilities which the Manager reasonably determines after consultation with the Supervisor are of a capital nature;

**Cash** includes a cheque and bank cheque;

**Custodian** means a person appointed to hold the Trust Fund under clause 2.03(a), and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Trust Fund under clause 2.03(b);

**Distribution Amount** means either:

- (a) the income earned by the Trust Fund, determined in accordance with clauses 8.08 and 8.09, less any sum that the Manager determines should be drawn from or added to the Reserve Fund Account in respect of the relevant Distribution Period (which, for clarity, the Manager may alter at its discretion); or
- (b) in the event that the Manager makes a determination pursuant to clause 9.06, an amount of capital of the Trust Fund equal to the net amount specified in paragraph (a) of this definition;

**Distribution Period** means the period of one month or such other period the Manager with the consent of the Minister may agree;

**Eligibility Period** means, in respect of a Bonus Bond and a particular Bonus Bonds Prize, the period of such length of time in respect of that Bonus Bonds Prize as may be described or referred to in the Second Schedule to this Governing Document (as amended from time to time in accordance with the Finance Act (No. 2) 1990), provided that:

- (a) such period shall not, in respect of a Bonus Bond and a particular Bonus Bonds Prize, end earlier than (but shall include) the last day of the Month immediately following the

Month in which that Bonus Bond was deemed to be issued in accordance with clause 5.02(a), clause 5.02(b) or clause 5.02(c) (as the case may require); and

- (b) if no such period is described or referred to in the Second Schedule to this Governing Document (as amended from time to time in accordance with the Finance Act (No. 2) 1990) in respect of a Bonus Bond and a particular Bonus Bonds Prize, such period shall end on (but shall include) the last day of the Month immediately following the Month in which that Bonus Bond was deemed to be issued in accordance with clause 5.02(a), clause 5.02(b), clause 5.02(c) or clause 15.03(e) (as the case may require);

**Entitlement** means, in respect of a Bonus Bond and a ballot completed by the Manager during any applicable Entitlement Period, entitlement to any part of the Distribution Amount attributable to that Bonus Bond as a result of that ballot;

**Entitlement Period** means, in respect of a Bonus Bond and a particular Bonus Bonds Prize, the period commencing on the expiry of the Eligibility Period applicable to that Bonus Bond and that Bonus Bonds Prize and terminating on the day on which the Manager makes an appropriate entry on the Register recording the redemption and cancellation of that Bonus Bond in accordance with clause 7;

**Financial Year** in relation to this Governing Document means the period of twelve months ending on the 30<sup>th</sup> day of September in each year or such other date as may be agreed between the Manager and the Supervisor;

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

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

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

**Gross Value of the Trust Fund** means the total of:

- (a) the number of Bonus Bonds on issue multiplied by Issue Price; and
- (b) the value of the Reserve Fund Account;

**Income** means the net income earned by the Trust Fund, determined in accordance with the provisions of clauses 8.08 and 8.09;

**Investment** or **Investment of the Trust Fund** means any investment, asset, right or property of any nature at any time forming part of the Trust Fund;

**Issue Price** means, in relation to a Bonus Bond, its issue price determined in accordance with clause 6.01 or 6.02;

**Liabilities of the Trust Fund** means all liabilities of the Trust Fund (excluding Capital Liabilities) and includes debts and other obligations of the Supervisor (acting in its capacity as trustee and supervisor of the Scheme) payable from the Trust Fund (including in particular but without limitation all taxes or duties payable by or in respect of the Trust Fund) and the liability of the Supervisor as drawer or acceptor of a bill of exchange but, unless reasonable allowance should be made, excludes other contingent liabilities and such debts and other obligations of the Supervisor in respect of which by the terms of this Governing Document the Supervisor is not entitled to be indemnified out of the Trust Fund;

**Manager** means the manager for the time being appointed under the provisions of this Governing Document;

**Market Value** of any **Investment** as at any Business Day means:

- (a) in respect of any Investment which is not a Mortgage and which is listed on any Appropriate Exchange, the price quoted for the last sale of that Investment on that Appropriate Exchange on or before that Business Day PROVIDED HOWEVER that if there shall have been no such sale in the five Business Days ending with that Business Day, or if either the Manager or the Supervisor shall form the view that such last sale price is not an accurate measure of the value of such Investment, the value thereof shall be the fair market value determined by the Manager or by a Qualified Adviser; or
- (b) in respect of Investments not included within paragraph (a) above, an amount agreed upon, or determined in a manner agreed upon, between the Manager and the Supervisor or failing such agreement the fair market value determined by a Qualified Adviser;

**Minister** means the Minister of Finance;

**Month** means calendar month;

**Mortgage** means any mortgage or charge secured over Property or any share in any mortgage or charge secured over Property including any contributory mortgage held by a trustee or nominee, any submortgage or subcharge secured over 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;

**New Zealand Stock Exchange** means the main board of NZX Limited;

**Office** means the registered office from time to time of the Manager or such other office as the Manager may notify to Bondholders for the purposes of this Governing Document;

**PDS** means the most recent product disclosure statement or PDS for the Scheme, as defined in the FMCA;

**Person** includes company, corporation, corporation sole, firm, government, or body of persons (whether corporate or unincorporated);

**Prescribed Denominations** means Bonus Bonds in such values as specified by the Manager from time to time;

**Property** includes real and personal property and any estate or interest in any property real or personal and any debt and any thing in action and any other right or interest and includes property in New Zealand or elsewhere;

**Qualified Adviser** means an appropriately qualified Person (who may be an employee of the Supervisor or the Manager) appointed by the Manager with the prior approval of the Supervisor (such approval not to be unreasonably withheld) for the purpose of determining the value of any of the Investments of the Trust Fund;

**Quarterly Date** means the last days of March, June, September and December;

**Redemption Amount** means the amount specified in clause 7.03;

**Redemption Notice** means a notice that complies with the requirements of clause 7.01;

**Register** means the Register described in clause 12;

**Registrar** means the Person who maintains the Register;

**Related Company** bears the meaning given to that term in section 2(3) of the Companies Act 1993;

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

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

**Reserve Fund** means the accumulated amount of Income held in the Reserve Fund Account (such amount being made up of the amounts of Income which the Manager, with the approval of the Supervisor for any such amounts greater than ten (10) per cent of Income but not otherwise, from time to time determines to be appropriate to transfer to such Account) to meet any reduction in the Value of the Trust Fund;

**Reserve Fund Account** means the account designated as such in the books of the Trust Fund which holds the Reserve Fund;

**Scheme** means the trust established under this Governing Document which is commonly referred to as the "Bonus Bonds Scheme";

**Selling Fee** means the Manager's fee for issuing Bonus Bonds calculated in accordance with clause 6.03;

**SIPO** has the meaning given to it by the FMC Regulations;

**Special Resolution** bears the meaning set out in paragraph 12(a) of the First Schedule to this Governing Document;

**Standing Application** means an Application for the purchase of Bonus Bonds on a regular basis in respect of moneys from whatever source paid to the Scheme from time to time by or on account of a Bondholder until he ceases to be such or withdraws such Application by notice in writing;

**Subscription Bank Account** means the separate bank account outside the Scheme in the name of the Supervisor or a Custodian, opened and operated by the Manager pursuant to clause 5.03;

**Supervisor** means the supervisor for the time being appointed under the provisions of this Governing Document and, in respect of the Trust Fund, includes the Custodian;

**Trust Fund and Fund** means the trust fund of the Scheme described in clause 2.02;

**Value of the Trust Fund** in respect of any Business Day means such sum as is ascertained and fixed by the Manager in respect of that Business Day being the aggregate of:

- (a) the Market Value of all of the Investments in the Trust Fund; and
- (b) the amount of Cash (excluding Cash which the Manager deems to be Income) forming part of the Trust Fund;

Less: Capital Liabilities of the Trust Fund and realisation costs which may become payable.

In determining the Value of the Trust Fund no account shall be taken of:

- (i) any amounts held in the Reserve Fund Account; or
- (ii) any Income or Liabilities of the Trust Fund to the extent that such liabilities are able to be met out of Income at the time they fall due for payment.

- 1.02 Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- 1.03 Reference to a statute or regulation includes all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions and, where the context requires, any regulations and exemptions made under them.
- 1.04 Headings have been inserted in this Governing Document for guidance only and shall not be deemed to form any part of the context.
- 1.05 Where under or pursuant to this Governing Document 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 next following Business Day.
- 1.06 For the purposes of the definition of "Value of the Trust Fund" the Manager may estimate the amount of brokerage and other costs referred to therein on such basis as the Manager may reasonably consider to be appropriate and the estimation of the Manager as to such amount shall be conclusive and binding upon the Supervisor and all Bondholders.
- 1.07 Unless the context otherwise requires, references in this Governing Document to money are references to New Zealand currency.
- 1.08 Where for the purposes of any provision of this Governing Document it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency such sum shall be converted to New Zealand currency on a consistent basis fixed from time to time by the Manager and any liability which is payable in a non-New Zealand currency shall for the purposes of the Governing Document be treated as being a liability of an amount equal to the New Zealand currency equivalent determined as aforesaid PROVIDED ALWAYS THAT in determining the New Zealand currency equivalent of a liability payable or an amount expressed in a non-New Zealand currency, account may be taken of any contractual arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency of the liability.
- 1.09 Where any frameworks or methodologies specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA apply to the Scheme and relate to any matter which is required by the FMCA to be provided for adequately in this Governing Document, the provisions of this Governing Document dealing with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for the Scheme.

## **2. Creation and Constitution of the Trust Fund**

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- 2.01 The Supervisor is appointed as the supervisor of the Scheme and agrees to act as supervisor for the Bondholders to hold the Trust Fund in trust for the relevant Bondholders, and to act in the interests of the Bondholders, upon and subject to the terms and conditions contained or implied in this Governing Document and relevant laws.
- 2.02 The Trust Fund shall consist of all the Cash, Investments, assets, rights and other property for the time being held by the Supervisor or a Custodian upon the trusts of this Governing Document including without limitation:
- (a) the proceeds of sale of any Investments;
  - (b) all additions or accretions thereto; and
  - (c) all income therefrom held pending distribution or reinvestment.

- 2.03 (a) The Supervisor may, having consulted with the Manager, nominate in writing from time to time any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which part or all of the Trust Fund is to be vested. The Custodian must meet the requirements for such person under the FMCA. The Supervisor must take all reasonable steps to ensure that the function of holding all or part of the Trust Fund is performed in the same manner and subject to the same duties and restrictions as if the Supervisor was performing it directly and must take all reasonable steps to monitor the performance of the Custodian. The Supervisor shall be jointly and severally liable with the Custodian for the performance by the Custodian of the functions imposed on it pursuant to this clause 2.03(a) and the FMCA with respect to the Scheme. The Supervisor shall cause any such Custodian to execute an agreement in a form satisfactory to the Supervisor by which the Custodian agrees to comply with all of the covenants and obligations on the part of the Supervisor expressed or implied in this Governing Document and relevant laws, including without limitation the provisions of clause 19.03.
- (b) If authorised in writing by the Supervisor in consultation with the Manager, a Custodian appointed under clause 2.03(a) may itself appoint one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which part or all of the Trust Fund is to be vested. Any sub-custodian appointed under this clause 2.03(b) must meet the requirements for such person under the FMCA. The Custodian must take all reasonable steps to ensure that the function of holding all or part of the Trust Fund is performed in the same manner and subject to the same duties and restrictions as if the Custodian was performing it directly and must take all reasonable steps to monitor the performance of the sub-custodian. The Supervisor and the Custodian which appointed that sub-custodian shall be jointly and severally liable with the sub-custodian for the performance by the sub-custodian of the functions imposed on it pursuant to this clause 2.03(b) and the FMCA with respect to the Scheme. The Custodian shall cause any such sub-custodian to execute an agreement in a form satisfactory to the Supervisor by which the sub-custodian agrees to comply with all of the covenants and obligations on the part of the Supervisor expressed or implied in this Governing Document and relevant laws, including without limitation the provisions of clause 19.03.
- (c) The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to clauses 2.03(a) and 2.03(b) (having consulted with the Manager), the fees that may be charged and the extent to which expenses will be reimbursed.
- (d) To the fullest extent permitted by the FMCA, the Supervisor may agree to indemnify and reimburse out of the Trust Fund any Custodian appointed in respect of the Scheme in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in relation to the performance of its functions in respect of the Scheme.

2.04 The Manager is appointed as the Manager of the Scheme and agrees to act as the Manager on the terms and conditions express or implied in this Governing Document and relevant laws.

2.05 The Manager may in its discretion change the name of the Scheme at any time.

### **3. Bonus Bonds**

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- 3.01 (a) The beneficial interest in the Trust Fund shall be divided into units and each Bonus Bond shall be allocated and designated as a unit in the Trust Fund.
- (b) Each Bonus Bond shall confer an equal interest in the Trust Fund but shall not confer any interest in any particular part of the Trust Fund. All investments made with the funds of the Trust Fund shall be held by the Supervisor or the Custodian as the exclusive property of the Scheme and such investments shall be held exclusively for the benefit of the Bondholders. No Bondholder shall be entitled to require the transfer to him of any particular part of the Trust Fund nor (subject to the rights of Bondholders created by this

Governing Document and by law) shall any Bondholder be entitled to interfere with or question the exercise or non-exercise by the Manager or Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this Governing Document or in respect of the Trust Fund or any part or parts thereof. Except where expressly provided herein 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 the Bondholders) herein contained enure for the benefit of and bind each Bondholder and are legally enforceable as between the Manager, the Supervisor and Bondholders.

- 3.02 The terms and conditions attaching to Bonus Bonds shall be set out in a current PDS but shall not be inconsistent with the provisions of this Governing Document.
- 3.03 The Manager may at its discretion at any time apply to any Appropriate Exchange for listing of the Bonus Bonds on that Appropriate Exchange.

## **4. Issue of Bonus Bonds**

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- 4.01 The Manager may at any time invite applications for Bonus Bonds to be issued under this Governing Document, upon and subject to its terms and conditions and such other terms and conditions as the Manager shall from time to time determine.
- 4.02 The Manager shall in inviting offers in terms of clause 4.01 comply with all of the relevant provisions of all relevant laws.
- 4.03 Any proposed issue of Bonus Bonds may in the Manager's discretion be underwritten and any underwriter or its nominees may take up the Bonus Bonds not otherwise subscribed for and charge underwriting commission and all costs and disbursements of the issue as may be agreed with the Manager, all of which shall be payable out of the subscription moneys received in respect of those Bonus Bonds.
- 4.04 Every Person wishing to apply for Bonus Bonds shall:
- (a) make an Application for Bonus Bonds in such form and manner as the Manager shall from time to time determine;
  - (b) apply to purchase Bonus Bonds only in the Prescribed Denominations; and
  - (c) pay to the Manager, by whatever means the Manager may approve from time to time, the application moneys.
- 4.05 The Manager may from time to time set requirements for the minimum number or value of Bonus Bonds for which Applicants must apply. Subject to complying with such minimum requirements, an Application for Bonus Bonds may be in respect of any amount of money which is sufficient to purchase any number of Bonus Bonds in the Prescribed Denominations.
- 4.06 The Manager may in its absolute discretion accept or refuse to accept in whole or in part any Application and the Manager shall not be required to give any reason or ground for such refusal.

## **5. Allotment**

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- 5.01 Applications for Bonus Bonds accepted by the Manager will be treated as a subscription for Bonus Bonds to be issued from the Trust Fund and the Issue Price payable by Applicants will always be the price calculated in accordance with clause 6.01 or clause 6.02 (as the case may be).

- 5.02 (a) If the Manager accepts an Application, then, if the relevant payment has been made to the Manager, whether by direct payment to the Subscription Bank Account or not and whether on a Business Day or not, the Bonus Bonds shall (subject to clause 5.02(b) and clause 5.02(c) (as the case may require)) be deemed to be issued on the later of the day of lodgement of the Application or receipt of payment by the Manager. Payments made by direct credit will not constitute acceptance of the Application by the Manager and any monies received by direct credit where the Manager declines the Application will be refunded to such Applicant in reasonable time.
- (b) Notwithstanding anything in clause 5.02(a), where a Bonus Bond has been issued to a Bondholder in substitution of, or as part of a transaction comprising a substitution of, an existing Bonus Bond held by that Bondholder (a **Substituted Bonus Bond**), those Substituted Bonus Bonds may, at the sole discretion of the Manager (and upon payment of any applicable fee), be deemed to be issued on any day during the Month immediately preceding the Month in which the substitution occurs.
- (c) Notwithstanding anything in clause 5.02(a) or clause 5.02(b), where the Application for Bonus Bonds has been lodged through, and in accordance with any conditions specified by the Manager as applicable to, an on-line or internet-based offering channel approved by the Manager, the Bonus Bonds shall be deemed to be issued to a Bondholder on the date of lodgement of the Application even if receipt of the relevant payment by the Manager for those Bonus Bonds occurs later **PROVIDED THAT** no such Bonus Bonds shall be deemed to be issued under this clause 5.02(c) if the Manager does not receive payment in full within 3 Business Days (or such longer period as the Manager determines) of the date of lodgement in which case any such Application will be deemed to have been declined by the Manager.
- (d) The number of Bonus Bonds issued pursuant to an Application shall be that number of Bonus Bonds that have an Issue Price equal to the application moneys received and accepted.
- 5.03 All application moneys received by the Manager shall immediately be credited or paid into the Subscription Bank Account subject to deduction or payment therefrom of all amounts the Manager is expressly entitled by this Governing Document to receive and retain for its own benefit pursuant to this Governing Document. The balance of the application moneys shall be credited to a bank account for the Scheme within 7 days.
- 5.04 The Manager shall be entitled to receive and retain for its benefit the Selling Fee, if applicable, in respect of Bonus Bonds issued in accordance with clause 6.03.
- 5.05 The Manager shall make prompt decisions on all Applications and must promptly refund, or arrange for the Supervisor to promptly refund, application moneys, provided such application moneys are cleared funds, received in respect of rejected Applications. Application moneys received or held in respect of rejected Applications shall not constitute an Investment of the Fund.
- 5.06 The Manager shall promptly notify the Registrar of the acceptance or rejection of each Application in such manner as is agreed between the Registrar and Manager. The Registrar shall cause an accepted Applicant to be entered upon the Register (or, where the Applicant is already on the Register, cause the Register to be altered accordingly).
- 5.07 Subject to clause 5.09, an Application for Bonus Bonds may be in respect of any amount of money.
- 5.08 The Manager may issue a Bonus Bond to a Person known to the Manager to be under seven years of age but shall pay prizes to the parent or guardian of such person until the age of seven years is attained. The Manager may not issue a Bonus Bond to a Person known to the Manager to be of unsound mind or a Person whose Person or estate is liable to be dealt with in any way under the laws relating to mental health.

- 5.09 The minimum amount of investment in Bonus Bonds shall be the amount specified by the Manager in the current PDS but such amount may be varied from time to time by the Manager. All investments must be in amounts equal to the Prescribed Denominations or some combination thereof.
- 5.10 An Application for Bonus Bonds may be designated by the Applicant as a Standing Application.
- 5.11 No Bonus Bond may be issued by the Manager after the occurrence of the events specified in clause 28.01 except with the prior consent in writing of the Supervisor.
- 5.12 The Manager shall be at liberty, at its own cost and not that of the Trust Fund, to pay such commission, procuration fee or brokerage to any Person for subscribing for or underwriting the purchase or subscription for or obtaining purchases or subscriptions for any Bonus Bonds as the Manager may from time to time determine.

## **6. Issue Price**

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- 6.01 Subject to clause 6.02, each Bonus Bond will be issued at a price of one dollar (\$1.00).
- 6.02 The Manager may, if it considers that special circumstances have arisen which justify it doing so, make one or more special determinations of the issue price of Bonus Bonds which may, at the Manager's discretion, apply to one or more issues of Bonus Bonds or for Bonus Bonds issued during a specified period (including until another special determination of the issue price is made).
- 6.03 The Manager may require an Applicant for Bonus Bonds to pay, in addition to the Issue Price of those Bonus Bonds, such Selling Fee as may from time to time be specified in a current PDS as the Manager may fix as a condition of issue of those Bonus Bonds. The Manager may deduct and retain the Selling Fee from the subscription moneys received in respect of those Bonus Bonds. The Manager shall be entitled to waive from time to time the whole or any part of the Selling Fee and, subject to what may appear in a current PDS under which the affected Bonus Bonds were issued, to increase or reduce such fee.

## **7. Redemption of Bonus Bonds**

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- 7.01 If any Bondholder shall desire to withdraw from the Scheme, he shall give notice in writing to that effect in such form and manner as the Manager shall from time to time determine. Such notice shall:
- (a) specify the amount of money the Bondholder wishes to withdraw or the number of Bonus Bonds in respect of which the Bondholder desires to effect withdrawal;
  - (b) comply with such other terms and conditions as may be specified by the Manager in the current PDS (including, for the avoidance of doubt, terms and conditions relating to identity verification requirements or other legal or regulatory requirements that the Manager may be required to comply with from time to time in respect of a Bondholder); and
  - (c) if required by the Manager, be accompanied by such evidence of the Bondholder's title to the relevant Bonus Bonds as the Manager may require from time to time.

No Redemption Notice shall be given in respect of a lesser amount of Bonus Bonds as may be specified by the Manager in the current PDS.

- 7.02 Subject to clause 7.08, the Manager shall procure that, within twenty-eight (28) Business Days after actual receipt of a Redemption Notice, the Bonus Bonds specified in that Redemption

Notice are redeemed and the holder of those Bonus Bonds is paid the Redemption Amount in respect of each such Bonus Bond. The Manager may, in order to satisfy its obligations under this clause 7.02, agree with any Bondholder who has issued a Redemption Notice to transfer Authorised Investments to such Bondholder which have an aggregate Market Value not exceeding the Redemption Amount in respect of the Bonus Bonds which are the subject of the Redemption Notice.

7.03 The Redemption Amount in respect of any Bonus Bond shall, subject to the proviso to this clause and clause 14.01, be the Issue Price of that Bonus Bond, less any fee the Manager may charge pursuant to this Governing Document **PROVIDED THAT** the Manager may, if it considers that special circumstances have arisen which justify it doing so, make one or more special determinations of the Redemption Amount of Bonus Bonds which may, at the Manager's discretion, apply to a one or more redemptions of Bonus Bonds or for Bonus Bonds redeemed during a specified period (including until another special determination of the Redemption Amount is made).

7.04 In connection with a redemption of Bonus Bonds the Manager shall have a right to:

- (a) direct the Supervisor pursuant to clause 8.02 to realise Investments; and/or
- (b) direct the Supervisor pursuant to clause 21.01 to Borrow,

to provide the Redemption Amount in respect of the Bonus Bonds to be redeemed.

7.05 Upon receipt of a direction pursuant to clause 7.04, the Supervisor shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall pay the proceeds of such realisation and/or Borrowing to the Manager for payment to the Bondholder.

7.06 Bonus Bonds redeemed pursuant to the foregoing provisions shall cease to exist and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the Register in respect of such cancellation.

7.07 [Not used.]

7.08 (a) If by reason of:

- (i) the suspension of trading on any Appropriate Exchange (whether generally or in respect of any specific Investment); or
- (ii) financial, political or economic conditions applying in respect of any financial market; or
- (iii) the nature of any Investment; or
- (iv) the occurrence or existence of any other circumstance or event,

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of Bondholders, for the Supervisor to realise Investments or Borrow in accordance with clause 7.04 in order to permit withdrawals from the Trust Fund, then the Manager may give notice (a **Withdrawal Suspension Notice**) to that effect to any Bondholder who gives or has given a Redemption Notice and to the Supervisor. A Withdrawal Suspension Notice shall have the effect of suspending the operation of all Redemption Notices including without limitation the fixing of the Redemption Amount until such time (which may not be more than thirty (30) days after the giving of the Withdrawal Suspension Notice) as the Manager gives to the Bondholders who gave those Redemption Notices notice to the effect that the Withdrawal Suspension Notice is cancelled, and following the cancellation of a Withdrawal Suspension Notice the Redemption Amount, for all Redemption Notices affected by the

Withdrawal Suspension Notice, shall be calculated in accordance with clause 7.03 as though those Redemption Notices were received on the date the cancellation of the Withdrawal Suspension Notice becomes effective.

- (b) Notwithstanding anything contained in this Governing Document if:
- (i) a Redemption Notice shall be received or a series of Redemption Notices received in respect of the same holding of Bonus Bonds within a period of three months that relate to more in total than 3% of the number of Bonus Bonds on issue at the time of the request or last request; and
  - (ii) the Supervisor and the Manager shall both agree it is in the general interests of all Bondholders to defer immediate redemption of the total Bonus Bonds requested,

**THEN** such Bonus Bonds may be redeemed by instalments over a period approved by the Supervisor or in total at the expiration of a period approved by the Supervisor **AND** in any such case the Redemption Amount shall be calculated at the Business Day or respective Business Days on which such Bonus Bonds are redeemed.

## 8. Investments

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- 8.01 The Manager shall, in consultation with the Supervisor, establish, and may, on prior notice to the Supervisor, at any time change a SIPO for the Trust Fund in accordance with the requirements of the FMCA.
- 8.02 Subject to clauses 8.03, 8.04 and 8.08 and to compliance with the SIPO for the Trust Fund, the Manager shall have absolute and uncontrolled discretion as to the investment of any sums of Cash forming part of the Trust Fund and as to the purchase, sale, transfer, exchange or alteration of any Investments from time to time and the Manager alone shall be entitled from time to time to cause to be effected any transactions which it may consider to be in the interests of Bondholders and the Supervisor shall (and, when a Custodian has been appointed, procure that the Custodian shall) from time to time to the extent of the Cash in its hands effect and pay for such investments or purchases, sales, transfers, exchange or alterations of Investments as may be directed in writing by the Manager and shall do all things necessary on its part to give effect to any such direction.
- 8.03 The Trust Fund shall be invested in accordance with the SIPO and only in Authorised Investments.
- 8.04 Notwithstanding clause 8.02, the Supervisor shall not act (and must direct any Custodian to refuse to act) on the direction of the Manager to acquire or dispose of any Investment if in the opinion of the Supervisor conveyed in writing to the Manager the proposed acquisition or disposal is manifestly not in the interests of the Bondholders or is in breach of this Governing Document, any rule of law or any enactment. The Supervisor (and the Custodian where applicable) shall not be liable to the Bondholders or the Manager for so refusing to act (or for directing any Custodian to so refuse to act) on any direction. If the Supervisor refuses (or directs any custodian to refuse) to act on a direction from the Manager pursuant to this clause, the Supervisor must notify the FMA in writing of that fact and the Supervisor's reasons for refusing to act.
- 8.05 The Manager must not enter into a transaction with any Related Party that provides for a Related Party Benefit to be given except as permitted by the FMCA. The Manager must give prior written notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit. Neither the Manager, nor any Related Party shall be liable to account to the Trust Fund for any profit arising from any such transaction, except to the extent required by the FMCA. A failure to comply with this clause 8.05 does not affect the validity of a transaction (subject to any court order to the contrary).

8.06 Without prejudice to the generality of clause 8.02:

- (a) the Manager shall be entitled to direct the Supervisor to permit Cash in the Trust Fund to be placed or remain on deposit with any company or body nominated by the Manager for such time as the Manager shall consider desirable in the interests of the Bondholders;
- (b) if:
  - (i) as the result of any scheme or arrangement for the amalgamation or reconstruction of any company or body any of whose shares are included in the Trust Fund; or
  - (ii) as the result of any scheme or offer for the exchange of the shares of, or Authorised Investments owned by, any such company or body,

the Supervisor would, on the scheme becoming effective or the exchange being made, receive shares in some other company or body or Authorised Investments owned by some other company or body then the Manager shall direct the Supervisor whether or not the offer for exchange is to be accepted and whether or not the whole or any part of the shares in such other company or body or Authorised Investments owned by such other company or body so to be received by the Supervisor shall be retained as part of the Trust Fund. If the Manager decides that any of such new shares or Authorised Investments are to be retained then the same shall when received be retained accordingly. Otherwise such new shares or Authorised Investments or such proportion that is not to be retained shall be sold and the net proceeds of sale thereof reinvested;

- (c) if the Supervisor shall in respect of any shares forming part of the Trust Fund receive an offer in common with other holders of the like shares or otherwise from any person to purchase the same or any part thereof the Supervisor shall notify the Manager forthwith whereupon the Manager shall direct the Supervisor as to the extent to which the offer is to be accepted and the Supervisor shall act accordingly;
- (d) if any shares forming part of the Trust Fund shall be wholly or partially redeemed or repaid by the company or body issuing the same whether by payment in cash or under an option to convert the shares so to be redeemed or repaid into some other shares of the company or body the Manager shall direct the Supervisor either:
  - (i) to convert in whole or in part the shares to be so redeemed or repaid into the shares into which it is offered to be converted; or
  - (ii) to accept redemption in whole or in part of the shares in Cash;
- (e) any shares (excepting rights and fractions of shares) received by the Supervisor by way of bonus in respect of any Investment shall at the discretion of the Manager either be retained as part of the Trust Fund, or sold, or retained as to part and sold as to the balance; and
- (f) all rights, fractions, benefits or other property in any shape or form other than Cash may at the discretion of the Manager be sold for the benefit of Bondholders.

8.07 Any Investment shall as soon as reasonably practicable after receipt of the necessary documents by the Supervisor be, registered in the name of the Supervisor or the Custodian and held in safe custody by the Supervisor or such Custodian and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this Governing Document.

8.08 Without prejudice to the generality of clause 8.02, the Manager shall be entitled to direct the Supervisor on behalf of the Trust Fund to enter into any agreement to underwrite or sub-underwrite any issue of shares or other securities (as defined in the FMCA), or any futures

contract, put option, call option or similar obligation and the Supervisor shall give effect to any such direction provided that the Supervisor may before entering into any such agreement or obligation require that its liability thereunder is to its satisfaction limited to the assets for the time being held upon the trusts created pursuant to this Governing Document.

- 8.09 In determining Income of the Trust Fund for any period there shall be taken into account all income received and receivable and all costs, charges and expenses paid or accrued including, without limiting the generality of the foregoing:
- (a) all fees, costs and disbursements payable hereunder to the Manager and to the Supervisor;
  - (b) all costs and expenses incurred in respect of Investments of the Trust Fund;
  - (c) all depreciation of Investments of the Trust Fund (if the Manager determines such should be charged against income) of an amount determined by the Manager;
  - (d) all cost and disbursements incurred in connection herewith or in connection with the Trust Fund or the administration thereof and chargeable against income;
  - (e) due allowance for prepayments, doubtful debts and bad debts;
  - (f) any taxes or duties paid or payable by or in respect of the Trust Fund;
  - (g) such other provisions as the Manager deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Trust Fund for that period;
  - (h) the reasonable fees and expenses of the Auditor in connection with the audit of the Trust Fund;
  - (i) if the Manager so determines, all or part of the costs and disbursements incurred in connection with establishing or setting up of the Scheme including initial marketing expenses which costs and disbursements may at the discretion of the Manager be amortised over a period of up to five years and shall be and be deemed to be chargeable against income; and
  - (j) realised and unrealised capital gains and, if appropriate, losses received or suffered by the Trust Fund which the Manager reasonably determines on normal commercial principles are Income.
- 8.10 If any question shall arise as to whether any money or property constitutes income or capital or whether any expense is chargeable against income such question shall be determined by the Manager who shall do so by construing this Governing Document and applying normal commercial principles and generally accepted accounting principles and such determination, in the absence of manifest error, shall be conclusive and binding upon the Supervisor and all Bondholders.
- 8.11 The Manager shall enter all Income received by or accrued to the Trust Fund into the Income account and may debit such account for:
- (a) paying or making provision for any Liabilities of the Trust Fund;
  - (b) making distributions to Bondholders; and
  - (c) any other reason required for the proper administration of the Scheme.

## 9. Distribution and Allocation of Entitlement

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- 9.01 As soon as practicable after the end of every Distribution Period, the Distribution Amount for that Distribution Period shall be determined and distributed to Bondholders in accordance with their Entitlements. All Entitlements in respect of joint Bondholders shall (unless agreed otherwise with the Manager) be paid jointly to the first two Persons named on the Register as Bondholders of the relevant Bonus Bonds, and the Registrar may act on any proof of such joint Bondholders as he may determine. The sum of Entitlements of a Bondholder for a Distribution Period shall be rounded down to the nearest whole cent.
- 9.02 (a) During the continuance of the Scheme and subject to the terms of this Governing Document, the Manager will distribute each Bondholder's Entitlement in Cash or such other payment means as determined by the Manager unless:
- (i) the Bondholder elects to receive "Bonus" Bonus Bonds that equate to that Bondholder's Entitlement; or
  - (ii) the Bondholder fails to satisfy identity verification requirements or other legal or regulatory requirements that the Manager may be required to comply with from time to time in respect of that Bondholder (a "Non-Complying Bondholder"), in which case the Manager may distribute the Non-Complying Bondholder's Entitlement in "Bonus" Bonus Bonds that equate to the Non-Complying Bondholder's Entitlement. Once the Manager is satisfied that the relevant identity verification requirement or other legal or regulatory requirement has been satisfied, the Non-Complying Bondholder may elect to receive the relevant Entitlement in Cash or such other payment means as determined by the Manager.
- (b) Entitlements shall be determined by ballot conducted by the Manager. The first eligible serial number drawn shall win the first prize and subsequent prizes shall be determined in the order drawn. The prize structure is set out in the Second Schedule and may be amended from time to time in accordance with the Finance Act (No.2) 1990. Notwithstanding clause 26.01, where the prize structure set out in the Second Schedule is amended from time to time in accordance with the Finance Act (No.2) 1990, this Governing Document shall be deemed to be amended in accordance with such amendments upon notification of such amendments to the Supervisor and the Manager and the Supervisor shall not be required to enter into a deed modifying this Governing Document or to do any other act or thing to give effect to such amendments. No Bonus Bond shall have a better chance of winning a prize than 1 in 9600. All other terms and conditions relating to entitlements to and the distribution of prizes shall be as specified from time to time by Order in Council.
- (c) The provisions of clause 5, with such changes as are necessary, apply to "Bonus" Bonus Bonds issued in accordance with this clause 9.02, including the minimum investment amounts specified in clause 5.09. If the Entitlements of any Bondholders are distributed by the issue of "Bonus" Bonus Bonds in accordance with clause 9.02(a), the Supervisor shall on the direction of the Manager at any time apply and capitalise, if necessary, the whole of the Bondholders' Entitlements towards paying up in full new Bonus Bonds to be issued and distributed as fully paid "Bonus" Bonus Bonds to and amongst the Bondholders to whom "Bonus" Bonus Bonds are to be distributed in accordance with clause 9.02(a). By requesting that Entitlements be distributed by the issue of "Bonus" Bonus Bonds, Bondholders will have elected to forego their Entitlement to Cash.
- (d) The number of "Bonus" Bonus Bonds to be issued will be determined by dividing the Entitlement so applied or capitalised by the Issue Price applicable determined for this purpose by the Manager. Any surplus Entitlement that cannot be applied to "Bonus" Bonus Bonds will promptly be paid to the Bondholder by the Manager.

- 9.03 Each allocation shall be made within seventy (70) days after the last day of the Distribution Period to which it relates.
- 9.04 Bondholders may elect to have their Entitlements distributed to them by the issue of “Bonus” Bonus Bonds in the manner described in clause 9.02 by making a written request on that behalf to the Manager on the relevant Application for Bonus Bonds or in such other form as may from time to time be determined by the Manager. Any such requests must be received and processed by the Manager by close of business on the expiration of the Distribution Period. Bondholders who are Non-Complying Bondholders for the purposes of clause 9.02 may elect to have their Entitlements distributed in Cash or such other payment means as determined by the Manager once the Manager is satisfied that the identification verification requirements or other legal or regulatory requirements referred to in clause 9.02 have been satisfied by making a written request on that behalf to the Manager in such form as may from time to time be determined by the Manager and identified in the current PDS.
- 9.05 In any case where the Entitlement of any Bondholder is not to be distributed by the issue of “Bonus” Bonus Bonds in accordance with clause 9.02 and that Entitlement amounts to less than \$25.00 then the Manager may in its discretion allocate to the relevant Bondholder the number of additional Bonus Bonds that equate to such Bondholder’s Entitlement, such additional Bonus Bonds to be issued in accordance with clause 5 immediately before the distribution to the relevant Bondholder was due to take place.
- 9.06 Notwithstanding any provision of this Governing Document, the Manager is entitled in its discretion to specify that:
- (a) any Income of the Trust Fund shall be retained and reinvested and not distributed; and
  - (b) any capital of the Trust Fund should be included in the Distribution Amount and distributed.
- In the event that the Manager specifies that any Income should be retained and reinvested and not distributed:
- (c) the Manager shall specify that an amount of capital of the Trust Fund equal to the net amount of Income which would otherwise have been distributed shall be included in the Distribution Amount; and
  - (d) the Income so retained and reinvested shall be treated as capital of the Trust Fund from such date as the Manager may specify.
- 9.07 The Manager is entitled in its discretion to specify in respect of each distribution the extent to which (allowing for reasonable approximation) the Entitlements of a Bondholder participating in that distribution consist or are deemed to consist of various types of income or capital comprised therein.
- 9.08 Any Entitlement not claimed within 6 months shall be distributed to the relevant Bondholder by the issue of “Bonus” Bonus Bonds in the manner described in clause 9.02.
- 9.09 Any moneys payable by the Supervisor or by the Manager to a Bondholder under the provisions of this Governing Document may be credited to any bank account nominated by the Bondholder. The giving by the Manager of the encoded payment instructions to the paying bank will be due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.

## 10. Taxation Liability

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- 10.01 In this clause:

**Relevant Person** means a Bondholder and his personal representatives or successors;

**Tax** includes all taxes, duties and levies including Goods and Services Tax and other charges including penalties and interest; and

**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 Bonus Bonds; and
- (b) any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Bondholder.

10.02 The Supervisor or the Manager may require an amount equal to the Taxation Amount to be deducted from any amount otherwise payable to or applied in respect of a Relevant Person, where such amount is payable by the Supervisor or the Manager or from the Fund.

10.03 Amounts deducted under clause 10.02 shall be applied in:

- (a) payment of the Taxation Amount due to the relevant tax authority; or
- (b) reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds.

10.04 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.

10.05 Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at a rate determined by the Manager and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

## **11. Customer due diligence and disclosure of beneficial interests**

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11.01 The Manager may require any Bondholder or any Applicant to provide the Manager with any information which it requires in order:

- (a) to conduct appropriate customer due diligence on any Bondholder or Applicant, including (without limitation) identifying and verifying that Bondholder or Applicant (as applicable) and each beneficial owner of a Bonus Bond; and
- (b) without limiting (a) above, to comply fully with its obligations under all applicable law (including any anti-money laundering or countering financing of terrorism legislation), all applicable regulator guidance and policy, and the Manager's internal compliance policies in relation to such law, guidance or policy.

11.02 Where an Applicant does not comply with a request made by the Manager pursuant to clause 11.01, the Manager may refuse that Application. This clause does not limit clause 4.

11.03 Where the Manager is satisfied that:

- (a) a Bondholder has failed to comply with any request made by the Manager pursuant to clause 11.01; or
- (b) a Bondholder's continued holding of Bonus Bonds may be in breach of any applicable law (including any anti-money laundering or countering financing of terrorism legislation),

applicable regulator guidance and policy, or the Manager's internal compliance policies in relation to such law, guidance or policy,

the Manager may, by notice in writing to the Bondholder registered as holding the Bonus Bonds in respect of which the failure relates (the **Specified Bonus Bonds**) require the disposal of the Specified Bonus Bonds or any part thereof within such time as is specified in the notice. Any Bondholder disposing of Specified Bonus Bonds shall not be entitled to make any claim upon the Manager or the Supervisor in respect of the acquisition or disposal of the Specified Bonus Bonds or in respect of any other matter.

11.04 If the Specified Bonus Bonds are not disposed of in accordance with the notice given by the Manager pursuant to clause 11.03 the Manager may itself redeem or cause the Specified Bonus Bonds to be redeemed at such price and on such date or dates nominated by the Manager.

11.05 For the purposes of giving effect to clause 11.03 the Manager may:

- (a) appoint a person to execute as transferor a transfer or other instrument in respect of any Bonus Bonds sold or redeemed in accordance with the provisions of clause 11.03 and to receive and give good discharge of the purchase or redemption money therefor; and
- (b) register the transfer or effect the redemption and may, or shall where required by clause 13.01, issue confirmation information to any transferee.

11.06 The redemption money less the expenses of any redemption made in accordance with the provisions of clause 11.04 shall, subject to the Manager's and Supervisor's obligations at law, be paid to the Bondholder whose Bonus Bonds were redeemed. Where Specified Bonus Bonds are sold or redeemed in accordance with clause 11.04, the Bondholder concerned shall not be entitled to make any claim (other than to moneys payable under this clause 11.06 upon the Manager, the Supervisor, transferee (if any) of the Specified Bonus Bonds, or person appointed (under clause 11.05(a) hereof) in respect of the acquisition or disposal of the Specified Bonus Bonds or in respect of any other matter.

## 12. Register

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12.01 The Manager shall keep and maintain or cause to be kept and maintained an up-to-date register of Bondholders in a form and manner required by the FMCA.

12.02 Subject to the requirements of the FMCA, the Register shall be held at such place as the Manager shall from time to time stipulate.

12.03 There shall be no requirement to register, in the case of joint holders of Bonus Bonds, the names and addresses of more than two Persons holding such Bonus Bonds jointly.

12.04 The Manager shall cause the Register to be audited by the Auditor in accordance with FMCA.

12.05 The Supervisor shall be entitled to rely absolutely on the Register as being correct and the Supervisor shall not be required to enquire into the authenticity of the Register nor shall it incur any liability or responsibility on account of any mistake in the Register.

12.06 Any change of name or address of any Bondholder shall be notified by such Bondholder in writing to the Manager who shall alter the Register accordingly.

12.07 The Register must be open for inspection as required by the FMCA.

12.08 Neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of any charge, pledge or equity to which any of the Bonus

Bonds or any interest therein are or may be subject, or to recognise any Person as having any interest in any Bonus Bond except for the Person recorded in the Register as the Bondholder. Neither the Manager nor the Supervisor shall be required to enter or record notice of any trust, expressed, implied or constructive, on the Register.

12.09 The Register may be closed during such time (not exceeding in the aggregate thirty (30) Business Days in each year) as the Manager thinks fit.

### 13. Confirmation information

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13.01 Without limiting the information that the Manager may provide to a Bondholder in relation to that Bondholder's holding of Bonus Bonds, the Manager will provide a Bondholder with the confirmation information required by the FMCA following the issue or redemption of a Bonus Bond, or otherwise in the circumstances required by the FMCA.

### 14. Consolidation and Split of Bonus Bonds

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14.01 The Manager may at any time, by notice in writing to the Bondholders and the Supervisor, cause the Bonus Bonds 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 (the **Operative Date**); and
- (b) specify the ratio (the **Ratio**) which the number of Bonus Bonds in existence after the consolidation or subdivision will bear to the number of Bonus Bonds in existence before the consolidation or subdivision and the Redemption Amount for such Bonus Bonds.

14.02 As from the Operative Date, each Bondholder shall be deemed to hold a number of Bonus Bonds equivalent to the number held by him before the Operative Date multiplied by the Ratio. Fractions of a Bonus Bond resulting from this multiplication shall be disregarded and a person who would otherwise receive a fraction of a Bonus Bond will receive the appropriate fraction of the Redemption Amount for a Bonus Bond in lieu thereof.

### 15. Transfer and Transmission of Bonus Bonds

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15.01 Any Bondholder may transfer all or any of the Bonus Bonds held by him by means of an instrument of transfer in writing in accordance with clause 15.02.

15.02 (a) Any Bonus Bonds transferred pursuant to an "authorised transaction" or a "licensed market transaction" within the meaning of the FMCA may be transferred by an instrument of transfer complying with the relevant provisions of the FMCA.

- (b) Every instrument of transfer in respect of a transfer not falling within the provisions of subclause (a) above shall be in such form as the Manager may approve from time to time and shall be signed by the transferor and the transferee.

15.03 (a) Every instrument of transfer shall be delivered to the Manager, at such address as may be specified in the current PDS, for registration, accompanied by such evidence as the Manager may require to prove the title of the transferor or his right to transfer the Bonus Bonds.

- (b) On being satisfied that the provisions of this clause and that all statutory or regulatory provisions (including all identity verification requirements that the Manager may be

required to comply with from time to time in respect of a Bondholder) have been complied with, the Manager may register the transfer in the Register.

- (c) Upon registration of any instrument of transfer the Manager may, or shall if required by clause 13.01, issue confirmation information to the transferee and the transferor.
- (d) The Manager may decline to register any transfer if:
  - (i) the provisions of this clause 15 or any applicable statutory provisions have not been complied with; or
  - (ii) the registration of the transfer would result in some Bonus Bonds but less than 500 Bonus Bonds either remaining in the name of the transferor or standing in the name of the transferee.
- (e) Notwithstanding anything in clauses 5.02 and 7.01, the Manager may, in order to give effect to any transfer, redeem the Bonus Bonds being transferred and issue to the transferee replacement Bonus Bonds and any such replacement Bonus Bonds may, at the discretion of the Manager be deemed to be issued on any day during the Month immediately preceding the Month in which the substitution occurs.

15.04 All instruments of transfer in respect of transfers which are registered may be retained by the Manager but any instrument of transfer which the Manager may decline to register shall within two months after the date on which the instrument of transfer is lodged with the Manager be returned to the Person lodging the same.

15.05 Registrations of transfers may be suspended at such times and for such periods (not exceeding in the aggregate thirty (30) Business Days in each year) as the Manager may from time to time determine. Registration of transfers may also be suspended during the period between the giving of notice of a meeting of Bondholders and the completion of the said meeting as the Manager thinks fit.

15.06 The executors or administrators of a deceased Bondholder (not being one of several joint Bondholders) and in the case of the decease of one or more of several joint Bondholders the survivor or survivors of such joint Bondholders shall be the only persons recognised by the Manager as having any title or interest in the Bonus Bonds held by such Bondholder or Bondholders.

15.07 Any Person becoming entitled to any Bonus Bonds by operation of law, for example in consequence of the death or bankruptcy of any Bondholder, may upon producing such evidence of his title of the character in respect of which he proposes to act under this clause as the Manager shall think sufficient be registered himself as the holder of such Bonus Bonds or, subject to the provisions as to transfer contained in this clause, may transfer such Bonus Bonds. This provision shall apply in the case of a person who becomes entitled as a survivor of Persons registered as joint holders.

15.08 If the Manager becomes aware of the death or bankruptcy of a Bondholder and no redemption of his Bonus Bonds has occurred within six months of the Manager becoming so aware, the Manager shall be entitled to redeem the Bonus Bonds held by such deceased Bondholder or bankrupt and deposit the proceeds of such redemption in a bank account with the Manager opened in the name of the Supervisor. The Supervisor may, upon receiving evidence of title satisfactory to it to such deposit, pay to claimants such sums as are properly payable. No interest shall be payable on such deposits or monies paid by the Supervisor but the Supervisor may deduct such reasonable fee representing administration charges from any payment made hereunder.

## **16. Remuneration of Supervisor**

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- 16.01 The Supervisor shall be paid out of the Trust Fund in respect of its services hereunder in addition to the reimbursement specified in clause 27.11 a fee equal to an amount agreed and to be reviewed annually by the Manager and the Supervisor. The Supervisor shall be entitled to receive, in addition to such fee, any Goods and Services Tax or similar tax or duty payable in respect of such fee.
- 16.02 The fee referred to in clause 16.01 shall be paid in arrears on each Quarterly Date and on the date of termination of the Scheme.

## **17. Removal and Retirement of Supervisor**

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- 17.01 Subject to compliance with the requirements of the FMCA, the Supervisor may be removed from office as supervisor by:
- (a) the Manager with the FMA's consent; or
  - (b) by such alternative means (if any) as from time to time may be prescribed under any relevant legislation.
- 17.02 The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do, subject to the appointment of a new Supervisor and the transfer to such new Supervisor of all of the Investments and all other property or assets of the Trust Fund.
- 17.03 The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has retired or been removed from office) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless they hold a licence under the Financial Markets Supervisors Act 2011 that covers managed investment schemes under the FMCA and are otherwise entitled by law to act as the supervisor or the Scheme. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution at a meeting of Bondholders duly called to appoint a new Supervisor.

## **18. Remuneration of Manager**

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- 18.01 The Manager shall be entitled to be paid out of the Trust Fund in respect of its services hereunder in addition to the reimbursement specified in clause 27.11, a fee to be specified by the Manager in the current PDS, including any amount held in the Reserve Fund Account. The Manager shall be entitled at any time and from time to time to alter the amount of that fee by giving at least one month's prior written notice to that effect to the Supervisor. Any change of fee shall not become effective until the increased level of fees has been disclosed in the current PDS. The Manager shall be entitled to receive, in addition to such fee, any Goods and Services Tax or similar tax or duty payable in respect of such fee.
- 18.02 The fee referred to in clause 18.01 shall be calculated monthly, on the basis of the Gross Value of the Trust Fund from day to day, and shall be paid in arrears on each Month and on the date of termination of the period of the Scheme.
- 18.03 In addition to any fees payable to the Manager under this Governing Document the Manager shall be entitled to charge Bondholders additional fees relating to transfers, redemptions and any other matter of whatsoever nature as may from time to time be specified in the current PDS.

## 19. Removal of Manager

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- 19.01 The Manager shall cease to hold office as Manager of the Scheme if the Manager is removed pursuant to the FMCA.
- 19.02 If the Manager ceases to hold office pursuant to clause 19.01, the Manager shall immediately desist from all activities related to the Scheme and shall promptly deliver to the Supervisor all information and documentation held by the Manager relating to the Scheme which the Supervisor may reasonably request.
- 19.03 Notwithstanding any other provision of this Governing Document, if ANZ Investment Services (New Zealand) Limited or any Related Company of the Manager ceases for any reason to be the Manager of the Scheme then (except to the extent that ANZ Investment Services (New Zealand) Limited or such Related Company otherwise agrees in writing):
- (a) if on the date of such cessation the name of the Scheme includes the expressions “ANZ” and/or “Bonus Bonds” from that date the name of the Scheme shall if lawful be the name arrived at by removing the expressions “ANZ” and/or “Bonus Bonds” and if not lawful be the name agreed between ANZ Investment Services (New Zealand) Limited or such Related Company and the Supervisor;
  - (b) if on the date of such cessation the name of the Custodian includes the expressions “ANZ” and/or “Bonus Bonds” the Supervisor shall forthwith after that date change the name of that company so that the expressions “ANZ” and/or “Bonus Bonds” cease to appear therein;
  - (c) the Supervisor and the Manager shall each ensure that, from the date of such cessation, the expressions “ANZ” and/or “Bonus Bonds” do not appear in any documents, publications, or advertisements relating to the Scheme, and that all registers and records are amended to record the change of name of the Custodian; and
  - (d) if ANZ Investment Services (New Zealand) Limited has been removed from office as Manager pursuant to clause 19.01, the Supervisor shall pay to ANZ Investment Services (New Zealand) Limited out of the Trust Fund as compensation for loss of office an amount equal to the total fees received by ANZ Investment Services (New Zealand) Limited pursuant to this Governing Document during the 24 months preceding the date of such removal.
- 19.04 It is hereby declared, for the purposes of the Contracts (Privity) Act 1982, that clause 19.03 shall be enforceable by the ANZ Bank New Zealand Limited and any other company that is a Related Company of ANZ Bank New Zealand Limited as well as by any party to this Governing Document.

## 20. Retirement of Manager

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- 20.01 The Manager may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed pursuant to clause 20.02 and has executed the deed referred to in clause 20.03. Upon giving notice of its intention to retire, the Manager shall provide to the Supervisor all information and documentation held by the Manager relating to the Scheme which the Supervisor may reasonably request.
- 20.02 If any vacancy occurs in the office of Manager (whether by retirement of the Manager pursuant to clause 20.01 or removal of the Manager pursuant to clause 19.01) the Supervisor shall have the power to appoint a Person who meets the requirements of a temporary manager under the FMCA as temporary Manager, subject to the FMA's power to appoint a temporary manager as set out in the FMCA, which temporary Manager shall have all the powers conferred on the

Manager by this Governing Document or by law until a new Manager is appointed in accordance with the provisions of this clause 20.02. Upon any such vacancy occurring, the Supervisor must take all reasonable steps to appoint a permanent manager for the Funds who is entitled in accordance with the FMCA and otherwise by law to act as the manager of the Scheme. If the Supervisor fails or refuses to appoint a Manager, a Manager may be appointed by a Special Resolution at a meeting of Bondholders duly called to appoint a Manager.

20.03 A Manager appointed pursuant to clause 20.02 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the Manager undertakes to the Supervisor and the Bondholders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) 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 Manager had been originally named as a party hereto.

## 21. Borrowing Powers

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21.01 The Supervisor shall have power, if so directed by the Manager pursuant to clause 21.03, but subject to clause 21.04, to Borrow money, and to give security in respect of any Borrowing over all or any part or parts of the Trust Fund.

21.02 All borrowings, raising of money, charging of Investments or other transactions entered into or undertaken pursuant to clause 21.01 (**Security Transactions**) shall only be entered into or made where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Bondholders or for the purposes of conducting the investment or management or other operation of the Trust Fund pursuant to this Governing Document including the repayment or redemption of any Bonus Bonds from time to time **AND** the Supervisor or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.

21.03 The Manager may, subject to clauses 21.02 and 21.04, at any time and from time to time if the Manager considers it necessary or desirable to do so, by notice in writing to the Supervisor, require the Supervisor to Borrow moneys on behalf of the Trust Fund, and if the Manager so directs to secure such Borrowing upon all or any part or parts of the Trust Fund in such manner as the Manager thinks fit. Any such notice shall specify the party from whom the Borrowing is to be made, and the terms of the Borrowing, and the Manager shall not give any such notice unless it has arranged the Borrowing with such party.

21.04 The Supervisor shall on receipt of a direction by the Manager pursuant to clause 21.03 take all necessary steps to give effect to that direction provided however:

- (a) no Security Transaction shall be entered into where the effect of entering into the Security Transaction would be that the total moneys, amounts or other obligations thereby secured would exceed 50% of the Gross Value of the Trust Fund (calculated taking account of the proceeds of the borrowing); and
- (b) the Supervisor shall not be required to execute any agreement, security or other document in respect of a Security Transaction unless the Supervisor is satisfied that the Supervisor's liability is restricted to the Investments from time to time comprising the Scheme and that any loan security or other obligation binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor in any capacity other than in its capacity as Supervisor.

21.05 No person lending money to or otherwise dealing with the Supervisor shall be bound to inquire as to whether the limit in clause 21.04(a) has been exceeded, and no breach of such limit shall affect the validity or enforceability of any loan or any other transaction.

## 22. Accounts and Reports

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- 22.01 The Manager and the Supervisor shall, and the Supervisor will procure that the Custodian shall, having regard to their separate functions and obligations, keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Scheme and the matters in respect of which such receipt and expenditure takes place and of the issue and cancellation of Bonus Bonds and of all other matters for which accounts should properly be kept. The Manager and the Supervisor shall, and the Supervisor will procure that the Custodian shall, provide to each other from time to time any information necessary for this purpose.
- 22.02 The Manager shall cause to be prepared annual accounts in respect of the Trust Fund for each Financial Year in accordance with the FMCA.
- 22.03 The annual accounts prepared in accordance with clause 22.02 shall be audited by the Auditor in accordance with the FMCA. The Auditor shall separately report to the Manager and the Supervisor:
- (a) whether the accounts read in conjunction with the notes thereto disclose a true and fair view of the state of affairs of the Scheme as at the end of the period to which they relate and of the results of the Scheme for such period; and
  - (b) whether in examining such accounts, and the records and books of account the Auditor has obtained any knowledge of any default in the fulfilment of the terms covenants provisions or conditions of this Governing Document by the Supervisor or the Manager and, if so, particulars of each such default.
- 22.04 In carrying out his duties the Auditor shall be entitled to require from the Manager and the Supervisor such information, explanations, documents, certificates and accounts as he may consider necessary, and the Manager and the Supervisor (as the case may be) shall forthwith provide the same to the Auditor.
- 22.05 The Manager shall cause to be filed any statements and documents required to be filed pursuant to any relevant law.
- 22.06 The Manager shall provide to the Supervisor such information as it may from time to time reasonably request in writing.

## 23. Auditor

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- 23.01 As soon as practicable after the date of execution of this Governing Document the Manager shall after consultation with the Supervisor appoint an auditor or auditors of the Trust Fund who shall be a licensed auditor or registered audit firm and entitled by law to act as such.
- 23.02 The Auditor may also be auditor of the Manager and may be the auditor of any other trust whether of a similar nature to the Scheme or otherwise but may not be an officer or servant (or the partner of an officer or servant) of the Manager or the Supervisor.
- 23.03 The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Fund.
- 23.04 The Auditor may at any time be removed from office by the Manager with notice to the Supervisor. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.

23.05 Any vacancy in the office of Auditor occurring under clause 23.04 shall be filled by the Manager (after consultation with the Supervisor) appointing an auditor qualified for appointment in terms of clause 23.01.

23.06 The Manager must comply with the requirements in the FMCA and the FMC Regulations relating to the appointment of the Auditor and the Auditor's obligation to report to the Supervisor.

## **24. Meetings of Bondholders**

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24.01 The Manager shall summon a meeting of Bondholders upon the request in writing of the Supervisor or a Bondholder or Bondholders holding Bonus Bonds that have a combined value of no less than 5% of the value of the Bonus Bonds on issue at the date of the Manager's receipt of the request.

24.02 The Manager and the Supervisor may at any time of its own volition convene a meeting of Bondholders.

24.03 All meetings of Bondholders shall be convened and held in accordance with the provisions set out in the First Schedule to this Governing Document or as otherwise prescribed by law.

24.04 The Bondholders shall have the power to give such directions to the Supervisor as they think proper concerning the Scheme, provided that

- (a) the directions are consistent with the provisions of this Governing Document and any relevant laws and any directions given by the FMA pursuant to the Financial Markets Supervisors Act 2011; and
- (b) the directions are given by means of a resolution passed at a meeting of Bondholders by Bondholders holding not less than three-quarters of the Bonus Bonds who are present in person or by proxy and vote and who hold not less than one-quarter of the Bonus Bonds on issue.

24.05 Where any direction is given to the Supervisor pursuant to clause 24.04 in respect of any matter the Supervisor may comply with the direction provided that such direction is consistent with the provisions of this Governing Document, the FMCA and any applicable law, and shall not be liable for anything done or omitted by it by reason of its following the direction in good faith. The Supervisor may also at its discretion apply to the High Court for directions in respect of the matter.

## **25. Notices**

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25.01 Any notice to be given to any Bondholder may be given either:

- (a) personally; or
- (b) by sending it by post to the address of the Bondholder shown in the Register; or
- (c) subject to the Bondholder having consented to receive information relating to the Scheme in an electronic form, by electronic means to the electronic address of the Bondholder shown in the Register; or
- (d) with the prior written approval of the Supervisor, by general advertisement.

25.02 A notice may be given to the joint holders of a Bonus Bond by giving the notice to the first two Persons named in the Register as holders of that Bonus Bond, and any such notice to those

first two Persons named in the Register as holders of that Bonus Bond shall be deemed notice to all the joint holders.

25.03 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the third day following the day of posting and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed, pre-paid and posted. Any notice by advertisement will be deemed to have been given on the day of publication of the newspaper or other publication containing the advertisement. Without limiting section 11(a) of the Electronic Transactions Act 2002, a notice sent by email will be deemed to have been received on the day on which the email leaves the communication system of the sender (and if that day is not a Business Day, or the transmission is sent after 5.00pm on a Business Day, then the notice will be deemed to have been given on the next Business Day after that day).

25.04 Any notice delivered at or posted to the registered address of a Bondholder shall notwithstanding that such Bondholder be then dead and whether or not the Supervisor or the Manager have notice of his death be deemed to have been duly served and such service shall be deemed a sufficient service on the executors and administrators of the deceased Bondholder and all Persons (if any) registered as joint holders with him in respect of the Bonus Bonds concerned.

## 26. Amendments to Governing Document

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26.01 Subject to the FMCA, the Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Governing Document (by means of a deed executed by the Supervisor and the Manager) in any of the following cases:

- (a) if in the opinion of the Supervisor the same is made to correct a manifest error or is of a formal or technical nature; or
- (b) if in the opinion of the Supervisor the same is necessary or desirable for the more convenient economical or advantageous working, management or administration of the Trust Fund or to obtain listing of the Bonus Bonds on the New Zealand Stock Exchange, or for safeguarding or enhancing the interests of the Trust Fund or Bondholders; or
- (c) if in the reasonable opinion of the Supervisor the same is necessary or desirable in view of legislation or requirements imposed by any lawful authority affecting the Scheme; or
- (d) if the same is authorised by a Special Resolution; or
- (e) if the same is considered by the Supervisor not to be or likely to become prejudicial to the general interests of the Bondholders.

**PROVIDED THAT** no amendment shall be made under this clause which would have the effect of materially altering the terms upon which the Scheme became an approved unit trust without the prior written consent of the Minister of Finance.

26.02 Notwithstanding the provisions of clause 26.01 where the Supervisor, having received 15 Business Days' written notice, and the Manager agree that it is in the interests of the Bondholders to vary the definition of "Authorised Investments" so as to exclude therefrom any particular form of investment or to add thereto any other form of investment then:

- (a) if the Manager shall post a statement in such form as the Supervisor approves to all Bondholders on the Register at the date of posting the statement setting out therein details of the proposed variations; and

- (b) Bondholders holding not less than ten (10%) per cent of the number of Bonus Bonds in existence at the date of posting the statement do not give notice of their intention to call a meeting of Bondholders within 30 days of the date of posting of the statement,

the Supervisor and the Manager may enter into and execute a deed amending the definition of Authorised Investments to give effect to the alterations proposed in the statement forwarded to Bondholders.

26.03 Where any material amendment has been made to the Governing Document pursuant to clause 26.01 with the prior written consent of the Minister of Finance, the Manager will provide a notice to Bondholders in accordance with clause 25.01 which will set out, in summary form, all such amendments. If such notice is to be sent by mail, it may be sent at the time the Manager next mails information to the Bondholders but in any event no later than three (3) months after the date those amendments are made.

## **27. Supervisor's and Manager's Powers and Indemnities**

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27.01 The Supervisor is the supervisor for the purposes of the FMCA and is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA. Subject to the provisions of this Governing Document and relevant laws and the powers, rights and discretions given to the Manager, the Supervisor shall have all powers over and in respect of the Investments of the Trust Fund which it could exercise if it were the absolute and beneficial owner of such Investments. In particular, without derogating from the foregoing, the Supervisor shall have full and absolute powers to do the following:

- (a) purchase, sell and otherwise deal with Investments upon such terms as the Supervisor thinks fit;
- (b) execute and pay for repairs, and improvements relating to Investments;
- (c) insure any Investments of the Scheme and any property which forms security for any Mortgage for such amounts and on such conditions and in such types of insurances as may be deemed necessary;
- (d) attend and vote at meetings;
- (e) lend money;
- (f) borrow or raise money unsecured or secured subject to the conditions contained in this Governing Document;
- (g) instruct agents and consultants to act in all matters that can legally be delegated and to sign and execute such deeds acts and documents for such purposes;
- (h) make and carry out any takeover proposal, offer or invitations;
- (i) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Supervisor deems fit;
- (j) subject to clause 21.02, guarantee the performance of any Person in relation to any agreement, security, charge, contract, undertaking or promise and secure any such guarantee by mortgage, charge or other encumbrance over the whole or any part of the Trust Fund;
- (k) create, grant, renew, alter or vary any mortgage, charge or other encumbrance over the whole or any part of the Trust Fund for any purpose whatsoever and upon such terms and conditions as the Supervisor may in its absolute discretion think fit;

- (l) agree, enter into and perform any contract, option, easement or other right relating to any Investment;
- (m) agree to the release, modification or variation of any rights, privileges or liabilities of any Investments from time to time forming part of the Trust Fund or any securities given in relation thereto;
- (n) agree to the rearrangement or reconstruction of any Person including any increase or reduction in the capital of the Person;
- (o) 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;
- (p) 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 Supervisor either generally or on conditions as the Supervisor deems fit and to carry out, exercise and comply with any of the same;
- (q) manage any Investment being an asset of the Trust 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 the Scheme;
- (r) 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 relates to Authorised Investments;
- (s) consolidate and divide all or any of the Bonus Bonds of the Scheme into Bonus Bonds of a larger amount or subdivide all or any of the Bonus Bonds of the Scheme into Bonus Bonds of a smaller amount;
- (t) perform and enforce agreements; and
- (u) institute, prosecute, compromise and defend legal proceedings.

27.02 The Supervisor shall have the powers conferred on it by the FMCA and, when exercising its powers and performing its duties as supervisor of the Scheme, it must comply at all times with its duties under the FMCA.

27.03 The Supervisor and the Manager in incurring any debts, liabilities or obligations, or in taking or omitting any other action for or in connection with the affairs of the Trust Fund, are each and shall each be deemed to be acting for and on behalf of the Trust Fund and not in their own respective personal capacities. To the fullest extent permitted under the law and the FMCA neither the Supervisor nor the Manager shall be under any personal liability, nor shall resort be had to their private property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust Fund.

27.04 If contrary to the provisions of clause 27.03 either of the Supervisor or the Manager shall be held personally liable to any other person in respect of any debt or liability or obligation incurred by or on behalf of the Trust Fund or any action taken or omitted in connection with the Trust Fund, then to the fullest extent permitted under the law and the FMCA the Supervisor or the Manager (as the case may be) shall be entitled to indemnity and reimbursement out of the Trust Fund to the full extent of such liability and to the full extent of the costs of any litigation, other proceedings or other action taken in respect of the liability in which such liability shall have been determined including without limitation legal fees and disbursements.

27.05 The Supervisor and the Manager shall each be liable to the Trust Fund for any loss arising out of wilful default or wilful breach of trust but subject thereto and to the fullest extent permitted under the FMCA neither the Supervisor nor the Manager shall be liable to the Trust Fund or to any Bondholder for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Trust Fund or as a result of acting as Supervisor or Manager (as the case may be) under this Governing Document.

27.06 The Supervisor and the Manager shall each be entitled to be reimbursed out of the Trust Fund 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 Governing Document, and without prejudice to the generality of the foregoing shall be entitled to be indemnified against any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in establishing the Scheme (which expenses may be amortized by being written off against the Trust Fund in equal instalments over the first five Financial Years) or in bringing or defending any action or suit in respect of the Trust Fund or the provisions of this Governing Document **PROVIDED THAT** the Manager and the Supervisor shall not be entitled to be separately indemnified against any internal administration expenses.

27.07 Without prejudice to the generality of clauses 27.01 and 27.06:

- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to verify 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, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to verify any information document form or list supplied to it by the Supervisor;
- (c) the Supervisor and the Manager may each (without liability for loss) act upon or refuse to act upon the opinion or advice of, or upon statements of or information in relation to the Trust Fund 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 he 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, secretary, officer or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager;
- (e) except insofar as herein otherwise expressly provided, the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in it by this Governing Document 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 herein 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 (all hereinafter in this sub-clause (f) called **Relevant Persons**) from being a Bondholder or from acting in any particular capacity 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, attorney or agent or in any other fiduciary, vicarious or other professional capacity and shall not be deemed to breach any of the obligations arising out of any fiduciary relationship created by this Governing Document or imposed or implied by law; and

- (g) for greater certainty, but not so as to limit the foregoing, nothing herein contained shall be construed to prevent the Manager or the Supervisor separately from establishing or acting as manager or trustee or supervisor for trusts whether of a nature similar to or different from the trusts of this Governing Document.

27.08 No provision of clauses 27.03 to 27.07 preceding shall have the effect of exempting the Supervisor or the Manager or any director or officer of the Supervisor or Manager from, or indemnifying the Supervisor or Manager or any such director or officer against, any liability for breach of trust where he fails to show the degree of care and diligence required of it in that capacity, having regard to the provisions of this Governing Document and the powers, authorities and discretions conferred hereby or to the extent that doing so would be void under the FMCA or any other relevant laws.

27.09 The Manager shall use its best endeavours to ensure that the Scheme is carried on in a proper and efficient manner.

27.10 The Manager shall:

- (a) make available upon demand to the Supervisor for inspection the whole of the Manager's books and papers insofar they relate to the Scheme and all books and papers relating to the Scheme;
- (b) give to the Supervisor such information as is required to be provided to the Supervisor by the FMCA or as the Supervisor may otherwise require with respect to all matters relating to the Scheme or any business of the Manager or to any property of the Manager (whether acquired before or after the date of this Governing Document) or otherwise relating to the affairs of the Manager;
- (c) provide to the Supervisor such reports in such form, containing such content and at such times as the Manager and the Supervisor agree in writing (including, for the avoidance of doubt, in relation to SIPO limit breaks, and, if applicable, material unit pricing errors and material non-compliances with any unit pricing methodology for Bonus Bonds in the Trust Fund) from time to time;
- (d) provide Bondholders with information, notices and disclosures required to be given to them under the FMCA, subject to any applicable exemptions; and
- (e) correct any material pricing errors or material non-compliances with a pricing methodology for Bonus Bonds, to the extent required by the FMCA and otherwise in accordance with any compensation policy agreed between the Manager and the Supervisor from time to time (that shall include agreement on materiality and compensation), provided that where the amount of any reimbursement or compensation required is less than any minimum level of reimbursement or compensation which is determined in accordance with such policy then no reimbursements or compensation shall be required to be provided.

27.11 Subject to the proviso to clause 27.06, the Manager and the Supervisor shall be reimbursed out of the Trust Fund (whether from income or capital or both) for and in respect of:

- (a) all costs, charges and expenses (including legal fees) incurred in connection with the formation of the Scheme, the acquisition, registration, custody, disposal of or other dealing with Investments, including bank charges and stamp duty, and the expenses of any agents or Custodian of the Supervisor or the Manager both within and outside New Zealand but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager of the Supervisor; and
- (b) the fees and expenses of the Auditor; and

- (c) all taxes, duties and imposts charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other Person) in connection with the Scheme or the Investments on any account whatsoever; and
- (d) interest and other expenses relating to borrowings and discounts and acceptance and other fees in respect of bill facilities; and
- (e) the costs of convening and holding any meeting of Bondholders; and
- (f) the costs of postage in respect of all cheques, accounts, distribution statements, notices, quarterly and other reports and other documents posted to all or any Bondholders in accordance with the provisions of this Governing Document; and
- (g) the fees and expenses of any solicitor, barrister, valuer, accountant or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties under this Governing Document; and
- (h) all costs of preparing and printing confirmation information, accounts, distribution statements and cheques; and
- (i) expenses in connection with the keeping of the Register; and
- (j) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective powers and duties under this Governing Document.

## 28. Winding Up

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28.01 The Scheme shall determine and be wound up upon the occurrence of the earliest of the following events:

- (a) if the Manager certifies in writing that it is in its opinion in the interests of Bondholders that the Scheme should be wound up; or
- (b) if a Special Resolution of Bondholders is passed resolving to wind up the Scheme; or
- (c) on the expiration of a period of 80 years less one day from the date of this Governing Document; or
- (d) if the Scheme is required to be wound up under the FMCA.

28.02 The Manager and the Supervisor will comply with any applicable procedural requirements in the FMCA relating to the winding up of the Scheme.

28.03 The Supervisor shall within 14 days after the occurrence of any event referred to in clause 28.01, give to each Bondholder notice of the occurrence of that event and of the intention of the Supervisor to distribute the Trust Fund.

28.04 The Supervisor shall, subject to clause 28.05, as soon as is practicable after the occurrence of an event referred to in clause 28.01:

- (a) sell call in and convert into Cash the whole of the assets of the Trust Fund; and
- (b) pay out, discharge, or otherwise make proper provision for the liabilities of the Trust Fund and any contingent liabilities of the Supervisor or Manager payable from the Trust Fund; and

- (c) distribute the Cash available in the Trust Fund less all costs and expenses incurred by the Supervisor or Manager in respect of the winding up amongst Bondholders and (subject to the terms of issue of their Bonus Bonds) in proportion to the numbers of Bonus Bonds held by them.

28.05 Upon the winding up of the Scheme the Supervisor may, with the sanction of a Special Resolution and subject to a right of indemnity, distribute the whole or any part or parts of the Trust Fund to the Bondholders in specie and (subject to the terms of issue of their Bonus Bonds) in proportion to the number of Bonus Bonds held by them and may for that purpose set such value as the Supervisor considers fair upon such property to be so distributed. Any distribution pursuant to this clause may be made by instalments.

## 29. Management of the Scheme

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29.01 The Scheme shall be managed by the Manager (with full power to delegate to its officers and employees or any third party approved by the Supervisor or any of them all acts matters or things whether or not requiring or involving the Manager's judgement or discretion). The Manager is responsible for performing the functions for which responsibility is attributed to it as manager of the Scheme under the FMCA.

29.02 Without in any way affecting the generality of the foregoing, the Manager may, in carrying out and performing the duties and obligations on its part which are contained under this Governing Document or the FMCA:

- (a) by power of attorney appoint any Person 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
- (b) appoint by writing or otherwise any person to be sub-agent or delegate of the Manager as the Manager may think necessary or proper for such purposes and with such powers authorities and discretions (not exceeding those vested in the Manager) as it thinks fit and to supersede or suspend any such sub-agent or delegate with or without assigning any cause or reason and either absolutely or for such times it may think proper,

### PROVIDED THAT:

- (c) the Manager must take all reasonable steps to:
  - (i) ensure that all delegated functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
  - (ii) monitor the performance of those functions; and
- (d) notwithstanding any delegation or appointment pursuant to this clause the Manager shall remain liable for acts or omissions of any officer, employee, attorney, agent, sub-delegate or sub-agent to whom any delegation is made or who is appointed under the preceding provisions of this clause.

29.03 Subject to clause 8.05 in relation to Related Party Benefits, the Manager may agree with any such agent or delegate (including, for the avoidance of doubt, an investment manager or administration manager) the fees that may be charged and the extent to which expenses will be reimbursed out of the Trust Fund.

29.04 To the fullest extent permitted by the FMCA, the Manager may agree to indemnify and reimburse out of the Trust Fund any investment manager, administration manager or any other

person appointed under clause 29.02 in respect of any debt, liability or obligation incurred by them in relation to the performance of their functions in respect of the Scheme, provided that the rights of any investment manager to be indemnified out of the Trust Fund shall be limited to the extent required by section 136(2)(b) of the FMCA.

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

- (a) act honestly in acting as Manager of the Scheme;
- (b) in exercising any powers or performing any duties as Manager of the Scheme:
  - (i) act in the best interests of the Bondholders; and
  - (ii) treat the Bondholders equitably;
- (c) not make use of information acquired through being the Manager in order to:
  - (i) gain an improper advantage for itself or any other person; or
  - (ii) cause detriment to the Bondholders;
- (d) exercise the care, diligence and skill that a prudent person engaged in the profession of managing the Scheme would exercise in the same circumstances; and
- (e) comply with all other duties applicable to it under the FMCA.

29.06 The Manager must carry out the functions of a manager of a managed investment scheme in accordance with this Governing Document, the SIPO and all other issuer obligations (as that term is defined in the FMCA).

29.07 The Manager has the same duties and liability 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).

29.08 All rights of voting conferred by all or any of the Investments shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Bondholder 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. The Manager shall not be under any liability or responsibility in respect of the management of any company or body 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.

## 30. Governing Law

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

## 31. Limitation of Liability

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31.01 Notwithstanding anything contained in this Governing Document or any rule of law no Bondholder shall be or become personally liable in respect of any debt or liability of the Trust Fund and:

- (a) no Bondholder shall in any circumstances (subject to any rights the Supervisor or the Manager may have to recover moneys paid in error or to withhold or recover any amounts in respect of any taxes payable by or on account of a Bondholder) be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Trust Fund;
- (b) nothing in this Governing Document or in the relationship between the Bondholders shall be deemed to create a partnership amongst Bondholders; and
- (c) neither the Supervisor nor the Manager shall be or act as agents for the Bondholders, and neither shall have power to incur liabilities on behalf of any Bondholder or pledge the credit of any Bondholder.

## 32. Counterparts

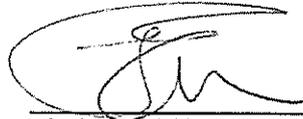
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32.01 This Governing Document may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Governing Document by signing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

## Execution

Executed and delivered as a deed.

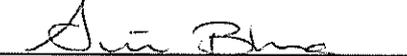
ANZ Investment Services (New Zealand) Limited by



Authorised Signatory

Felicity Evans  
Print Name

In the presence of:



Witness Signature

Anita Bhuja  
Print Name

Executive Assistant  
Witness Occupation

Wellington  
Place of residence

Trustees Executors Limited by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Place of residence

## Execution

Executed and delivered as a deed.

**ANZ Investment Services (New Zealand) Limited by**

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Place of residence

**Trustees Executors Limited by**

  
\_\_\_\_\_  
Authorised Signatory

Robert Gatward

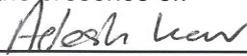
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Authorised Signatory

Melanie Lyn Hewitson

\_\_\_\_\_  
Print Name

In the presence of:

  
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Adesh Kaur  
Business Analyst  
Auckland  
Witness Occupation

\_\_\_\_\_  
Place of residence



2016/211 (1 of 1)

## Schedule 1: Meetings of Bondholders

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### VENUE OF MEETINGS

1. Meetings shall be held in such place in New Zealand as the Manager determines.

### NOTICE OF MEETINGS

2. (a) **NOTICE** of every meeting shall be given in the manner provided in the Governing Document to:
  - (i) every Bondholder who has supplied to the Manager an address for the giving of notice to him; and
  - (ii) every Person upon whom the ownership of any Bonus Bond devolves by reason of his being a legal personal representative or an assignee in bankruptcy of a Bondholder where the Bondholder but for his death or bankruptcy would be entitled to receive notice but only where such person has supplied to the Manager an address for the giving of notice to him.
- (b) A copy of the notice shall be sent to the Supervisor, the Auditor and every director of the Manager at the same time it is sent to Bondholders.
- (c) **FIFTEEN** (15) working days' notice at least of every meeting shall be given. The notice shall 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 shall specify the place, day and hour of the meeting and the general nature of the business to be transacted. The notice must meet the requirements of the FMC Regulations.
- (d) **THE** accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate proceedings at any meeting.

### QUORUM

3. (a) **NO** business shall be transacted at any meeting unless the requisite quorum is present at the commencement of the meeting.
- (b) **IF** a Special Resolution is not to be submitted, the quorum for meetings shall be Bondholders present in person or by proxy or by attorney or by authorised representative holding not less than 5 per cent of the number of Bonus Bonds for the time being in existence. If a Special Resolution is to be submitted, the quorum for meetings shall be Bondholders present in person or by proxy or by attorney or by authorised representative holding Bonus Bonds with a combined value of not less than 25 per cent of the value of Bonus Bonds held by those Bondholders who are entitled to vote.
- (c) **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 Bondholders shall be dissolved. In any other case, it shall stand adjourned to such day and time not being less than fourteen (14) days thereafter and to such place as may be appointed by the Supervisor and at the reconvening of such adjourned meeting the Bondholders present in person or by proxy or by attorney or by authorised representative and entitled to vote whatever the number of Bonus Bonds held by them shall be a quorum.
- (d) **NOTICE** of the reconvening of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Bondholders present at the reconvening of the adjourned

meeting whatever their number and whatever the number of Bonus Bonds held by them shall form a quorum.

#### **SUPERVISOR AND THE MANAGER MAY ATTEND AND SPEAK**

4. **ANY** director, officer or professional advisor of the Supervisor and any other person authorised in that behalf by the Supervisor and any director, officer or professional advisor of the Manager or any other person authorised in that behalf by the Manager may attend any meeting and all such persons shall have the right to speak at the meeting.

#### **CHAIRMAN**

5. **A** person nominated in writing by the Supervisor shall preside at every meeting as Chairman.

#### **ADJOURNMENT OF MEETINGS**

6. (a) **THE** Chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.  
  
(b) **NO** business shall be transacted at the reconvening of any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

#### **VOTING RIGHTS**

7. **THE** only persons entitled to vote in person or by proxy or by attorney or by authorised representative shall be the Bondholders registered in the Register at the date of the meeting (or if the reconvening of an adjourned meeting at the date the meeting from which the adjournment took place was first due to be held).

#### **PROXIES**

8. (a) **VOTES** may be given either personally or by proxy or by attorney and also in the case of a corporation by an authorised representative. An instrument appointing a proxy shall be in such form as the Manager and the Supervisor shall agree upon from time to time and need not be witnessed.  
  
(b) **WHENEVER** the Chairman of the meeting or an officer of the Supervisor or the Manager is appointed a proxy for a Bondholder and the Bondholder 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 his proxy is to vote upon any resolution coming before the meeting his vote shall be used to vote in favour of resolution.  
  
(c) **A** person appointed to act as proxy need not be a Bondholder.  
  
(d) **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 certified by a Notary Public or in such manner as the Supervisor shall approve shall be deposited by post or electronically at either such place or address as the Manager may in the notice convening the meeting appoint or (if no such place is appointed) the Office not less than forty-eight (48) hours before the time appointed for holding the meeting or the reconvening of the adjourned meeting or for the taking of a poll at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid provided that the Supervisor may waive the foregoing requirements in relation to the power of attorney or other authority.

- (e) **A** proxy shall unless the contrary is stated thereon be valid as well for the reconvening of any adjourned meeting as for the meeting to which it related. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve (12) months from the date of its execution but this provision shall not be construed to apply to the appointment of any attorney or representative otherwise than by an instrument of proxy.
- (f) **AN** instrument or proxy in favour of the Chairman of the meeting or the Chairman (howsoever expressed) shall be valid and effective as though it were in favour of a named person and shall constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer.
- (g) **A** person appointed proxy shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (except and to the extent to which the proxy is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Bondholder concerned.
- (h) **A** vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or power of attorney or of the authority under which the proxy was executed or the transfer of the Bonus Bonds in respect of which the vote is given provided that no notice in writing of such death, insanity or revocation is received by the Manager at the Office or that the transfer has not been entered into the Register before the commencement of the meeting or the reconvening of the adjourned meeting at which the proxy is used.

#### **POWER OF ATTORNEY**

- 9. **ANY** Bondholder may by power of attorney appoint an attorney (who need not be a Bondholder) to vote and act on his behalf at any meeting and such power of attorney or proof thereof to the satisfaction of the Supervisor shall (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 Office. Such attorney if so empowered may appoint a proxy for the Bondholder granting the power of attorney.

#### **REPRESENTATIVE OF COMPANY**

- 10. (a) **A** person authorised pursuant to a resolution of the directors or other governing body of a corporation which is a Bondholder to act for it as its representative at any meeting shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Bondholder. A person so authorised is in this Schedule referred to as “an authorised representative”.
- (b) **AN** authorised representative shall be obliged to produce evidence of his appointment at any time before the time appointed for the holding of, or at, the meeting or the reconvening of the adjourned meeting, or for the taking of a poll, at which he proposes to vote.

#### **PROCEDURE**

- 11 (a) **A** Special Resolution must be taken as a poll. Any other resolution put to the vote of a meeting shall 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 Chairman or the Supervisor or any representative of the Supervisor or by one or more Bondholders holding or representing not less than 5% of the number of Bonus Bonds in existence. Unless a poll is required or so demanded, a declaration by the Chairman that a resolution has been carried unanimously or by a particular majority or lost shall be conclusive

evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- (b) **IF** a poll is required or is duly demanded it shall be taken in such manner as the Chairman may direct and the result of such poll shall be deemed to be the resolution of the particular matter on which the poll was demanded.
- (c) **IN** the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Bondholder or on behalf of Bondholders.
- (d) **A** poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty (30) days from the date of the meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the question on which the poll was demanded. No notice need be given of a poll not taken immediately.
- (e) **THE** demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (f) **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 his votes or cast all the votes he uses in the same way.
- (g) **ON** a show of hands every person present at the meeting and entitled to vote (whether as a Bondholder or as a proxy or attorney or authorised representative) shall have one vote only. On a poll every Bondholder who is present in person or by proxy or by attorney or by an authorised representative shall be entitled to one vote for every Bonus Bond of which he is the holder or authorised representative.
- (h) **IN** the case of joint Bondholders the vote of the senior who tenders a vote whether in person or by proxy or by attorney or by authorised representative shall be accepted to the exclusion of the votes of the other joint Bondholders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

## RESOLUTIONS

- 12**
- (a) **THE** expression “Special Resolution” means a resolution passed by a poll at a meeting duly convened and held in accordance with the provisions herein contained and carried by a majority of Bondholders with a combined value of not less than 75 per cent of the value of the Bonus Bonds held by those Bondholders who are entitled to vote and who vote (whether in person or by proxy or attorney or authorised representative).
  - (b) Subject to the FMCA, a meeting of Bondholders shall have the following powers exercisable by Special Resolution:
    - (i) Power to sanction the exchange of Bonus Bonds for, or the conversion of Bonus Bonds into shares, stock, debenture, debenture stock or other obligations or securities of any company formed or to be formed.
    - (ii) Power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Bondholders howsoever such rights shall arise.
    - (iii) Power to assent to any alteration, modification of, variation, or addition to the provisions contained in the Governing Document or any deed supplemental thereto or the conditions attaching to the Bonus Bonds and to authorise the Manager and

the Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition.

- (iv) Power to give any sanction, assent, release or waiver of any breach or default by the Manager under any of the provisions of the Governing Document.
- (v) Subject to the FMCA and all relevant laws, power 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 the Governing Document.
- (vi) Power 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 clause 17.03.
- (vii) Power 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 clause 20.02.
- (viii) Power to sanction the exchange of Bonus Bonds for, or the conversion of Bonus Bonds into, units or interests in any other managed investment scheme or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution.

#### **WRITTEN RESOLUTION**

- 13** A written resolution is valid as if it has been passed at a meeting if it is signed in accordance with the FMCA by Bondholders holding Bonus Bonds that have a combined value of no less than 75 per cent of the value of the Bonus Bonds on issue held by those Bondholders who are entitled to vote on the resolution at a meeting.

#### **SPECIAL RESOLUTION BINDS ALL UNIT HOLDERS**

- 14** A Special Resolution passed at a meeting of the Bondholders duly convened and held in accordance with these presents shall be binding upon all Bondholders whether present or not present at the meeting and each of the Bondholders, the Supervisor and the Manager shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Manager, the Supervisor and the Bondholders be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

#### **MINUTE TO BE KEPT**

- 15** **MINUTES** of all resolutions and proceedings at every meeting shall be made by the Supervisor or if the Supervisor shall not be represented at any meeting by some person appointed by the Chairman of such meeting and duly entered in books from time to time provided for that purpose by the Supervisor and any such minutes as aforesaid if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings had or by the Chairman of the next succeeding meeting of Bondholders, shall be prima facie evidence until the contrary is proved of matters therein stated and every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat and proceedings thereof shall be deemed to have been duly passed and had. The Manager and the Supervisor are entitled to accept such minutes as being correct if such acceptance is based upon a reasonable belief that the minutes are genuine.

## Schedule 2: Bonus Bonds Prize Structure

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Monthly prize draws:

Up to the first \$2,500,000 of the prize funds will be divided as follows:

\$1,000,000	No less than 1 prize
\$100,000	No less than 1 prize
\$50,000	No less than 1 prize

Each remaining complete \$100,000 of the prize funds will be divided as follows:

\$5000	No less than 1 prize
\$500	No less than 1 prize
\$100	No less than 1 prize
\$50	No less than 100 prizes
\$20	No less than 3050 prizes

Each remaining complete \$10,000 of the prize funds will be divided as follows:

\$500	No less than 1 prize
\$100	No less than 1 prize
\$50	No less than 20 prizes
\$20	No less than 375 prizes

Any further residue prize funds of less than \$10,000 is then divided into \$500 prizes as far as possible and any further residue less than \$500 is divided into \$20 prizes as far as possible.